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PUTTING SHOULDER PADS ON SCHLECK: HOW THE BUSINESS OF PROFESSIONAL CYCLING COULD BE IMPROVED THROUGH A MORE AMERICAN STRUCTURE

*Chris Deubert**

INTRODUCTION

It was announced in August 2010 that three-time Tour de France winner Alberto Contador, less than a week after his latest victory, was leaving his Kazakhstan-based team, Astana, at the end of the season.¹ Contador reportedly rejected a two-year, nearly \$13 million deal from Astana,² instead choosing to sign with Bjarne Riis' Danish-based Saxo Bank-SunGard team for a reported two years and \$20 million.³ The move was particularly notable because Contador was essentially replacing rider Andy Schleck, who announced that at the end of the 2010 season he would be leaving Riis' squad to form a team based in his native Luxembourg.⁴ Schleck finished second to Contador in both the 2009 and 2010 Tours de France, including a controversial thirty-nine second victory in 2010.⁵

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1. Alasdair Fotheringham, *Contador Quits Astana to Replace Rival Schleck*, INDEP. (U.K.), Aug. 4, 2010, at 54, available at <http://www.independent.co.uk/sport/general/others/cycling-contador-quits-astana-to-replace-rival-schleck-2042336.html> (reporting that Contador turned down approximately £4.1 million (about \$6.3 million) annually); Andrew Hood, *Bjarne Riis Signs Alberto Contador for the 2011 Saxo Bank-Sungard Team*, VELO NEWS (Aug. 12, 2010, 5:13 PM), http://velonews.competitor.com/2010/08/news/riis-signs-contador_132572 [hereinafter Hood, *Riis Signs Contador*].

2. Fotheringham, *supra* note 1.

3. *Contador Signs Two-Year Deal with Saxo Bank-SunGard*, EL PAÍS (Madrid), Aug. 4, 2010, at 6.

4. Richard Moore, *Cycling: Tour Champion Contador to Replace Schleck at Saxo Bank*, GUARDIAN (London), Aug. 4, 2010, at 7; Ben Atkins, *Andy Schleck Confirms Saxo Bank Departure*, VELONATION (July 30, 2010, 10:44 AM), <http://www.velonation.com/News/ID/5070/Andy-Schleck-confirms-Saxo-Bank-departure-destination-still-to-be-announced.aspx>.

5. *Contador in Yellow as Schleck Suffers Untimely Mechanical at the Tour. France's Voeckler Wins the Stage*, VELO NEWS (June 22, 2011, 2:46 PM), http://velonews.competitor.com/2010/07/news/contador-in-yellow-as-schleck-suffers-untimely-mechanical-at-the-tour-frances-voeckler-wins-the-stage_129933. Entering Stage 16 of the 2010 Tour de France, an important mountain stage, Schleck held a thirty-

While it was not as controversial as Brett Favre forcing his way onto the Minnesota Vikings⁶ or Johnny Damon signing with the New York Yankees,⁷ just weeks prior to Contador's signing, anyone who rooted for Team Saxo Bank⁸ also ardently rooted against the Spaniard Contador and Astana. Surely the Saxo Bank fans questioned their loyalty to the team in light of its signing of Contador. Moreover, by the start of the 2011 season, Contador had brought three former Astana riders with him to Saxo

one second lead over Contador. Juliet Macur, *Etiquette Debate Follows Tour De France Lead Change*, N.Y. TIMES, July 20, 2010, at B.11. However, on a decisive climb that day, Schleck's bike chain became dislodged, forcing Schleck to stop and repair it. David Roth, *Contador Wins by One Bike Chain*, WALL ST. J. BLOG (July 26, 2010, 10:34 AM), <http://blogs.wsj.com/dailyfix/2010/07/26/contador-wins-by-the-length-of-one-bike-chain>. While Schleck was forced to stop, Contador rode on, in a move some said was against unwritten rules not to attack a rider who has stopped through no fault of his own. *See id.* Contador took thirty-nine seconds on the stage to take an eight second lead over Schleck. *Id.* On the Tour's penultimate stage, the individual time trial, Contador added thirty-one more seconds to his lead to win the 2010 Tour by thirty-nine seconds—the exact margin that Contador obtained as a result of Schleck's mechanical problems in Stage 16. *Id.*

6. *See generally* Jim Corbett, *Legendary NFL QB Shows No Quit in His Love for Game*, USA TODAY, Aug. 21, 2009, at A.1. Favre was the quarterback of the NFL's Green Bay Packers from 1992 through 2007, during which he won three MVP awards and led the team to a 1997 Super Bowl Championship. *Id.* Favre often contemplated retirement and announced his decision to leave the game following the 2007 season, opening the door for young Packers' quarterback Aaron Rodgers. *Id.*; Hank Gola, *Packers Ready to Move On Without Legendary Leader*, N.Y. DAILY NEWS, Aug. 8, 2008, at 80. A few weeks later Favre changed his mind, having felt forced out by the Packers. Corbett, *supra*. Favre reportedly wanted to play for the Packers' division rival, the Minnesota Vikings. Gola, *supra*. Instead, the Packers traded Favre and the three years remaining on his contract to the New York Jets on the condition that if the Jets traded Favre to the Vikings the Jets would owe the Packers three first round draft picks. *Id.* After a disappointing 2008 season, Favre again announced his retirement, causing the Jets to release him. Corbett, *supra*. Ultimately still bitter about his departure from the Packers, Favre signed with the Vikings for the 2009 season. *Id.*

7. Pete Caldera, *Johnny Be Good; Damon Final Piece of Explosive Yankee Lineup*, REC. (N.J.), Dec. 24, 2005, at S.01. Damon was the centerfield on the Boston Red Sox from 2002 through 2005, helping lead them to a World Series title in 2004—the franchise's first since 1918. Tom Haudricourt, *2004 World Series at a Glance*, MILWAUKEE J. SENTINEL, Oct. 23, 2004, at 04; Dan Shaughnessy, *Yes!!! Red Sox Complete Sweep, Win First Series in 86 Years*, BOS. GLOBE, Oct. 28, 2004, at A1. Following the 2005 season, Damon signed a four-year, \$52 million deal with the Red Sox's arch rival the New York Yankees, with whom he won a World Series in 2009. Caldera, *supra*; Jayson Stark, *Damon Steals the Show in Game 4*, ESPN (Nov. 1, 2009), http://sports.espn.go.com/mlb/playoffs/2009/columns/story?columnist=stark_jayson&id=4615712.

8. Team Saxo Bank-SunGard was known as just Team Saxo Bank prior to the 2011 season. Hood, *Riis Signs Contador*, *supra* note 1.

Bank-Sungard⁹ and Schleck successfully wooed four former Saxo Bank riders to his new Leopard Trek team.¹⁰ This would be similar to the Yankees suddenly acquiring four of their starters from their arch rival Boston Red Sox.

This type of mass free agency in cycling is of questionable value. The advent of free agency in American professional sports has made roster changes an accepted part of the game, causing some commentators (notably comedian Jerry Seinfeld) to note that we merely “root for laundry.”¹¹ Nevertheless, the degree and nature of the turnover in professional cycling can quickly strip away any of laundry’s meaning. Undoubtedly, many 2010 Saxo Bank supporters found themselves rooting for Leopard Trek in 2011.

Rider movement is certainly not cycling’s biggest problem. More than anything else, doping scandals have sundered the sport by chasing away sponsors, destabilizing team operations, and causing annual chaos among riders.¹² At the time of writing of this Article, the status of Contador’s 2010 Tour de France title and cycling career hangs in the balance due to doping allegations.¹³

9. *Riis Signs Noval, Hernandez and Navarro for Saxo Bank-Sungard*, VELO NEWS (Aug. 12, 2010, 5:24 PM), http://velonews.competitor.com/2010/08/news/riis-signs-noval-hernandez-and-navarro-for-saxo-bank-sungard_134385. The three riders that left Astana for Saxo Ban-SunGard were Benjamin Noval, Jesus Hernandez, and Daniel Navarro. *Id.*

10. Andrew Hood, *Riis Not Losing Sleep Over ‘Leopard-Shack’ Merger*, VELO NEWS (Sept. 7, 2011, 9:23 AM), http://velonews.competitor.com/2011/09/news/riis-not-losing-sleep-over-leopard-shack-merger_191207. The riders who left Saxo Bank for Leopard Trek were: Frank Schleck, Stuart O’Grady, Fabian “Spartacus” Cancellara, and Jens Voigt. *Id.*

11. Steve Buckley, *Light’s Fight Not Too Bright*, BOS. HERALD, Nov. 26, 2008, at 60; Kevin Modesti, *Stadiums Not Just Buildings*, DAILY NEWS (L.A.), July 16, 2008, at C.1; Scott Ostler, *This Latest Squabble Won’t Stand Test of Time*, S.F. CHRON., Dec. 13, 2007, at D.1. The phrase means that fans root for the team jerseys rather than the individuals wearing them.

12. John Ward Anderson, *Doping Scandal Rocks Cycling*, WASH. POST, July 1, 2006, at E.1.

13. *Alberto Contador Tests Positive for Clenbuterol*, CYCLINGNEWS (Sept. 30, 2010, 10:06 AM), <http://www.cyclingnews.com/news/alberto-contador-tests-positive-for-clenbuterol> [hereinafter *Contador Tests Positive*]; Juliet Macur, *Second Failed Test Puts Heat on Contador*, N.Y. TIMES, Oct. 5, 2010, at B.11. In September 2010, it was revealed that Contador had tested positive for the banned substance clenbuterol during the 2010 Tour de France. *Contador Tests Positive, supra*. It was later revealed that another urine test of Contador’s taken during the Tour de France contained plastic residue indicative of blood doping. Macur, *supra*. The Spanish Cycling Federation accepted Contador’s excuse that the failed tests were the result of eating tainted beef and declined to suspend Contador. *Contador Tests Positive, supra*; *UCI Appeals Contador Decision to Court of*

While the freedom of contract and employment opportunity is something to be celebrated considering the history of control exercised by teams over their athletes across many sports, there are superior business models that would improve the operations and financial viability of professional cycling while also making it more comprehensible and appealing to the fans. This Article will explain the current structure of international professional cycling and compare it to the typical structure of American professional team sports. Lastly, this Article will explain key areas where the structure and operations of professional cycling could be improved by adopting a more American approach.

I. CURRENT STRUCTURE OF PROFESSIONAL CYCLING

A. International Cycling Union

Based in Aigle, Switzerland, the International Cycling Union, or Union Cycliste Internationale (“UCI”) in French, is a nongovernmental, non-profit, international association in accordance with Swiss law.¹⁴ The UCI was created in 1900 and governs the world of cycling, including Olympic participation.¹⁵ The members of the UCI are the national cycling federations of each country.¹⁶ As of 2011, more than 170 nations have a cycling federation as a participating member in the UCI.¹⁷ Each national federation sends representatives to the UCI, which constitute the Congress of the UCI.¹⁸ The Congress then elects a President of the UCI and nine other persons to form the Management Committee.¹⁹ The President and the

Arbitration for Sport, CYCLINGNEWS (Mar. 24, 2011, 1:56 PM), <http://www.cyclingnews.com/news/uci-appeals-contador-decision-to-court-of-arbitration-for-sport> [hereinafter *UCI Appeals*]. The UCI appealed to the Court of Arbitration for Sport and a hearing is set for November 2011. *Contador CAS Hearing Postponed until November*, CYCLINGNEWS (July 26, 2011, 3:54 PM), <http://www.cyclingnews.com/news/contador-cas-hearing-postponed-until-november>; *UCI Appeals, supra*.

14. Union Cycliste Internationale [UCI] [International Cycling Union], UCI Constitution, ch. II, art. 4, at 2 (Oct. 1, 2010) [hereinafter *UCI Constitution*], available at <http://www.uci.ch> (follow “Rules” hyperlink; then follow “Constitution” hyperlink).

15. UCI, UCI Cycling Regulations: Part XI: Olympic Games, ch. I, para. 11.1.001, at 1 (Sept. 30, 2010) [hereinafter *UCI Regulations, Part XI*], available at <http://www.uci.ch> (follow “Rules” hyperlink; then follow “Part XI: Olympic Games” hyperlink).

16. UCI Constitution, *supra* note 14, ch. II, art. 4, at 2.

17. See *National Federations*, UCI, <http://www.uci.ch/templates/UCI/UCI1/layout.asp?MenuId=MTI2NjU&LangId=1> (last visited Oct. 7, 2011).

18. UCI Constitution, *supra* note 14, ch. IV, art. 27, at 9.

19. *Id.* art. 29(e), at 9.

Management Committee are elected every four years.²⁰ Since 2006, former professional cyclist Pat McQuaid has served as President of the UCI.²¹

In addition to the national federations, there are five continental confederations—Africa, America, Asia, Europe, and Oceania—grouping the nations of each continental region into a single entity.²² Each of these continental confederations appoints delegates to vote on possible amendments to the UCI Cycling Regulations presented to the Congress.²³ The number of votes for each continental confederation varies, presumably based on the continent's perceived role in professional cycling: Africa has seven voting delegates; America, nine; Asia, nine; Europe, fourteen; and Oceania, only three, for a total of forty-two.²⁴ The Congress meets annually²⁵ to debate and consider the issues, which are then presented to it by the Management Committee, and to be voted on by the voting delegates.²⁶ In the case of a tied vote, the proposal is rejected.²⁷

The UCI Cycling Regulations are extensive in nature and govern nearly all the rules of cycling in eight different disciplines,²⁸ including the licensing of riders, teams, team managers,²⁹ equipment,³⁰ race length and conditions, rider contracts and salaries,³¹ and drug testing.³² The UCI's structure, rules and purpose are substantially the same as other international sporting organizations such as Fédération Internationale de Foot-

20. *Id.* art. 48, para. 3, at 14.

21. *Patrick McQuaid*, UCI, <http://www.uci.ch/templates/UCI/UCI1/layout.asp?MenuId=MTI2NzU&LangId=1> (last visited Oct. 7, 2011).

22. UCI Constitution, *supra* note 14, ch. III, art. 23, at 7.

23. *Id.* ch. IV, art. 36, para. 1, at 11.

24. *Id.* ch. IV, art. 36, para. 2, at 11.

25. *Id.* ch. IV, art. 28, para. 1, at 9.

26. *Id.* ch. IV, art. 31, at 10.

27. *Id.* ch. IV, art. 38, para. 1, at 11.

28. The eight different disciplines are road, track, mountain bike, cyclo-cross, BMX, trials, indoor cycling and para-cycling. *See, e.g.*, UCI, UCI Cycling Regulations: Part II: Road Races (July 1, 2011) [hereinafter UCI Regulations, Part II], available at www.uci.ch (follow "Rules" hyperlink; then follow "Part II: Road Races" hyperlink).

29. UCI, UCI Cycling Regulations: Part I: General Organisation of Cycling as a Sport, ch. I, § 1, art. 1.1.010, at 2–3 (July 1, 2011) [hereinafter UCI Regulations, Part I], available at www.uci.ch (follow "Rules" hyperlink; then follow "Part I: General organization of cycling as a sport" hyperlink).

30. *Id.* ch. III, § 1, art. 1.3.001, at 57.

31. *See* UCI Regulations, Part II, *supra* note 28.

32. *See* UCI, UCI Cycling Regulations: Part XIV: Anti-Doping, (July 1, 2011) [hereinafter UCI Regulations, Part XIV], available at www.uci.ch (follow "Rules" hyperlink; then follow "Part XIV: Antidoping Rules" hyperlink).

ball Association (“FIFA”) and Fédération Internationale de Basketball (“FIBA”).³³

The UCI also hosts cycling events in addition to its regulatory role, though not the most prestigious ones, as will be discussed in more detail below.³⁴ The UCI Constitution specifically designates the Court of Arbitration for Sport (“CAS”),³⁵ also based in Switzerland, as “the sole competent authority to deal with and judge appeals” of decisions made by the UCI, applying Swiss law if necessary.³⁶

B. Teams

Licenses are required for nearly all persons who are involved in professional cycling, including riders, motorcycle pacers, team managers, coaches, doctors, mechanics, announcers, and race organizers.³⁷ The license confirms that “its holder undertakes to respect the [UCI] constitution and regulations” thereby authorizing him or her to participate in cycling events.³⁸ While individual team members and staff must be licensed, teams themselves must register with the UCI.³⁹ There are two types of registered teams relevant to professional road cycling: ProTour teams and Professional Continental teams.

33. For more information on FIBA, including its regulations, see *About FIBA*, FIBA, <http://www.fiba.com/pages/eng/fc/FIBA/quicFact/p/openNodeIDs/889/selNodeID/889/quicFacts.html> (last visited Oct. 7, 2011); *Official FIBA Regulations*, FIBA, <http://www.fiba.com/pages/eng/fc/FIBA/ruleRegu/p/openNodeIDs/916/selNodeID/916/fibaRegu.html> (last visited Oct. 7, 2011). For more information on FIFA, including its regulations, see *Laws and Regulations*, FIFA, <http://www.fifa.com/aboutfifa/officialdocuments/doclists/laws.html> (last visited Sept. 16, 2011); *Mission & Statutes*, FIFA, <http://www.fifa.com/aboutfifa/organisation/mission.html> (last visited Sept. 16, 2011).

34. See discussion *infra* Part II.D.

35. UCI Constitution, *supra* note 14, ch. XIII, at 21. The Court of Arbitration for Sport (“CAS”) is an international arbitration body set up to settle disputes related to sports. Its headquarters are in Lausanne; there are additional courts located in New York City and Sydney, with ad-hoc courts created in Olympics host cities as required. For more information on the CAS, see *20 Questions about the CAS*, CT. ARB. FOR SPORT, <http://www.tas-cas.org/en/20questions.asp> (last visited Oct. 3, 2011); see generally Jason Gubi, *The Olympic Binding Arbitration Clause and the Court of Arbitration for Sport: An Analysis of Due Process Concerns*, 18 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 997 (2008); Richard H. McLaren, *Twenty-Five Years of the Court of Arbitration for Sport: A Look in the Rear-View Mirror*, 20 MARQ. SPORTS L. REV. 305 (2010).

36. UCI Constitution, *supra* note 14, ch. XIII, at 21.

37. UCI Regulations, Part I, *supra* note 29, ch. 1, § 1, art. 1.1.001, at 1.

38. *Id.*

39. *Id.* ch. 1, § 3, art. 1.1.041, at 11.

i. ProTour Teams

Each year the UCI issues a maximum of eighteen ProTour team licenses.⁴⁰ The ProTour license grants the licensed team the right to participate in the UCI WorldTour,⁴¹ to be discussed in more detail later.⁴² There are four criteria upon which the UCI awards licenses: sporting, ethical, financial, and administrative.⁴³ While the sporting criteria considers the team's previous performance,⁴⁴ the ethical, financial, and administrative criteria are important in a sport plagued by doping scandals,⁴⁵ lacking major revenue streams, and where team financial viability has been an issue in the past.⁴⁶ In considering whether a team has satisfied these crite-

40. UCI Regulations, Part II, *supra* note 28, ch. XV, §3, art. 2.15.009, at 82.

41. *Id.* ch. XV, § 2, art. 2.15.003, at 82.

42. *See infra* text accompanying notes 40–52.

43. UCI Regulations, Part II, *supra* note 28, ch. XV, § 3, art. 2.15.011, at 83.

44. A team ranked in the top fifteen will be deemed to have satisfied the sporting criteria. A team ranked lower than twentieth shall not be considered to have satisfied the sporting criterion, while teams ranked sixteen to twenty are examined more closely. *Id.* ch. XV, § 3, art. 2.15.011a–b, at 83.

45. The use of illegal drugs in cycling is so prevalent in the sport's history that there is a Wikipedia page entitled "List of doping cases in cycling" dating all the way back to 1886. *See List of Doping Cases in Cycling*, WIKIPEDIA, http://en.wikipedia.org/wiki/List_of_doping_cases_in_cycling (last updated Sept. 17, 2011). Among the more recent scandals, in 1998 the entire Festina team was thrown out of the Tour de France and many other teams quit the race, John Ward Anderson, *Downhill Ride; Has Cycling Bottomed Out? Will the Sport Rebound or Continue to Self-Destruct?*, HAMILTON SPECTATOR (Can.), May 30, 2008, at 8; Simon Hart, *The Road to Ruin: Timeline of the Relentless Scandals that Keep Haunting the Sport*, DAILY TELEGRAPH (London), May 21, 2010, at 10; in 2006 former Tour de France winner Jan Ullrich was forced out of the Tour de France the night before as part of a doping investigation, Anderson, *supra*; Hart, *supra*; 2006 Tour de France winner Floyd Landis tested positive for blood doping and had his title revoked, Anderson, *supra*; Hart, *supra*; in 2007, the leader of the Tour de France, Michael Rasmussen was kicked out mid-tour for lying about his pre-race whereabouts and missing drug tests, *Leader Rasmussen Kicked Off Tour*, IRISH EXAM'R (July 26, 2007), <http://search.proquest.com/docview/758388530/fulltext?accountid=37371>; and in 2008 defending champion of the Tour de France, Alberto Contador, was unable to defend his title because his Astana team was involved in a doping scandal, *Astana Banned From Tour de France; Contador Likely Won't Defend Title*, ESPN (Feb. 13, 2008, 4:14 PM), <http://sports.espn.go.com/oly/cycling/news/story?id=3243640>.

46. In mid-season 2003, team sponsor Coast was replaced by Bianchi after Coast was unable to pay riders and staff for several months. Alasdair Fotheringham, *Ullrich Reaches Crossroads in Tour of Troubles; Former Champion Aims to Puts [sic] His Career Back on Track from the Ruins of Alcohol, Drugs and Team Bankruptcy*, INDEP. (U.K.), June 9, 2003, at 6 [hereinafter Fotheringham, *Ullrich Reaches Crossroads*], available at 2003 WLNR 10452766. In 2001, the British Linda McCartney Cycling Team, was unable to pay its riders for several months, leading the UCI to file a criminal complaint against

ria, the UCI will examine the team's anti-doping compliance,⁴⁷ satisfaction of contractual and legal obligations,⁴⁸ financial records,⁴⁹ and compliance with UCI regulations.⁵⁰ As a condition of registering as a Pro-Tour team, the team agrees to participate in the biological passport program⁵¹ and be subject to the UCI's anti-doping rules.⁵²

While teams are often associated with their title sponsor, such as Team RadioShack or Saxo Bank, the team's actual legal name will likely be something different than that of its sponsor, which may not be associated with the team in a year or two.⁵³ Each team is a legal entity, such as a corporation or limited liability company, created under the laws of one of various countries. While in American sports the owner of a professional sports team is often publicly known,⁵⁴ this is not the case in professional

the team alleging that a fraudulent bank guarantee was presented to the UCI. *See* Kieran Daley, *Union Presses Case Against Defunct Team*, INDEP. (U.K.), Mar. 7, 2001, at 29, available at 2001 WLNR 7209761.

47. UCI Regulations, Part II, *supra* note 28, ch. XV, § 3, art. 2.15.011c, at 83.

48. *Id.*

49. *Id.* ch. XV, § 3, art. 2.15.011d, at 83.

50. *Id.* ch. XV, § 3, art. 2.15.011e, at 83.

51. *Id.* ch. XV, § 4, art. 2.15.070a, at 95. The biological passport program is administered by the UCI and the World Anti-Doping Association ("WADA").

A biological passport is an individual, electronic record for each rider, in which the results of all doping tests over a period of time are collated. The passport for each rider will contain: (1) results of individual urine tests; (2) results of individual blood tests; (3) a haematological profile consisting of the combined results of haematological parameters analysed in a series of blood samples; and (4) a steroid profile consisting of the combined results of steroid levels in a series of urine samples.

Id. For more information, see *Biological Passport – Questions / Answers*, UCI (Feb. 9, 2011),

<http://www.uci.ch/templates/UCI/UCI2/layout.asp?MenuId=MTU4ODY&LangId=1>.

52. UCI Regulations, Part XIV, *supra* note 32, ch. I, r. 1, at 1. The UCI anti-doping rules are based on the World Anti-Doping Code as approved by the WADA. *See id.* "WADA was established in 1999 as an international independent agency composed and funded equally by the sport movement and governments of the world. Its key activities include scientific research, education, development of anti-doping capacities, and monitoring of the World Anti Doping Code." *About WADA*, WORLD ANTI-DOPING AGENCY [WADA] (June 2011), <http://www.wada-ama.org/en/About-WADA>. The WADA Code is used for the Olympics and most other international athletic competitions. *Id.*

53. *See* Thomas A. Valentinsen, *Riis Cycling Announces 2011 Team SunGard-Saxo Bank*, ROADCYCLING.COM (Aug. 3, 2010, 1:40 AM), http://www.roadcycling.com/articles/Riis-Cycling-Announces-2011-Team-SunGard-Saxo-Bank-Saxo-Bank-to-Continue-Cooperation-with-Riis-Cycling_003785.shtml.

54. Some owners become symbolic or iconic and are more associated with the team than any player or coach. Such figures include the late George Steinbrenner of the New

cycling. Bjarne Riis, a former Tour de France winner,⁵⁵ is a notable exception as the owner and team manager of Riis Cycling. Riis Cycling (originally named Professional Cycling Denmark) was formed in 1998 following Riis' retirement as a professional rider.⁵⁶ However, on any media platform, Riis Cycling's team is not referred to as "Riis Cycling" but instead by its corporate sponsor as will be discussed below.⁵⁷

An athlete's involvement with the team can create confusion: following doping allegations by former teammate Floyd Landis in May 2010, the federal government opened an investigation into Lance Armstrong and the teams that helped him win seven consecutive Tours de France from 1999 to 2005.⁵⁸ From 1996 through 2004 the team, Capital Sports and Entertainment, LLC, was sponsored by the United States Postal Service, and in 2005 the team was sponsored by the Discovery Channel.⁵⁹ As the investigation began, Armstrong repeatedly countered the description of those teams being "his teams" by stating he was simply a rider (employee) with no ownership interest in the team.⁶⁰ However, prior to the 2005 season, Armstrong was given an 11.5% equity interest in the team, though he was still not involved in the operations of the team.⁶¹ The team exited pro cycling in 2007 but returned for the 2010 cycling season as Armstrong was completing his comeback. It is believed that by then Armstrong had obtained a much larger interest in the team, as he was essential to the team's major sponsorship agreements, including Ra-

York Yankees or Al Davis of the NFL's Oakland Raiders. See Cam Inman, Op-Ed., *Davis Could Learn a Thing or Two from the Boss*, OAKLAND TRIBUNE, Oct. 30, 2009, available at 2009 WLNR 21746037.

55. Riis won the 1996 Tour de France but it was later revealed that he used performance enhancing drugs during his career and in that race. See *Riis: We've Come Clean*, ADVERTISER (Austl.), Aug. 5, 2010, at 76.

56. See *Tour Team History Part 2*, ROAD BIKE ACTION MAG. (July 20, 2009), <http://www.roadbikeaction.com/RBA-Features/content/197/1955/Tour-Team-History-Part-2.html>; Matt Rendell & Susanne Horsdal, *Life after Lance*, OBSERVER (London), July 2, 2006, at 34.

57. See *infra* text accompanying notes 65–67.

58. Juliet Macur, *Armstrong Distances Himself from Doping Inquiry*, N.Y. TIMES, July 15, 2010, at B11; *Race Winners Since 1903*, LE TOUR DE FRANCE, <http://www.letour.fr/2011/TDF/HISTO/us/palmares.html> (last visited Sept. 24, 2011) [hereinafter Macur, *Armstrong Distances Himself*].

59. Dean Bonham, *Armstrong Adds Kick to Postal Service Efforts*, ROCKY MTN NEWS, May 12, 2001, at 4.C; *The History of Race Cycling*, DISCOVERY CHANNEL, <http://www.yourdiscovery.com/team/history/index.shtml> (last visited Oct. 2, 2011).

60. Macur, *Armstrong Distances Himself*, *supra* note 58.

61. *Id.*; Bonnie D. Ford, *Lance's Comments Differ from Testimony*, ESPN (July 14, 2010, 7:08 PM), <http://sports.espn.go.com/oly/cycling/news/story?id=5380225>.

dioShack, Nike, Trek, and Nissan. Nevertheless, a rider having an equity ownership in the team is extraordinarily rare.

Once the team is formed as a legal entity, it must obtain sponsorship to maintain financial viability. The sport of cycling, despite drawing millions of spectators each year,⁶² cannot charge admission based on its inherent nature as a distance event. Consequently, nearly all of a team's revenue comes from sponsors who find it beneficial to associate themselves with that team.⁶³ These sponsors cover a variety of industries, though many obviously relate to cycling. The team's most important sponsors are the "principal partners" whose names and color schemes will be used as the team name and make up the bulk of the team's uniform.⁶⁴

For example, Riis Cycling was originally named "Team home—Jack & Jones" for the Danish-based clothing company.⁶⁵ The team has since undergone several name changes as its principal sponsors have changed.⁶⁶ The team began to achieve more success when it brought on the American company Computer Sciences Corporation ("CSC") as a principal sponsor in 2001.⁶⁷

Unfortunately the history of doping in the sport has significantly hindered sponsorship arrangements, as many sponsors have become weary of associating themselves with a team or athlete that could result in sporting disgrace.⁶⁸ Most principal sponsorship arrangements with teams are

62. The Tour de France draws an estimated ten to fifteen million people to its route each year. Colin Bateman, *British Are Coming with Genuine Tour de Force in Tour de France*, EXPRESS (London), July 3, 2010, available at 2010 WLNR 13370710; Jeremy Whittle, *Mark Cavendish Rips Up Tour Record Books as He Claims Tenth Stage Win*, TIMES (July 27, 2009), http://www.timesonline.co.uk/tol/sport/more_sport/cycling/article6728238.ece (Eng.).

63. Michel Desbordes, *The Economics of Cycling*, in HANDBOOK ON THE ECONOMICS OF SPORT 398, 409 (Wladimir Androff & Stefan Szymanski eds., 2006).

64. UCI Regulations, Part II, *supra* note 28, ch. XV, § 4, art. 2.15.050, at 90.

65. *Tour Team History Part 2*, *supra* note 56; *The World's Best Cycling Team Celebrates 10-Year Anniversary*, RIIS CYCLING (Aug. 27, 2011, 7:55 PM), http://www.riis-cycling.com/ny_news.asp?n_id=1495&lang=uk.

66. See Brecht Decaluwé, *Riis Announces Two New Sponsors for Future*, CYCLINGNEWS (July 12, 2010, 10:37 PM), <http://www.cyclingnews.com/news/riis-announces-two-new-sponsors-for-future>.

67. The team's success culminated in 2008 when team member Carlos Sastre won the Tour de France and the team won the team classification. See Sastre, *CSC-Saxo Bank Deliver Tour de France Win for New Bell Volt*, EASTERN-BELL SPORTS, <http://www.eastonbellsports.com/sastre-csc-saxo-bank-deliver-tour-de-france-win-for-new-bell-volt> (last visited Sept. 27, 2011).

68. See Jim Vertuno, *Discovery Team Disbands: Elite American Cycling Unit Unable to Secure New Sponsor*, FT. WAYNE J. GAZETTE, Aug. 11, 2007, at 6B, available at 2007

for only one or two years as a result.⁶⁹ Continuing the Riis Cycling example, after a six-year period in which CSC was the sole principal sponsor of Riis Cycling, the Danish bank Saxo Bank joined as another principal sponsor in 2008 and was the sole principal sponsor in 2009 and 2010.⁷⁰ UCI Regulations permit teams to have a maximum of two principal sponsors.⁷¹ Saxo Bank was prepared to leave the cycling sponsorship market following the expiration of its 2010 contract, but was convinced to come back in as a co-principal partner along with the American software company SunGard when Riis was able to secure Contador as a rider.⁷²

As a result of unstable sponsorship issues and the resulting financial difficulties, the UCI imposes a number of regulations meant to help provide stability to the sport. First, the team must have a “paying agent” who is the person or entity responsible for the team’s financial, contractual and legal obligations, such as rider and sponsorship contracts.⁷³ The paying agent can only act through the physical persons who hold a UCI license.⁷⁴ For Team Saxo Bank-SunGard, most likely Riis Cycling is the paying agent, acting through Bjarne Riis, who holds a UCI license. Second, a team’s ProTour license is generally granted for a four-year period.⁷⁵ However, each team must register each year anew pursuant to the criteria described earlier.⁷⁶ Third, the paying agent is required to provide key financial documents to the UCI, including account statements, profit and loss statements, cash flow plans, and budgets.⁷⁷ Fourth, each team

WLNR 15678617 (discussing the disbanding of the Discovery team, on which Lance Armstrong won seven Tours de France, including several years when the team was sponsored by the US Postal Service); *see also* Ian Austen, *Cycling’s Drug Problem Leads T-Mobile to End Sponsorship*, N.Y. TIMES, Nov. 28, 2007, at D1, available at 2007 WLNR 23464048 (discussing T-Mobile ending a sixteen-year run as a major sponsor of professional cycling due to doping scandals).

69. Interview with John Wilcockson, Editor, VeloNews.com (Aug. 16, 2010) (Wilcockson has covered over forty Tours de France for a variety of publications and has written seven books on the sport of cycling); *see, e.g.*, Doreen Carvajal, *After Scandal, Cycling Struggles for Sponsors*, N.Y. TIMES, May 11, 2007, at C.5.

70. *History, Riis CYCLING*, http://www.riis-cycling.com/pages.asp?pa_id=5&top_menu=2&under_menu=1 (last visited Sept. 27, 2011).

71. UCI Regulations, Part II, *supra* note 28, ch. XV, § 4, art. 2.15.055, at 91.

72. Moore, *Tour Champion Contador to Replace Schleck at Saxo Bank*, GUARDIAN, *supra* note 4.

73. UCI Regulations, Part II, *supra* note 28, ch. XV, § 4, arts. 2.15.057–63, at 91–92.

74. *Id.* ch. XV, § 4, art. 2.15.060, at 92.

75. *Id.* ch. XV, § 3, art. 2.15.031, at 86–87.

76. *See supra* text accompanying notes 40–52.

77. UCI Regulations, Part II, *supra* note 28, ch. XV, § 4, art. 2.15.068, at 94.

must obtain a bank guarantee for the team's debts, including its contracts.⁷⁸

The UCI Regulations are demonstrative that “[t]he financial stability of the UCI ProTeam must be ensured at all times, in particular by adequate owner’s equity.”⁷⁹ For example, the Regulations state that all “income deriv[ed] from the . . . [team] must be allocated exclusively [for the] operations of the team.”⁸⁰

A typical budget for a ProTeam is between \$10 and \$20 million.⁸¹ However, in 2010, in its first season of racing, Britain’s Team Sky was believed to have a budget in excess of \$50 million.⁸² It was revealed in 2011 that the United States Postal Service paid approximately \$8 million per year to finance Lance Armstrong’s teams between 2001 and 2004.⁸³ The \$8 million represented approximately 60–65% of the team’s budget.⁸⁴

The financial requirements are essential to ensuring that each ProTeam is professionally staffed and maintained. Each UCI ProTeam must have “at least [twenty-three] riders, [two] team managers and [eight] other staff . . . on a full-time basis.”⁸⁵ The maximum number of riders depends on the number of “new professionals” a team has, up to a maximum of thirty total riders.⁸⁶ A new professional is simply a rider in his first year as a professional.

ii. Professional Continental Teams

A Professional Continental team is substantially the same as a ProTour team in its organization, licensing, registration, organization, UCI obligations, funding, and more. One key difference is that in its licensing and registration process, a Continental team is not judged on a sporting criteria.⁸⁷ “Each . . . continental team must employ at least [sixteen] riders,

78. *Id.* ch. XV, § 4, arts. 2.15.092–96, at 99.

79. *Id.* ch. XV, § 4, art. 15.090, at 99.

80. *Id.*

81. Tom Zed, *Wheel of Fortune and Global Power Corporate High-Flyers Descend on Tour*, ADVERTISER (Austl.), Jan. 22, 2010, at 12.

82. Steve McMorran, *Greipel Wins Tour Down Under; Sutton Takes Sixth Stage for Team Sky*, 680 NEWS (Jan. 24, 2010, 1:05 PM), <http://www.680news.com/sports/article/20150—greipel-wins-tour-down-under-sutton-takes-sixth-stage-for-team-sky>.

83. Shaun Assael, *Details of Lance Armstrong Sponsorship*, ESPN (Jan. 14, 2011, 5:03 PM), <http://sports.espn.go.com/oly/cycling/news/story?id=6019436>.

84. *Id.*

85. UCI Regulations, Part II, *supra* note 28, ch. XV, § 4, art. 2.15.049, at 89–90.

86. *Id.* ch. XV, § 4, art. 2.15.110, at 103.

87. *Id.* ch. XVI, art. 2.16.013, at 135.

[two] team managers, and [three] other staff . . . on a full-time basis.”⁸⁸ A Continental team can have a maximum of twenty-five riders.⁸⁹

A Continental team may aspire to become a ProTour team, and the Continental team status functions as an important stepping stone in the process. Cycling’s Grand Tours (the Tour de France, Giro d’Italia, and Vuelta a España) typically have between twenty and twenty-two teams each year—more than the eighteen teams licensed as ProTour teams each year by the UCI.⁹⁰ Consequently, each year two to four Continental teams have the opportunity to participate in cycling’s biggest events and make headlines. The Continental team can then apply for the next season for a ProTour license based on its performance in the prior season.⁹¹

This two-tiered system operates similarly to the promotion and relegation system used in European sports, most notably soccer. In promotion and relegation, a sports league is divided into several divisions, with the highest division composed of the best caliber of teams and players.⁹² At the end of each season, each division in the league will relegate or demote the bottom two or three teams from that division to the next lowest division. In their place, the top two or three teams from that next lowest division will be promoted to the higher division. The demoted teams may be given some financial support while the promoted teams may have to meet off-the-field conditions to ensure promotion, such as financial solvency, stadium capacity, and facilities.⁹³

The promotion and relegation system permits teams to start at the very bottom of the sporting world and rise to the very top. Although professional cycling only has two “divisions” as compared to English soccer’s

88. *Id.* ch. XVI, art. 2.16.001, at 132.

89. *Id.* ch. XVI, art. 2.16.032, at 142.

90. *Id.* ch. XV, § 3, art. 2.15.009, at 82. In the 2010 Tour de France, the four Continental teams that participated were (1) Bbox Bouygues Telecom; (2) Cofidis, Le Credit En Ligne; (3) Cervelo Test Team; and (4) BMC Racing Team. See *2010 UCI Professional Continental Teams*, UCI, (Aug. 12, 2010), <http://www.uci.ch/templates/BUILTIN-NOFRAMES/Template1/layout.asp?MenuId=MTU4MTU&LangId=1>; *2010*, UCI (Aug. 12, 2010), available at <http://www.uci.ch> (follow the “Road” hyperlink; then follow the “Results” hyperlink; follow the “Men Elite” hyperlink; select “2010” from the season drop down menu; select “Tour De France” from the event list; follow the “General Classification” hyperlink; select the “Team Time” tab) (last visited Sept. 20, 2011).

91. See UCI Regulations, Part II, *supra* note 28, ch. XV, art. 2.15.009, at 82 & ch. XVI, 2.16.013, at 135.

92. *Id.* ch. XVI, arts. 2.16.010 bis–16, at 134–37.

93. For more on the benefits of the promotion and relegation system, see Stephen F. Ross & Stefan Szymanski, *Open Competition in League Sports*, 2002 WIS. L. REV. 625 (2002).

five,⁹⁴ the system still reduces the barriers to and costs of entry for professional cycling teams.

iii. Association Internationale des Groupes Cyclistes Professionnels

All teams, whether ProTour and Continental, registered with the UCI collectively form the International Association of Professional Cycling groups, or Association Internationale des Groupes Cyclistes Professionnels (“AIGCP”) in French. The AIGCP has very little power in the structure of professional cycling. While the AIGCP and the riders’ union, Cyclistes Professionnels Associes (“CPA”), do negotiate Joint Agreements governing certain aspects of the riders employment, the agreements are very basic and do not substantially impact the sport, as will be discussed in further detail later. In addition, the AIGCP and its member teams do not host any events from which to draw revenue.

Teams registered as ProTour teams formed the International Professional Cycling Teams (“IPCT”) following the formation of the ProTour in 2005, as will be discussed in more detail below. The IPCT supplements the larger AIGCP but, like the AIGCP, only serves an advisory role in the business of professional cycling.⁹⁵

C. Cyclists

A cyclist who wishes to become a professional must obtain a UCI license from the national federation where he or she resides.⁹⁶ Each national federation can determine the criteria for issuing a license.⁹⁷ The only criteria set by USA Cycling, the American national federation, is the completion of an application, that the cyclist be at least nineteen years old, and payment of \$60.⁹⁸

A rider is free to sign a contract with any team registered with the UCI once he obtains his UCI license. A rider will have reached such a level

94. For a current listing of the teams in each of the five levels, see SOCCER ASS’N, www.soccerassociation.com (follow “England” hyperlink) (last visited Oct. 7, 2011).

95. Interview with John Wilcockson, *supra* note 69; *see generally* Andrew Hood, *Tuesday’s EuroFile: Disco Leaves AIGCP*, VELO NEWS (Jan. 19, 2007, 1:00 AM), http://velonews.competitor.com/2007/06/road/tuesdays-eurofile-disco-leaves-aigcp-basso-vows-return-honchar-booted_12435 (stating that while the AIGCP and the IPCT are both independent cycling professionals’ associations, the highest level of cycling competitions do not require cyclists to maintain memberships with either organization).

96. UCI Regulations, Part I, *supra* note 29, ch. 1, art. 1.1.011, at 3.

97. *Id.* ch. 1, § 1, art. 1.1.006, at 2.

98. USA CYCLING, Rider Application/Renewal License Form (Nov. 2010), *available at* http://www.usacycling.org/forms/waiver.php?url=license_app.pdf (click “I Agree” button).

by entering and doing well in races sanctioned by his national federation as an individual beforehand. A contract of employment with either a UCI ProTeam or a Continental team is governed by the standard cycling contract under UCI Regulations and the Joint Agreements as negotiated by AIGCP and the CPA.⁹⁹

i. Cyclistes Professionnels Associes and the Joint Agreements

The CPA is effectively the labor union for professional road cyclists but either lacks or has substantially failed to act upon any of its potential power under European law.¹⁰⁰ The CPA, like the AIGCP, has little influence on the direction and structure of professional cycling. With few employees and resources, the CPA is relegated to an advisory role.¹⁰¹

A cyclist contract must be for a fixed period of years, beginning and ending on December 31.¹⁰² For the 2010 season, the minimum salary for a ProTour rider was €33,000 (about \$42,500 as of March 2011).¹⁰³ The minimum for a Continental rider was €27,500 (approximately \$35,500).¹⁰⁴ These amounts do not include any bonuses, compensation, prizes, or other benefits awarded from races.¹⁰⁵ In the past, teams have had difficulty making payroll,¹⁰⁶ and as a result, if a team fails to pay a rider on time, the rider's payment is automatically increased at an annual interest rate of 5%.¹⁰⁷

The Joint Agreements ensure that teams provide disability and insurance benefits to the riders in addition the rider's salary. A rider injured

99. UCI Regulations, Part II, *supra* note 28, ch. XV, § 4, art. 2.15.111, at 104. The standard contract can be found in Part II, Chapter XV, Section 4, Article 2.15.139 of the UCI Cycling Regulations. In practice, most riders first sign with continental teams before making a ProTeam.

100. *See, e.g.*, Desbordes, *supra* note 63, at 403, 409 (explaining that cycling teams are financed solely by sponsors who often become insolvent and leave the team's riders unemployed).

101. Interview with John Wilcockson, *supra* note 69; *see, e.g.*, Greg Johnson & Paul Verkuylen, *CPA, UCI to Increase Communication*, CYCLINGNEWS (Mar. 26, 2008), <http://www.cyclingnews.com/news/cpa-uci-to-increase-communication>.

102. UCI Regulations, Part II, *supra* note 28, ch. XV, § 4, art. 2.15.139, at 111.

103. UCI, Joint Agreements, ch. II, art. 10, at 172–73 (Sept. 30, 2010), *available at* <http://www.uci.ch> (follow “Rules” hyperlink; then follow “Joint Agreements” hyperlink) [hereinafter UCI Regulations, Joint Agreements].

104. *Id.* A new professional on a ProTour team received a minimum of €26,700 (about \$34,500) and a new professional on a Continental team received a minimum of €23,000 (about \$29,500). *Id.*

105. UCI Regulations, Joint Agreements, *supra* note 103, ch. II, art. 14, at 174.

106. *See* Daley, *supra* note 46; Fotheringham, *Ullrich Reaches Crossroads*, *supra* note 46.

107. UCI Regulations, Joint Agreements, *supra* note 103, ch. II, art. 21, at 175.

during the course of his employment is entitled to his full salary for three months and 50% of his salary for another three months, so long as the amount being paid is not less than the minimum annual salaries discussed earlier.¹⁰⁸ To be eligible for the benefits, “industrial disablement” must be established.¹⁰⁹ This European standard examines the level of disablement “by reference to a person of the same age and sex whose physical and mental condition is normal.”¹¹⁰ Obtaining industrial disablement benefits “normally requires a disablement assessment of at least [14%].”¹¹¹ How this compares with disability insurance in American sports will be discussed later in the Article.

In addition, where a rider is not already covered under a national health insurance and/or pension program, the team is required to take out policies to cover the rider.¹¹² Most European riders—as opposed to American riders—are covered by some type of national health insurance.¹¹³ Consequently, this provision potentially makes American riders more expensive to a team than comparable European riders because the team has to contribute to a health insurance plan for the American rider.

ii. Free Agency and the Bosman Ruling

Perhaps the most important part of the cyclist’s contract is the set of terms governing his future employment. In American sports, we are familiar with the concept of free agency, e.g., when a player has accrued a certain amount of experience¹¹⁴ as determined by a collective bargaining

108. *Id.*

109. *Id.*

110. Nicholas J. Wikeley, *Social Security Appeals in Great Britain*, 46 ADMIN. L. REV. 183, 189 (1994).

111. *Id.*

112. UCI Regulations, Joint Agreements, *supra* note 103, ch. II, art. 22, at 176.

113. See Gregory L. Weiss, *U.S. Health Care Situation Isn't Unique*, ROANOKE TIMES, Dec. 6, 2009, at 3 (listing Argentina, Austria, Australia, Belgium, Brazil, Canada, Chile, China, Cuba, Denmark, England, Finland, France, Germany, Greece, Iceland, Ireland, Israel, Italy, Japan, Kuwait, Malaysia, the Netherlands, New Zealand, Norway, Panama, Peru, Portugal, Romania, Russia, Scotland, South Africa, Spain, Sweden, Switzerland, South Korea, Sri Lanka, and Taiwan as countries with some form of universal health care).

114. See, e.g., Major League Baseball & Major League Baseball Players Ass’n, art. XX(B)(1), at 70 (Dec. 20, 2006), http://mlbplayers.mlb.com/pa/pdf/cba_english.pdf [hereinafter MLB CBA] (stating that in Major League Baseball, a player must have at least six years of Major League Service to be a free agent); Nat’l Basketball Ass’n & Nat’l Basketball Players Ass’n, *2005 Collective Bargaining Agreement*, NAT’L BASKETBALL PLAYERS ASS’N, art. XI, § 4(b), at 240 (July 2005) <http://www.nbpa.org/cba/2005> [hereinafter NBA CBA] (stating that in the National Basketball Association, a player must have at least four seasons to be an Unrestricted Free

agreement (“CBA”) between his union and the teams, and his contract has expired, he may offer his services to any and all bidders for a salary limited only by the terms of the CBA.¹¹⁵

While free agency rights in American sports were mostly developed in the 1970s,¹¹⁶ the rights of European athletes were not conclusively established until the Bosman ruling in 1995.¹¹⁷ Jean-Marc Bosman was a soccer player on the Belgian club RC Liege whose contract expired at the end of June 1990.¹¹⁸ In April 1990, RC Liege offered Bosman a contract worth a quarter of what he made the previous year, which he rejected.¹¹⁹ As a result of his rejection, Bosman was placed on the “compulsory”

Agent.); Nat’l Football League & Nat’l Football League Players Ass’n, *2006-2012 Collective Bargaining Agreement*, NAT’L FOOTBALL LEAGUE, art. XIX, § 1(a), at 57 (Mar. 8, 2006), <http://static.nfl.com/static/content/public/image/cba/nfl-cba-2006-2012.pdf> [hereinafter NFL CBA] (stating that in the National Football League, a player must have at least four Accrued Seasons to be an unrestricted free agent); Nat’l Hockey League & Nat’l Hockey League Players Ass’n, *2005-2011 Collective Bargaining Agreement*, NAT’L HOCKEY LEAGUE, art. 10, § 10.1(a), at 27 (July 22, 2005), <http://www.nhl.com/cba/2005-CBA.pdf> [hereinafter NHL CBA] (stating that in the National Hockey League, a player’s free agency rights depend on both the player’s age and experience. Generally a player who is at least twenty-seven years old or has seven or more Accrued Seasons is an unrestricted free agent.).

115. The NFL and MLB CBAs have no maximum salaries, although in the NFL, as a practical matter, salaries are limited by the salary cap provisions. *See generally* MLB CBA, *supra* note 114, art. XX(B)(2), at 70–72; NFL CBA, *supra* note 114, art. XXIV, at 82–144. In the NBA, a player can earn 25%, 30%, or 35% of his team’s salary cap, depending on his level of experience. NBA CBA, *supra* note 114, art. II, § 7, at 33–34. In the NHL, a player can earn a maximum of 20% of his team’s salary cap. NHL CBA, *supra* note 114, art. 50, § 50.6, at 218–19.

116. *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, 183–90 (2009) (describing the leading cases that led to free agency in the respective sports: in the NFL, *Mackey v. Nat’l Football League*, 407 F. Supp. 1000 (D. Minn. 1975), *aff’d in relevant part*, 543 F.2d 610 (8th Cir. 1976); in the NHL, *Phila. World Hockey Club, Inc. v. Phila. Hockey Club, Inc.*, 351 F. Supp. 462 (E.D. Pa. 1972); in the NBA, *Robertson v. Nat’l Basketball Ass’n*, 389 F. Supp. 867, 872–73 (S.D.N.Y. 1975); in the MLB, *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)).

117. Case C-415/93, *Union Royale Belge des Societes de Football Ass’n v. Bosman*, 1995 E.C.R. I-04921 [hereinafter *Bosman*]; *see generally* Andrew L. Lee, *The Bosman Case: Protecting Freedom of Movement in European Football*, 19 FORDHAM INT’L L.J. 1255 (1996); Amikam Omer Kranz, *The Bosman Case: The Relationship between European Union Law and the Transfer System in European Football*, 5 COLUM. J. EUR. L. 431 (1999).

118. *Bosman*, 1995 E.C.R. I-04921, ¶ 28.

119. *Id.* ¶ 29.

transfer list, which allowed RC Liege to shop Bosman's rights to any interested team in return for a compensation fee meant to cover the costs of training the player.¹²⁰ When RC Liege and US Dunkerque, a French team, were unable to come to a suitable agreement, RC Liege chose to suspend Bosman for the entire season.¹²¹

Bosman challenged the league's transfer rules as an illegal obstacle to the free movement of workers under European Community ("EC") law.¹²² After a protracted legal battle, the European Court of Justice, the highest court in the EC in matters of EC law, ruled that "freedom of movement for workers . . . is a fundamental freedom" in the EC and that private associations cannot adopt sporting rules which restrict the exercise of rights conferred on individuals by EC law.¹²³

The result of the Bosman decision was that athletes in EC states could now offer their services to any team upon the expiration of their contract without their prior team having any say in the matter or receiving any type of compensation. Nevertheless, a lucrative transfer system remains whereby teams can loan or outright transfer a player still under contract to another team for large sums of money.¹²⁴

UCI Regulations specifically state that at the expiration of a rider's contract, "the [r]ider shall be entirely free to leave the [team] and sign a contract with a third party"¹²⁵ and "[a]ll transfer payment systems are prohibited."¹²⁶ However, UCI Regulations permit a transfer period from August 1 to December 31, during which UCI ProTeams or license applicants may recruit riders for the following year.¹²⁷ As a result, as in the case of Contador discussed at the beginning of this Article, it is common for riders to agree to ride for a new team the following calendar year de-

120. *Id.* ¶¶ 8, 30.

121. *Id.* ¶ 33.

122. *Id.* ¶ 92. The law most importantly invoked by *Bosman* was Article 48 of the Treaty Establishing the European Community, first signed by Belgium, France, Italy, Luxembourg, the Netherlands, and West Germany in 1957. *Id.* This Treaty has been amended and added to many times and is part of the law of all nations of the European Union. See generally Ingolf Pernice, *The Treaty of Lisbon: Multilevel Constitutionalism in Action*, 15 COLUM. J. EUR. L. 349 (2009) (detailing the development of European Union law).

123. *Bosman*, 1995 E.C.R. I-04921, Summary ¶¶ 7, 8, 9, 12.

124. See GLENN M. WONG, *ESSENTIALS OF SPORTS LAW* § 10.4, at 502–04 (4th ed. 2010) (describing the *Bosman* case and stating that in 2009, the Spanish soccer club, Real Madrid, set a record when it paid ninety-three million euros (about \$131 million at the time) to obtain forward Cristiano Ronaldo from Manchester United).

125. UCI Regulations, Part II, *supra* note 28, ch. XV, § 4, art. 2.15.139, at 113 (quoting Article 7 of the "Standard contract between a rider and a UCI Proteam").

126. *Id.* ch. XV, § 4, art. 2.15.120, at 106.

127. See *id.* ch. XV, § 4, arts. 2.15.120–20b, at 106–07.

spite four months remaining on their current contract. The Vuelta a España, one of cycling's Grand Tours, is unfortunately held during this "lame duck" period.

A team may not negotiate with a rider under contract except during the transfer period.¹²⁸ Teams and riders that violate this rule are subject to fines of 5,000 (about \$4,700) and 2,000 (about \$1,900) Swiss francs, respectively.¹²⁹

Finally, there is one particularly interesting provision concerning the employment of cyclists—riders and teams have the option to agree to a contract whereby the rider is a "self-employed worker."¹³⁰ The contract between the rider and the team must honor most, but not all, of the provisions of the standard contract.¹³¹ The major differences being that the rider's salary must be at least 150% of the minimum salary (almost \$64,000 for a ProTour rider),¹³² and riders are required to pay for and prove that they have their own health and disability insurance.¹³³

D. Races and Race Organizers

A UCI ProTour license, as mentioned earlier, is meant to provide the licensed team with the opportunity to enter UCI WorldTour events.¹³⁴ In fact, all UCI ProTour teams are required to participate in all events on the UCI WorldTour.¹³⁵ It is important to point out that most of the events on the UCI WorldTour are not organized by the UCI; the events are organized by other entities that agree to host an event as part of the

128. *Id.* ch. XV, § 4, art. 2.15.121a, at 107.

129. *Id.* ch. XV, § 4, art. 2.15.125, at 108.

130. *Id.* ch. XV, § 4, art. 2.15.115 bis, at 104–05.

131. *Id.* ch. XV, § 4, art. 2.15.115 bis(3), at 105.

132. *Id.*; see also UCI Regulations, Joint Agreements, *supra* note 103, ch. II, art. 10, at 172–73.

133. UCI Regulations, Part II, *supra* note 28, ch. XV, § 4, art. 2.15.115 bis(4–6), at 105.

134. *Id.* ch. XV, § 4, art. 2.15.003, at 82. In 2010, there was a sixteen-event UCI ProTour as well as separate events, including the three Grand Tours (Giro d'Italia, Tour de France, and Vuelta a España), which made up a World Calendar. See *2010 UCI ProTour Races*, UCI WORLDTOUR, <http://www.uciprotour.com> (follow "Races" hyperlink; then follow "Archives" hyperlink; then follow "UCI 2010 ProTour" hyperlink) (last visited Oct. 7, 2011); *2010-2011 UCI Road Calendar*, UCI, <http://www.uci.ch> (follow "Road" hyperlink; then follow "Calendar" hyperlink) (last visited Oct. 7, 2011). The dual system was eliminated prior to the 2011 season and all of the events were merged into one UCI WorldTour. John Wilcockson, *Confusion Continues as ProTour Teams Will Start All 26 Races in New UCI World Tour*, VELO NEWS (Oct. 5, 2010, 3:30 PM), http://velonews.competitor.com/2010/10/news/confusion-continues-as-protour-teams-will-start-all-26-races-in-new-uci-world-tour_144865.

135. *Id.* ch. XV, § 10, art. 2.15.261, at 131.

WorldTour for a variety of reasons, most notably it requires the best teams in the world to participate in the event. The UCI ProTour (the precursor to the current UCI WorldTour) and ProTour licensing schemes were created in 2005, replacing the fractured UCI Road World Cup Series. The new system was meant to address many of the problems discussed in this Article, including the short-term team sponsorship agreements, the financial viability of teams, and problems with doping.

A key to the UCI ProTour's initial success was convincing the three organizers of the Grand Tours to include their events as part of the ProTour. To make clear, the UCI is not involved in the creation, planning, financing, or operations of the three most important events in professional cycling. Instead, the Tour de France is organized by the Amaury Sport Organisation ("ASO"), the Giro d'Italia is organized by RCS Sport, and the Vuelta a España is organized by ASO and Unipublic. Both organizations organize other cycling as well as sporting events.¹³⁶

The ASO and other race organizers realistically have the most power in the world of professional cycling. The race organizers own the most lucrative asset in professional cycling: the television rights to the Tour de France and other major events. The Tour de France is broadcast on approximately 118 channels in over 185 countries and is worth approximately \$125 million in annual revenue to the ASO.¹³⁷

The Grand Tours are keenly aware of their power in the sport. After a contentious 2007 ProTour season, the three Grand Tours withdrew from the UCI ProTour.¹³⁸ The Grand Tours did not want to be forced to accept all eighteen ProTour teams into their events, instead wanting the freedom to invite more Professional Continental teams, which bring a national constituency and fan-base.¹³⁹ The UCI urged all ProTour teams to boycott ASO's March 2007 Paris-Nice race, claiming it was a forbidden race

136. The Amaury Sport Organisation, based in France, also organizes Paris-Nice, Paris-Roubaix, Liege-Bastogne-Liege, the Paris Marathon, and the French Open in golf. For more information see AMAURY SPORT ORG., <http://www.aso.fr/us/homepage.html> (last visited Sept. 16, 2011). RCS Sport, part of RCS Mediagroup based in Italy, also organizes Milan-San Remo and the Milan Marathon. For more information see RCS MEDIA GROUP, <http://www.rcsmediagroup.it/wps/portal/mg/> (last visited Sept. 16, 2011).

137. Kasey Coholan, *The Tour de France: Paris*, CAN. BUS., <http://www.canadianbusiness.com/article/16823—the-tour-de-france-paris> (last visited Sept. 17, 2011).

138. John Henderson, *Cycling Feud Requires Vaughter to Ride to Rescue of Sport*, DENVER POST, Apr. 19, 2009, at C5.

139. Val Migliaccio, *Peace Deal Ends Trauma for Tour*, ADVERTISER (Austl.), Aug. 19, 2008, at 87; see also *UCI Versus Grand Tour Organisers: The Gloves Are Off*, CYCLINGNEWS.COM (Dec. 10, 2005), http://autobus.cyclingnews.com/features/?id=2005/pro_tour_disarray.

under UCI Regulations.¹⁴⁰ In response, ASO threatened to ban any rider who boycotted Paris-Nice from participating in the Tour de France.¹⁴¹ Although neither the boycott nor the ban was carried out, during the 2008 Tour de France, seventeen of the eighteen ProTour teams¹⁴² participating threatened not to apply for ProTour licenses the following year, which would have crippled the ProTour arrangement.¹⁴³

A crisis was averted in September 2008 when ASO and the UCI reached a compromise that brought the Grand Tours back onto an expanded World Calendar, including many ASO events.¹⁴⁴ Nevertheless, the UCI still lacks control over the sport's biggest events and organizers. Instead, the UCI's only meaningful recourse is the power it has over the teams, who need a UCI license and ProTeam registration approved each year. Consequently, the UCI directs that race organizers must follow UCI rules or the UCI will punish any UCI licensed team that participates in the non-sanctioned race. This imbalance of power has been the source of much of professional cycling's tension and acrimony.¹⁴⁵

Race organizers must also obtain a UCI license to host their events,¹⁴⁶ and then apply each year to their respective national federations to have their races included on the racing calendars.¹⁴⁷ In addition, as stated earlier, their races must comply with the UCI's extensive regulations on the organization and structure of the race, for example the duration of the race,¹⁴⁸ stage distances,¹⁴⁹ total distance of the race,¹⁵⁰ the number of rest days,¹⁵¹ and the awarding of bonus points during the race.¹⁵²

140. See Henderson, *supra* note 138; UCI Regulations, Part I, *supra* note 29, ch. II, art. 1.2.019, at 23 (stating that “[n]o license holder may participate in an event that has not been included on a national, continental or world calendar or that has not been recognised by a national federation, a continental federation or the UCI.”).

141. Henderson, *supra* note 138, at C5.

142. Team Astana, which featured 2007 Tour de France champion Alberto Contador, was not invited to participate in the 2008 Tour because of doping allegations. See Dan Harbles, *ProTour Teams Take Sides*, DAILY TELEGRAPH (London), Jul. 16, 2008, at 13.

143. *Id.*

144. Henderson, *supra* note 138, at C5.

145. See, e.g., Assoc. Press, *Cycling Teams Threaten Boycott Over Radio Feud*, N.Y. TIMES (Mar. 17, 2011), http://www.nytimes.com/2011/03/18/sports/cycling/CYCUCIRadioFeud-2.html?_r=1; Pdraig, *To Snub or Snipe?*, RED KITE PRAYER (Sept. 18, 2010), <http://redkiteprayer.com/?p=3522>.

146. UCI Regulations, Part I, *supra* note 29, ch. I, § 1, art. 1.1.010(1.6), at 3.

147. UCI Regulations, Part I, *supra* note 29, ch. II, § 1, art. 1.2.006, at 21.

148. Major tours must be between fifteen and twenty-three days. UCI Regulations, Part II, *supra* note 28, ch. VI, art. 2.6.007, at 41.

149. The maximum length of a stage is 240 kilometers (148.8 miles). The maximum average daily distance (not including the prologue) is 180 kilometers (111.6 miles). The

II. COMPARISON TO AMERICAN SPORTS LEAGUE STRUCTURES

The first part of this Article examined the structure of professional cycling. The second part of the Article will compare that structure to the structure of America's four largest, most important, and most successful professional sports leagues—the National Football League (“NFL”), Major League Baseball (“MLB”), the National Basketball Association (“NBA”), and the National Hockey League (“NHL”)—collectively known as the “Big Four”.

In reality, the UCI is most similar to the Professional Golf Association (“PGA”). The PGA is an organization comprised of approximately 28,000 individual golfers who are certified by the PGA and participate in PGA events according to PGA rules.¹⁵³ In addition, the PGA organizes the PGA Tour—a schedule of events for the elite players in the world. Based on the golfers' performance in these events, they are awarded ranking points similar to the UCI.¹⁵⁴ Also like the UCI, the PGA does not organize every event on the golfing calendar that is calculated into these rankings. Specifically, the PGA does not host three of golf's major tournaments: the Masters,¹⁵⁵ the U.S. Open,¹⁵⁶ and the Open Championship.¹⁵⁷ The key difference between the UCI and the PGA is that there is no team structure whatsoever in professional golf.

maximum distance for an individual time trial is 60 kilometers (37.2 miles). *Id.* ch. VI, art. 2.6.008, at 42.

150. The maximum length of a major tour is 3,500 kilometers (2,170 miles). *Id.* ch. VI, art. 2.6.011, at 43.

151. In major tours there must be at least two rest days. *Id.* ch. VI, art. 2.6.012, at 43.

152. *Id.* ch. VI, art. 2.6.019, at 45–46.

153. See *History*, PGA OF AMERICA, <http://www.pga.com/pga-america/history> (last visited Oct. 5, 2011).

154. For more on the World Golf Ranking system, see *How the System Works*, OFFICIAL WORLD GOLF RANKING, (Jan. 1, 2011), http://www.officialworldgolfranking.com/about_us/default.sps?iType=425.

155. The Masters Tournament is hosted each year by the Augusta National Golf Club in Augusta, Georgia. It is the only one of golf's four majors that does not change venues. For more information, see *About the Masters*, MASTERS, http://www.masters.com/en_US/discover/about.html (last visited Oct. 5, 2011).

156. The U.S. Open is held by the United States Golf Association (“USGA”). *About USGA*, U.S. GOLF ASS'N, <http://www.usga.org/about.aspx?id=7881#show=d1615101-00df-42fe-97f1-bb9cd1de416c> (last visited Oct. 7, 2011). Whereas the PGA is an association of golfers, the USGA is national association of golf courses, clubs, and facilities, and the governing body of golf for the United States and Mexico. See *id.* Together with the R&A, the USGA produces and interprets the Rules of Golf. *Id.*

157. The Open Championship, also known as the British Open, is organized by the R&A, golf's governing authority in Europe, formerly part of the Royal & Ancient Golf

The introduction of the team element is what makes comparing professional cycling to the Big Four worthwhile. These leagues are substantially similar in their structure and operations. Consequently, this Article focuses on the structure of the NFL whose popularity¹⁵⁸ and litigation-filled history make it an interesting case study. Notably, the NFL and its players reached a new CBA in July 2011 following a contentious labor dispute. The CBA ultimately reached between the NFL and the players is believed to be substantially similar to the one that existed from 1993 through March 2011 in cycling, which will provide much of the background for a useful comparison.

A. The National Football League

The NFL is an unincorporated association of thirty-two separately owned and operated football teams.¹⁵⁹ An association, by definition, is an unincorporated organization that is not a legal entity separate from the persons composing the organization.¹⁶⁰ The structure of the NFL and its related entities is an oft-litigated topic, most recently before the United States Supreme Court in *American Needle, Inc. v. National Football League*.¹⁶¹ The league operates according to its Bylaws and Constitution, which are agreed upon by the thirty-two member teams. Section 1 of the Sherman Act, the United States' antitrust law, outlaws any contract,

Club at St. Andrews in Scotland. For more information, *About the R&A*, R&A, <http://www.randa.org/en/RandA.aspx> (last visited Oct. 7, 2011).

158. See *Super Bowl XLIV Mashers M-A-S-H: Saints Victory over Colts Most-Watched Program in TV History*, CHARLESTON DAILY MAIL (W.Va.), Feb. 9, 2010, at B4 (describing how the 2010 Super Bowl was the most watched program in U.S. television history).

159. *Am. Needle, Inc. v. Nat'l Football League*, 538 F.3d 736, 737 (7th Cir. 2008), *rev'd*, *Am. Needle, Inc. v. Nat'l Football League*, 130 S.Ct. 2201 (2010). American Needle, a hat manufacturer and licensee of NFL trademarks, sued the NFL and its related entity, NFL Properties ("NFLP"), after NFLP agreed to an exclusive license with Reebok for the licensing of intellectual property to use on clothing and related merchandise. *Id.* at 738. Both the district court and Seventh Circuit Court of Appeals granted the NFL summary judgment, ruling that through NFLP, the thirty-two NFL teams were a single-entity and therefore incapable of violating antitrust law under *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 738–39 (1984). The Supreme Court reversed, ruling that NFLP was merely an "instrumentality" of the teams and that competitors cannot avoid antitrust liability by acting through a third-party intermediary or joint venture. *Am. Needle, Inc.*, 130 S.Ct. at 2215. In addition, the court stated that the "teams are acting as separate economic actors pursuing separate economic interests and each team therefore is a potential independent center of decisionmaking." *Id.* at 2213.

160. BLACK'S LAW DICTIONARY 141 (9th ed. 2009).

161. *Am. Needle, Inc.*, 130 S.Ct. at 2204.

combination, or conspiracy which unreasonably restrains trade.¹⁶² Consequently, the Bylaws and Constitution, among other agreements involving the separate teams, have been the basis for many antitrust lawsuits, including the issues of team ownership,¹⁶³ team relocation,¹⁶⁴ intellectual property licensing,¹⁶⁵ television broadcasts,¹⁶⁶ player salaries,¹⁶⁷ player movement,¹⁶⁸ and more.¹⁶⁹

162. See Sherman Anti-Trust Act, 15 U.S.C. § 1 (2004); see also *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1, 87 (1911) (ruling that only “unreasonable” restraints are illegal).

163. See *N. Am. Soccer League v. Nat'l Football League*, 670 F.2d 1249 (2d Cir. 1982) (ruling that the NFL could not enforce a policy prohibiting owners from owning sports teams in other leagues); see also *Sullivan v. Nat'l Football League*, 34 F.3d 1091 (1st Cir. 1994) (ruling that the NFL's ban against corporate ownership could unreasonably restrain trade. The case was settled prior to a jury determination on remand).

164. See *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League*, 726 F.2d 1381 (9th Cir. 1984) (ruling that the NFL's procedures on franchise relocation were not sufficiently narrowly tailored in compliance with antitrust law).

165. See *Am. Needle, Inc. v. Nat'l Football League*, 130 S.Ct. 2201, 2212–13 (2010) (holding that for purposes of licensing their intellectual property, the thirty-two NFL teams could not be considered a single-entity).

166. See *United States v. Nat'l Football League*, 116 F. Supp. 319, 327 (D. Pa. 1953) (holding that the NFL's rule prohibiting the televising of outside games into a team's home territory when that team is playing an away game to be an “unreasonable and illegal restraint of trade”); see also *United States v. Nat'l Football League*, 196 F. Supp. 445, 447 (D. Pa. 1961) (ruling that the decision of the NFL's fourteen member clubs to collectively sell the broadcast rights to their games also violated antitrust law). These decisions were statutorily overruled by the Sports Broadcasting Act of 1961, 15 U.S.C. §§ 1291–1295 (1961). See also *Shaw v. Dallas Cowboys Football Club, Ltd.*, 172 F.3d 299, 303 (3d Cir. 1999) (ruling that the NFL's deal with DirecTV violated antitrust law).

167. See *Brown v. Pro Football, Inc.*, 518 U.S. 231, 251 (1996) (ruling that NFL's decision to impose fixed salaries for practice squad players is exempt from antitrust liability under the nonstatutory labor exemption).

168. *Mackey v. Nat'l Football League*, 407 F. Supp. 1000, 1007 (D. Minn. 1975), *aff'd in relevant part*, 543 F.2d 610 (8th Cir. 1976) (ruling that NFL's Rozelle Rule was an unreasonable restraint on player movement, and therefore constituted a violation of antitrust laws); see also *White v. Nat'l Football League*, 836 F. Supp. 1458 (D. Minn. 1993); *McNeil v. Nat'l Football League*, 790 F. Supp. 871, 896 (D. Minn. 1992) (invalidating NFL's existing free agency restrictions).

169. *Radovich v. Nat'l Football League*, 352 U.S. 445, 451 (1957) (ruling that the NFL, unlike MLB, is subject to antitrust laws); see also *U.S. Football League v. Nat'l Football League*, 644 F. Supp. 1040 (S.D.N.Y. 1986), *aff'd*, 842 F.2d 1335, 1340 (2d Cir. 1988) (Although a jury found that the NFL unlawfully monopolized professional football in the United States, the district court rejected the rest of the USFL's claims, finding “that the NFL had neither monopolized a relevant television submarket nor attempted to do so; that the NFL did not commit any overt act in furtherance of a conspiracy to monopolize; that the NFL did not engage in a conspiracy in restraint of trade; that the NFL's television contracts were not unreasonable restraints of trade; that the NFL did not control access to

The league has many employees, who essentially work for the thirty-two teams, to handle the business operations of the league, most notably the Commissioner. The Commissioner is hired by the teams and the scope of his power is generally only limited by the terms of the CBA reached with the players' union.¹⁷⁰ Current NFL Commissioner Roger Goodell arguably has more power than his fellow Commissioners in MLB, the NBA, or the NHL. In particular, he has been aggressive in enforcing a personal conduct policy.¹⁷¹

The league serves many important functions for its member teams, including negotiating the CBA with the players' union (including the drug testing policy),¹⁷² negotiating television contracts,¹⁷³ providing uniform rules and regulations for both on-the-field and off-the-field matters,¹⁷⁴

the three major television networks; and that the NFL did not interfere either with the USFL's ability to obtain a fall television contract or with its spring television contracts." As a result, the jury awarded a total of \$1 in damages, affirmed on appeal, effectively ending any chance of the USFL's resurrection and competition with the NFL.).

170. For cases involving the scope of Commissioner authority, see *Rose v. Giamatti*, 721 F. Supp. 906, 919 (D. Ohio 1989) (upholding the power of MLB Commissioner Bart Giamatti to discipline Pete Rose); see also *Finley v. Kuhn*, 569 F.2d 527, 534 (7th Cir. 1978); *Milwaukee Am. Ass'n v. Landis*, 49 F.2d 298, 301 (D. Ill. 1931); *Am. League Baseball Club of New York v. Johnson*, 179 N.Y.S. 498, 503 (Sup. Ct. 1919), *aff'd*, 190 A.D. 932, 179 N.Y.S. 898 (1920).

171. The following players have all been given suspensions ranging from six games to a full season or more for various types of illegal and inappropriate conduct: Michael Vick, Adam "Pacman" Jones, Plaxico Burress, Donte Stallworth, Chris Henry, Tank Johnson, and Ben Roethlisberger. See D. Orlando Ledbetter, *QB Penalty 'Unprecedented'*, ATL. J. CONST., Apr. 22, 2010, at 1C; see also Matthew J. Parlow, *Professional Sports League Commissioners' Authority and Collective Bargaining*, 11 TEX. REV. ENT. & SPORTS L. 179, 187 (2010).

172. NFL CBA, *supra* note 114, art. XLIV, § 5, at 197–98; see also Nat'l Football League, *Policy on Anabolic Steroids and Related Substances*, NFL PLAYERS ASS'N (2010), <https://www.nflplayers.com/about-us/Rules—Regulations/Player-Policies/Steroid-Policy> (follow "Steroid Policy Documentation" hyperlink). The NFL's "Policy on Anabolic Steroids and Related Substances" as negotiated with the NFLPA is separate from the NFL CBA. See *id.*

173. The thirty-two NFL teams are permitted to sell the rights to their games collectively under the Sports Broadcasting Act of 1961, 15 U.S.C. §§ 1291–1295 (1961). In 2010, the NFL and its member clubs will receive approximately \$3.7 billion in television rights deals from CBS, FOX, NBC, ESPN, and DirecTV. WONG, *supra* note 124, § 14.2.2, exhibit 14.1, at 719.

174. The NFL has a Competition Committee consisting of coaches, owners, and team executives to consider on-the-field rule changes. See, e.g., Gerry Fraley, *NFL Owners Decide Not to Change Overtime Format for Regular-Season Games*, DALLAS MORNING NEWS (May 26, 2010), <http://www.dallasnews.com/sports/dallas-cowboys/headlines/20100525-NFL-owners-decide-not-to-change-8041.ece>. An example of a recently changed on-the-field rule is that beginning with the 2010 season, in playoff

enforcing the league rules with respect to teams and players,¹⁷⁵ and creating a playing schedule.

By comparison, the UCI performs many of these same functions for the business of cycling. The key difference being the structure—whereas the NFL is formed by and through its 32 member teams, the UCI consists of about 170 member national federations and the teams have little control over the rules, regulations, and operation of professional cycling. In the NFL, the teams, via the league structure, organize and put on the roughly 330 NFL games each season.¹⁷⁶ In contrast, ProTour teams are merely participants in cycling events being put on by either the UCI or an event organizer such as ASO.

B. Teams

While UCI-licensed cycling teams have the AIGCP as their collective representative, albeit a weak one, the thirty-two NFL teams have the NFL as their collective association. Whereas almost anyone with the financial resources could put together a cycling team and apply for a UCI license, entry into the NFL is much more difficult. The existing NFL clubs must approve any application for a new member franchise and have the legal right to exclude any owner or organization.¹⁷⁷ The most

games only, if a team kicks a field goal on the first possession of overtime, the opposing team will have a possession to tie or win the game. *Id.* Previously it was a sudden death rule where the first team to score won. *Id.* An example of an important off-the-field rule is the Rooney Rule. *See, e.g.,* N. Jeremi Duru, *The Fritz Pollard Alliance, the Rooney Rule, and the Quest to "Level the Playing Field" in the National Football League*, 7 VA. SPORTS & ENT. L.J. 179, 187–96 (2008). The Rooney Rule requires NFL teams to always interview at least one minority candidate for a head coaching or general manager vacancy. *Id.* at 189.

175. In recent years NFL Commissioner Roger Goodell has enforced a very strict personal conduct policy for all league personnel. *See, e.g.,* Ledbetter, *supra* note 171; Carlos Monarrez, *NFL Suspends Lewand for 30 Days, Fines Him*, DETROIT FREE PRESS, July 31, 2010, at B1. Several players have been given suspensions for various types of illegal and inappropriate conduct. *See supra* note 171 and accompanying text. Team personnel are also subject to the policy: in 2010, Detroit Lions President Tom Lewand was suspended for thirty days and fined \$100,000 after being arrested on suspicion of drunk driving. Monarrez, *supra*.

176. Each of the 32 teams plays 16 regular season games and approximately 4 preseason games. Each game has 2 participating teams, equaling 320 games. In addition, there are 11 playoff games. *See Schedules*, NFL, <http://www.nfl.com/schedules> (last visited Oct. 7, 2011).

177. *See* Mid-S. Grizzlies v. Nat'l Football League, 550 F. Supp. 558 (E.D. Pa. 1982) *aff'd*, 720 F.2d 772 (3d Cir. 1983). The Memphis Grizzlies, a member club of the defunct World Football League, sued the NFL for inclusion into the NFL on antitrust grounds. *Id.* at 562. The court granted summary judgment for the NFL, finding that there was no

recent entry into the NFL was the Houston Texans in 2002, founded and owned by energy billionaire Bob McNair, who paid the existing thirty-one NFL owners a \$700 million expansion fee.¹⁷⁸

Although MLB, the NBA, and the NHL allow it, the NFL prohibits corporate ownership of teams.¹⁷⁹ Consequently, each NFL team is majority-owned by a particularly wealthy individual, seeing as how NFL franchises are worth an estimated average of over \$1 billion.¹⁸⁰ Owners typically create some type of limited liability entity that actually owns the team, the names of which are often only revealed during litigation.¹⁸¹ In stark contrast, the value of a ProTeam is derived almost entirely from its sponsorship agreements that are generally in the range of \$10 to \$20 million.¹⁸²

One of the keys to the NFL's success has been its generous revenue sharing arrangements. In 1961, then NFL Commissioner Pete Rozelle was instrumental in the passage of the federal government's Sports Broadcasting Act. The Sports Broadcasting Act immunizes the Big Four professional leagues and their member teams from antitrust scrutiny in the collective selling of the television rights to their games.¹⁸³ With the

showing how competition in any arguably relevant market would be improved if plaintiffs were given a share of the NFL's monopoly power. *Id.* at 572.

178. See Richard Sandomir, *N.F.L. Goes Back to Houston for \$700 Million*, N.Y. TIMES, Oct. 7, 1999, at D5.

179. Ryan Schaffer, *A Piece of the Rock (or the Rockets): The Viability of Widespread Public Offerings of Professional Sports Franchises*, 5 VA. SPORTS & ENT. L.J. 201, 209 (2006); see *Sullivan v. Nat'l Football League*, 34 F.3d 1091 (1st Cir. 1994) (ruling that the NFL's ban against corporate ownership could unreasonably restrain trade. The case was settled prior to a jury determination on remand and the policy remains in effect.).

180. *Special Report: NFL Team Valuations*, FORBES, http://www.forbes.com/lists/2010/30/football-valuations-10_NFL-Team-Valuations_Rank.html (last visited Sept. 17, 2011).

181. See Jorge E. Leal Garrett & Bryan A. Green, *Considerations for Professional Sports Teams Contemplating Going Public*, 31 N. ILL. U. L. REV. 69, 71, 81, 88–93 (2010).

182. Desbordes, *supra* note 63, at 403. In addition to the NFL's no corporate ownership policy, the NFL also prohibits any team or team owner from having any interest in a gambling operation. See Ed Bouchette, *Ownership Deal Closes With 10 New Partners; Rooney's Close Ownership Deal Rooney's Now Meet League Guidelines*, PITTSBURGH POST-GAZETTE, Sep. 25, 2009, at D1.

183. Sports Broadcasting Act, 15 U.S.C. §§ 1291–1295 (1961).

The antitrust laws . . . shall not apply to any joint agreement by or among persons engaging in or conducting the organized professional team sports of football, baseball, basketball, or hockey, by which any league of clubs participating in professional football, baseball, basketball, or hockey contests sells or otherwise transfers all or any part of the rights of such league's member clubs in the

increasing importance of television and television revenues, Rozelle felt that the only way small market clubs such as the Green Bay Packers could compete with large clubs such as the New York Giants was if all teams shared in the television revenues equally. As a result, NFL television rights are a tremendously valuable asset and make up nearly half of the NFL's more than \$8 billion in annual revenue.¹⁸⁴ In professional cycling, because the teams do not put on the events, they have no right to any of the television revenue.¹⁸⁵

In addition to shared television revenues, the NFL and its member clubs created NFL Properties ("NFLP") in 1963 to jointly license team and league intellectual property.¹⁸⁶ Again, this is a valuable source of shared revenue for the thirty-two NFL member teams.¹⁸⁷ While NFLP is mainly concerned with the most lucrative national or international sponsorship deals, teams do have local sponsorship and licensing arrangements, most notably for stadium naming rights.¹⁸⁸ While sponsors in professional cycling become the name of the team and dictate the team's jersey design, NFL teams only began letting sponsors place logos on practice jerseys in 2009, insisting that game jerseys are "sacred."¹⁸⁹

Just as the business of professional football is far more lucrative than that of professional cycling, an NFL club's operations are vastly more

sponsored telecasting of the games of football, baseball, basketball, or hockey, as the case may be, engaged in or conducted by such clubs.

Id. § 1291.

184. WONG, *supra* note 124, § 14.2.2, exhibit 14.1, at 719 (describing NFL's television deals worth an approximate \$3.7 billion annually); see Ron Borges, *Players' Union Expects '11 Lockout*, BOS. HERALD, Feb. 5, 2010, at 66; Gary Myers, *Lookin' Super Big Apple Should Get Ready for Big Game*, N.Y. DAILY NEWS, May 23, 2010, at 69.

185. See Daniel Benson, *Vaughters Calls for Sharing TV Revenue*, CYCLINGNEWS (July 19, 2011), <http://www.cyclingnews.com/news/vaughters-calls-for-sharing-tv-revenue>.

186. Gabriel Feldman, *The Puzzling Persistence of the Single-Entity Argument for Sports Leagues: American Needle and the Supreme Court's Opportunity to Reject a Flawed Defense*, 2009 WIS. L. REV. 835, 878-79.

187. See, e.g., Beth Hutchens, *NFL Players vs. Owners: A Hail Mary of a Lawsuit*, IPWATCHDOG (Mar. 13, 2011, 10:20 AM), <http://ipwatchdog.com/2011/03/13/nfl-players-vs-owners-a-hail-mary-of-a-lawsuit/id=15749>. However, the value may be diminished in future years based on the ongoing American Needle litigation. See generally *Am. Needle, Inc. v. Nat'l Football League*, 130 S.Ct. 2201, 2215 (2010). The NFL derived greater revenue from its exclusive license with Reebok—an arrangement that the district court could find unreasonably restrains trade on remand from the Supreme Court. See Marc Edelman, *Upon Further Review: Will the NFL's Trademark Licensing Practices Survive Full Antitrust Scrutiny? The Remand of American Needle v. Nat'l Football League*, 16 STAN. J.L. BUS. & FIN. (forthcoming 2011).

188. See Feldman, *supra* note 186, at 887-89.

189. Neil Best, *Practice Run for Corporate Logos*, NEWSDAY, Jul. 31, 2009, at A59.

complex and involve many more people. A preseason NFL roster has eighty players. In addition, an NFL team has two dozen coaches and well over one hundred people working in football operations, finance, human resources, marketing, public relations, information technology, and more—not to mention the thousands of people either employed by the team or by contract to work on game days.

C. Players

Perhaps the largest and most important difference between the structure of professional cycling and that of American sports is the role of the athletes. In each of the Big Four leagues, there is a corresponding players' union or players association that fights for and protects the players' rights pursuant to American labor law:¹⁹⁰ the National Football Players Association ("NFLPA"),¹⁹¹ the Major League Baseball Players Association ("MLBPA"),¹⁹² the National Basketball Players Association ("NBPA"),¹⁹³ and the National Hockey League Players' Association ("NHLPA").¹⁹⁴ The formation, recognition, and strength of the unions vary,¹⁹⁵ but each of them negotiates a CBA with its respective league that

190. See MAJOR LEAGUE BASEBALL PLAYERS ASS'N, <http://mlbplayers.mlb.com/pa/index.jsp> (last visited Oct. 7, 2011); NAT'L BASKETBALL PLAYERS ASS'N, www.nbpa.com (last visited Oct. 7, 2011); NAT'L HOCKEY LEAGUE PLAYERS' ASS'N, www.nhlpa.com (last visited Oct. 7, 2011); NFL PLAYERS ASS'N, <https://www.nflplayers.com> (last visited Oct. 7, 2011). The National Labor Relations Act, 29 U.S.C. §§ 151–169 (2006), protects "the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." 29 U.S.C. § 151.

191. The NFPLA became the National Labor Relations Board ("NLRB") certified representative of NFL players in 1970. See *History*, NFL PLAYERS ASS'N, <http://www.nflplayers.com/about-us/History> (last visited Sept. 22, 2011).

192. The MLBPA became the NLRB certified representative of MLB players in 1969. See *Frequently Asked Questions*, MAJOR LEAGUE BASEBALL PLAYERS ASS'N, <http://mlbplayers.mlb.com/pa/info/faq.jsp> (last visited Sept. 22, 2011).

193. See *About the NBPA*, NAT'L BASKETBALL PLAYERS ASS'N, <http://nbpa.org/about-us> (last visited Oct. 7, 2011).

194. See *About Us*, NAT'L HOCKEY LEAGUE PLAYERS' ASS'N, <http://nhlpa.com/About-Us> (last visited Oct. 7, 2011).

195. See WONG, *supra* note 124, § 11.3, at 529–71, for more information on the formation, recognition and strength of the various unions.

governs the terms and conditions of employment,¹⁹⁶ as well as many other matters.¹⁹⁷

Although most fans only pay attention to the CBAs when the failure to agree to one threatens play,¹⁹⁸ CBAs are the core around which the league, teams, the union, players, coaches, agents, and others base their actions. The recently expired 301-page NFL-NFLPA CBA contemplated almost all the activities which would affect a player, including the entry draft,¹⁹⁹ minimum salaries,²⁰⁰ practice limits,²⁰¹ team and league discipline,²⁰² free agency,²⁰³ limits on player compensation,²⁰⁴ player benefits

196. Certain subjects are considered “mandatory” subjects of bargaining, including pay rates, discipline, drug testing, safety, grievance procedures, benefits, and severance compensation. See WONG, *supra* note 124, § 11.2.2, at 527.

197. In addition to “mandatory” subjects, the parties are free to negotiate on “permissive” subjects of bargaining, such as a change in the bargaining unit, the status of supervisors, settlement of unfair labor practice charges, or internal union or company affairs. *Id.*

198. In the NFL, the players went on strike during training camp in 1970, 1974, and 1975, though no regular season games were lost. Paul D. Staudohar, *The Football Strike of 1987: The Question of Free Agency*, MONTHLY LAB. R., Aug. 1988, at 26 [hereinafter Staudohar, *Football Strike*]; Kevin Jackman & Bobby Mette, *NFL Lockout: An In-Depth Look at Past Labor Disputes in Sports*, B/R BLEACHER REP. (June 5, 2011), <http://bleacherreport.com/articles/724433-nfl-lockout-an-in-depth-look-at-past-labor-disputes-in-sports-current-nfl-issue>; Evan Weiner, *Countdown to the Real Kickoff—the NFL Lockout in 2011*, DAILY CALLER (Mar. 10, 2010, 11:56 AM), <http://dailycaller.com/2010/03/01/countdown-to-the-real-kickoff-%e2%80%93the-nfl-lockout-in-2011>. During the 1982 season the players went on a fifty-seven-day strike that reduced the regular season to nine games. WONG, *supra* note 124, § 11.3.3, at 531; Ray Fittipaldo, *History Shows Team Unity During A Work Stoppage is Harbinger of Later Success*, PITTSBURGH POST-GAZETTE, June 14, 2011, at D.1. The players struck for twenty-four days during the 1987 season, reducing the regular season to fifteen games. Jackman & Mette, *supra*. In MLB, players went on strike in 1972, 1980, 1981, 1985, and 1994–95, the last costing baseball its first missed World Series since 1905. Aaron Couch, *Five Worst Labor Disputes in Sports*, CHRISTIAN SCI. MONITOR, (Mar. 11, 2011), <http://www.csmonitor.com/layout/set/print/content/view/print/367362>. Owners locked the players out in 1973, 1976, and 1990. Jackman & Mette, *supra*. In the NBA, the players have never gone on strike, but the owners locked the players out in 1995, 1996, and 1998–99. WONG, *supra* note 124, § 11.3.4, at 533. In the NHL, the players went on a ten-day strike in 1992 and the owners locked the players out in 1994–95 and 2004–05, costing the league an entire season. *Both Sides of NHL Labor Dispute Had Winners and Losers*, VANCOUVER SUN, Jan. 14, 1995, at A.14; Couch, *supra*; Alan Adams, *Officials Fear NHL Lockout Tarnishing Game*, OTTAWA CITIZEN, Nov. 20, 1994, at D.3.

199. See NFL CBA, *supra* note 114, art. XVI, at 46–50.

200. See *id.* art. XXXVIII, at 179–82.

201. See *id.* art. XXXVII, § 5, at 177.

202. See *id.* art. VIII, at 19–22 & art. XI, at 34–35.

203. See *id.* art. XIX, at 57–67.

204. See *id.* art. XXIV, at 82–144.

and insurance,²⁰⁵ the standard player contract,²⁰⁶ grievance procedures,²⁰⁷ severance pay,²⁰⁸ and more. The legal basis for the players and teams to reach such a complex agreement will be discussed in more detail later.

In contrast, the Joint Agreements negotiated between the riders union, CPA, and the AIGCP is ten pages, covering only the most basic provisions, such as minimum salaries,²⁰⁹ bonus and prize money,²¹⁰ minimum vacation days,²¹¹ and health insurance.²¹² Notably, the Joint Agreements do not address drug testing. Not surprisingly, the CPA has little to no budget and few, if any, full-time employees.²¹³ In contrast, the NFLPA has over one hundred employees in a variety of capacities, notably Players Inc., the union's marketing arm, and a small army of experienced and talented attorneys led by Executive Director DeMaurice Smith.²¹⁴

Free agency has historically been the most important issue for American team sport athletes.²¹⁵ The path to true free agency in the NFL was a little longer than in other Big Four sports; the NFLPA made the questionable decision to give up free agency during collective bargaining negotiations in 1977 in return for an increase in pay, pensions, and benefits.²¹⁶ After a contentious legal battle that saw the NFLPA decertified as the official bargaining representative of the players amidst several anti-trust lawsuits,²¹⁷ the NFLPA and NFL agreed to a substantially changed

205. See *id.* art. XLIV, at 197–98 & art. XLIX, at 218–20.

206. See *id.* art. XIV, § 7, app. C, at 248–56.

207. See *id.* art. IX–X, at 23–33.

208. See *id.* art. XXXV, § 8, app. L, at 288.

209. UCI Regulations, Joint Agreements, *supra* note 103, ch. II, art. 10, at 172–73.

210. *Id.* ch. II, arts. 11–14, at 173–77.

211. Riders are entitled to a minimum of thirty-five vacation days per year. *Id.* ch. II, art. 17, at 174.

212. *Id.* ch. II, arts. 22–23, at 173–74.

213. Interview with John Wilcockson, *supra* note 69.

214. Smith was elected as Executive Director in 2009 following the death of long-time Executive Director and Hall of Fame player Eugene Upshaw. Larry Weisman, *Players Lose Leader; Football Loses Legend; Gene Upshaw, Dead at 63, Leaves Major Mark on Sport*, USA TODAY, Aug. 22, 2008, at C.1; *Executive Director*, NFL PLAYER'S ASS'N, <https://www.nflplayers.com/About-us/NFLPA-Officers/Executive-Director> (last visited Oct. 7, 2011) [hereinafter NFLPA Executive Director]. Prior to joining the NFLPA, Smith was a trial lawyer and litigation partner at D.C. law firm Patton Boggs, where he concentrated on white-collar criminal defense and tort liability trials. NFLPA Executive Director, *supra*. He also previously served as Counsel to then Deputy Attorney General Eric Holder in the U.S. Department of Justice before entering private practice. *Id.*

215. See, e.g., Deubert & Wong, *supra* note 116, at 183–91 (describing a period of rapid growth in the NFL following the first CBA granting unrestricted free agency).

216. *Id.* at 186.

217. *Id.* at 188. In 1987, Marvin Powell, other players, and the NFLPA sued the NFL challenging the player movement restrictions. The Eighth Circuit ruled that because the

NFL CBA in 1993, implementing a salary cap and unrestricted free agency for players who have at least four Accrued Seasons.²¹⁸ Players with three Accrued Seasons are free agents subject to certain restrictions and compensation for his original team.²¹⁹ Players with less than three Accrued Seasons are the exclusive property of their current club provided the current club makes them an offer in compliance with the CBA.²²⁰ The ability of teams to control players for their earliest years in the league is generally referred to as the Reserve System.²²¹

Obviously an important part of a player's free agency is negotiation with new teams. Whereas in professional cycling a rider negotiates his next contract while still under his current one, such actions are strictly forbidden in the NFL. A team may not negotiate with a player or his agent until his contract has expired at the conclusion of the league year, on or around March 1.²²² Doing so is impermissible tampering and can

players were still unionized, the nonstatutory labor exemption from antitrust laws still applied and would continue to apply so long as there was a possibility that proceedings could still be brought before the NLRB. *See Powell v. Nat'l Football League*, 930 F.2d 1293, 1303–04 (8th Cir. 1989). Based on the Eighth Circuit's recommendation, the NFLPA decertified and players brought another antitrust suit, in which the district court agreed that the NFL's most recent incarnation of the Rozelle Rule, Plan B free agency system, was an unreasonable restraint of trade. *See McNeil v. Nat'l Football League*, 790 F. Supp. 871 (D. Minn. 1992). Next, NFL players, led by Reggie White, brought a suit for treble damages under antitrust law. *White v. Nat'l Football League*, 836 F. Supp. 1458, 1461 (D. Minn. 1993). The case was settled as the modern NFL-NFLPA CBA was reached. *Id.* at 1462; Jarrett Bell, *Timeline of NFL Labor Disputes*, U.S.A. TODAY (Mar. 12, 2011), http://www.usatoday.com/sports/football/nfl/2011-03-03-nfl-labor-disputes-timeline_N.htm.

218. *See NFL CBA*, *supra* note 114, art. XIX, § 1(a), at 57. A player earns an "Accrued Season" when he is on full pay status for six or more regular season games. *Id.* art XVIII, § 1(a), at 56.

219. *Id.* art XIX, § 2(a), at 58.

220. *Id.* art XVII, § 2, at 56.

221. *See WONG*, *supra* note 124, at 847 (refer to the "Reserve Clause" glossary term).

222. In 2008, the NFL took away the San Francisco 49ers fifth-round draft pick for tampering with Chicago Bears linebacker Lance Briggs. *See Vaughn McClure*, *49ers Still Pay for Briggs, Tampering Charge Costs Them a Pick*, CHI. TRIB., Mar. 25, 2008, at 2. There have been many other suspected cases of tampering in recent years including: the New York Jets in 2009 with 49ers wide receiver Michael Crabtree, in 2009 the Washington Redskins with former Tennessee Titans defensive lineman Albert Haynesworth, and in 2008 the Minnesota Vikings with Green Bay Packers quarterback Brett Favre. *See John Crumpacker*, *Tampering Charges Likely Aimed at Jets*, S.F. CHRON., Sep. 22, 2009, at B1; Ryan O'Halloran, *Nearly Tamper Proof, Violations in NFL Are Hard to Substantiate*, WASH. TIMES (D.C.), Mar. 13, 2009, at C02; Jason Wilde, *Packers File Tampering Charge; They Claim Vikings Coach Darrell Bevell Had "Inappropriate Dialogue" with the QB*, WIS. ST. J., Jul. 17, 2008, at F1.

result in punishment by the Commissioner in the form of forfeited draft picks and/or a fine.²²³

One of the principal ways in which players move between teams is by trades, in which players are exchanged for each other. Trades are less common in the NFL than other American sports because of salary cap complications,²²⁴ but do occur frequently. Trades, which are the legal assignment of a player's contract to another team in exchange for the same, do not occur in professional cycling. Furthermore, when they do occur in European sports, they generally occur as part of a transfer agreement in which a significant sum of cash is involved. American sports generally do not allow for the sale of players.²²⁵

In recent years, one of the most contentious issues for NFL players and NFL alumni has been their disability benefits and health insurance.²²⁶ As stories of former players suffering from serious and permanent injuries and disabilities have become commonplace, the NFL has been forced by public perception and government rebuke²²⁷ to increase its funding to retired players²²⁸ while also doing more to prevent serious injuries to current players.²²⁹

223. See McClure, *supra* note 222.

224. See Ari Nissim, Note, *The Trading Game: NFL Free Agency, The Salary Cap, and Proposal for Greater Trading Flexibility*, 11 SPORTS LAW. J. 257, 266–67 (2004). Nissim is currently the Director of Football Administration for the New York Jets. Ari Nissim on 1050 ESPN Inside the Jets, N.Y. JETS, <http://www.newyorkjets.com/media-lounge/videos/Ari-Nissim-on-1050-ESPN-Inside-the-Jets/a7b7d62a-8688-4d19-814e-fc14ee5356cc> (last visited Sept. 30, 2011).

225. In 1976, Oakland Athletics owner Charlie Finley attempted to sell star pitcher Vida Blue to the New York Yankees and left fielder and pitcher Rollie Fingers to the Boston Red Sox rather than lose them to the newly established free agency in baseball. See Charles O. Finley & Co., Inc. v. Kuhn, 569 F.2d 527, 530–31 (7th Cir. 1978). MLB Commissioner Bowie Kuhn vetoed the deals as not in the best interests of baseball. *Id.* at 531. Finley sued, but a federal court upheld Commissioner Kuhn's powers. See *id.* at 543.

226. See Erika A. Diehl, Note, *What's All the Headache?: Reform Needed to Cope with the Effects of Concussions in Football*, 23 J.L. & HEALTH 83, 114–116 (2010); Daniel J. Kain, Note, *"It's Just a Concussion": The National Football League's Denial of a Causal Link Between Multiple Concussions and Later-Life Cognitive Decline*, 40 RUTGERS L.J. 697, 697 (2009); Brett Edwin LoVelle, Comment, *"Mortal Combat in Cleats": An Examination of the National Football League's Disability Plan and Its Impact on Retired Players*, 36 PEPP. L. REV. 1101, 1106 (2009).

227. The House Judiciary Committee has held two hearings (one in October 2009 and one in May 2010) on concussions in football and the NFL's lackluster response. Barry Wilner, *House Has Say on Concussions*, STAR-LEDGER (N.J.), May 25, 2010, at 32.

228. See Wayne Coffey, *When the Cheers Stop. After Giving His Body to the NFL, Jimmie Giles Is in Fight of His Life*, N.Y. DAILY NEWS, Dec. 27, 2009, at 78; Mike Haddon, *Bennett Tackles New Challenge*, PRESS-REGISTER (Ala.), Jul. 15, 2010, at B3; Fred

NFL players earn substantially more than professional cyclists. NFL players' minimum salaries are based on their level of experience and other contractual arrangements,²³⁰ but generally, in 2010, the minimum salary was \$320,000, nearly eight times that of a ProTour rider.²³¹

III. LEGAL BASIS FOR IMPROVING PROFESSIONAL CYCLING

Team and rider continuity is essential to the health of professional cycling. Although fans have their favorite riders and the sport is individual in its trophies, the sport is a team sport and the health of the business of cycling depends on the health of its teams. However, from 2001 to 2010, on average, 52% of the riders of the Tour de France were either new riders or with a new team as compared to the previous year's Tour.²³² On average, a team returning to the Tour from the previous year did so with four new riders out of a team of nine.²³³ Although this turnover could be from a variety of factors, such as retirement, injury, skill, or doping bans, the fact that large percentages of riders change teams and teams change names each year makes the sport difficult for fans to follow.

If a sponsor is going to derive meaningful benefit from its association with a team, it will want that team to develop a consistent fan base. An important part of developing a consistent fan base is having consistency within the team roster and nomenclature—if teams are changing sponsors every year or two, it becomes difficult to remember who all the teams are and who all of their riders are as well. On average, three out of the twenty-one teams that started each Tour de France from 2001 through 2010 were not in the previous year's race.²³⁴ In addition, during

Mitchell, *Former Players to Get More Aid; Gridiron Greats Fund Secures Commitments for Medical Assistance*, CHI. TRIB., Oct. 28, 2009, at C2.

229. In 2010 the NFL donated \$1 million to help study the long-term effects of playing football and the related brain trauma. See Alan Schwarz, *N.F.L. Gives \$1 Million to Brain Researchers*, N.Y. TIMES, Apr. 21, 2010, at B14. Also, beginning with the 2010 season, all NFL locker rooms have a poster warning players of the long-term effects of multiple concussions. Editorial, *Are You Ready for Some Football?*, N.Y. TIMES, Aug. 15, 2010, at WK7.

230. Players can sign "split" contracts whereby they earn a lower amount if they are not on the club's Active/Inactive List, i.e. on injured reserve. NFL CBA, *supra* note 114, art. XXXVIII, § 14, at 181. A player's minimum salary increased approximately \$75,000 for each Credited Season. *Id.* § 6, at 179.

231. *Id.*; UCI Regulations, Joint Agreements, *supra* note 103.

232. See generally *Races & Results: Tour de France Previous Years*, CYCLINGNEWS, <http://www.cyclingnews.com/tour-de-france> (last visited Sept. 23, 2011) (This data was calculated by examining the Start Lists from the 2001 to 2010 Tours de France.).

233. *Id.*

234. See *Tour de France 2000; Startlist, Participating Teams and Riders*, VIVELLO BIKES, http://tour.cyclingfever.com/editie.html?detp=view&_ap=startlijst&editie_id=448

the same time period, an average of 4.3 teams entered the Tour with at least one new or changed principal sponsor from the previous year.²³⁵ Consequently, about a third (3 plus 4.3) of the Tour's teams are not readily apparent or distinguishable in their identities each year.

There are a number of areas in which professional cycling could be improved through the adoption, application, or replication of some typical American sport features, including team collaboration, free agency, contractual creativity, and revenue generation. European labor and anti-trust or competition law play an important role in these areas. Many of these issues can be dealt with through collective bargaining as in American sports.

A. Labor Relations in Professional Cycling, the United States and the EC

The National Labor Relations Act ("NLRA") governs the relationship between employers and employees under American labor law.²³⁶ Specifically, the NLRA protects "the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."²³⁷ Furthermore, the Clayton Act statutorily exempts organized labor from antitrust law.²³⁸ This exemption applies most importantly to Section 1 of the Sherman Antitrust Act, which prohibits any contract, combination, or conspiracy that unreasonably restrains trade,²³⁹ and Section 2, which prohibits the attempted monopolization of trade or commerce.²⁴⁰

(follow "2001" hyperlink to view startlist for 2001 Tour de France; follow "2002" hyperlink to view startlist for 2002 Tour de France; etc.) (last visited Oct. 2, 2011).

235. *Id.*

236. National Labor Relations Act (NLRA), 29 U.S.C. §§ 151–169 (2006).

237. *Id.* § 151.

238. 15 U.S.C. § 17 (2006).

The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

Id.

239. 15 U.S.C. § 1 (2006); *see also* *Cont'l T. V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36 (1977); *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1, 87 (1911).

240. 15 U.S.C. § 2 (2006).

In American sports leagues, there are many agreements among the leagues' member clubs that would generally draw antitrust scrutiny under Section 1. For example, the thirty-two NFL teams agree to ways to control salaries through the use of a salary cap,²⁴¹ maximum contract lengths for rookies,²⁴² and a minimum number of years experience that a player must accrue before he can become a free agent.²⁴³ These agreements are exempt from antitrust law by reaching a CBA with the players' union, as will be explained in more detail below.

In cycling, race organizers such as ASO, as the most financially solvent bodies, have tremendous power in the sport of cycling. In addition, the UCI sets nearly all of the substantive regulations for the sport.²⁴⁴ However, the only two bodies that have the legal authority to control the terms and conditions of rider employment are the riders' union, the CPA, and the employing teams, the AIGCP.

Articles 11 and 28 of the Charter of Fundamental Rights of the European Union govern the right of EU employees to unionize and bargain collectively.²⁴⁵ Article 11 states that “[e]veryone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.”²⁴⁶ Furthermore, Article 28 provides that “[w]orkers and employers, or their respective organisations, have . . . the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.”²⁴⁷

Whereas the NLRA directs that employees and employers should negotiate over the “terms and conditions of their employment,”²⁴⁸ EC law has no such mandate. American labor law states or has ruled that certain topics are mandatory subjects of bargaining, such as wages and hours²⁴⁹

241. See generally NFL CBA, *supra* note 114, art. XXIV, at 82 (detailing the NFL's “guaranteed league-wide salary, salary-cap, [and] minimum team salary”).

242. *Id.* art. XVII, § 5, at 55. Players drafted in the first sixteen picks can sign deals of six years in length. *Id.* Players drafted in the second half of the first round can sign contracts up to five years in length. *Id.* All other rookies are limited to contracts of four years in length. *Id.*

243. See *infra* text accompanying notes 255–62.

244. UCI Constitution, *supra* note 14, ch. I, art. 2, at 1.

245. Charter of Fundamental Rights of the European Union, arts. 11, 28, 2007 O.J. (C 303).

246. *Id.* art. 11, at 5.

247. *Id.* art. 28, at 8.

248. 29 U.S.C. § 151 (2006).

249. *Id.*

and drug testing,²⁵⁰ while all others are merely permissive subjects of bargaining.²⁵¹

As discussed earlier, the Joint Agreements between the riders' CPA and the teams' AIGCP is a weak and short document. The CPA and the AIGCP failed to take advantage of their potential to control their livelihoods by exercising their rights to reach an agreement on all the substantive issues in professional cycling, as is done in American sports. The two groups instead acquiesce their legal power and rights to the UCI and the race organizers.

Again, the teams do not host events from which to draw revenue, as they do in American sports. Consequently, the teams are unstable economic entities with little ability to enforce their rights. At the same time, the riders are modestly paid employees in an unstable profession who likely choose instead to play by the existing rules rather than create career-threatening controversy. However, several professional athletes have essentially sacrificed parts of their career for the betterment of their brethren, including Jean-Marc Bosman, as discussed earlier, and Curt Flood in MLB.²⁵² Professional cycling needs a rider or riders willing to fight for the best interests of the riders, while the teams too must be willing to fight for their share of the control.

250. *Consol. Rail Corp. v. Ry. Labor Executives' Ass'n*, 491 U.S. 299 (1989); *see also Johnson-Bateman Co.*, 295 N.L.R.B. 180 (1989).

251. *See Pittsburgh & Lake Erie R.R. Co. v. Ry. Labor Executives' Ass'n*, 491 U.S. 490, 491 (1989) (ruling that employer did not have to bargain with union over decision to sell company assets); *First Nat'l Maint. Corp. v. N.L.R.B.*, 452 U.S. 666, 687 (1981) (ruling that employer had no duty to bargain with union over decision to terminate a contract with one of its commercial customers purely for economic reasons); *N.L.R.B. v. Wooster Div. of Borg-Warner Corp.*, 356 U.S. 342, 362 (1958) (ruling that a union recognition clause was not a mandatory subject of bargaining).

252. Flood was an All-Star outfielder for the St. Louis Cardinals in the 1960s. *See Flood v. Kuhn*, 407 U.S. 258, 264 (1972). In October 1969, Flood was traded to the Philadelphia Phillies. *Id.* at 265. Flood refused to go to Philadelphia, *id.* at 266, in part because he, an African-American, believed the Phillies had racist fans. Howard Burns, *Flood's Sacrifice Sports' Most Meaningful Trade*, SPORT'S COUCH POTATO (July 13, 2011), <http://sportsouchpotato.com/2014/flood>. Flood sued MLB Commissioner Bowie Kuhn and MLB challenging baseball's reserve clause as a violation of antitrust laws. *Flood*, 407 U.S. at 265. The case eventually reached the United States Supreme Court, which ruled against Flood based on baseball's judicially created antitrust exemption established fifty years earlier in *Federal Baseball Club v. National League*, 259 U.S. 200 (1922). *Flood*, 407 U.S. at 282–85. Flood never reported to the Phillies and played only thirteen more games with the Washington Senators in 1971 after sitting out the entire 1970 season. *Id.* at 266.

Certainly the collective bargaining relationship has caused several painful work stoppages in American sports,²⁵³ but through the adversarial process, unions and leagues have been successful in creating tremendously lucrative partnerships.²⁵⁴

As mentioned earlier, in the United States, the joint activity of employees through union conduct is statutorily exempt from antitrust law.²⁵⁵ The joint activity and agreements of multiple employers, such as the thirty-two NFL teams, can also be exempt from antitrust law in collective bargaining negotiations with a union. This exemption is known as the non-statutory labor exemption and has been developed through case law.²⁵⁶

The necessary conditions for satisfaction of the exemption were definitively laid out in the context of the NFL labor situation in *Mackey v. Na-*

253. NFL players went on strike from September 21 through November 16, 1982—reducing the season to nine games, Gene Wojciechowski, *NFL Strike: 1982; A History Lesson Not Learned*, L.A. TIMES, Sept. 23, 1987, at 1; Len Pasquarelli, *Lengthy Strike Has Mostly Been Forgotten*, ESPN (Sept. 21, 2007), http://sports.espn.go.com/nfl/columns/story?columnist=pasquarelli_len&id=3030311; NFL players went on strike from September 22 through October 15, 1987—forcing the NFL to use replacement players for weeks four through six, Staudohar, *Football Strike*, *supra* note 198, at 28–30; MLB players went on strike from August 12, 1994 through March 31, 1995—forcing the first-ever cancellation of the World Series, WONG, *supra* note 124, § 11.3.5, at 534; Paul D. Staudohar, *The Baseball Strike of 1994–95*, MONTHLY LAB. R., Mar. 1997, at 25–26; Couch, *supra* note 198; NBA owners locked the players out from July 1, 1998 through January 6, 1999—significantly shortening the regular season, WONG, *supra* note 124, § 11.3.4, at 533; Paul D. Staudohar, *Labor Relations in Basketball: The Lockout of 1998–99*, MONTHLY LAB. R., Apr. 1999, at 5, 8; NHL owners locked the players from September 16, 2004 through July 13, 2005—canceling an entire season, Paul D. Staudohar, *The Hockey Lockout of 2004–05*, MONTHLY LAB. R., Dec. 2005, at 23, 26, 27.

254. See, e.g., Chris Isidore, *Baseball Close to Catching NFL as Top \$ Sport*, CNN MONEY (Oct. 25, 2007), <http://money.cnn.com/2007/10/25/commentary/sportsbiz/index.htm> (stating that in 2007 MLB generated over \$6 billion in revenue); John Lombardo, *NBA Increases Shared Revenue by 63 Percent*, SPORTS BUS. J. (Apr. 28, 2008), <http://www.sportsbusinessdaily.com/Journal/Issues/2008/04/20080428/This-Weeks-News/NBA-Increases-Shared-Revenue-By-63-Percent.aspx> (noting that “the NBA’s total revenue-sharing pool increase[d] by 63 percent”). Tripp Mickle, *Escrow Cash Will Boost NHL*, SPORTS BUS. J. (Mar. 2, 2009), <http://www.sportsbusinessdaily.com/Journal/Issues/2009/03/20090302/This-Weeks-News/Escrow-Cash-Will-Boost-NHL.aspx?hl=%22escrow%20cash%20will%20boost%20NHL%22&sc=0> (noting that in 2009, the NHL is generated approximately \$2.64 billion).

255. Clayton Act, 15 U.S.C. § 17 (2006).

256. *United Mine Workers of Am. v. Pennington*, 381 U.S. 676, 710 (1965) (“[I]n order to effectuate congressional intent, collective bargaining activity concerning mandatory subjects of bargaining under the Labor Act is not subject to the antitrust laws.”).

tional Football League.²⁵⁷ In *Mackey*, NFL players challenged the NFL's Rozelle Rule, which allowed Commissioner Rozelle to determine the compensation paid to a free agent's former team if he signed with a new team.²⁵⁸ The Eighth Circuit stated that for the conduct of joint employers to be protected by the non-statutory labor exemption, (1) "the restraint on trade [must] primarily affect[] only the parties to the [CBA]," (2) the issue must "concern a mandatory subject of bargaining," and (3) the issue must have been achieved through "bona fide arm's-length bargaining."²⁵⁹ This non-statutory labor exemption has served as the backbone for negotiations between American player unions and leagues. Probably the greatest leverage any of the unions have in collective bargaining negotiations is the threat that they will decertify their union and sue the league on antitrust grounds when the non-statutory labor exemption no longer applies.²⁶⁰ EC law does not provide a statutory exemption from antitrust law for either unions or joint employers. However, EC law has developed a non-statutory labor exemption upon which a meaningful collective bargaining agreement in professional cycling can be based.²⁶¹

257. *Mackey v. Nat'l Football League*, 543 F.2d 606, 614 (8th Cir. 1976).

258. *Mackey v. Nat'l Football League*, 407 F. Supp. 1000, 1002 (D. Minn. 1975), *aff'd in relevant part*, 543 F.2d 610 (8th Cir. 1976).

259. *Mackey*, 543 F.2d at 614.

260. In 1989, the NFLPA decertified as the official bargaining unit of NFL players, permitting NFL players to successfully bring an antitrust suit against the NFL challenging its free agency restrictions. *See McNeil v. Nat'l Football League*, 790 F. Supp. 871, 896 (D. Minn. 1992). Thereafter, future Hall of Fame defensive end Reggie White led a class action lawsuit against the NFL for treble damages under antitrust laws. *White v. Nat'l Football League*, 836 F. Supp. 1458, 1461 (D. Minn. 1993). The White suit led to a \$200 million settlement and the NFL CBA that lasted from 1993 through the 2010 season. *See Will McDonough, Tentative Deal Reached In NFL Free Agency Among Concessions Made by Owners to NFL Players*, BOS. GLOBE, Dec. 23, 1992, at 59. The NFLPA later recertified as the representative of the players but following a breakdown in NFL-NFLPA labor negotiations in 2011, the NFLPA decertified again and immediately filed a class action antitrust lawsuit. *Brady v. Nat'l Football League*, No. 11-cv-00639, 2011 WL 1535240, at *2 (D. Minn. Apr. 25, 2011). That lawsuit was settled as part of a new CBA in July 2011 and the NFLPA shortly thereafter recertified as the official bargaining representative of NFL players. *NFL Lockout Timeline*, USA TODAY (July 21, 2011, 9:43 PM), http://www.usatoday.com/sports/football/nfl/2011-07-21-lockout-timeline_n.htm.

261. The preeminent article on this topic is Marc Edelman & Brian Doyle, *Antitrust and "Free Movement" Risks of Expanding U.S. Professional Sports Leagues into Europe*, 29 NW. J. INT'L L. & BUS. 403, 419-20 (2009).

B. EC Competition Law and the Non-Statutory Labor Exemption

There are two main provisions of EC competition (antitrust) law from which a non-statutory labor exemption will enable a successful collective bargaining agreement in professional cycling.

i. Article 101 of the TFEU

Article 101 of the Treaty on the Functioning of the European Union (“TFEU”) (formerly Article 81), is very similar to Section 1 of the Sherman Act under American antitrust law.²⁶² Article 101(1) prohibits “all agreements . . . decisions . . . and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market”²⁶³ Article 101(1) goes on to list specific conduct that is prohibited, including fixing prices,²⁶⁴ limiting production,²⁶⁵ the sharing of markets,²⁶⁶ treating trade partners differently,²⁶⁷ and conditioning the conclusion of a contract on supplementary obligations.²⁶⁸

Agreements in violation of Article 101(1) are “automatically void,”²⁶⁹ in the same sense that, under American law, “certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal” per se.²⁷⁰ However, EC case law has also found that “a rule which at first sight appears to contain a restriction that is necessary

262. Consolidated Version of the Treaty on the Functioning of the European Union art. 101, Mar. 30, 2010, 2010 O.J. (C 83) 88 [hereinafter TFEU], available at <http://eur-lex.europa.eu/en/treaties/index.htm>; Sherman Antitrust Act, 15 U.S.C. § 1 (2006). Likewise, Article 102 is very similar to Section 2 of the Sherman Antitrust Act. Compare TFEU art. 102, with Sherman Antitrust Act, 15 U.S.C. § 2 (2006).

263. TFEU art. 101(1).

264. *Id.* art. 101(1)(a).

265. *Id.* art. 101(1)(b).

266. *Id.* art. 101(1)(c).

267. *See id.* art. 101(1)(d).

268. *Id.* art. 101(1)(e).

269. *Id.* art. 101(2).

270. *N. Pac. Ry. Co. v. United States*, 356 U.S. 1, 5 (1958); *see also Arizona v. Maricopa Cnty. Med. Soc.*, 457 U.S. 332, 348 (1982) (holding that maximum prices are illegal per se); *Fashion Originators' Guild of Am. v. Fed. Trade Comm'n*, 312 U.S. 457, 465 (1941) (holding that group boycotts aimed at non-cooperating retailers or manufacturers are illegal per se); *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 218 (1940) (holding price fixing illegal per se).

in order to make that competition possible in the first place, it must be assumed that rule does not infringe Article [101(1)].²⁷¹

Article 101(3) also provides that certain agreements or practices may not violate Article 101(1) if they contribute “to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit.”²⁷² In addition, the agreements (1) must be “indispensable to the attainment of [Article 101(1)’s] objectives,” and (2) cannot provide the possibility of eliminating a substantial portion of competition for the product in question.²⁷³

ii. Article 45 of the TFEU

Article 45 (formerly Article 39) of the TFEU secures the freedom of movement for workers.²⁷⁴ The law forbids employment “discrimination based on nationality between workers of the Member States.”²⁷⁵ This statute was also part of the basis for the *Bosman* ruling discussed earlier, since at the time the Union of European Football Associations had rules limiting the number of non-nationals that could be on a team, at the time Manchester United, an English team playing in the English Premier League, was only allowed to have five non-English players on its team.²⁷⁶ As a result of the *Bosman* ruling, FIFA, through negotiations with the EC, has changed many of its rules so as to comply with EC law.²⁷⁷

The ECJ has stated that the free movement of workers is a fundamental right under EC law,²⁷⁸ and that any agreement restricting such rights will not be exempt based on a purported non-statutory labor exemption.²⁷⁹ This absolute view of workers rights does not exist in American law and limits available remedial measures for professional cycling.

271. Edelman & Doyle, *supra* note 261, at 418 (citing *Bosman*, 1995 E.C.R. I-04921, ¶ 265).

272. TFEU art. 101(3).

273. See Edelman & Doyle, *supra* note 246, at 418 (citing TFEU art. 101(3)(a)–(b)).

274. TFEU art. 45(1).

275. *Id.* art. 45(2).

276. *Bosman*, 1995 E.C.R. I-04921, ¶ 27.

277. Jean-Christian Drolet, *Extra Time: Are the New FIFA Transfer Rules Doomed?*, INT’L SPORTS L.J., Jan.–Apr. 2006, at 66, 66.

278. *Bosman*, 1995 E.C.R. I-04921, ¶ 92; Edelman & Doyle, *supra* note 261, at 423.

279. Edelman & Doyle, *supra* note 261, at 423.

iii. The Non-Statutory Labor Exemption in the EC

To establish a non-statutory labor exemption under EC law, a defendant must establish that (1) a CBA exists between management and labor, (2) the CBA was conducted in good faith, (3) on core subjects of collective bargaining, and (4) that the CBA does not directly affect third markets and third parties.²⁸⁰ The first three prongs are substantially similar to the *Mackey* Test in American law. The fourth prong is unique to EC law and may contradict American labor law that allows unions to negotiate CBA provisions, which affect persons not yet a part of the bargaining unit.²⁸¹ As a result of this fourth prong, certain agreements common in the Big Four CBAs, such as minimum age requirements²⁸² and drafts,²⁸³ would probably not be legal in the EC.²⁸⁴

280. *Id.* at 430 (citing Case C-222/98, *Van der Woude v. Stichting Beatrixoord*, 2000 E.C.R. I-7111, ¶¶ 22–27; Case C-67/96, *Albany Int'l BV v. Stichting Bedrijfspensioenfonds Textielindustrie*, 1999 E.C.R. I-5751, ¶ 296).

281. *Wood v. Nat'l Basketball Ass'n*, 809 F.2d 954, 960 (2d Cir. 1987) (citing 29 U.S.C. § 152(3) (2006)); *see also* *Fibreboard Paper Prods. Corp. v. N.L.R.B.*, 379 U.S. 203, 210–15 (1964); *Time-O-Matic, Inc. v. N.L.R.B.*, 264 F.2d 96, 99 (7th Cir. 1959); *John Hancock Mut. Life Ins. Co. v. N.L.R.B.*, 191 F.2d 483, 485 (D.C. Cir. 1951). In *Wood*, Leon Wood, a first round pick in the 1984 NBA Draft sued the NBA and NBPA claiming that the CBA between the two parties, including a salary cap and draft, violated antitrust laws as it applied to Wood because it was agreed to before Wood was a member of the NBPA. 809 F.2d at 958, 960. The court disagreed and ruled that the CBA was protected by the non-statutory labor exemption and Wood was subject to its provisions. *Id.* at 906–64.

282. The NBA requires all players to be at least nineteen years old, and if he's American, at least one NBA season must have elapsed since he graduated (or should have graduated) high school. NBA CBA, *supra* note 114, art. X, § 1(b)(1), at 225. The NFL requires that at least “three NFL regular seasons have begun and ended following either his graduation from high school or graduation of the class with which he entered high school, whichever is earlier.” NFL CBA, *supra* note 114, art. XVI, § 2(b), at 46. Prior to the 2006 extension of the CBA, this rule was not specifically in the CBA but instead only in the NFL Bylaws and Constitution. Michael A. McCann & Joseph S. Rosen, *Legality of Age Restrictions in the NBA and the NFL*, 56 CASE W. RES. L. REV. 731, 732–33 (2006). After the Maurice Clarett lawsuit, *Clarett v. Nat'l Football League*, 306 F. Supp. 2d 379 (S.D.N.Y.), *rev'd in part, vacated in part*, 369 F.3d 124 (2d Cir. 2004), the NFL and NFLPA negotiated the inclusion of the rule into the CBA. McCann & Rosen, *supra* at 744.

283. All of the Big Four leagues have drafts through which most of its players enter the league. *See First-Year Player Draft Rules*, MAJOR LEAGUE BASEBALL, <http://mlb.mlb.com/mlb/draftday/rules.jsp> (last visited Oct. 7, 2011); NBA CBA, *supra* note 114, art. X, § 1(a), at 225; NFL CBA, *supra* note 114, pmbl., at 3; NHL CBA, *supra* note 114, art. 8, § 8.1, at 17.

284. *See* Edelman & Doyle, *supra* note 261, at 424.

In addition to these specific CBA provisions, American sports leagues contain many other provisions, such as salary caps and free agency restrictions, that would likely violate Section 1 of the Sherman Act if not for the non-statutory labor exemption. Accordingly, these provisions would also likely violate Article 101(1) of the TFEU—though some would be exempt by the EC non-statutory labor exemption or even the exemption described in Article 101(3).

However, unlike in American labor law, employers and unions cannot collectively bargain away an employee's fundamental right to "free movement" under Article 45. Consequently, a cycling team's ability to control a young rider for the first couple of years through a draft or reserve system is questionable.

Nevertheless, professional cycling teams should consider adopting many of the provisions or practices of American sports leagues. Many of the issues needing attention can be resolved through a CBA between the CPA and the AIGCP pursuant to the EC non-statutory labor exemption. However, the proposed reforms will require careful compliance with Articles 101 and 45 of the TFEU.

Having established the legal framework within which the professional cycling world must work to improve, this Article will now discuss some of the specific aspects of professional cycling operations which should be modified, abolished, or created.

IV. AREAS OF IMPROVEMENT

A. Improve Team Collaboration

Each cycling team is an independent entity with no relationship to the other teams outside of the loosely bound and weak AIGCP. As a result of the issues discussed in this Article, team turnover is quite common. Furthermore, because the UCI only issues eighteen ProTour licenses, teams are in competition off the road as well. Nevertheless, team continuity and stability are essential to drawing and maintaining fan interest, and ultimately the sport's health. Collaboration among teams could help to consolidate resources and to form a united front on issues important to the teams during discussions with riders, the UCI, and race organizers.

The NFL, NBA, and NHL have salary caps that limit the amount of money a team can spend on its players.²⁸⁵ The agreements among the

285. See NFL CBA, *supra* note 114, art. XXIV, § 4, at 96–102 (setting salary cap at 58% of Total Revenues in 2010); NBA CBA, *supra* note 114, art. VII, § 2 at 120–25 (setting salary cap at 51% of Basketball-Related Income in 2011–2012); NHL CBA, *supra* note 114, art. 50, § 50.4, at 193–197 (designating Players' Share as 54–57% of

teams to restrict player salaries would violate Section 1 of the Sherman Act but can exist so long as the salary cap is agreed to as part of a CBA pursuant to the non-statutory labor exemption. The players associations agree to the caps in exchange for a guarantee that the players will receive a minimum percentage of certain league revenues.²⁸⁶ While the guarantees are relatively modest (50% in the NFL, 75% of the salary cap in the NBA, and 54–57% percent in the NHL), in practice, most teams spend to the limit of the salary cap.

The Union of European Football Associations announced in May 2011 that it intended to unilaterally implement a salary cap, becoming the first European sports league to do so.²⁸⁷ The main purpose of the salary cap is to place all teams on equal financial footing and prevent the highest revenue teams in the biggest cities from signing the best players. Cycling, too, would benefit from a salary cap which would help ensure that the wealthiest teams cannot hoard the best riders and effectively bankrupt poorer teams.

A salary cap would put all cycling teams in a more equal financial setting while also providing teams and sponsors with better expectations about the present and future costs of cycling. Riders should also favor a salary cap similar to the ones used in the United States. While it may restrict salaries, a cap can stabilize teams and guarantee the riders a portion of cycling revenues. By guaranteeing the riders a portion of team income, it creates a valuable partnership between the riders and the teams. Both parties will have every incentive to increase revenues in the sport.²⁸⁸

A negotiated salary cap in cycling should be exempt from scrutiny pursuant to the EC non-statutory labor exemption. Such a salary cap would easily satisfy the first three elements of the EC non-statutory labor ex-

Hockey Related Revenues). It is important to point out that each league calculates and includes different revenue sources in the fund of revenues ultimately divided amongst the players. For example, in the NFL CBA, 10% of TR is deducted before calculating the salary cap. NFL CBA, *supra* note 114, art. XXIV, § 1(a)(xiv)(1)(A), at 92.

286. NFL CBA, *supra* note 114, art. XXIV, § 3, at 95; NBA CBA, *supra* note 114, art. VII, § 2(b)(1) at 122 (setting minimum at 75% of the salary cap); NHL CBA, *supra* note 114, art. 50, § 50.5, at 198–218 (establishing \$16 million range in permissible payroll range).

287. David Zaring, *Can American Soccer Fans Bring Antitrust Claims Against European Football For Financial Fair Play?*, CONGLOMERATE (May 25, 2011), <http://www.theconglomerate.org/2011/05/can-american-soccer-fans-bring-antitrust-claims-against-european-football-for-financial-fair-play.html>.

288. In reality, the riders and teams must recognize that doping for short-term gains and wins only ends up costing them money in the long-run as the sport loses credibility and sponsors. See *supra* notes 13–14 and accompanying text.

emption: (1) the existence of a CBA between management and labor; (2) that the CBA was reached in good faith; and (3) that the CBA affects core subjects of collective bargaining.²⁸⁹ The fourth element—that the CBA does not directly affect third markets and third parties—is less clear. A salary cap could affect those that are not a party to the CBA, such as not-yet-professional cyclists, by depressing the salaries they could earn upon their entry into the professional realm. However, the salary cap is not designed for that purpose and the harm to these young cyclists should not be considered direct.

All Big Four leagues have a degree of revenue sharing. All the leagues equally divide the revenues from the national television contracts but have varying policies concerning gate receipts and local revenues. Again, cycling teams lack substantial revenue streams because they do not host events. Nevertheless, if teams work collaboratively to increase revenues, they should consider ways in which to share revenues in an effort to provide stability to teams and the sport. If teams were more financially stable and proactive, it is not inconceivable that they could obtain an equity interest in cycling events so as to procure more revenues.

A salary cap or revenue sharing arrangement could help provide financial stability to the teams by allowing them to appreciate in value over time. Unfortunately, the AIGCP performs almost none of the roles that the NFL serves for its member teams, notably negotiating television and licensing agreements and negotiating a CBA with the players. The NFL generates tremendous revenue and provides important stability to the league and its member teams by performing these and other tasks for the teams. The AIGCP should serve as a centralized resource for its teams to share best practices and provide guidance and oversight in the sport. The AIGCP instead relinquishes its legal authority to control and influence the sport to the UCI.

B. Change the Transfer Period

Presently, even though rider contracts run concurrent to calendar years, riders and teams are permitted to begin negotiating a contract during the current season for the following year beginning August 1.²⁹⁰ In American sports, contracts expire during the offseason, at which point teams may negotiate with the players. The August 1 date most likely exists for practical reasons as it is right after the Tour de France in July, during which all the interested parties in the world of cycling are together in one place,

289. See *supra* text accompanying notes 255–61.

290. UCI Regulations, Part II, *supra* note 28, ch. XV, § 4, art. 2.15.120(a), at 106.

including riders, teams, and sponsors.²⁹¹ As a result, there are many high profile contracts announced between riders and their new teams in early August.

However, these changes are announced just weeks before the Vuelta a España, one of cycling's three Grand Tours and biggest events. The change of a rider from his existing team to another team for the following season generally means that rider will not be participating in that year's Vuelta. For example, Alberto Contador announced in early August 2010 that he was leaving Astana for Saxo Bank-SunGard. Consequently, Contador did not compete for Astana at the 2010 Vuelta even though it is a race he won in 2008. This current timing is detrimental.

The transfer period should begin in late September, at the earliest, to allow for the completion of the Vuelta. While many years ago it may have been practical to negotiate while at the Tour de France, the highly connected world of smartphones, email, and text messages, enables negotiations from a distance. Alternatively, negotiations could occur at the Vuelta. In addition, transfer payments are not permitted in cycling and teams do not trade riders further showing the lack of a legitimate need for the current transfer date.

Moving the transfer period until after the Vuelta should spark greater interest in the Vuelta as sponsors, team personnel, and typically non-participating riders might feel compelled to attend on the cusp of the transfer period. Moreover, fans may become more interested as transfer rumors heat up around the event or more successful riders choose to participate in the Vuelta. There is no realistic danger of stealing any of the Tour de France's spotlight, whose history and prestige carries the sport.

Teams also need to negotiate with potential sponsors for the following year. Starting the transfer period six weeks later should not seriously hinder this process. Furthermore, a sponsor's willingness to cut the check is obviously tied to the success of the team and the riders on the team. For example, again, Saxo Bank decided to remain a sponsor of Riis Cycling only after Riis was able to sign Alberto Contador. However, sponsors do not presently consider association with the Vuelta to be a major

291. Interview with John Wilcockson, *supra* note 69; *see, e.g., The Tour 2011*, LE TOUR DE FRANCE, http://www.letour.fr/2011/TDF/COURSE/us/le_parcours.html (last visited Oct. 2, 2011) (stating that the 2011 Tour de France began July 2 and ended July 24); *The Tour 2010*, LE TOUR DE FRANCE, http://www.letour.fr/2010/TDF/COURSE/us/le_parcours.html (last visited Oct. 2, 2011) (stating that 2010 Tour de France began July 3 and ended July 25); *The Tour 2009*, LE TOUR DE FRANCE, http://www.letour.fr/2009/TDF/COURSE/us/le_parcours.html (last visited Oct. 2, 2011) (stating that the 2009 Tour de France began on July 4 and ended on July 26).

factor since most sponsorship decisions are made before the race. If the transfer period, and consequently the sponsorship negotiation period, was delayed until after the Vuelta, the Vuelta may be considered a more important event and its results could be more appropriately considered in sponsorship deals.

The sport of cycling ultimately revolves around the Tour de France. However, the current transfer period undermines one of its three most important events. Moving the date until after the Vuelta a España would allow the Vuelta to grow in importance and prestige creating a more balanced schedule that grabs and holds fan attention.

C. Increase the Creativity in Contractual Provisions

EC law regards the free movement of workers to be a fundamental right that cannot be compromised, even through collective bargaining.²⁹² Consequently, a reserve system such as those used in the Big Four, whereby a team controls an athlete's rights for the first few years of an athlete's career, would not be legal under EC law. Nevertheless, rider continuity is important to the stability of the sport from a team, sponsor, or fan perspective. Furthermore, there are other ways in which teams can control rider movement as part of a CBA with the CPA.

In the NFL, unlike MLB, the NBA, or the NHL, contracts are not guaranteed. A player's contract can be terminated if the player engages in activities other than the contracted professional sport that may involve a significant risk of personal injury.²⁹³ Even when players are injured in the sport that they play professionally, they are often released and go through an injury grievance process to determine their appropriate compensation.²⁹⁴ Accordingly, the major issue in NFL contract negotiations is the portion of money to be "guaranteed."²⁹⁵ Contracts or bonuses can be guaranteed against termination in the event of injury, diminished skill, or a salary cap charge that is too large for the team.²⁹⁶ While the team can still cut the player, the player will still be paid if certain portions of his contract were guaranteed.²⁹⁷

The length of an NFL contract is superficial as a result of its mostly non-guaranteed nature. Although a player may sign a six-year deal, due

292. *Bosman*, 1995 E.C.R. I-04921, ¶ 92.

293. NFL CBA, *supra* note 114, art. XIV, § 7, app. C, at 248–56.

294. *See id.* art. X, at 28–33.

295. Deubert & Wong, *supra* note 116, at 200.

296. *Id.*

297. *Id.* About 50% of compensation in the NFL is guaranteed. *See, e.g., 2010 NFL Draft Rookie Signing Status*, BACKSEAT FAN BLOG (July 29, 2011, 8:00 PM), <http://backseatfan.com/2010/04/2010-nfl-draft-rookie-signing-status>.

to the high injury rate and rapid turnover in talent, the chances of the player actually completing the contract are not great. To offset the risk, most contracts have incentive and bonus provisions that reward the player financially if he performs well.²⁹⁸ The sport of cycling should use similar contract structures.

Cycling teams generally sign riders to one or two-year contracts as anything longer would be a financial commitment that most teams cannot make alongside their one or two year sponsorship deals. Through non-guaranteed contracts that provide an upside to the riders in the case of good performance, teams could control riders for longer durations. Riders' careers are short and their desperation for employment is what has already caused them to allow the UCI to control the sport in place of a CBA. Therefore, riders are unlikely to complain very long or loud about a change in the structure of their contracts. Nevertheless, this change can and should be negotiated in a CBA with the CPA.

In a related contractual issue, UCI rules prohibit contract negotiations between a team and a rider except for during the specified transfer period.²⁹⁹ However, it is quite clear that these rules are not enforced. Prior to the 2010 season, Bradley Wiggins left the Garmin-Slipstream team for the new Team Sky based in his native England. Team Sky made known their desire for the British Wiggins to lead their new team amidst his surprise fourth place overall performance at the Tour de France.³⁰⁰ However, Wiggins was still under contract to Garmin-Slipstream for one more year.

The UCI failed to enforce its pseudo non-tampering provision and Garmin-Slipstream considered litigation to prevent Sky's poaching of Wiggins.³⁰¹ Ultimately, Team Sky reached a financial settlement with Garmin-Slipstream and Wiggins signed a four-year deal with the financially robust Team Sky.³⁰² However, the UCI's failure to have and en-

298. *See id.* at 189–90.

299. UCI Regulations, Part II, *supra* note 28, ch. XV, § 4, art. 2.15.120(b), at 107.

300. Richard Moore, *Team Sky Assemble Tour Squad with Bradley Wiggins on their Mind*, GUARDIAN (London), Sept. 8, 2009, at 5; Alasdair Fotheringham, *We Will Not Let Wiggins Join British Team Sky, Says Garmin Manager*, INDEP. (Aug. 20, 2009), <http://www.independent.co.uk/sport/general/others/cycling-we-will-not-let-wiggins-join-british-team-sky-says-garmin-manager-1774427.html> (U.K.).

301. Matthew Pace, Counsel, Herrick Feinstein LLP, Panelist at the 14th Annual Fordham Sports Law Symposium (Mar. 26, 2010) (panel attended by author); *see generally* Moore, *Team Sky Assemble Tour Squad With Bradley Wiggins On Their Mind*, *supra* note 300.

302. John Henderson, *CYCLING Boulder-Based Cycling Team Set to Go Without Wiggins*, DENVER POST, Dec. 26, 2009, at C.3; Daniel Benson & Richard Tyler, *Bradley*

force an effective non-tampering provision hurt the stability of the sport and caused dissension among the teams.

D. Revenue Generation

There are other business operation improvements that professional cycling would benefit from implementing, beyond those made through a CBA. Most notably, certain changes could enable higher television revenues. Television broadcast revenues are among the most important and lucrative sources of revenue in American sports.³⁰³ For this to be the case, the Sports Broadcasting Act provides the Big Four leagues an important exemption from antitrust laws. This exemption permits individual teams and potential competitors to pool their rights and sell them collectively. If professional cycling had a more American structure whereby the league and the events existed only as a function of the individual teams, it too would possibly need some type of exemption from antitrust or competition law.

However, as detailed throughout this Article, the teams do not create or control the events—the UCI and event organizers, such as ASO, do. Since ASO is a single entity, it can and does collectively sell the rights to many of its events. For example, in 2010 Versus broadcast eight of ASO's fourteen professional cycling events.³⁰⁴ ASO is able to leverage the importance of broadcasting the Tour de France into forcing Versus or

Wiggins Signs with Team Sky, CYCLINGNEWS (Dec. 10, 2010), <http://www.cyclingnews.com/news/bradley-wiggins-signs-with-team-sky>.

303. See *supra* note 173 (noting that the NFL receives nearly half of its \$8 billion in annual revenue from its broadcasting agreements).

304. See Press Release, Amaury Sport Org. & AEG, ASO and AEG Expand Cycling Partnership Agreement (Jan. 20, 2011), *available at* http://www.prcity.com/amgentourofca/stories/pdf/AEG-ASO-partner_1.19.11.pdf. The eight events were The Tour de France, Tour of Qatar, Tour of Oman, Paris-Nice, Le Critérium International, Paris-Roubaix, La Fleche Wallonne and Liege-Bastogne-Liege. Philip Hunter, *European Broadcasting Union Reaches Deal for Major Cycling Events*, BROADCAST ENGINEERING (Mar. 28, 2011, 12:33 PM), <http://broadcastengineering.com/news/european-broadcasting-union-reaches-deal-majoring-cycling-events-20110328/>; *Media*, TOUR OF OMAN 2010, <http://www.tourofoman.om/2010/media.php?cls=vi> (last visited Oct. 4, 2011); *The Critérium on Television*, LE TOUR DE FRANCE (Mar. 22, 2010), <http://www.letour.fr/2010/CRI/COURSE/us/actus.html#zone148826>; Nigel Wynn & Andrew Canning, *Tour of Qatar 2010: Preview and Coverage Index*, CYCLING WEEKLY (Feb. 4, 2010), <http://www.cyclingweekly.co.uk/news/latest/441288/tour-of-qatar-2010-preview-and-coverage-index.html>; *2010 Versus TV Schedule for Cycling Coverage*, CHASING 1:20 BLOG (January 12, 2010), <http://www.chasing120.com/2010/01/2010-versus-tv-schedule-of-cycling.html>; see also *Cycling*, AMAURY SPORT ORG., <http://www.aso.fr/us/cyclism.html> (last visited Oct. 4, 2011).

broadcasters in other countries to broadcast ASO's lesser known events. It is the failure of the UCI to do something similar which continues to deprive the UCI of meaningful revenues.

Most of the events on the UCI WorldTour are organized by separate, individual entities. Consequently, these individual entities cannot collectively combine to sell the television rights to their events without violating EC antitrust law. The individual race organizers are effectively the same as the thirty-two separate NFL teams in that they each possess valuable rights to an event. The Sports Broadcasting Act provides Big Four sports teams the important ability to sell the television rights to their events collectively. Television networks are far more interested—and pay far more—to broadcast games for the entire league and concomitant sponsorship rather than just a few teams. The consistent message that a certain television network is the exclusive broadcaster for a certain league's games is valuable and provides valuable national exposure for sponsors. Legislation similar to the Sports Broadcasting Act would likewise be necessary in the EC. While the EC takes a hard-line on antitrust issues, they also take a hard-line on doping in sports. EC legislators and regulators would have to recognize that legislation similar to the Sports Broadcasting Act would provide important financial stability to the sport of cycling—which could help reduce the doping scandals.

In addition, the UCI should look to purchase and control more events. The events would provide the UCI with a valuable source of revenue and, if they controlled enough major events, they could then sell them collectively without running afoul of antitrust laws. The ASO derives substantial revenue from its ability to collectively sell the television rights to its events. If the UCI could do the same, it could gain leverage against the ASO and make the UCI WorldTour a more legitimate and sustainable enterprise.

CONCLUSION

Cycling is one of the world's favorite sports. It has withstood countless scandals questioning the legitimacy of its champions and races. Nevertheless, those scandals continue to cast a dark shadow over the sport's governance and sustainability. The stability and sustainability of the sport of cycling continues to be threatened by the sport's antiquated systems which have placed nearly all of the power in the hands of event organizers, rather than the teams and riders. American sports have been largely successful in creating a shared and lucrative partnership between teams and athletes through the collective bargaining process. Cycling teams and cyclists need to do the same. By adopting some of the Ameri-

can approaches to professional sports, cycling could take steps towards a cleaner and more stable sport.