



Comparing Health-Related Policies & Practices in Sports:

The NFL and Other Professional Leagues

Chapter 5

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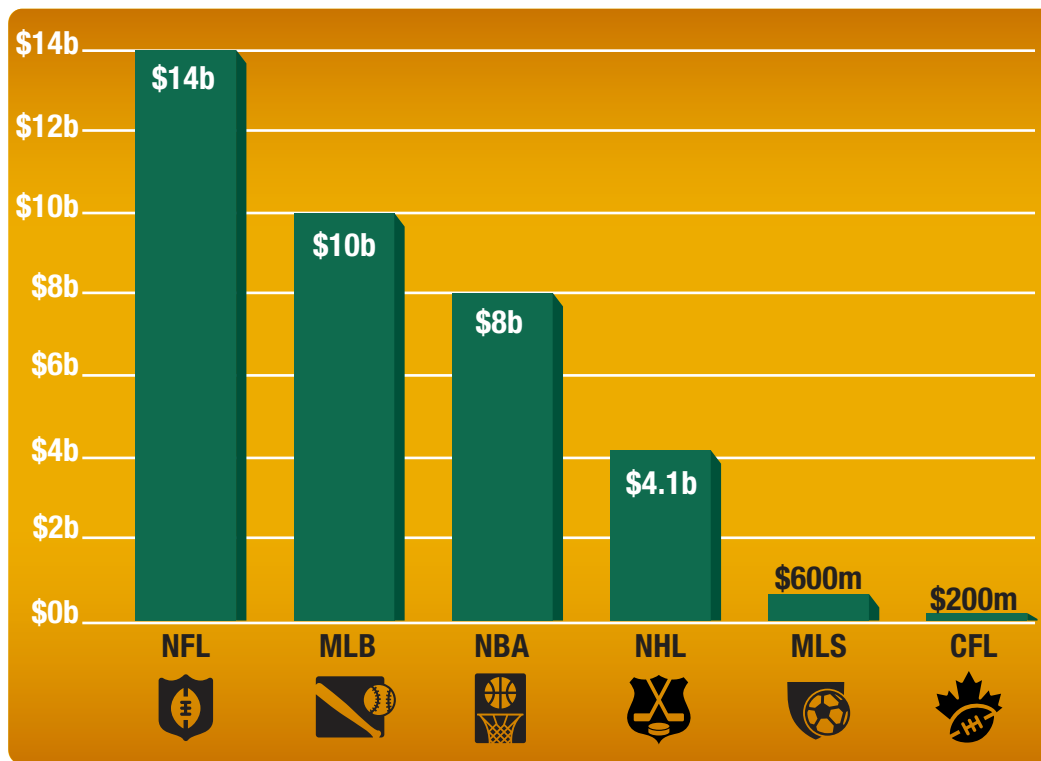
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Compensation



This Chapter examines the form and nature of player compensation in the NFL, MLB, NBA, NHL, CFL, and MLS.^a In reviewing this Chapter, it is important to understand that the structures, operations and finances of the NFL, MLB, NBA, and NHL — the “Big Four” — are considerably different from those of the CFL and MLS due to, among other things, their long-standing place in the United States and the amount of their revenues (billions versus millions).

^a In this Chapter, we are focused on the compensation structures of the players actually playing in the leagues, and not on practice squad, minor league, or development league players. The structure of play and compensation for players at these lower levels vary considerably across the leagues based on differing needs, and thus do not provide for a useful comparison.

Figure 5-A: The Leagues' Revenues

Compensation is an important component of player health. First, the different compensation structures and systems in the leagues can influence players' decisions about their physical and mental health, for example when to play through injury, when to retire, and the like. In their efforts to maximize their earnings (and sometimes, eligibility for various benefits), some players might sacrifice their short- and/or long-term physical and mental health.¹ The compensation structures dictate when or if a player faces such a trade-off.

Compensation may also be related to health in a second way. Without adequate savings and benefits during and after NFL play, players may find themselves insufficiently prepared to meet their physical and mental health needs, especially in the event of crisis.² In addition, as we discussed in greater detail in Chapter 3, crises in physical and mental health are closely tied to bankruptcy, home foreclosure, and other serious financial setbacks.³ In the worst case scenario, these two outcomes can lead to a vicious cycle—poor health outcomes lead to financial losses, which worsen the ability to combat physical and mental health impairments, which in turn further deplete financial resources. Additionally, financial health is also in and of itself an important component of a person's health. Financial difficulties can

cause stress that contributes to or exacerbates psychological and physical ailments. NFL players suffer these outcomes as well, despite their relatively high (but short-lived) compensation.

Before explaining the form and nature of compensation, it is important to discuss two concepts essential to the leagues' compensation structures: salary caps; and, free agency. After explaining these key terms, we then discuss, for each league: (1) its respective salary cap; (2) rookie compensation; (3) veteran compensation;^b (4) minimum, maximum, and average (mean) salaries; and, (5) guaranteed compensation. At the conclusion of this Chapter, we provide a chart summarizing and comparing some of the key compensation figures and policies across the leagues.

1) THE SALARY CAP

Generally, a "Salary Cap" in sports is the maximum amount of money that a club can spend on its' players' salaries collectively in a season.⁴ While some of the leagues use different terminology for their Salary Cap, and there are various nuances and differences among them, each of the leagues has some mechanism that restricts or reduces the

^b For purposes of this Chapter, we define a "rookie" as any player who has not yet played and a veteran as any player who has played.

amounts clubs can spend on player compensation. In each of the leagues, the Salary Cap is negotiated with a corresponding labor organization, or players association, that represents the players in negotiating the CBA. In the cases of the NFL, NBA, and NHL, the players associations have agreed to the Salary Caps in exchange for a minimum percentage of league revenues being spent on players. Moreover, in the cases of the NFL, NBA, NHL, and CFL, there is also a salary floor—a minimum amount that the clubs must spend on player salaries. How player contracts are calculated pursuant to these Salary Caps has a significant impact on the ways players are compensated in each sport.

2) FREE AGENCY

MLB is the oldest of the leagues, having begun play in 1903.⁵ Beginning in the earliest days of professional baseball and MLB, every player contract contained what is known as a “reserve clause.”⁶ The reserve clause prohibited players from negotiating with other clubs and granted the clubs an option to renew the player’s contract on the club’s terms.⁷ If players wanted to play professional baseball, they had almost no leverage in their contract negotiations.

The reserve clause raised concerns with the Sherman Antitrust Act. Section 1 of the Sherman Antitrust Act prohibits contracts, combinations, or conspiracies that unreasonably restrain trade.⁸ The reserve clause was an agreement among the separate baseball clubs not to negotiate with each other’s players and thus potentially unreasonably restrained the labor market for players’ services. However, in 1922, in *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs* (“*Federal Baseball*”),⁹ the Supreme Court of the United States held that MLB was not engaged in interstate commerce and was thus exempt from antitrust laws.¹⁰

As MLB grew into the large-scale, national business that it is today, the Supreme Court’s holding in *Federal Baseball* seemed questionable, including to the Supreme Court itself. However, in 1953¹¹ and again in 1972,¹² the Supreme Court upheld MLB’s antitrust exemption and the reserve clause on the grounds of *stare decisis*.^c The Court reasoned that Congress had permitted MLB’s antitrust exemption to stand for

50 years and that if anything were going to change, it had to be through legislation.^{13,d}

The other leagues were not as fortunate. The reserve clause was used in all of the Big Four leagues, but the Supreme Court limited the antitrust exemption to baseball.¹⁴ Consequently, as a result of antitrust litigation in the 1970s, the reserve clause was effectively eliminated in the NFL, NBA, and NHL.¹⁵ In 1976, MLB players finally were able to extinguish further use of the reserve clause through the collectively bargained grievance process,^e and subsequent collective bargaining efforts.

Without the reserve clause, club owners became concerned that open bidding for players’ services would financially ruin the leagues. Consequently, the leagues each began to negotiate with their respective players unions. In 1976, MLB and the MLBPA, the NBA and NBPA, and the NHL and NHLPA all agreed to new CBAs.¹⁶ In exchange for a variety of concessions, the players agreed to rules that reflected the reserve clause’s intent: the clubs would be permitted to control a player’s rights for a certain number of years, and then, after a player gained a certain level of experience, that player would become a “free agent,” able to offer his services to any and all clubs at the highest price the market would bear. The club’s ability to control the player for the first few years of his career is perhaps seen as fair consideration for the club’s investment in the player’s development, particularly at any minor league level.

While the NFL and NFLPA did not agree to free agency as it existed in the other leagues until 1993,¹⁷ beginning in the 1970s free agency became and is an integral part of the modern sports landscape. Below, we generically define three terms common to the concept of free agency in professional sports that are key to understanding compensation in these leagues. While not all of the leagues use these exact terms, they all utilize the concepts:

- d Indeed, in 1998 Congress passed the Curt Flood Act, named for the plaintiff in the 1972 Supreme Court case, which substantially overruled *Federal Baseball* and its progeny by declaring that actions relating to the employment of Major League Baseball players are subject to antitrust law. However, the Act kept Major League Baseball’s antitrust immunity concerning its handling of minor league baseball and franchise issues, such as relocation. See 15 U.S.C. § 26b; *City of San Jose v. Office of the Comm’r of Baseball*, 776 F.3d 686 (9th Cir. 2015).
- e After the 1974 season, Los Angeles Dodgers pitcher Andy Messersmith refused to sign the contract presented to him by the Dodgers. The club exercised its options under the reserve clause and Messersmith played the 1975 season without an executed contract. After the season, Messersmith claimed that he had played out the option year of the contract and was now a free agent, able to sign with any club he chose. An arbitrator ultimately sided with Messersmith. Joshua P. Jones, *A Congressional Swing and Miss: The Curt Flood Act, Player Control, and the National Pastime*, 33 Ga. L. Rev. 639, 659-60 (1999). The arbitrator’s decision was affirmed in federal court. *Kansas City Royals Baseball Corp. v. Major League Baseball Players Ass’n*, 409 F. Supp. 233 (W.D. Mo. 1976) *aff’d*, 532 F.2d 615 (8th Cir. 1976).

c *Stare decisis* is Latin for “to stand by things decided.” It is “[t]he doctrine of precedent, under which a court must follow earlier judicial decisions when the same points arise again in litigation.” Black’s Law Dictionary (9th ed. 2009).

- **Exclusive Rights Player:** A player whose contract has expired and who, because he has minimal experience (defined differently by the various leagues), must sign a contract with his prior club, provided that club offers him a contract that meets the minimum requirements outlined in the CBA. Exclusive Rights Players have no leverage and thus generally must accept the contract offered by the club, which is typically for a salary at or near the league minimum.
- **Restricted Free Agent:** A player whose contract has expired and who can sign a contract with any club but, because the player has only a limited (but more than minimal) amount of experience (defined variously among the leagues), if the player signs with a new club his prior club is entitled to some form of compensation, typically draft picks. Further, the prior club has a right of first refusal on a contract offered by another club as long as it had already made the player an offer meeting certain minimum criteria outlined in the CBA (“Qualifying Offer”). Restricted Free Agents have minimal leverage as clubs generally prefer not to pay the required compensation to the player’s prior club.
- **Unrestricted Free Agent:** A player whose contract has expired and, because he has reached a certain threshold of experience defined by the CBA, can sign a contract with any club without his prior club retaining any rights concerning the player. Unrestricted Free Agents have far more leverage and options as compared to Exclusive Rights Players or Restricted Free Agents. Becoming an Unrestricted Free Agent is an important opportunity for players to offer their services to any and all clubs at the highest price the market will bear (within the confines of the CBA).

With these important concepts and terms in mind, we turn to analyzing how they are effectuated in the leagues today and their effect on player health.

The more that is paid to NFL players — including retired players — in the form of benefits and medical care, i.e., Player Benefits Cost, the less they are able to receive in the form of salary.

A) Compensation in the NFL



The most recent CBA agreed to by the NFL and the NFLPA was executed in 2011 and expires in 2021.

1) THE NFL’S SALARY CAP

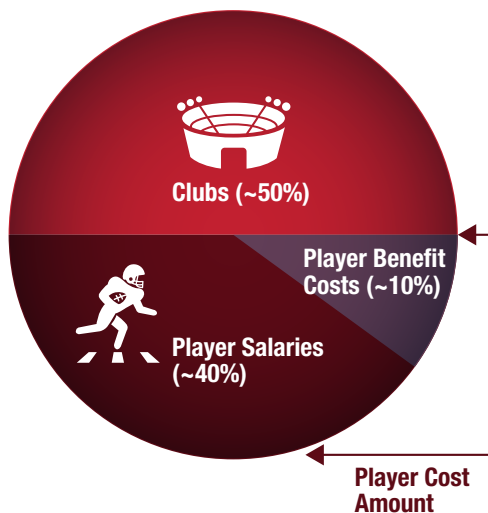
NFL players, as a group, are entitled to different percentages of different revenue sources: (1) 55% of League Media, which consists of all NFL broadcasting revenues;¹⁸ (2) 45% of NFL Ventures/Postseason revenue, which includes all revenues arising from the operation of postseason NFL games and all revenues arising from NFL-affiliated entities, including NFL Ventures,¹⁹ NFL Network,²⁰ NFL Properties,²¹ NFL Enterprises,²² NFL Productions,²³ and NFL Digital;²⁴ and, (3) 40% of Local Revenues, which includes those revenues not included in League Media or NFL Ventures/Postseason, and specifically includes revenues from the sale of pre-season television broadcasts.²⁵ These revenues are collectively known as “All Revenue” or “AR.”²⁶ AR in 2017 is estimated to reach \$14 billion.²⁷ The players’ share of AR cannot be less than 47% and cannot exceed 48.5%.²⁸

The players’ share of AR — the Player Cost Amount²⁹ — is one of two essential components for calculating the Salary Cap.³⁰ The other is Player Benefit Costs. Player Benefit Costs are the total amounts the NFL and its clubs spend on programs and benefits for players, including retired players, in addition to the costs of providing medical care to NFL players.³¹ The Salary Cap is determined by subtracting Player Benefit Costs from the Player Cost Amount and dividing by the number of clubs in the NFL.³² In other words, the Salary Cap equals Player Cost Amount minus Player Benefit Costs divided by 32. *Thus, the more that is paid to NFL players—including retired players—in the form of benefits and medical care, i.e., Player Benefits Cost, the less they are able to receive in the form of salary.* Indeed, in 2015, when the Salary Cap was \$143,280,000 per club, each club was charged \$37,550,000 in Player Benefit Costs. Thus, out of a possible \$180,830,000 that could have been spent on player salaries for each club, 26.2% was allocated to player benefits.

It is important to clarify these figures. As Figure 5-B shows on the next page, about 50% of a club’s revenue is allocated towards the players (the Player Cost Amount). The club keeps the other 50%. Of the 50% allocated for the players, in 2015, 26.2% of that was used on player

benefits. Thus, in 2015, we can estimate that each club had approximately \$361,660,000 in revenue, \$180,830,000 of which would be available for players. \$37,550,000 was spent on player benefits. The \$37,550,000 is 26.2% of the Player Cost Amount and 10.4% of the club's revenue.

Figure 5-B: Division of All Revenue



In 2016, the NFL Salary Cap was \$155.27 million.³³ In 2017, the Salary Cap is \$167 million.³⁴ Importantly, the NFL's Salary Cap is considered a "hard" Salary Cap in that, with some small exceptions or nuances, there is no way for a club to exceed the Salary Cap.³⁵ In exchange for the hard Salary Cap, clubs individually must spend at least 89% of their Salary Cap in cash over a four-year period,³⁶ and collectively must spend 95% of their Salary Caps in cash over a four-year period.³⁷ However, the Salary Cap in one season includes prorated portions of signing and option bonuses paid in previous years, even though no payment is actually made in the most recent season (see Section 4 below for additional explanation). Consequently, a club's Salary Cap figure does not represent the actual amount of money being paid to the players. The cash requirement measures the amount of compensation actually being paid and thus ensures that clubs are actually paying the players at least some threshold amount of money.

2) ROOKIE COMPENSATION

Rookie compensation was a major issue during the 2011 CBA negotiations. For example, the 2010 first overall Draft pick Sam Bradford agreed to a six-year, \$78 million contract with the St. Louis Rams, including \$50 million guaranteed before he ever played a game in the NFL.³⁸ By comparison, Tom Brady, at the time a three-time Super Bowl champion and two-time league MVP, received only a

four-year, \$72-million contract with \$48.5 million guaranteed when he re-signed with the New England Patriots prior to the 2010 season.³⁹ With clubs—and, to some degree, players—unhappy with the amounts being paid to unproven rookies, the terms regarding rookie compensation were changed dramatically in the 2011 CBA.⁴⁰

First, contracts for rookie players are now "fixed and unalterable."⁴¹ First-round Draft picks are limited to four-year contracts, with the club retaining the option to extend the contract for a fifth year.⁴² Rookies drafted in rounds two through seven are limited to four-year contracts, and undrafted rookies can only sign three-year contracts.⁴³

Second, the amount of each rookie's compensation is largely determined by each club's Total Rookie Allocation, *i.e.*, how much a club can spend on its rookies (also known as the "Rookie Salary Cap"). Each club's Total Rookie Allocation is calculated based on the club's amount, round, and position of Draft picks.⁴⁴ Thus each drafted player has a value within each club's Total Rookie Allocation. Clubs and contract advisors (*i.e.*, agents) will not deviate much, if at all, from that assigned value in the total amount of compensation provided to the player in his rookie contract.⁴⁵ If one drafted player received more than was allotted for his salary under the Total Rookie Allocation, it means another drafted player would have to receive less than was allocated for his salary under the Total Rookie Allocation.

Third, a rookie's compensation generally consists of three items: (1) the base or "Paragraph 5" Salary, which is listed in Paragraph 5 of the Standard Player Contract; (2) a signing bonus, *i.e.*, a lump sum paid to the player shortly after signing the contract; and, (3) a Performance Incentive. The 2011 CBA prohibited several types of contract structures and bonuses that had previously been used to inflate rookies' contracts.⁴⁶ For most rookies, the signing bonus is the only portion of their compensation that is guaranteed, as Paragraph 5 salaries are typically only guaranteed (in whole or in part) for first round Draft picks.⁴⁷ The Performance Incentive is typically earned only if a player participates in a certain number of the club's plays and the club meets certain statistical performance criteria such as winning a certain number of games.⁴⁸

In spite of these changes, rookie compensation still varies dramatically. 2016 first overall pick Jared Goff signed a four-year fully-guaranteed contract worth \$27.9 million, including a \$18.5 million signing bonus.⁴⁹ By contrast, the 253rd and final pick of the 2016 NFL Draft, Kalan Reed, signed a four-year deal worth \$2.4 million, including a \$58,540 signing bonus.⁵⁰ Only the signing bonus was guaranteed.⁵¹

3) VETERAN COMPENSATION

A veteran's compensation is typically determined by the new contract he signs when his existing contract has expired or is approaching expiration. Upon expiration of a player's contract, he meets one of three definitions of a veteran in the NFL. The three different types of veterans are determined by the number of Accrued Seasons a player has earned. Generally speaking, a player earns an Accrued Season for each season he is on the club's roster for six or more games.⁵² Importantly, a player earns an Accrued Season for games missed as a result of a football-related injury.⁵³

First, an Exclusive Rights Player is a player with less than three Accrued Seasons whose contract has expired.⁵⁴ An Exclusive Rights Player can only sign a contract with his prior club, provided the club offers him a contract for at least the minimum permissible salary.⁵⁵ Although drafted rookie contracts are required to be four years in length, players' contracts are often terminated before their expiration and the players then sign new contracts with other clubs. If the contract with the new club expires before the player has reached three Accrued Seasons, he will be an Exclusive Rights Player. There are dozens of exclusive rights players every year, most of whom are simply battling to remain on the roster.^f

Chris Banjo, a safety for the Green Bay Packers is a recent example of an Exclusive Rights Player. Banjo was not selected in the 2012 NFL Draft, and was out of the NFL until signing with the Jacksonville Jaguars prior to the 2013 season. When the Jaguars cut Banjo during the 2013 pre-season, he signed a one-year deal with Green Bay for the league minimum. Banjo, as an Exclusive Rights Player, again signed one-year deals with Green Bay for the league minimum prior to the 2014 and 2015 seasons.⁵⁶

Second, players with exactly three Accrued Seasons and an expired contract are Restricted Free Agents.⁵⁷ A Restricted Free Agent can negotiate with other clubs but his prior club, provided it makes an offer to the player, retains a right of first refusal and the right to receive Draft picks from the other club as compensation. The round of the Draft pick to which the prior club is entitled varies depending on the amount of money it offered the player.⁵⁸ There were 74 Restricted Free Agents in the 2015 off-season and 41 in the 2016 off-season.

Jermaine Kearse, a wide receiver for the Seattle Seahawks, is a recent example of a Restricted Free Agent. Kearse

signed with Seattle as an undrafted free agent prior to the 2012 season. After being released by the club twice during the 2012 season, in October 2012 Kearse and the Seahawks agreed to a contract for the 2012, 2013, and 2014 seasons. When Kearse's contract expired after the 2014 season, Kearse became a Restricted Free Agent. In the 2015 off-season, the Seahawks offered Kearse a one-year contract worth \$2,356,000, as they were required to do in order to retain their right of first refusal. Kearse signed the contract.⁵⁹

Third, a player with four or more Accrued Seasons whose contract has expired is an Unrestricted Free Agent.⁶⁰ An Unrestricted Free Agent is "completely free to negotiate and sign a Player Contract with any Club, and any Club shall be completely free to negotiate and sign a Player Contract with such player without penalty or restriction[.]"⁶¹ There are typically around 400 Unrestricted Free Agents each off-season.

A recent example of an Unrestricted Free Agent is Ndamukong Suh. Suh, a defensive lineman, was selected second overall in the 2010 NFL Draft by the Detroit Lions and signed a five-year contract. When Suh's contract expired after the 2014 season, he was an Unrestricted Free Agent and signed a six-year, \$114 million contract with the Miami Dolphins.⁶²

The nature of a player's compensation varies considerably depending on his status. Exclusive Rights Players typically have no leverage and thus generally must accept the contract offered by the club, which is typically at or near the league minimum Paragraph 5 Salary (non-guaranteed). Similarly, Restricted Free Agents typically have minimal leverage as clubs prefer not to pay the required compensation to the prior club. Consequently, Restricted Free Agents ordinarily sign the contracts the clubs are required to offer them to retain the right of first refusal. These contracts are non-guaranteed one-year contracts for between \$1.2 and \$2.6 million per year.⁶³

Unrestricted Free Agents have far more leverage and options. While less skilled Unrestricted Free Agents might only sign contracts for the league minimum—if they are offered any contract at all—the best players are able to sign multi-year deals worth tens of millions of dollars, including tens of millions of dollars in guarantees.⁶⁴ An Unrestricted Free Agent contract includes Paragraph 5 salary as well as many different types of bonuses, such as a signing bonus; an option bonus (a lump sum paid in the event the club or player opts to extend or alter the contract in some way); a roster bonus (a lump sum paid in the event the player is still on the club's roster at a determined date); and, a workout

^f For context, 2,274 players played in at least one NFL game in 2016. This statistic is derived from official NFL-NFLPA playtime statistics.

Table 5-A:
NFL Minimum Paragraph 5 Salaries

Credited Seasons	2015	2016	2017	2018	2019	2020
0	\$435,000	\$450,000	\$465,000	\$480,000	\$495,000	\$510,000
1	\$510,000	\$525,000	\$540,000	\$555,000	\$570,000	\$585,000
2	\$585,000	\$600,000	\$615,000	\$630,000	\$645,000	\$660,000
3	\$660,000	\$675,000	\$690,000	\$705,000	\$720,000	\$735,000
4-6	\$745,000	\$760,000	\$775,000	\$790,000	\$805,000	\$820,000
7-9	\$870,000	\$885,000	\$900,000	\$915,000	\$930,000	\$945,000
10+	\$970,000	\$985,000	\$1,000,000	\$1,015,000	\$1,030,000	\$1,045,000

bonus (a lump sum paid in the event a player participates in a minimum number of the club's off-season workouts).⁶⁵ In addition, players' contracts might include incentive clauses, which provide players with bonuses based on the achievement of certain statistical accomplishments.⁶⁶

Of course, players do not need to reach Unrestricted Free Agency to sign the types of contracts discussed above. The fact that a player's Unrestricted Free Agency is approaching often causes the player and his club to negotiate a contract extension that is generally commensurate with what the player would have received had he reached Unrestricted Free Agency.⁶⁷

4) MINIMUM, MAXIMUM, AND AVERAGE (MEAN) SALARIES

NFL players' minimum salaries are dependent upon their number of Credited Seasons. Generally, a player earns a Credited Season (differentiated from an Accrued Season discussed above) when he is entitled to be paid for at least three regular season games.⁶⁷ Table 5-A above shows the minimum Paragraph 5 salaries for players based on their number of Credited Seasons and the League Year.^h

The minimum salary is particularly important as nearly half of the players in the NFL only make the league minimum.⁶⁸

The NFL does not prescribe a maximum salary. However, the Salary Cap and its complicated rules create barriers that effectively restrict player salaries. For example, when a player receives a signing bonus, even though the signing bonus is typically paid in one or two lump sums shortly after the contract is executed, only a portion of the signing bonus counts against the Salary Cap for the year in which the bonus was paid. For Salary Cap purposes, the signing bonus is prorated equally over the duration of the contract.⁶⁹ Thus, if a player receives an \$8 million signing bonus as part of a four-year contract, the signing bonus will count against the Salary Cap for \$2 million each year (\$8 million divided by 4 years). However, a signing bonus can only be prorated over a maximum of five years.⁷⁰ Clubs thus generally prefer not to sign a player to a contract longer than five years to avoid losing the full benefit of proration.

The concept of an "average" salary in the NFL can be confusing. As discussed above, players often receive a significant portion of their compensation in upfront lump sum payments and then are paid less during the remainder of the contract. For example, when Unrestricted Free Agent Ndamukong Suh signed a six-year, \$114 million contract with the Miami Dolphins in 2015, he received a \$25.5 million signing bonus in the first year but his Paragraph 5 salaries for the remainder of the contract averaged \$17.16 million.⁷¹ Thus, it is unclear when the media is reporting "average" salary whether they are calculating that figure based on the compensation a player will receive in that particular season, or on the average amount owed to the player over the duration of the contract. Additionally, the details of NFL player contracts are typically not public, further calling into question the reliability of the data reported by the media.

g For example, in 2014, two years before he would have been eligible for free agency, J.J. Watt signed a six-year contract extension with the Houston Texans for \$100 million, \$51.8 million of which was guaranteed. *Texans give J.J. Watt \$100M deal*, ESPN, Sept. 2, 2014, http://espn.go.com/nfl/story/_/id/11451373/jj-watt-houston-texans-reach-agreement-6-year-100-million-deal, archived at <http://perma.cc/GUQ4-GP9J>.

h Credited Seasons are particularly important when it comes to NFL players' eligibility for health-related benefits, as discussed in Chapter 3: Health-Related Benefits.

In the NFL community, clubs and contract advisors (*i.e.*, agents) generally think of a player's salary in terms of the Average Per Year ("APY"). The APY is determined by dividing the contract's total compensation by its length. While there are nuances that might call into question whether to include certain years or forms of compensation in the calculation, the APY is generally a useful method for understanding the compensation provided to a player pursuant to a contract.

Based on our analysis, the website *spotrac.com* provides the most reliable publicly available data on player contracts. Using data from *spotrac.com* from the second week of the 2015 regular season, the average NFL player had a contract that was approximately 2.9 years in length and worth approximately \$7.6 million total, or about \$2.7 million per year. The median APY was approximately \$710,000, and about 61% of the players had an APY of less than \$1 million.

The value or duration of an NFL player contract is less meaningful when considering that NFL contracts are generally not guaranteed.

5) GUARANTEED COMPENSATION

Guaranteed compensation in the NFL is a complicated issue. Many people—particularly some players—feel that fully guaranteeing a player's contract is a fair trade for the health risks players undertake. More important for our purposes here, focused on protecting and promoting player health, if a player's contract were fully guaranteed, he would likely feel less pressure to play through injuries in an effort to continually prove himself to the club and avoid termination of his contract.⁷² However, we have concerns about the possibility of unintended consequences as well as the feasibility of fully guaranteeing player compensation, which will be discussed in detail in the Analysis and Recommendation Sections below.

To understand these concerns, in this Section we provide an explanation of guaranteed compensation in the NFL. Generally, NFL clubs are permitted to terminate a player's contract without any further financial obligation to the player for five reasons:

1. the player "has failed to establish or maintain [his] excellent physical condition to the satisfaction of the Club physician";
2. the player has "failed to make a full and complete disclosure of [his] physical or mental condition during a physical examination";
3. "[i]n the judgment of the Club, [the player's] skill or performance has been unsatisfactory as compared with that of other players competing for positions on the Club's roster";
4. the player has "engaged in personal conduct which, in the reasonable judgment of the Club, adversely reflects on the Club"; and,
5. "[i]n the Club's opinion, [the player is] reasonably anticipated to make less of a contribution to the Club's ability to compete on the playing field than another player or players whom the Club intends to sign or attempts to sign, or already on the roster of the Club, and for whom the Club needs Room."⁷³

Players and their contract advisors seek to curtail the clubs' termination rights as to individual players by negotiating for some of the player's compensation to be guaranteed in addendums to the Standard Player Contract. Guaranteed compensation takes a wide variety of forms (most notably in signing bonuses),⁷⁴ but generally players and their contract advisors seek to guarantee the player's contract even where he is terminated for "injury," "skill," or "Salary Cap." An "injury" guarantee will protect against the first reason listed above for which clubs can generally terminate a player's contract; a "skill" guarantee will protect against the third reason; and, a "Salary Cap" guarantee will protect against the fifth reason. A player might have all or just some seasons of his contract guaranteed for skill, injury, and/or Salary Cap. In addition, there are other mechanisms in the CBA which can effectively guarantee some or all of a player's salary, including Injury Protectionⁱ and Termination Pay.^j

Generally, players and their contract advisors seek to obtain as much guaranteed money as possible in contract negotiations. Guaranteed compensation provides the player with a secure income that is otherwise typically threatened by injury. However, there are times when a player might not

i Where a player is injured in one season, fails the pre-season physical the next season because of that injury, and is terminated by the club as a result, the player is entitled to 50% of his salary for that season up to a maximum of \$1.1 million in the 2015 season. If the player is still physically unable to play two seasons after the injury, he is entitled to 30% of his salary up to a maximum for \$525,000 in 2015. A player is only entitled to Injury Protection once in his career. See 2011 NFL CBA, Art. 45.

j A player with at least four years of experience who has his contract terminated after the first game of the season is entitled to the remainder of his salary for that season once in his career. 2011 NFL CBA, Art. 30.

want to sign the contract that offers him the most money—guaranteed or unguaranteed. Younger players might eschew the last year or two of a contract and the money that comes with it in favor of a shorter contract. In doing so, the player is hoping or expecting that he will be able to complete the shorter contract, reenter the free agency market, and sign another contract. Such decisions are obviously risky—the player’s career might end for skill or health reasons under the shorter contract and the player will never have another chance at another contract. However, if the player is healthy, securing a second free agent contract can be lucrative.

From a club’s perspective, guaranteed compensation is something to be avoided. Guaranteeing all or a portion of a player’s contract commits the club to a player financially, regardless of whether the player performs poorly or suffers a career threatening injury. Nevertheless, clubs regularly agree to guarantee compensation to players to persuade them to join or stay with the club.

Changes to the Salary Cap rules as part of the 2011 CBA potentially increased the use of guaranteed money. Technically, whether a player’s compensation is guaranteed has no effect on the Salary Cap—a club is limited to a certain amount of player compensation costs regardless of whether that amount is guaranteed or unguaranteed. Importantly, the amount of player salary that is counted against a club’s Salary Cap does not necessarily reflect the amount actually being paid to players. As a result of the Salary Cap’s accounting rules, in any given year a significant portion of a club’s Salary Cap allocation might be consumed by charges that do not actually reflect a payment being made from the club to players, such as prorated portions of a signing bonus paid in a prior year. However, the 2011 CBA addressed this discrepancy by adding a requirement that clubs spend a certain amount of the Salary Cap in cash, that is, actual payments to the players, regardless of the accounting rules. Probably the easiest way for a club to ensure that it spends a sufficient amount in cash is to pay lump sum signing bonuses. Signing bonuses are the most traditional form of guaranteed compensation.

Using the same data from *spotrac.com* discussed above, one finds that approximately 44% of all contracted compensation is guaranteed. The data also shows that approximately 70% of players had at least some guaranteed compensation in their contract and the average amount of guaranteed compensation in an NFL player contract was \$3.4 million. Additionally, 251 players had a contract that included at least \$10 million in guaranteed compensation and 740 players had a contract that included at least \$1 million in guaranteed compensation.

Approximately 44% of all contracted compensation is guaranteed and approximately 70% of players had at least some guaranteed compensation in their contract.

In recent years, the percentage of an NFL player’s contract that is guaranteed appears to have risen. Although the scope of the guarantees is sometimes debated,⁷⁵ it is not uncommon for marquee players to sign contracts that guarantee 50% or more of their compensation.⁷⁶ Moreover, the 2011 CBA significantly curtailed rookie compensation, cutting the amount top Draft picks earned by more than 50%.⁷⁷ In exchange, however, many first round Draft picks’ contracts are now fully guaranteed.⁷⁸

There is also an important caveat to the guaranteed nature of the various bonuses players receive. The bonuses are almost always subject to proportional forfeiture or voiding if a player violates the contract in some way, such as by refusing to show up to training camp, failing a test under the NFL’s Policy and Program on Substances of Abuse (“Substance Abuse Policy”), failing a test under the NFL’s Policy on Performance-Enhancing Substances (“PES Policy”),^k or otherwise engaging in conduct detrimental to the NFL or the club.⁷⁹ For example, if a player received a \$10 million signing bonus for a five-year contract, and the player later refuses to report to the club for the fifth season in hopes of signing a more lucrative contract, the player could be required to return \$2 million of the signing bonus to the club.⁸⁰ Similarly, if a player is entitled to have his Paragraph 5 salary guaranteed in his second season, but fails a drug test between the first and second seasons, the contract might contain a clause permitting the club to void the guarantee in the second season.⁸¹

With the structure of compensation in the NFL explained above, we are ready to compare it to the other leagues.

k The Substance Abuse Policy and PES Policy are discussed at length in Chapter 4: Drug and Performance-Enhancing Substance Policies.



B) Compensation in MLB

The most recent CBA agreed to by MLB and the Major League Baseball Players Association (“MLBPA”) was executed in 2016 and expires in 2021.

1) MLB’S TAX THRESHOLD

Unlike the NFL, MLB does not have a “Salary Cap” for its clubs, insofar as there is no maximum amount that clubs can spend on player salaries. Instead, MLB sets a Tax Threshold and applies a “Competitive Balance Tax” for compensation paid to players over that amount. For the 2016 season, the Tax Threshold was set at \$189 million,⁸² and will be \$195 million in 2017.⁸³ This tax is also known as the “luxury tax” and is intended to encourage parity by forcing clubs not to exceed the Tax Threshold. The Competitive Balance Tax ranges from 20% to 50% depending upon how many times the club has previously exceeded the Tax Threshold.⁸⁴

In 2016, MLB revenues were an estimated \$10 billion.⁸⁵

2) ROOKIE COMPENSATION

Rookies generally are paid the league minimum and have one-year contracts, as will be explained further below.¹

3) VETERAN COMPENSATION

The 2012 MLB CBA and uniform player contract (“UPC”) divide players into three categories based on the amount of time they have spent in the major leagues, and which category a player falls into has important consequences for his salary. A player’s time in the major leagues is tracked by a metric known as Major League Service Time (“MLST”). A player accumulates one day of MLST for “each day of the . . . season [he] is on a Major League Club’s Active List.” One season of MLST is defined as 172 days.⁸⁶

A player with less than three years of MLST is bound to his club by the terms of the UPC, which contains a reserve clause that effectively allows the club to unilaterally retain

his services so long as it pays him the minimum salary set in the CBA.⁸⁷ A player in this position is said to be “under reserve” to his club, and has essentially no leverage to influence his base salary—he can either accept his club’s offer (almost certainly for a salary at or very near the minimum allowed by the CBA), attempt to hold out for higher pay, or find an occupation outside of MLB.⁸⁸ As a result, skilled players under reserve to their clubs are paid far less than they would be in an open market for their services.⁸⁹

A player with more than three years but less than six years of MLST is said to be “arbitration eligible,” and has the right under the CBA to submit the issue of his salary to an arbitration panel, with or without the consent of his club.⁹⁰ Certain players with more than two but less than three years of MLST are also arbitration eligible.⁹¹ These players, known as “Super Two” players, must have accumulated 86 days of MLST in the immediately preceding season and rank in the top 22% in total MLST among all players eligible for Super Two consideration.⁹²

If an arbitration-eligible player initiates arbitration, he and his club must exchange single-year salary figures with one another⁹³ and submit those figures to a salary arbitration panel consisting of three arbitrators jointly selected by the MLBPA and MLB.⁹⁴ Salary arbitration proceedings are summary and winner-take-all: each side has just 90 minutes to argue⁹⁵ for its proposed salary,⁹⁶ and the salary arbitration panel may award the player a single-year contract for either the proposed salary he submitted or the proposed salary the club submitted—it may not award any other figure.⁹⁷ This form of arbitration, also known as pendulum or final offer arbitration, forces the sides to submit reasonable figures in the hopes that the arbitrator believes their submission is closer to the player’s value than the other side’s submission.⁹⁸ As a result, approximately 90% of all salary arbitration cases settle before a hearing.⁹⁹ In effect, the salary arbitration mechanism permits players to receive their free market wages for one season without the ability to actually negotiate with other clubs.

A player with more than six years of MLST at the completion of the term of his contract becomes a free agent and is able to offer his services to any and all clubs at whatever price the market will bear.¹⁰⁰ In veteran free-agency contracts, there is often a trade-off between contract length and average annual compensation.¹⁰¹ Due to risks of injury or performance drop-offs, a player might accept a lower average annual compensation in exchange for higher total compensation in a longer contract.¹⁰²

MLB’s three-tiered system is similar to the NFL’s use of Exclusive Rights Players, Restricted Free Agents, and

¹ Theoretically, a player could execute a long-term contract with the club before his rookie season that provides for greater pay in the rookie season, but such contracts are extremely rare. See Craig Calcaterra, *At Least One Major Leaguer is Not Pleased With the Jon Singleton Deal*, *Hardball Talk* (June 3, 2014, 8:55 AM), <http://mlb.nbcports.com/2014/06/03/at-least-one-major-leaguer-is-not-pleased-with-the-jon-singleton-deal/>, archived at <https://perma.cc/2BPJ-YCHU>.

Unrestricted Free Agents. In both leagues, players gain more rights and compensation with experience.

Most MLB free agents obtain contracts that are short in duration. The share of one-year free agent contracts signed in each of the seasons from the 2007 season to the 2013 season, for example, has ranged from 51.43% to 76.52%, and the share of two-year free-agent contracts has ranged from 13.08% to 27.62%.¹⁰³ Between 2007 and 2014, only the 2013 free agency market had more than 20% of free agent contracts extend beyond three years.¹⁰⁴

Though most free agents are only able to obtain short-term deals, superstars have been able to bargain for extremely lucrative long-term contracts. For example, in 2014, the Miami Marlins signed Giancarlo Stanton, a then-twenty-five-year-old right fielder, to a thirteen-year, \$325 million contract,¹⁰⁵ breaking the previous record held by the Detroit Tigers infielder Miguel Cabrera's ten-year \$292 million deal.¹⁰⁶

MLB clubs are thought to have deployed two strategies to minimize players' opportunities to obtain large free-agent contracts.

First, clubs have kept star prospects in the minor leagues for a few weeks at the beginning of their rookie season before having the player join the major league roster. This plan prevents the young player from achieving the necessary number of days on the roster to accrue a full season of MLST, thus delaying the player's free agency by a year.¹⁰⁷ For example in 2015, the Chicago Cubs waited 11 days before calling up star rookie third baseman Kris Bryant.¹⁰⁸ By doing so, Bryant will not be a free agent until after the 2021 season.¹⁰⁹ Had Bryant started the season with the Cubs, he would be eligible for free agency after the 2020 season.¹¹⁰

Second, clubs have signed players to long-term contract extensions at reduced salaries years before the player reaches free agency or is salary arbitration eligible.¹¹¹ For example, in 2012, the Pittsburgh Pirates' star center fielder Andrew McCutchen had played two seasons and was a year away from being salary arbitration eligible—and thus likely earning a multi-million dollar salary commensurate with players of similar skill. Rather than go through salary arbitration in future years and have McCutchen potentially reach free agency, the Pirates signed McCutchen to a six-year contract worth \$51.5 million, plus a seventh-year at the club's option for \$14.75 million.¹¹² The contract means the Pirates control McCutchen's rights through his ninth season—three years after when he would have become a free agent if not for the long-term extension. For McCutchen, the long-term extension provides him long-term financial security when he otherwise would have been playing on year-to-year contracts

until he reached free agency. As for any player, there was no guarantee that McCutchen would have continued to be sufficiently healthy and productive to reach free agency and receive a long-term multi-million dollar contract.

4) MINIMUM, MAXIMUM, AND AVERAGE (MEAN) SALARIES

In 2016, the mean MLB salary was \$4.4 million per year,¹¹³ and the minimum salary was \$507,500.¹¹⁴ There is no maximum salary for MLB players.

Simple averages are not entirely revealing due to the fact that younger players are limited in their ability to obtain market wages by MLB's free agency and salary arbitration rules. Data on the distribution of average annual salaries in 2012 indicate that high salaries are concentrated among a relatively small number of the league's players according to the following distribution:^m

- **Bottom 20%:** \$481,593
(The minimum 2012 salary was \$480,000)
- **Second 20%:** \$505,109
- **Third 20%:** \$1,195,785
- **Fourth 20%:** \$3,606,888
- **Top 20%:** \$11,164,616
- **Top 5%:** \$18,363,670
- **Top 1%:** \$23,791,667¹¹⁵

5) GUARANTEED COMPENSATION

Unlike the NFL, MLB contracts are generally understood to be fully guaranteed.¹¹⁶ According to Paragraph 7 of the UPC, clubs may terminate a player's contract if the player shall at any time:

1. fail, refuse, or neglect to conform his personal conduct to the standards of good citizenship and good sportsmanship or to keep himself in first-class physical condition or to obey the Club's training rules; or
2. fail, in the opinion of the Club's management, to exhibit sufficient skill or competitive ability to qualify or continue as a member of the Club's team; or
3. fail, refuse or neglect to render his services hereunder or in any other manner materially breach this contract.

^m For context, approximately 1,375 players played in an MLB regular season game in 2016.

However, in practice, Paragraph 7 is usually nullified in the contracts of any player other than those with minimal MLST or veterans with little to no leverage. Thus, MLB clubs generally cannot terminate a player's contract, *i.e.*, MLB player contracts are generally guaranteed.



C) Compensation in the NBA

The most recent CBA agreed to by the NBA and the National Basketball Players Association (“NBPA”) was executed in 2017, takes effect on July 1, 2017, and expires in 2024. However, both parties have the option of terminating the CBA after the 2022–23 season by serving written notice of the exercise of such option by December 15, 2022.¹¹⁷

1) THE NBA'S SALARY CAP

NBA players are collectively entitled to approximately 50% of Basketball Related Income (“BRI”).¹¹⁸ BRI is “the aggregate operating revenues . . . received or to be received . . .” by the NBA, NBA Properties, Inc., NBA Media Ventures, LLC and any subsidiaries.¹¹⁹ The NBA's Salary Cap is determined by multiplying BRI by 44.74%, subtracting player benefit costs, and dividing by the number of clubs.¹²⁰ The Salary Cap for the 2016–2017 season is \$94.143 million,¹²¹ and is expected to be \$102 million in 2017–18.¹²² The NBA's Salary Cap is in the process of considerable growth due to new multi-billion dollar television contracts for the NBA.¹²³ Each club is required to pay its players a total of at least 90% of the Salary Cap each year.¹²⁴ The NBA's 2016–17 revenues are projected to be an estimated \$8 billion.¹²⁵ Unlike the NFL's “hard” Salary Cap, the NBA's Salary Cap is considered “soft,” because there are multiple exceptions that permit clubs to exceed the Salary Cap. These exceptions will be discussed below in detail in Section 3: Veteran Compensation.

In addition to the Salary Cap, the NBA also has a Tax Level. The Tax Level is a threshold for a club's player salaries that is above the Salary Cap. While the 2016–17 Salary Cap was \$94.143 million, the Tax Level was \$113.287 million.¹²⁶ The Tax Level is expected to rise to \$122 million in 2017–18.¹²⁷ If clubs exceed the Tax Level, they must pay the league a graduated tax based on how much they have exceeded the Tax Level.¹²⁸ The Tax Levels increase if the club has exceeded the Tax Level in three or more of the previous four seasons (*i.e.*, a “Repeater”).¹²⁹ Up to 50% of the total tax payments may be distributed, at the NBA's

option, to non-taxpaying clubs, and amounts not distributed to non-taxpaying clubs can be used for other league purposes.¹³⁰ If a club's total salaries are higher than the Salary Cap but lower than the Tax Level, *e.g.*, \$100 million in 2016–17, the club would not make a tax payment.

Table 5-B:
NBA Tax Levels (Non-Repeater)

Incremental Club Salary Above Tax Level	Tax Rate for Increment
\$0–\$4,999,999	\$1.50 for \$1
\$5,000,000–\$9,999,999	\$1.75 for \$1
\$10,000,000–\$14,999,999	\$2.50 for \$1
\$15,000,000–\$19,999,999	\$3.25 for \$1
\$20,000,000 and over	Tax rates increase by \$0.50 for each additional \$5,000,000 increment above the Tax level (e.g., for Team Salary \$20,000,000 to \$24,999,999 above the Tax level, the Tax rate is \$3.75-for-\$1 for that increment).

Table 5-C:
NBA Tax Levels (Repeater)

Incremental Club Salary Above Tax Level	Tax Rate for Increment
\$0–\$4,999,999	\$2.50 for \$1
\$5,000,000–\$9,999,999	\$2.75 for \$1
\$10,000,000–\$14,999,999	\$3.50 for \$1
\$15,000,000–\$19,999,999	\$4.25 for \$1
\$20,000,000 and over	Tax rates increase by \$0.50 for each additional \$5,000,000 increment above the Tax level (e.g., for Team Salary \$20,000,000 to \$24,999,999 above the Tax level, the Tax rate is \$4.75-for-\$1 for that increment).

In 2015–16, seven NBA clubs exceeded the Tax Level and were required to pay a tax, with the Cleveland Cavaliers paying the most at approximately \$54 million.¹³¹

2) ROOKIE COMPENSATION

The NBA Draft has two rounds. The initial contract entered into by a first round NBA Draft pick and the club that drafts the player is called a Rookie Scale Contract.¹³² Rookie Scale Contracts must cover two seasons, with a club option for the third and fourth seasons.¹³³ Clubs must exercise the option for the third season by October 31 following the player's first

season and must exercise the option for the fourth season by the October 31 following the player's second season.¹³⁴ The values of these contracts can be negotiated between 80% to 120% of the Rookie Scale, agreed to by the NBA and NBPA. There is a different Rookie Scale for each year of the CBA, with values increasing or decreasing annually at the same rate as any increase or decrease in the Salary Cap. The first pick in the NBA Draft is given the greatest Rookie Scale amount, with each subsequent pick receiving a lesser Rookie Scale amount. For illustrative purposes, the Rookie Scale amounts for the first and last three first round NBA Draft positions for the 2017–2018 season are as follows¹³⁵:

Table 5-D:
Sample of NBA Rookie Scale (2017–2018)

Pick	1st Year Salary	2nd Year Salary	3rd Year Salary	4th Year Option (Percentage Increase over 3rd Year Salary)
1	\$5,855,200	\$6,949,900	\$8,121,000	26.1%
2	\$5,238,800	\$6,218,300	\$7,266,100	26.2%
3	\$4,704,500	\$5,584,000	\$6,525,000	26.4%

28	\$1,179,100	\$1,399,600	\$1,635,300	80.5%
29	\$1,170,500	\$1,389,300	\$1,623,400	80.5%
30	\$1,162,100	\$1,379,300	\$1,611,800	80.5%

Second round Draft picks do not operate under any scale. They may sign for any amount at or above the minimum salary.¹³⁶ Second round Draft picks, however, generally only command a minimum salary or an amount slightly above the minimum.¹³⁷ Initial contracts for second-round Draft picks are commonly one, two, or three years in length.¹³⁸

Similar to the NBA, NFL rookie contracts operate on a scale based on the Total Rookie Allocation. However, the NFL rookies' salaries are not collectively bargained in the way the NBA's rookies' salaries are.

3) VETERAN COMPENSATION

As in the NFL, there are two types of free agency in the NBA: unrestricted and restricted.¹³⁹ Unrestricted Free Agents are able to sign with any club after their prior contract has terminated and there is nothing that the player's prior club can do to prevent him from signing with a new club.¹⁴⁰ Players become Restricted Free Agents only in limited circumstances: (1) following the fourth year of a

player's Rookie Scale Contract; and, (2) for non-first round picks, when the player's contract has expired and he has been in the NBA for three or fewer seasons.^{141,n} In order to make a player who meets these qualifications a Restricted Free Agent, the club for which the player last played must make the player a one-year Qualifying Offer.¹⁴² The value of the Qualifying Offer is based on, among other things, the player's Draft position.¹⁴³

The Restricted Free Agent may choose to accept the club's Qualifying Offer. In most cases, if he accepts the Qualifying Offer, the player would become an Unrestricted Free Agent after he completes the one-year Qualifying Offer contract. If he does not want to sign a contract with the club for which he last played, the player may sign an offer sheet (which includes principal terms such as base salary, number of years, and signing bonus) with another club.¹⁴⁴ The offer

n In the case of first round draft picks, the player would only become a restricted free agent if the club did not exercise its option to extend his rookie contract for the next season.

sheet must be for more than two seasons.¹⁴⁵ The player's prior club then has a right of first refusal for a two-day period.¹⁴⁶ If the player's prior club exercises its right of first refusal, then the player will be under contract with his prior club under the principal terms of the offer sheet.¹⁴⁷ If the prior club does not match the terms of the offer sheet and the player joins a new club, the prior club does not receive any compensation for the loss of the player. In contrast, in the NFL, clubs that lose Restricted Free Agents are awarded compensatory draft picks depending on the amount of the player's new contract.

As mentioned above, there are exceptions to the Salary Cap. While there are ten different exceptions,¹⁴⁸ we list here the most important ones (as summarized by the NBA with minor clarifying edits):¹⁴⁹

1. **Qualifying Veteran Free Agent ("Bird") Exception:**^o A team may re-sign its own free agent to a first-year salary of up to the maximum player salary if he played for the team for some or all of each of the prior three consecutive seasons (or, if he changed teams, he did so by trade).
2. **Early Qualifying Veteran Free Agent ("Early Bird") Exception:** A team may re-sign its own free agent to a first-year salary of up to the greater of (a) 175% of the player's salary in the last season of his prior contract; or, (b) 105% of the average NBA player salary for the prior season, if he played for the team for some or all of each of the prior two consecutive seasons (or, if he changed teams, if he did so by trade or by assignment via the NBA's waiver procedures). A contract signed using the Early Bird Exception must be for at least two seasons.
3. **Non-Taxpayer Mid-Level Salary Exception:**
 - a. A team may use the Non-Taxpayer Mid-Level Salary Exception to sign one or more players to contracts with first-year salaries that, in the aggregate, provide for a total up to \$8.406 million in 2017–18 (the Exception amount grows annually by the same amount as the Salary Cap).
 - b. Contracts signed under the Non-Taxpayer Mid-Level Salary Exception can cover up to four seasons.
 - c. A team can use the Non-Taxpayer Mid-Level Salary Exception to re-sign its own free agent (as well as to sign another team's free agent), but cannot use this Exception to acquire a player by assignment.
4. **Minimum Salary Exception:** A team may sign a player to a one-year or two-year contract at the applicable minimum player salary (prorated as appropriate for a 10-Day or Rest-of-Season contract). This Exception may also be used to acquire by assignment a player who was signed to a one-year or two-year minimum contract.

The Bird and Early Bird Exceptions are the most significant. These exceptions permit clubs to resign their best players for maximum or close to maximum salaries without regard to the Salary Cap. If other clubs wanted to sign these players to maximum contracts, those contracts would count against the Salary Cap. These rules provide a clear advantage to a player's prior club in free agency negotiations.

In contrast, the NFL's Salary Cap has no meaningful exceptions.¹⁵⁰

4) MINIMUM, MAXIMUM, AND AVERAGE (MEAN) SALARIES

The minimum salary in the NBA depends on the player's experience level and increases each season. The minimum salaries for the 2016–17 season (under the 2011 CBA)¹⁵¹ and the 2017–18 season (under the 2017 CBA)¹⁵² are as follows:

Table 5-E:
NBA Minimum Salaries

Years of Service	2016–17 (2011 CBA)	2017–18 (2017 CBA)
0	\$543,471	\$815,615
1	\$874,636	\$1,312,611
2	\$980,431	\$1,471,382
3	\$1,015,696	\$1,524,305
4	\$1,050,961	\$1,577,230
5	\$1,139,123	\$1,709,538
6	\$1,227,286	\$1,841,849
7	\$1,315,448	\$1,974,159
8	\$1,403,611	\$2,106,470
9	\$1,410,598	\$2,116,995
10+	\$1,551,659	\$2,328,652

^o The exception is named for Boston Celtics legend Larry Bird as the rule is believed to have been created to help the Celtics resign Larry Bird in 1983, even though they never actually had to use the exception on Bird. Larry Coons, *Larry Coon's NBA Salary Cap FAQ*, CBA FAQ, <http://www.cbafaq.com/salarycap.htm> (last visited Feb. 21, 2017), archived at <http://perma.cc/K9XV-FRTE>.

Unlike the NFL, the NBA CBA includes limits on player salaries. A player who has completed fewer than seven Years of Service^p has a maximum annual salary of 25% of the Salary Cap at the time of contract execution or 105% of the Salary for the final season of his prior contract, whichever is greater.¹⁵³ However, a player who has four Years of Service at the end of his Rookie Scale Contract, or a second-round pick or undrafted player who has four Years of Service following the end of the last season covered by his contract is eligible to receive, from his prior club only, 30% of the Salary Cap in effect at the time of contract execution, provided that the player has (i) been named twice to an All-NBA first, second, or third team or named Defensive Player of the Year, in the immediately preceding season or in two seasons during the immediately preceding three seasons, or (ii) been named as NBA MVP at least once during the preceding three seasons.¹⁵⁴

A Player who has at least seven but less than ten Years of Service has a maximum annual salary of 30% of the Salary Cap in effect at the time of contract execution or 105% of the Salary Cap for the final season of his prior contract, whichever is greater.¹⁵⁵ A player with ten or more Years of Service has a maximum annual salary of 35% of the Salary Cap in effect at the time of contract execution or 105% of the Salary for the final season of his prior contract, whichever is greater.¹⁵⁶

The 2017 CBA introduced an important exception to the rule limiting players with at least seven but less than ten Years of Service to 30% of the Salary Cap. Under the 2017 CBA,

a player who has eight (8) or nine (9) Years of Service at the time the Contract is executed and rendered such Years of Service for the Team with which he first executed a Player Contract (or, if he was under a Player Contract for more than one Team during such period, changed Teams only by trade during the first four (4) Salary Cap Years in which he was under a Player Contract) shall be eligible to enter into a Designated Veteran Player Contract pursuant to which he receives from his Prior Team up to thirty-five percent (35%) of the Salary Cap in effect at the time the Contract is executed (the “Designated Veteran Player 35% Max Salary”) if the player has met at least one of the following criteria at the time his Contract is executed: (i) the player was named to the All-NBA first, second, or third team, or was named

Defensive Player of the Year, in the immediately preceding Season or in two (2) Seasons during the immediately preceding three (3) Seasons; or (ii) the player was named NBA MVP during one of the immediately preceding three (3) Seasons (the “Designated Veteran Player 35% Max Criteria”).¹⁵⁷

The Designated Veteran Player rule was reportedly introduced in response to 2014 NBA MVP Kevin Durant leaving his original team, the Oklahoma City Thunder, for the Golden State Warriors prior to the 2016-17 season.¹⁵⁸ Had the rule existed at the time, the Thunder would have been able to offer Durant a contract with a higher annual salary than the Warriors which might have enticed him to stay with the club.

The mean annual salary in the NBA for the 2016–2017 NBA season is between \$6.9 million and \$8 million,^q much more than the \$2.7 mean salary for an NFL player. The median salary in the NBA for the 2016–2017 NBA season is between \$4 million and \$5 million. In 2016–17, the largest guaranteed contract in the NBA was Mike Conley’s five-year deal worth \$140,529,829 in gross value.¹⁵⁹ It is worth noting that NBA players generally have higher salaries than players in other professional sports leagues due, at least in part, to the fact that NBA rosters are much smaller. An NBA club’s active roster is 12-13 players¹⁶⁰ while NFL active rosters are 46 players,¹⁶¹ MLB active rosters are 25 players¹⁶² and NHL active rosters are 23 players.¹⁶³

Also unlike the NFL, the NBA CBA limits a veteran player’s contract length. The default rule in the CBA is that a player contract may cover up to but no more than four seasons in length.¹⁶⁴ However, there are several instances where the CBA deviates from the default rule. For example, a player contract between a Qualifying Veteran Free Agent and his prior club may cover up to but not more than five seasons

q We rely on information from the NBA and spotrac.com in making this estimate. Spotrac.com, as of March 2017, maintained a database of 446 player contracts (including some partial-season contracts such as 10-day contracts) that demonstrated a mean salary of \$6.9 million and a median salary of \$4.0 million. See NBA Contracts, spotrac.com, <http://www.spotrac.com/nba/contracts/> (last visited Mar. 13, 2017), archived at <https://perma.cc/V7Y8-LA5M>. In reviewing this Report, the NBA stated that the mean salary was approximately \$8 million and the median salary was approximately \$5 million. The NBA’s determination of the mean salary is determined by dividing all player salaries by 396 players. 2017 NBA CBA, Art. 1, § 1(d). However, at any given time during the season, the number of players on NBA rosters is approximately 450. Thus, we believe the best statistics are likely somewhere between spotrac.com’s and the NBA’s. Basketball Reference, a well-regarded website, also provides data on this issue. Basketball Reference lists the mean NBA salary as \$4.9 million and the median salary as \$2.1 million. See 2016-2017 NBA Player Contracts, Basketball Reference, <http://www.basketball-reference.com/contracts/players.html> (last visited Mar. 13, 2017), archived at <https://perma.cc/94UD-3RCG>. However, Basketball Reference’s salary database includes 607 contracts, far more than the approximately 450 NBA players on rosters at any given time, and also includes dozens of partial-season contracts for less than \$100,000. Thus, we do not consider Basketball Reference’s data sufficiently accurate to be used here.

p A player is credited with a year of service for each year that he is on an NBA roster for at least one day during the regular season. 2017 NBA CBA, Art. I(iii).

and an extension of a Rookie Scale Contract may cover up to but no more than five seasons.¹⁶⁵ The mean contract length in the NBA during the 2016-17 season was 3.1 years.¹⁶⁶

In sum, the contract rules provide significant advantages to a player's prior club. The prior club can offer a contract longer than other clubs and not have that contract count against the club's Salary Cap. In addition, players who have reached certain milestones, (such as All-NBA teams or MVP awards), are able to be paid a higher percentage of the Salary Cap by their prior club than by a new club. It is thus not surprising that the ten largest contracts in the NBA during the 2016–17 season were all contracts signed between a player and his existing club.^r

5) GUARANTEED COMPENSATION

The NBA Uniform Player Contract (“UPC”) permits NBA clubs to terminate a player's contract if the Player shall:

- i at any time, fail, refuse, or neglect to conform his personal conduct to standards of good citizenship, good moral character (defined here to mean not engaging in acts of moral turpitude, whether or not such acts would constitute a crime), and good sportsmanship, to keep himself in first class physical condition, or to obey the Team's training rules;
- ii at any time commit a significant and inexcusable physical attack against any official or employee of the Team or the NBA (other than another player), or any person in attendance at any NBA game or event, considering the totality of the circumstances, including (but not limited to) the degree of provocation (if any) that may have led to the attack, the nature and scope of the attack, the Player's state of mind at the time of the attack, and the extent of any injury resulting from the attack;
- iii at any time, fail, in the sole opinion of the Team's management, to exhibit sufficient skill or competitive ability to qualify to continue as a member of the Team . . . ; or
- iv at any time, fail, refuse, or neglect to render his services hereunder or in any other manner materially breach this Contract.¹⁶⁷

^r The ten largest contracts in the 2016–17 season were: Mike Conley and the Memphis Grizzlies (\$152.6m) Damian Lillard and the Portland Trailblazers (\$139.9m); DeMar DeRozan and the Toronto Raptors (\$139.0m); Bradley Beal and the Washington Wizards (\$127.2m); Andre Drummond and the Detroit Piston (\$127.2m); Anthony Davis and the New Orleans Pelicans (\$127.2m); Carmelo Anthony and the New York Knicks (\$124.0m); Nicolas Batum and the Charlotte Hornets (\$120.0m); Chris Bosh and the Miami Heat (\$118.7m); and, James Harden and the Houston Rockets (\$118.0m). *NBA Contracts*, spotrac.com, <http://www.spotrac.com/nba/contracts> (last visited Jan. 30, 2017), archived at <https://perma.cc/KR3K-M576>.

However, the CBA permits clubs and players to agree to “compensation protection,” *i.e.*, a guarantee of a player's contract in five circumstances, in the event of the player's: lack of skill; death; basketball-related injury; injury or illness; and, mental disability.¹⁶⁸ Compensation protections are negotiated terms in each player contract. However, the CBA requires that compensation protection be given in many circumstances. For sign-and-trade contracts,^s the first season of the contract must be protected for lack of skill.¹⁶⁹ For Rookie Scale Contracts, all seasons must be protected for lack of skill and injury/illness for at least 80% of the player's Base Compensation.¹⁷⁰ Qualifying Offers made to a Restricted Free Agent must be protected for lack of skill and injury/illness.¹⁷¹ Nevertheless, “[i]n practice, the majority of NBA contracts (especially for established veterans) are fully guaranteed. Non-guaranteed salary is most often used for fringe players (either at the beginning or end of their careers) or for the later years of long-term contracts (often in conjunction with benchmarks that allow the salary to become fully guaranteed over time).”¹⁷² Data from spotrac.com gathered during January 2017 shows that 97.3% of NBA player compensation contracted for at that time was guaranteed,¹⁷³ as compared to about 44% of NFL player compensation.

While the NBA restricts clubs and players to compensation protection in just five scenarios, the NFL CBA does not limit the types of guarantees players and clubs can negotiate. Nevertheless, in practice, NFL contracts are generally only guaranteed against skill, injury, and Salary Cap. The fact that contracts in the NBA tend to be guaranteed more than those in the NFL is most likely a reflection of the leverage of the players in contract negotiations over time.

D) Compensation in the NHL



The most recent CBA agreed to by the NHL and National Hockey League Players Association (“NHLPA”) was executed in 2013 and expires in 2022. In September 2019, both parties have the option of terminating the CBA, effective September 2020.¹⁷⁴

^s A sign-and-trade contract is one in which a player signs with his prior club only to allow his prior club to then trade him to a new club. These transactions allow both clubs to take advantage of certain Salary Cap provisions, which ultimately benefits the player as well by enabling the desired transaction and contract.

1) THE NHL'S SALARY CAP

NHL players are collectively entitled to 50% of Hockey Related Revenues (“HRR”).¹⁷⁵ Generally speaking, HRR “means the operating revenues . . . from all sources, whether known or unknown, whether now in existence or created in the future, . . . of each Club or the [NHL], . . . derived or earned from, relating to or arising directly or indirectly out of the playing of NHL hockey games or NHL-related events in which current NHL Players participate or in which current NHL Players’ names and likenesses are used[.]”¹⁷⁶ The NHL’s 2015–16 revenues were an estimated \$4.1 billion.¹⁷⁷

The NHL’s Salary Cap structure includes both an Upper Limit and Lower Limit on club payrolls. To determine the Upper and Lower Limits, the parties multiply HRR by 50%, subtract player benefit costs, and then divide by the 30 NHL clubs to reach a midpoint.¹⁷⁸ The Lower Limit is reached by multiplying the midpoint by 85% and the Upper Limit is reached by multiplying the midpoint by 115%.

In the 2016–17 season, the Lower Limit is \$54 million and the Upper Limit is \$73 million.¹⁷⁹ Finally, the NHL’s Salary Cap is considered “hard,” because there are no exceptions permitting clubs to exceed the Salary Cap.

The NHL’s Salary Cap is similar to the NFL’s in that it has a hard upper limit (with a few exceptions) as well as setting some type of salary floor.

2) ROOKIE COMPENSATION

Almost all NHL rookies are “Group 1 Players”—players who signed their first contract between the ages of 18 and 24 and are still playing pursuant to the contract.¹⁸⁰ Group 1 Players are subject to the Entry Level System. The Entry Level System dictates the length of a player’s rookie contract depending on the age at which the player first signed the contract:¹⁸¹

Table 5-F:
NHL Entry Level System

Age at First Contract Signing	Contract Length
18-21	3 years
22-23	2 years
24 ^t	1 year

^t Players 25 and older are not subject to the Entry Level System and have no limits on their compensation. 2013 NHL CBA, § 9.1(b).

Group 1 Players’ compensation may only take the form of NHL Paragraph 1 (base) salary,¹⁸² signing bonuses, games-played bonuses, and performance bonuses.¹⁸³ The players’ compensation in salary, signing bonuses and games-played bonuses cannot exceed \$925,000 in any year of their first contract.¹⁸⁴ However, a player can negotiate with the club the opportunity to receive performance bonuses that can raise his compensation up to \$3,775,000.¹⁸⁵ Moreover, the player is eligible for performance bonuses from the league that can raise his compensation several hundred thousand dollars.¹⁸⁶

Once a player’s rookie contract expires, he is no longer subject to the Entry Level System. At that point, the player is either subject to the club’s exclusive rights or enters another Group depending on his age and experience level, as is explained next.

3) VETERAN COMPENSATION

Once a player is no longer subject to the Entry Level System, *i.e.*, his rookie contract has expired, he will typically transition from being a Group 1 Player into some other Group:

- **Group 2:** Players with expired contracts, who signed their first contract between the ages of 18 and 24 and have reached a certain level of experience: (1) for players who signed their first contract between the ages of 18 and 21, three years of minor league or NHL experience; (2) for players who signed their first contract between 22 and 23, two years of minor league or NHL experience; and, (3) for players who signed their first contract at 24 or older, one year of minor league or NHL experience.¹⁸⁷ Group 2 players are Restricted Free Agents, provided the club has made a Qualifying Offer.¹⁸⁸
- **Group 3:** Players with expired contracts who have either played at least seven years in the NHL or are at least 27 years old.¹⁸⁹ Group 3 players are Unrestricted Free Agents.¹⁹⁰
- **Group 4:** Players who, while still under contract, instead play in a league not affiliated with the NHL and then later try to return to the NHL.¹⁹¹ Group 4 players are known as “Defected Players,” and the NHL club from which the player defected retains the right to match any offer in the event the player returns to the NHL.
- **Group 5:** Players with expired contracts who have played at least ten years in the minor leagues or NHL and in the final year of their most recent contract did not earn more than the average salary.¹⁹² Group 5 players are Unrestricted Free Agents,¹⁹³ but, in reality, any player who would meet the criteria for Group 5 status would already be a Group 3 player.¹⁹⁴

The NHL and NHLPA nonetheless kept the Group 5 status in the CBA in the event it applied in future CBAs due to possible definitional or criteria changes.¹⁹⁵

- **Group 6:** Players with expired contracts who are at least 25 years old, have played at least three seasons in the minor leagues, a European professional league while on loan from an NHL club, or the NHL and have played less than 80 NHL games (or 28 games if a goalie).¹⁹⁶ Group 6 players are Unrestricted Free Agents.¹⁹⁷

In addition to the Groups listed above, clubs hold exclusive rights over their players who have an expired contract and less than three years of experience.¹⁹⁸ Provided the club offers the player a contract meeting certain criteria in the CBA, the player can only sign with his prior club.¹⁹⁹

The NHL is the only Big Four league that takes age into consideration when determining free agent status.

In addition to the above-described scenarios, the NHL also has a salary arbitration mechanism for Restricted Free Agents. Players are eligible for salary arbitration depending upon the age at which they signed their first contract and their minor league, European league (while on loan from an NHL club) and NHL experience level.²⁰⁰

Table 5-G:
NHL Salary Arbitration Eligibility

Age at First Contract Signing	Minimum Years of Experience
18–20	4 years
21	3 years
22–23	2 years
24 and older	1 year

An eligible player is always entitled to elect salary arbitration,²⁰¹ while clubs can only elect salary arbitration in two situations. First, clubs can elect salary arbitration if the player's prior year salary exceeded \$1,750,000,²⁰² a figure that is adjusted upward based on the mean salary in the league and equaled \$1,953,297 in 2016. Second, the club can file for salary arbitration if an eligible player has not filed for salary arbitration by his July 5 deadline.²⁰³ Once the salary arbitration process has commenced, the player and the club both then submit briefs on the player's value and can request either a one- or two-year contract, with some restrictions based on the player's experience level.²⁰⁴ The arbitrator renders a decision within 48 hours and has

the discretion to choose the player's salary,²⁰⁵ *i.e.*, unlike in MLB's salary arbitration process, the arbitrator is not bound to choose one side's position, but can determine the amount at his or her discretion.

4) MINIMUM, MAXIMUM, AND AVERAGE (MEAN) SALARIES

The minimum salary for an NHL player during the 2016–17 season is \$575,000.²⁰⁶

As for maximum salaries, no player contract can provide for compensation in any year in excess of 20% of the Upper Limit.²⁰⁷ In addition, NHL player contracts are restricted in terms of the variability of the salary over the term of the contract.²⁰⁸ Generally speaking, these rules limit how much salaries can increase or decrease from year to year and prevent clubs from evading the Salary Cap. For purposes of counting a player's salary against the Salary Cap in any given year, the player's average salary over the term of the contract is used.²⁰⁹ Thus, the variability rules prevent a club from adding years that the player is unlikely to play to the end of the contract for minimum compensation, which can have the effect of reducing the Salary Cap charge of the contract.

In 2010 (prior to the most recent CBA), the New Jersey Devils are alleged to have tried to do just that. The Devils and Ilya Kovalchuk agreed to a 17-year contract worth \$102 million.²¹⁰ However, in the final five years of the contract, during which Kovalchuk would have been ages 39–44, Kovalchuk was due to earn only \$550,000 per year, far short of the nearly \$9 million per year that he was set to earn in the first 11 years of the contract.²¹¹ The NHL invalidated the contract on the grounds that it was an illegal attempt to circumvent the Salary Cap, a decision that was upheld by an arbitrator.²¹² The Kovalchuk case led to the creation of the variability rules in the 2013 CBA as well as a seven-year cap on player contract length (eight if the club is re-signing its own player).²¹³

The NFL has some similar rules. Rookie contracts cannot increase more than 25% in the second year of the contract (to avoid possible circumvention of the Total Rookie Allocation),²¹⁴ and contracts extending beyond the life of the CBA cannot increase more than 30% (to avoid possible circumvention of the Salary Cap).²¹⁵

The mean salary of an NHL player during the 2016–17 season was approximately \$2,892,546,²¹⁶ slightly more than the estimated \$2.7 million mean salary in the NFL. Additionally, the average contract was 3.5 years in length.²¹⁷

5) GUARANTEED COMPENSATION

The NHL Standard Player Contract permits clubs to terminate player contracts at their discretion at certain times during the off-season.²¹⁸ This authority is broader than in the NFL CBA. However, in the NHL, if the club chooses to terminate the player's contract, it must "buy out" the player's contract. The portion of a player's salary that must be bought out is determined by his age. If the player is under 26 years of age at the time of termination, the club must pay the player, an amount equal to one-third of the player's base salary.²¹⁹ If the player is 26 years of age or older, the club must pay the player, an amount equal to two-thirds of the player's base salary.²²⁰ Clubs must pay the buyout over twice as many years as are remaining on the term of the contract. Generally, clubs are still obligated to pay any amounts owed to the player in the form of a signing bonus even if they terminate the player's contract.²²¹

In addition, unlike most NFL players' contracts, NHL players' contracts are guaranteed against injury. The Standard Player Contract provides that if a player is injured during the course of his employment as a hockey player and is subsequently unable to perform his duties as a hockey player, the club will continue to pay the player his base salary so long as the player is unable to play up until the expiration date of the contract.²²²

E) Compensation in the CFL



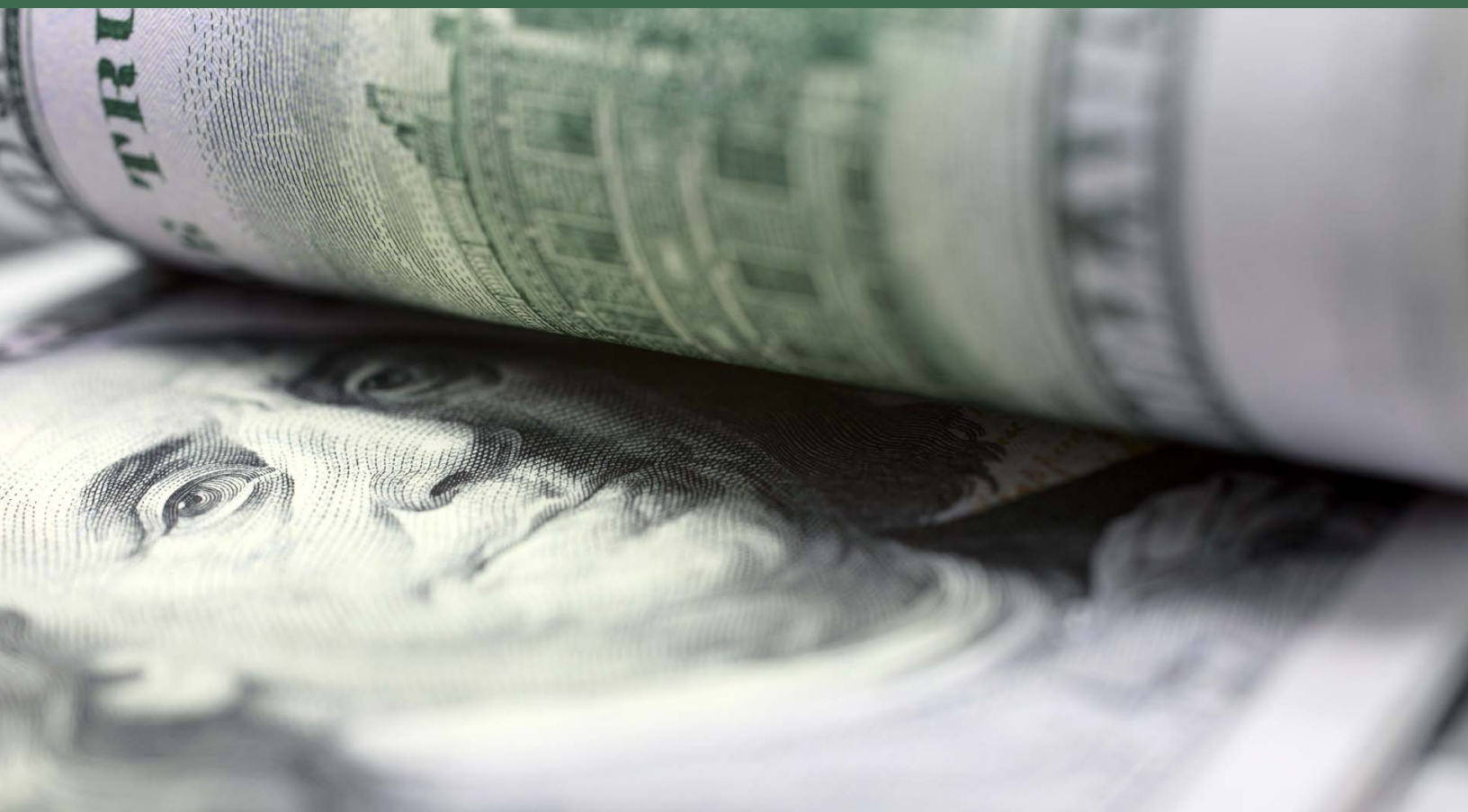
The most recent CBA agreed to by the CFL and the Canadian Football League Players Association ("CFLPA") was executed in 2014 and expires in 2019. The CFL CBA does not specify, but it stands to reason that all of the below amounts are in Canadian dollars.

1) THE CFL'S SALARY CAP

The CFL CBA sets both a maximum²²³ and a minimum²²⁴ amount each club can spend on player salaries:

Table 5-H:
CFL Salary Cap Ranges

Season	Range
2015	\$4,450,000 – \$5,050,000
2016	\$4,500,000 – \$5,100,000
2017	\$4,550,000 – \$5,150,000
2018	\$4,600,000 – \$5,200,000



By comparison, in 2016, the NFL's Salary Cap was \$155.27 million,²²⁵ more than 30 times than the that of the CFL (in Canadian dollars).

The 2006 CBA entitled players to 56% of league revenues.²²⁶ However, this provision was eliminated in the 2010 CBA, which also included an increase in the Salary Cap.

The CFL's revenues in 2013 were estimated to be approximately \$180 million, of which the players reportedly only received approximately 20%.²²⁷ This number seems surprising considering the players' prior guarantee of 56% of revenues. Nevertheless, assuming the estimates of league revenue are accurate, the accuracy of the reported revenue split is borne out by simple calculations. There are nine teams in the CFL. Assuming all of them spent to the maximum of the Salary Cap in 2016, they would have spent \$45,900,100 on player salaries collectively. That figure only represents only 25.5% of the CFL's estimated \$180 million in revenue. The fact that three of the clubs make their financial statements public supports the estimate of the league's revenues.²²⁸

2) ROOKIE COMPENSATION

CFL rookies sign a one-year contract with a one-year club option.²²⁹ If the club exercises the option, the contract must provide the player with at least the same level of salary and bonus payments (except signing bonus) that the player earned under the prior contract.²³⁰ The club option can only be exercised once.²³¹

3) VETERAN COMPENSATION

Upon expiration or termination of a player's rookie contract (including any option years), a player in the CFL becomes an Unrestricted Free Agent and can sign with any club without any compensation to the player's prior club.²³²

In contrast, NFL players are only Unrestricted Free Agents after the expiration of their rookie contract if they have obtained four Accrued Seasons—which would necessarily happen if the player plays until the expiration of his CBA-mandated four-year rookie contract.

4) MINIMUM, MAXIMUM, AND AVERAGE (MEAN) SALARIES

The minimum salary for an CFL player in the 2016 season was \$52,000.²³³ There are no maximum salaries in the CFL. Nevertheless, the Salary Cap imposes limitations on player salaries collectively.

The mean CFL player salary is approximately \$80,000 per year.²³⁴ This income is supplemented by signing bonuses and post-season playoff compensation.²³⁵

Many CFL players supplement their income with a secondary career, including the league's 2013 Most Outstanding Player, Calgary Stampeders running back Jon Cornish.²³⁶ Although growth in league revenues suggests the number is decreasing, the Stampeders communications director estimated that 10% of the club's roster holds secondary jobs.²³⁷ In 2014, the last year where such data was made public, the highest paid player in the CFL was reportedly B.C. Lions quarterback Travis Lulay, who earned a salary of approximately \$450,000.²³⁸

5) GUARANTEED COMPENSATION

As a general matter, CFL contracts are not guaranteed.²³⁹ The Standard Player Contract provides clubs the right to terminate the player's contract in five situations:

- 1 "in the opinion of the said Medical Committee, the Player is not completely fit to participate in football activities"²⁴⁰;
- 2 "the Player fails at any time during the term of th[e] Contract to demonstrate sufficient skill and capacity to play football of the calibre required by the Club"²⁴¹;
- 3 "the Player's work or conduct in the performance of th[e] Contract is unsatisfactory"²⁴²;
- 4 "where there exists a limit to the number permitted of a certain class of Player and the Player, being within that class, should not be included amongst the permitted number"²⁴³; and,
- 5 "termination of th[e] contract is in the best interest of the Club having regard for the competitiveness of the Club as a whole or the formation of a team with the greatest overall strength."²⁴⁴

These situations are very similar to the situations under which an NFL club can terminate a player's contract. Most importantly, both in the NFL and CFL, clubs can terminate contracts if the player is injured or no longer good enough.

Despite CFL clubs' termination rights, the CBA does provide certain veteran players with some level of protection. Players are entitled to 100% of their salary for the remainder of that season if their contract is terminated after a certain point in the season, depending on their level of experience:²⁴⁵

Table 5-I:
CFL Player Salary Protection Against Injury

Years of Experience	Required Games to Receive Salary
6 or more	9
5	10
4	11

The CFL's salary protection for certain veterans is similar to the NFL's Injury Protection^u and Termination Pay^v benefits.

Finally, CFL rookies receive signing bonuses which are typically considered guaranteed compensation. In 2015, the first overall pick of the CFL Draft, lineman Alex Mateas, received a signing bonus of \$20,000.²⁴⁶



F) Compensation in MLS

MLS and the MLS Players Union (“MLSPU”) agreed to the most recent CBA in 2015, which expires in 2020.

In analyzing the MLS compensation structure, it is important to understand how the labor relations dynamic between MLS and MLSPU is potentially different from that of the other sports leagues. MLS, formed in 1995, was structured in an effort to be considered a single-entity under the antitrust laws,²⁴⁷ a distinction further explained below. In operational terms, rather than having each club owned and controlled by a different person or entity, as in the other sports leagues, all of the clubs in MLS are owned and controlled by Major League Soccer, LLC, a Delaware limited liability company.²⁴⁸ Major League Soccer, LLC then has operator-investors, entities that have bought into MLS for the right to a certain amount of control over a single MLS club.²⁴⁹ However, the amount of control is significantly less than in the other American sports leagues, as the clubs have to abide by strict MLS rules concerning

player compensation and transactions.²⁵⁰ Generally, MLS negotiates the contracts with players and then allocates the players to the clubs,²⁵¹ or the clubs choose among the players hired by MLS.²⁵²

MLS' structure was designed to avoid the antitrust litigation and scrutiny common to the other professional sports leagues.²⁵³ As we discussed in the beginning of this Chapter, Section 1 of the Sherman Antitrust Act prohibits contracts, combinations, or conspiracies that unreasonably restrain trade.²⁵⁴ If an organization or joint venture is considered a single entity, there can be no multiplicity of parties agreeing to rules that might unreasonably restrain a market—such as the market for players' services through eligibility rules, a Salary Cap, or free agency rules as have often been the subjects of litigation in other leagues. In other words, without multiple parties there cannot be the contract, combination, or conspiracy necessary for antitrust scrutiny.²⁵⁵

Nevertheless, within a year of beginning play, in *Fraser v. Major League Soccer, L.L.C.*, several players sued MLS alleging that its rules on player compensation and mobility were violations of the antitrust laws. The United States District Court for the District of Massachusetts found that MLS was a single-entity and thus dismissed the plaintiffs' Section 1 antitrust claims.²⁵⁶ The remainder of the plaintiffs' claims was dismissed after a jury found that the plaintiffs had failed to adequately allege a relevant market in which MLS had allegedly violated the antitrust laws.^{257, w} On appeal, the United States Court of Appeals for the First Circuit was skeptical that MLS' structure constituted a single entity for purposes of antitrust law, but declared that the question “need not be answered definitively in this case.”²⁵⁸ The Court of Appeals nevertheless affirmed the dismissal of the plaintiffs' claims based on the jury's determination.²⁵⁹ Thus, the effectiveness of MLS' efforts to be considered a single entity is questionable.

After the *Fraser* case, MLS players formed the MLSPU to negotiate terms and conditions of employment with MLS in a CBA.²⁶⁰ However, without the clear threat of antitrust litigation (and the concomitant treble damages), the players and MLSPU potentially lack the authority and leverage of other professional sports unions.²⁶¹ But as MLS has grown both in revenues and clubs, control and financial investment by the operator-investors has increased, causing some to question whether MLS' operations are sufficiently

u Where a player is injured in one season, fails the pre-season physical the next season because of that injury, and is terminated by the club as a result, the player is entitled to 50% of his salary for that season up to a maximum of \$1.1 million in the 2015 season. If the player is still physically unable to play two seasons after the injury, he is entitled to 30% of his salary up to a maximum for \$525,000 in 2015. A player is only entitled to Injury Protection once in his career. See 2011 NFL CBA, Art. 45.

v A player with at least four years of experience who has his contract terminated after the first game of the season is entitled to the remainder of his salary for that season once in his career. 2011 NFL CBA, Art. 30.

w The plaintiffs had also alleged that MLS had violated Section 2 of the Sherman Antitrust Act by monopolizing the market for the services of Division I professional soccer players in the United States, and Section 7 of the Clayton Act by combining in such a way as to substantially lessen competition. See *Fraser v. Major League Soccer, L.L.C.*, 284 F.3d 47, 55 (1st Cir. 2002).

centralized to potentially be considered a single entity for purposes of antitrust law.²⁶²

In sum, because of MLS' structure, MLS—as compared to other professional sports leagues—is potentially less concerned that its rules concerning player compensation and employment are a violation of antitrust law, which would subject it to treble damages.²⁶³ Consequently, MLS has more leverage in CBA negotiations with the MLSPU than other leagues do with their unions. This lack of union power is shown, in part, in MLS' compensation structures.

1) MLS' SALARY CAP

The Salary Cap for the 2017 season is \$3,845,000,²⁶⁴ and increases about 7% annually.²⁶⁵ However, during the 2017 season, MLS clubs are permitted to acquire up to three players whose salaries exceed \$480,625,²⁶⁶ but whose salaries will only count against the Salary Cap in the amount of \$457,500 (or less if they are under the age of 24).²⁶⁷ These players, known as Designated Players, are considered important for MLS to attract and retain high-quality players who might otherwise play in Europe.²⁶⁸ In the 2016 season, there were 49 designated players.²⁶⁹ The 46 Designated Players for whom salary information is available earned an average of \$1,766,329.²⁷⁰ Of the 49 designated players, only 9 were American-born.^x

MLS' revenues are approximately \$600 million per year,²⁷¹ less than 5% of the NFL's approximately \$14 billion in annual revenue.

2) ROOKIE COMPENSATION

Unlike the Big Four leagues, MLS does not have compensation rules specific to rookies.

3) VETERAN COMPENSATION

Prior to the 2015 CBA, veteran MLS players had no free agency. Under the old system, players with expired contracts could be redrafted by other MLS clubs without any say in where they were assigned.²⁷² The 2015 CBA initiated a limited form of free agency. Players with expired contracts who are 28 or older and have played at least eight years in MLS now have the ability to select their MLS club.²⁷³ The players' salaries will be restricted based on their prior salaries: players who previously made more than \$200,000

can receive a 15% increase; players who made between \$100,000 and \$200,000 can receive a 20% increase; and, players who made less than \$100,000 can receive a 25% increase.²⁷⁴

4) MINIMUM, MAXIMUM, AND AVERAGE (MEAN) SALARIES

The minimum salary in MLS for the 2016 season was \$62,500 per year.²⁷⁵

There is no maximum player salary in MLS.²⁷⁶ However, the maximum amount a player's salary can count against the Salary Cap is \$457,500 (unless they are a Designated Player).²⁷⁷ There are also complicated accounting mechanisms by which clubs can “buy down” a player's Salary Cap charge.²⁷⁸

The mean salary of an MLS player in 2016 was \$290,246, and the median salary was \$108,900.²⁷⁹ However, the average salary figure is skewed by the distribution of salaries. Out of 558 MLS players, 22 of them made \$1 million per year or more, with four players (Michael Bradley, Gerrard Steven, Frank Lampard, and Kaka) making \$6 million per year or more.²⁸⁰ When these 22 players are removed from the calculation as outliers, the average salary of the remaining 536 players is only \$169,886.²⁸¹ Similarly, when the salaries of the 46 Designated Players for whom salary information was available in 2016 are removed as outliers, the average salary drops to \$156,847.²⁸² Due to these wide disparities in player income, the MLSPU made it a priority to try and establish a “middle class” in MLS, including by providing for some form of free agency and raising the minimum salary.²⁸³

5) GUARANTEED COMPENSATION

The contract of any player 24 years old or older who has at least one year of playing experience is automatically guaranteed,²⁸⁴ meaning that it cannot be terminated “solely because of the quality of the Player's on-field performance or the fact that the Player may have sustained an injury during the performance of his duties as an MLS Player.”²⁸⁵ As a result, the majority of MLS player contracts are guaranteed.²⁸⁶

In 2016, the average MLS player contract had an average of \$317,892 in guarantees.²⁸⁷ However, if one removes the 46 Designated Players for whom there was salary information as outliers, MLS player contracts contain, on average, \$168,821 in guaranteed compensation.²⁸⁸

x The American-born players were Jozy Altidore, DaMarcus Beasley, Alejandro Bedoya, Matt Besler, Michael Bradley, Clint Dempsey, Maurice Edu, Tim Howard, and Graham Zusi.

G) Analysis

The below table summarizes some of the key provisions and figures concerning compensation structures in professional sports, subject to the various nuances and intricacies discussed above.

Table 5-J:
Comparisons of Leagues' Compensation Statistics and Policies

Benefit	NFL	MLB	NBA	NHL	CFL	MLS
Mean Annual Salary	\$2.7 million	\$4.25 million	\$6.9-8 million	\$2.89 million	\$80,000	\$290,246
Mean Career Length	5.0 years ²⁸⁹	5.6 years ²⁹⁰	4.8 years ²⁹¹	5.6 years ²⁹²	3.2 years ²⁹³	3.2 years ^y
Minimum Salary (2016)	\$450,000	\$507,500	\$543,471	\$575,000	\$52,000	\$62,500
Maximum Salary	No	No	Yes	Yes	No	No
Maximum Contract Length	No	No	Yes	Yes	No	No
Unrestricted Free Agency Rights	After four seasons	After six seasons	After five seasons for first round picks	Depends on age and experience	Upon expiration of rookie contract	28 years old and eight years of experience
Guaranteed Compensation	~ 44%	~ 100%	~ 90%	For injury and one-third or two-thirds of the player's salary	Almost none	For players 24 and older with 1+ years' experience
Salary Cap Type	Hard	Luxury Tax	Soft and Luxury Tax	Hard	Hard	Soft
Guaranteed Share of Revenue	Yes	No	Yes	Yes	No	No

At the beginning of this Chapter, we identified two key ways in which compensation and compensation structures affect player health: (1) influencing players' decisions about playing with injuries; and, (2) players' retirement planning and eventual retirement. We are most concerned with how compensation and compensation structures affect player behavior and decision-making concerning their health, *i.e.*, what are the consequences of the current compensation

regimes on players' short- and long-term health. Unfortunately, these are questions that we cannot fully answer at the present.

To effectively and rigorously compare how the different leagues' compensation structures affect player health decisions would require the ability to control for the various levers, including free agency rules, salary and contract

^y Nick Schwartz, *The average career earnings of athletes across America's major sports will shock you*, For the Win Blog—USA Today (Oct. 24, 2013, 10:07 AM), <http://ftw.usatoday.com/2013/10/average-career-earnings-nfl-nba-mlb-nhl-mls>, archived at <http://perma.cc/J8QL-Q3RG>. Nevertheless, as pointed by the MLPSU in its review of this Report, the author of this article did not indicate how he arrived at the 3.2 years statistic. Moreover, MLSPU Executive Director Bob Foose stated that “this number is significantly misleading given the global nature of soccer (there are, I believe, professional leagues in over 80 countries around the world, typically with multiple such leagues in each country). We have not consistently tracked the total average career length of MLS players, but when we last did an exhaustive study, in 2013, the average MLS player (whose career was over) had played a total of just under 8.8 years of professional soccer over the course of that career. We haven't updated these numbers since then, but I don't have any reason to believe that these numbers have changed significantly.” We believe this is a valid point and thus suggest caution in considering the mean career length of MLS players. Athletes in the other leagues rarely play in multiple professional leagues and thus the same concern is not present.

limitations, salary cap structure, and the level of guaranteed compensation. Additionally, one would likely also want to be able to control for other relevant factors, such as career length, career earnings and injury outcomes. The type and amount of health-related benefits, discussed at length in Chapter 3, also impact player compensation structures. Each of the leagues' compensation structures is an amalgam of these various levers and factors. This is a challenging analysis that requires more data than is currently available and thus we cannot fairly assess which leagues' overall compensation structures among the Big Four are best for players.^z

There is, however, one compensation issue that is the subject of frequent discussion and thus merits further analysis: guaranteed compensation. As discussed above, many people believe that NFL player health could be improved through guaranteeing more of their compensation. The belief is that by guaranteeing a player's future compensation, he will not feel pressured to play through injuries to protect his status on the club. On this and related issues, many would argue that MLB's system is the most player-friendly, because compensation is almost entirely guaranteed, there is no

hard Salary Cap, there is no maximum salary, and, there is no maximum contract length.²⁹⁴ It is thus not surprising that, as of February 2017, the 23 largest contracts among these sports leagues are all for MLB players.^{aa} However, MLB players are not guaranteed a share of the revenue like in other leagues and must wait six years before becoming an Unrestricted Free Agent, the longest wait of the Big Four and thus it is not clear that their compensation arrangement is preferable.

The NFL and NFLPA are frequently criticized—by players,²⁹⁵ the media²⁹⁶ and academics, among others—for what is perceived as the lack of guaranteed contracts as compared to the other leagues.²⁹⁷ However, the issue is complicated. As a preliminary matter, when discussing the compensation paid to players, one must also consider the benefits the players receive. As is discussed in Chapter 3 of this Report, the NFL generally provides a benefits package superior to those offered in all of the other leagues. The additional complications on this issue are discussed below in the Recommendation Section.

^z The CFL and MLS cannot realistically be compared to the Big Four due to their relatively small amounts of revenue and also the MLS' attempted single-entity structure.

^{aa} Information about salaries and contracts was derived from data available on sportrac.com, the most reliable public source for information about professional sports contracts based on our analysis. Indeed, as of February 2017, there are 41 MLB contracts worth over \$100 million while there are only 18 such contracts in the NBA, 12 in the NFL, and three in the NHL.



H) Recommendation

Recommendation 5-A: The NFL and NFLPA should research the consequences and feasibility of guaranteeing more of players' compensation as a way to protect player health.

As discussed above, guaranteed compensation in the NFL is a complicated issue. While many people—and players in particular—have expressed a desire for increased guaranteed compensation, it is not clear that fully guaranteed compensation would be beneficial to players *collectively* such that it ought to be preferred to the status quo.

As a preliminary matter, the NFLPA itself has expressed mixed views about the guaranteed contracts. In a 2002 editorial in *The Washington Post*, then-NFLPA Executive Director Gene Upshaw acknowledged that the possibility of guaranteed contracts “is severely undermined by the risk of a career-ending injury” and touted the benefits available to players as an alternative.²⁹⁸ Then, in two reports issued by the NFLPA in or around 2002 and 2007 respectively, the NFLPA asserted that NFL player compensation is, in fact, largely guaranteed by explaining that more than half of all compensation *paid* to players is guaranteed.²⁹⁹ However, importantly, this statistic does not mean that half of all compensation *contracted* was guaranteed—indeed, as discussed above, approximately 44% of all contracted compensation is guaranteed. Players are often paid guaranteed money (*e.g.*, a signing bonus or roster bonus) in the first or second year of the contract only to have the base salaries (the unguaranteed portions) in the later years of the contract go unpaid because the player's contract was terminated.

With this background in mind, there are several reasons why fully guaranteed compensation might not be beneficial to players *collectively*. First, while fully guaranteed contracts might be good for the players who receive them, it could result in many players not receiving any contract at all. If clubs were forced to retain a player of diminishing skill because his contract was guaranteed, a younger or less proven player might never get the opportunity to sign with the club.³⁰⁰ Relatedly clubs might continue to provide playing opportunities to the players with larger contracts in order to justify those contracts—preventing younger players from establishing themselves as starting or star players and earning higher salaries. It is also likely that under a system of guaranteed compensation, player salaries would decrease (at least in the short-term)—particularly the salaries of the highest paid players and players who are less certain to add value to a roster—as clubs would be more cautious about taking on the financial liabilities, especially given the Salary Cap in place in the NFL. Similarly, clubs also may seek to minimize their financial liabilities by reducing roster sizes, which might cost marginal players their jobs, while again reducing opportunities for young or unproven players to join a club.

There are also logistical challenges to implementing fully guaranteed contracts. The finances and operations of the NFL and its clubs are greatly intertwined with the fact that NFL contracts have never been fully guaranteed. Since 1993, NFL clubs have had to comply with a strict Salary Cap that necessarily influences the types of contracts clubs are willing to offer, including the possibility of guaranteed compensation. Fully guaranteed contracts would be a fundamental and monumental alteration to the current business of the NFL that, at a minimum, would require a gradual phasing in process.^{ab}

It is possible that a rate of guaranteed contracts less than 100% but more than the current 44% is also optimal. Given the varying factors to be weighed and considered, it is not clear what percentage of guaranteed compensation would maximize player health for the most NFL players.

Clearly this is a complex issue, with the potential for substantial unintended consequences. Thus, we recognize the likely health value of guaranteed contracts, while simultaneously recognizing that it may not be the right solution for all players. Importantly, as discussed above, players who value a contractual guarantee over potentially higher but uncertain compensation may negotiate for that protection individually, as many currently do. Moreover, we expect that other

ab For example, one rule that would likely have to be removed is the NFL's requirement that clubs deposit into a separate account the present value, less \$2 million, of guaranteed compensation to be paid in future years. 2011 CBA, Art. 26 § 9. Former NFL club executive Andrew Brandt believes clubs “hide behind” the funding rule to avoid guaranteeing player compensation, and have been largely successful in doing so. Andrew Brandt, Supplemental Peer Review Response (Nov. 6, 2015).

Recommendations Concerning Compensation – continued

recommendations made in this Report and, more importantly, our other Report, *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*, including key recommendations related to the medical professionals who care for players,³⁰¹ if adopted, would make great strides toward protecting and promoting player health such that guaranteed compensation would be less critical for that purpose.

Ultimately, we recommend further research into this question, including player and club perspectives, economic and actuarial analysis, and comprehensive consideration of the relevant trade-offs, ramifications, and potential externalities. In the meantime, we note that the trend toward greater use of contractual guarantees can help promote individual player health and allow individual negotiation by players based on their own goals and priorities.

Endnotes

- 1 See, e.g., Josh Alper, *Sean Lee says it was his call to sit with \$2 million on the line*, ProFootballTalk (Jan. 4, 2016, 10:46 AM), <http://profootballtalk.nbcsports.com/2016/01/04/sean-lee-says-it-was-his-call-to-sit-with-2-million-on-the-line/>, archived at <https://perma.cc/69QS-FVPH>.
- 2 See Thomas Richardson, Peter Elliott, & Ronald Roberts, *The relationship between personal unsecured debt and mental and physical health: A systematic review and meta-analysis*, 33 *Clinical Psychol. Rev.* 8, 1148-62 (2013). Many experts have recognized that “financial insecurity can cause people to ‘cut corners in ways that may affect their health and well-being,’ like spending less on food, clothing, or prescriptions.” Nadia N. Sawicki, *Modernizing Informed Consent: Expanding the Boundaries of Materiality*, Univ. Ill. L. Rev. (2016), citing Kevin R. Riggs, Peter A. Ubel, *Overcoming Barriers to Discussing Out-of-Pocket Costs With Patients*, 174 *Jama Int. Med.* 849 (2014); Peter A. Ubel, Amy P. Abernethy, S. Yousuf Zafar, *Full Disclosure—Out-of-Pocket Costs as Side Effects*, 369 *New Eng. J. Med.* 1484 (2013). Indeed, to many, “financial well-being is certainly within the boundaries of most peoples’ concept of health.” *Id.*, quoting Michael S. Wilkes & David L. Schriger, *Caution: The Meter is Running: Informing Patients About Health Care Costs*, 165 *Western J. Med.* 74, 78 (1996) (noting that “discussions about the cost of care are an important part of the physician-patient relationship”).
- 3 See, e.g., Melissa B. Jacoby, Teresa A. Sullivan, Elizabeth Warren, *Rethinking the Debates over Health Care Financing: Evidence from the Bankruptcy Courts*, 76 *N.Y.U. L. Rev.* 375 (2001) (empirical data demonstrating how many American families declare bankruptcy in the aftermath of illness or other healthcare crisis); Christopher Tarver Robertson, Richard Egelhof, Michael Hoke, *Get Sick, Get Out: The Medical Causes of Home Mortgage Foreclosures*, 18 *Health Matrix* 65 (2008) (empirically demonstrating and discussing the role that health crises have in home foreclosures).
- 4 See, e.g., 2011 NFL CBA, Art. 1 (“‘Salary Cap’ means the absolute maximum amount of Salary that each Club may pay or be obligated to pay or provide to players . . . at any time during a particular League Year”); 2017 NBA CBA, Art. 1, § 1(mmm) (“‘Salary Cap’ means the maximum allowable Team Salary for each Team for a Salary Cap Year, subject to the rules and exceptions set forth in [the CBA]”).
- 5 The National League had begun play in 1876 and the American League in 1901. MLB was the result of a merger between the two leagues.
- 6 Joshua P. Jones, *A Congressional Swing and Miss: The Curt Flood Act, Player Control, and the National Pastime*, 33 *Ga. L. Rev.* 639, 642 (1999).
- 7 *Id.*
- 8 See *American Needle, Inc. v. Nat’l Football League*, 560 U.S. 183, 186 (2010), citing 15 U.S.C. § 1.
- 9 *Fed. Baseball Club of Balt., Inc. v. Nat’l League of Prof’l Baseball Clubs*, 259 U.S. 200 (1922).
- 10 See Nathaniel Grow, *Defining the “Business of Baseball”: A Proposed Framework for Determining the Scope of Professional Baseball’s Antitrust Exemption*, 44 *U.C. Davis L. Rev.* 557, 566 (2010).
- 11 See *Toolson v. N.Y. Yankees*, 346 U.S. 356 (1953).
- 12 See *Flood v. Kuhn*, 407 U.S. 258 (1972).
- 13 See *id.* at 284.
- 14 In *Radovich v. Nat’l Football League*, 352 U.S. 445 (1957), the Supreme Court held that the NFL was not exempt from the antitrust laws. In *Haywood v. Nat’l Basketball Ass’n*, 401 U.S. 1204 (1971), the Supreme Court held that the NBA was not exempt from the antitrust laws. Lower courts have subsequently refused to extend baseball’s antitrust exemption to professional hockey, *Phila. World Hockey Club, Inc. v. Phila. Hockey Club, Inc.*, 351 F. Supp. 462, 466 n.3 (E.D. Pa. 1972); professional golf, *Blalock v. Ladies Prof’l Golf Ass’n*, 359 F. Supp. 1260, 1263 (N.D. Ga. 1973); and professional tennis, *Gunter Harz Sports, Inc. v. U.S. Tennis Ass’n*, 665 F.2d 222, 223 (8th Cir. 1981).
- 15 See Chris Deubert & Glenn M. Wong, *Understanding the Evolution of Signing Bonuses and Guaranteed Money in the National Football League: Preparing for the 2011 Collective Bargaining Negotiations*, 16 *UCLA Ent. L. Rev.* 179, 187 (2009) (describing the various legal proceedings leading to free agency in those sports).
- 16 See Glenn M. Wong, *Essentials of Sports Law*, Exs. 11.3–11.6 (4th ed. 2010) (providing CBA history for each of the Big Four leagues).
- 17 See Chris Deubert, Glenn M. Wong, John Howe, *All Four Quarters: A Retrospective and Analysis of the 2011 Collective Bargaining Process and Agreement in the National Football League*, 19 *UCLA Ent. L. Rev.* 1, 9–12 (2012) (discussing NFL-NFLPA labor relations between 1987 and 1993).
- 18 The NFL currently has television broadcasting agreements with ESPN, NBC, CBS, FOX, NFL Network and DirecTV. In addition, the NFL has a radio broadcasting agreement with Westwood One. In total, the broadcasting agreements bring in approximately \$7 billion in annual revenue to the NFL. Kurt Badenhausen, *The NFL Signs TV Deals Worth \$27 Billion*, *Forbes* (Feb. 14, 2011, 6:13PM), <http://www.forbes.com/sites/kurtbadenhausen/2011/12/14/the-nfl-signs-tv-deals-worth-26-billion/>, archived at <http://perma.cc/8PXK-2VNU>.
- 19 NFL Ventures is responsible for negotiating all of the league’s major sponsorship, marketing, and media rights deals. NFL Ventures, which Commissioner Goodell ran before becoming Commissioner, includes four wholly-owned subsidiaries: NFL Enterprises, NFL Properties, NFL Productions, and NFL International. See Tommy Craggs, *Exclusive: Leaked Documents Show Operating Profits for NFL Ventures Rose 29 Percent Last Year*, *Deadspin* (July 15, 2011, 1:10 PM), <http://deadspin.com/5821386/audited-financials-operating-profit-for-nfl-ventures-lp-rose-from-999-million-to-13-billion-last-year>, archived at <http://perma.cc/3MNZ-XHLLU>.
- 20 NFL Network is the league-owned and operated television network devoted full-time to the NFL, including broadcasting select Thursday night games. For more information, see www.nfl.com/nflnetwork.
- 21 NFL Properties is responsible for licensing, sponsorship, and marketing. NFL Properties was the subject of *Am. Needle, Inc. v. Nat’l Football League*, 560 U.S. 183 (2010). NFL Properties was created by the 32 individual clubs to collectively market and license the clubs’ individual intellectual property, such as names, colors, logos, and trademarks. In 2000, the clubs—through NFL Properties—granted Reebok an exclusive license to produce and sell trademarked headwear for the 32 clubs. American Needle—a former licensee and creator of NFL apparel headwear—could no longer create headwear with NFL logos and trademarks. American Needle challenged the exclusive license as an illegal restraint of trade by the 32 NFL clubs. The Northern District of Illinois granted the NFL summary judgment after finding that NFL Properties constituted a single entity for antitrust purposes, and therefore there was no contract, combination, or conspiracy to restrain trade. See *Am. Needle, Inc. v. New Orleans La. Saints*, 496 F. Supp. 2d 941, 943 (N.D. Ill. 2007). The Seventh Circuit affirmed. *Am. Needle, Inc. v. Nat’l Football League*, 538 F.3d 736 (7th Cir. 2008). The Supreme Court reversed. *Am. Needle*, 560 U.S. 183. While the Court noted that NFL clubs “depend upon a degree of cooperation for economic survival,” the necessity of cooperation does not transform concerted action into the independent action of a single entity. *Id.* at 198. Furthermore, that “even if league-wide agreements are necessary to produce football, it does not follow that concerted activity in marketing intellectual property is necessary to produce football.” *Id.* at n.7.
- 22 NFL Enterprises is responsible for advertising, publicizing, promoting, marketing, and selling broadcasts of NFL games.
- 23 NFL Productions, also known as NFL Films, is the league-owned film

- company that for over 50 years has produced award-winning films about the NFL. For more information see www.nffilms.com.
- 24 NFL Digital is responsible for the league's technology and new media ventures, including www.nfl.com and NFL Mobile.
 - 25 NFL CBA, Art. 12, § 6.
 - 26 NFL CBA, Art. 12, § 1, § 6.
 - 27 Mike Florio, *NFL will reach \$14 billion in 2017 revenue*, ProFootballTalk (Mar. 6, 2017, 11:29 AM), <http://profootballtalk.nbcsports.com/2017/03/06/nfl-will-reach-14-billion-in-2017-revenue/>, archived at <https://perma.cc/X57A-VRXU>.
 - 28 NFL CBA, art. 12, § 6(c)(ii).
 - 29 NFL CBA, Art. 12, § 6(c)(i).
 - 30 NFL CBA, Art. 1.
 - 31 NFL CBA, Art. 12, § 2.
 - 32 NFL CBA, Art. 12, § 6(c)(v).
 - 33 *Adjusted Team Salary Caps*, NFLPA (Mar. 7, 2016), <https://www.nflpa.com/news/all-news/2016-adjusted-team-salary-caps>, archived at <https://perma.cc/K9GZ-ZDGN>.
 - 34 Josh Alper, *Salary cap set at \$167 million*, ProFootballTalk (Mar. 1, 2017, 11:12 AM), <http://profootballtalk.nbcsports.com/2017/03/01/salary-cap-set-at-167-million/>, archived at <https://perma.cc/7W45-ERVV>.
 - 35 In reality, the NFL Salary Cap does permit for one exception for veteran players playing for the minimum salary. Players with at least four Credited Seasons who sign for the league minimum will only have their salary count against the Salary Cap as if the player only had two Credited Seasons. 2011 NFL CBA, Art. 27. This exception discourages clubs from hiring younger players over experienced veterans simply because they are younger. Also, each club's Salary Cap is uniquely based upon whether certain incentives were earned by the club's players in the previous season. 2011 NFL CBA, Art. 13, § 6(c)(ii–iii).
 - 36 NFL CBA, Art. 12, § 9(a).
 - 37 NFL CBA, Art. 12, § 8(b).
 - 38 Chris Deubert & Glenn Wong, *All Four Quarters: A Retrospective And Analysis Of The 2011 Collective Bargaining Process And Agreement In The National Football League*, 19 UCLA Ent. L. Rev. 1, 52 (2012), citing *Rams Give Bradford 50M Guaranteed*, ESPN (July 31, 2010, 9:09 AM), <http://sports.espn.go.com/nfl/news/story?id=5425041>, archived at <http://perma.cc/BZW8-GNTH>.
 - 39 Chris Deubert & Glenn Wong, *All Four Quarters: A Retrospective And Analysis Of The 2011 Collective Bargaining Process And Agreement In The National Football League*, 19 UCLA Ent. L. Rev. 1, 52 (2012), citing *Tom Brady Signs Extension*, ESPN (Sept. 11, 2010, 3:13 PM), <http://sports.espn.go.com/boston/nfl/news/story?id=5552561>, archived at <http://perma.cc/X69A-2G33>.
 - 40 See Chris Deubert & Glenn Wong, *All Four Quarters: A Retrospective And Analysis Of The 2011 Collective Bargaining Process And Agreement In The National Football League*, 19 UCLA Ent. L. Rev. 1, 52–60 (2012) (discussing changes to rookie compensation as part of 2011 CBA).
 - 41 NFL CBA, Art. 7 § 3(a).
 - 42 *Id.*
 - 43 *Id.*
 - 44 NFL CBA, Art. 7, § 1(e).
 - 45 See Chris Deubert & Glenn Wong, *All Four Quarters: A Retrospective And Analysis Of The 2011 Collective Bargaining Process And Agreement In The National Football League*, 19 UCLA Ent. L. Rev. 1, 58–60 (2012). The formula for calculating the Total Rookie Allocation and each player's portion of the Total Rookie Allocation are intended to be secret to provide the clubs and players a range within which to negotiate a contract. However, prior to the 2011 League Year, an NFLPA employee inadvertently sent to all contract advisors the 2011 Total Rookie Allocations for each club, including for each drafted player. Consequently, all of the contract advisors and clubs knew the total amount of compensation each rookie was to receive. Additionally, the Salary Cap and Total Rookie Allocation increase by the same percentage each year. Thus, contract advisors and clubs can easily determine a drafted player's share of the Total Rookie Allocation by examining the 2011 Total Rookie Allocations and increasing them the same percentage as the Salary Cap increased each year (a figure that is made public). *Id.*
 - 46 See 2011 CBA, Art. 7 § 3(e) (prohibiting “option bonuses, option exercise fees, option nonexercise fees, Salary Advances . . . voidable year(s) provisions, buybacks of voidable year(s) provisions, and any ‘contract within the contract’ (i.e. terms and conditions of a contemplated superseding contract within the Rookie Contract).”); Chris Deubert & Glenn Wong, *All Four Quarters: A Retrospective And Analysis Of The 2011 Collective Bargaining Process And Agreement In The National Football League*, 19 UCLA Ent. L. Rev. 1, 52–60 (2012) (discussing changes to rookie compensation as part of 2011 CBA).
 - 47 See Chris Deubert & Glenn Wong, *All Four Quarters: A Retrospective And Analysis Of The 2011 Collective Bargaining Process And Agreement In The National Football League*, 19 UCLA Ent. L. Rev. 1, 60–61 (2012).
 - 48 *Id.* at 57–58. The Performance Incentive theoretically has the possibility of players risking injury to reach the playtime threshold necessary to earn the bonus. While this possibility exists, it is only one of many pressures that players feel to continue playing. Additionally, players are generally unlikely to know their cumulative playtime percentages during the season.
 - 49 Michael David Smith, *Jared Goff expected to sign with Rams today*, ProFootballTalk (June 9, 2016, 10:00 AM), <http://profootballtalk.nbcsports.com/2016/06/09/jared-goff-expected-to-sign-with-rams-today/>, archived at <https://perma.cc/3JBL-LSUY>.
 - 50 *Kalan Reed*, Spotrac, <http://www.spotrac.com/nfl/tennessee-titans/kalan-reed/> (last visited June 23, 2016), archived at <http://perma.cc/BY5K-PJ94>.
 - 51 *Id.*
 - 52 NFL CBA, Art. 8, § 1.
 - 53 *Id.*
 - 54 NFL CBA, Art 1.
 - 55 NFL CBA, Art. 8, § 2.
 - 56 Weston Hodkiewicz, *Safety Banjo re-signs*, Green Bay Press-Gazette, Apr. 18, 2015, available at 2015 WLNR 11354235.
 - 57 NFL CBA, Art. 9, § 2.
 - 58 See *id.*
 - 59 Curtis Crabtree, *Jermaine Kearse signs restricted free agent tender with Seahawks*, ProFootballTalk (May 5, 2015, 11:42 PM), <http://profootballtalk.nbcsports.com/2015/05/05/jermaine-kearse-signs-restricted-free-agent-tender-with-seahawks/>, archived at <http://perma.cc/N78Z-ZJAM>.
 - 60 NFL CBA, Art. 1 (“‘Unrestricted Free Agent’ means a Veteran with four or more Accrued Seasons, who has completed performance of his Player Contract”); 2011 CBA, Art. 8, § 1 (“a player shall receive one Accrued Season for each season during which he was on, or should have been on, full pay status for a total of six or more regular season games”).
 - 61 NFL CBA, Art. 9, § 1(a).
 - 62 See James Walker, *Breaking down Ndamukong Suh's record-setting contract*, ESPN, Mar. 12, 2015, http://espn.go.com/blog/nflnation/post/_/id/163930/breaking-down-ndamukong-suhs-record-setting-contract, archived at <http://perma.cc/GD65-SFMV>.
 - 63 NFL CBA, Art. 9 § 2(b).
 - 64 For example, in 2015, former Detroit Lion Ndamukong Suh signed a six-year deal with the Miami Dolphins for \$114 million, \$60 million of which was guaranteed. Josh Alper, *Dolphins make it official with Ndamukong Suh*, ProFootballTalk (Mar. 11, 2015, 4:14 PM), <http://profootballtalk.nbcsports.com/2015/03/11/dolphins-make-it-official-with-ndamukong-suh/>, archived at <http://perma.cc/2T5Z-367S>.
 - 65 See Chris Deubert & Glenn M. Wong, *Understanding the Evolution of Signing Bonuses and Guaranteed Money in the National Football League*:

- Preparing for the 2011 Collective Bargaining Negotiations*, 16 UCLA Ent. L. Rev. 179, 190–97 (2009) (discussing the different types of bonuses common in NFL player contracts).
- 66 See 2011 NFL CBA, Art. 13, § 6(c) (listing incentives permitted to be included in NFL players).
- 67 See Bert Bell/Pete Rozelle NFL Player Retirement Plan (Apr. 1, 2012) § 1.11 (defining “Credited Season”); 2011 NFL CBA, Art. 26, § 2 (same).
- 68 Gregg Rosenthal, *Winners, Losers from the NFL Lockout*, ProFootballTalk (July 25, 2011, 3:15 PM), <http://profootballtalk.nbcsports.com/2011/07/25/winners-losers-from-the-nfl-lockout/>, archived at <http://perma.cc/FB28-XHSF>.
- 69 NFL CBA, Art. 13, § 6(b)(i).
- 70 *Id.*
- 71 See James Walker, *Breaking down Ndamukong Suh’s record-setting contract*, ESPN, Mar. 12, 2015, http://espn.go.com/blog/nflnation/post/_/id/163930/breaking-down-ndamukong-suhs-record-setting-contract, archived at <http://perma.cc/GD65-SFMV>.
- 72 See Sally Jenkins, *NFL’s concussion priorities: Dodging blame, making players responsible*, Wash. Post, Dec. 3, 2015, https://www.washingtonpost.com/sports/redskins/nfls-concussion-priorities-dodging-blame-making-players-responsible/2015/12/03/1b8752f8-99d2-11e5-94f0-9eeaff906ef3_story.html, archived at <https://perma.cc/JT6P-JX44> (“The heart of the NFL’s concussion problem is not that players hide symptoms; it’s a compensation structure that forces them to play hurt, or get cut.”)
- 73 See 2011 NFL CBA, App. H. Notice of Termination; see also *id.*, at Art. 4 §5(d).
- 74 See Chris Deubert & Glenn M. Wong, *Understanding the Evolution of Signing Bonuses and Guaranteed Money in the National Football League: Preparing for the 2011 Collective Bargaining Negotiations*, 16 UCLA Ent. L. Rev. 179 (2009) (describing the various forms of guaranteed compensation in the NFL).
- 75 See Mike Florio, *The full Kaepernick contract details*, ProFootballTalk (Jun. 5, 2014, 12:46 AM), <http://profootballtalk.nbcsports.com/2014/06/05/the-full-kaepernick-contract-details/>, archived at <http://perma.cc/B6W9-WVC7> (discussing details of Colin Kaepernick’s 2014 contract with the San Francisco 49ers. Despite reports that Kaepernick had received \$61 million guaranteed, only about \$13 million was guaranteed against skill, injury, and Salary Cap).
- 76 See Chris Deubert, Glenn M. Wong, John Howe, *All Four Quarters: A Retrospective and Analysis of the 2011 Collective Bargaining Process and Agreement in the National Football League*, 19 UCLA Ent. L. Rev. 1, 61–63 (2012) (discussing the movement towards more guaranteed compensation). In 2012, Peyton Manning signed a five-year deal with the Denver Broncos for \$96 million, \$58 million of which was guaranteed. Mike Klis & Jeff Legwold, *Peyton Manning’s \$96 million deal with Broncos includes neck injury clause*, Denver Post, Mar. 20, 2012, http://www.denverpost.com/ci_20213659/peyton-mannings-deal-broncos-5-years-96-million, archived at <http://perma.cc/4GMF-C92W>. In 2014, J.J. Watt signed a six-year deal with the Houston Texans for \$100 million, \$51.8 million of which was guaranteed. *Texans give J.J. Watt \$100M deal*, ESPN, Sept. 2, 2014, http://espn.go.com/nfl/story/_/id/11451373/jj-watt-houston-texans-reach-agreement-6-year-100-million-deal, archived at <http://perma.cc/GUQ4-GP9J>. And, in 2015, Ndamukong Suh signed a six-year deal with the Miami Dolphins for \$114 million, \$60 million of which was guaranteed. Josh Alper, *Dolphins make it official with Ndamukong Suh*, ProFootballTalk (Mar. 11, 2015, 4:14 PM), <http://profootballtalk.nbcsports.com/2015/03/11/dolphins-make-it-official-with-ndamukong-suh/>, archived at <http://perma.cc/2T5Z-367S>.
- 77 See Chris Deubert, Glenn M. Wong, John Howe, *All Four Quarters: A Retrospective and Analysis of the 2011 Collective Bargaining Process and Agreement in the National Football League*, 19 UCLA Ent. L. Rev. 1, 52–61 (2012) (discussing changes to rookie compensation scheme).
- 78 *Id.*
- 79 See 2011 NFL CBA, Art. 4, § 9. See also Chris Deubert, Glenn M. Wong, John Howe, *All Four Quarters: A Retrospective and Analysis of the 2011 Collective Bargaining Process and Agreement in the National Football League*, 19 UCLA Ent. L. Rev. 1, 48–51 (2012) discussing clubs’ efforts to recoup portions of bonus money already paid to players); Chris Deubert & Glenn M. Wong, *Understanding the Evolution of Signing Bonuses and Guaranteed Money in the National Football League: Preparing for the 2011 Collective Bargaining Negotiations*, 16 UCLA Ent. L. Rev. 179, 202–26 (2009) (same).
- 80 See Chris Deubert & Glenn M. Wong, *Understanding the Evolution of Signing Bonuses and Guaranteed Money in the National Football League: Preparing for the 2011 Collective Bargaining Negotiations*, 16 UCLA Ent. L. Rev. 179, 194–95 (2009) (same).
- 81 See 2011 NFL CBA, Art. 4, § 9(g) (discussing voiding of guarantees).
- 82 MLB CBA, Art. XXIII § B(2)
- 83 *MLBPA, MLB Announce Details of New Labor Agreement*, MLBPA (Dec. 2, 2016), http://www.mlbplayers.com/ViewArticle.dbml?DB_OEM_ID=34000&ATCLID=211336390, archived at <https://perma.cc/4XUA-2DAW>.
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- 143 See 2017 NBA CBA Art. XI, § 1(c).
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- 168 *See* 2017 NBA CBA, Art. II § 4. Negotiating over guarantees for mental disability is potentially troubling. A player and his agent may be unlikely to want to raise that issue as a point of negotiation for fear of causing the club to be concerned that the player suffers from a mental disability. Nevertheless, according to the NBA, many contracts in the NBA include guarantees for mental disability.
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- 181 NHL CBA, § 9.1(b).
- 182 A player's Paragraph 1 Salary is the player's salary as specified in Paragraph 1 of the SPC. *See* Ex. 1 to the 2013 NHL CBA ("The Club hereby employs the Player as a skilled hockey Player for the term of _____ League Year(s) commencing the later of July 1, 20 or upon execution of this SPC and agrees, subject to the terms and conditions hereof, to pay the Player a salary of _____ US Dollars (\$_____).").
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- 184 NHL CBA, § 9.3.
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- 186 *Id.*
- 187 NHL CBA, § 10.2(a)(i).
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- 219 NHL Standard Player Contract, ¶ 13(d).
- 220 *Id.*
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- 224 CFL CBA, § 14.09.
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- 228 *Id.*
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- 234 Emily Kaplan, *The CFL's Most Outstanding Player Moonlights as a Banker*, Monday Morning Quarterback with Peter King, Jun. 26, 2014, <http://mmqb.si.com/2014/06/26/cfl-off-season-jobs-jon-cornish-calgary-stampeders/>, archived at <http://perma.cc/K6C7-2CM9>.
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- 238 *Roughriders sign quarterback Durant to contract extension*, Globe & Mail, Apr. 16, 2014, <http://www.theglobeandmail.com/sports/football/roughriders-sign-quarterback-durant-to-contract-extension/article18042091/>, archived at <http://perma.cc/26WW-WDJU>.
- 239 Aside from guarantees for veteran players, "CFL contracts are not guaranteed in the case of a player being released or beyond the current season in the case of a football-related injury." See Can. Football League Database *supra* note 235.
- 240 CFL Standard Player Contract, ¶ 6.
- 241 CFL Standard Player Contract, ¶10(a).
- 242 CFL Standard Player Contract, ¶10(b).
- 243 CFL Standard Player Contract, ¶10(c).
- 244 CFL Standard Player Contract, ¶10(d).
- 245 CFL CBA, Art. 15.
- 246 Justin Dunk, *Top CFL picks land rookie-record signing bonuses*, SportsNet (May 15, 2015, 11:19 AM), <http://www.sportsnet.ca/football/cfl/top-cfl-picks-land-rookie-record-signing-bonuses/>, archived at <http://perma.cc/8NUF-A5J6>.
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- 252 See *Order*, *Namoff v. D.C. Soccer LLC*, No. 2012-CA-7050, at *2 (D.C.Sup.Ct. May 8, 2014) ("MLS has sole discretion to hire players and provides their salary and benefits[.]")
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- 255 See *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984) (parent corporation and wholly owned subsidiary were not legally capable of conspiring with each other under Section 1 of the Sherman Act).
- 256 See *Fraser v. Major League Soccer*, L.L.C., 97 F.Supp.2d 130, 135-36 (D.Mass. 2000).
- 257 See *Fraser v. Major League Soccer*, L.L.C., 284 F.3d 47, 55 (1st Cir. 2002).
- 258 *Id.* at 56-59.
- 259 See *id.*
- 260 See *About the MLS Players Union*, Major League Soccer Players Union, https://www.mlspu.org/about_mlspu.html (last visited Aug. 28, 2015), archived at <http://perma.cc/P2XJ-MN4R>.
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