

1-1-1994

White v. National Football League: The Myth of Free Agency in the National Football League

George Mavris

Recommended Citation

George Mavris, *White v. National Football League: The Myth of Free Agency in the National Football League*, 14 Loy. L.A. Ent. L. Rev. 381 (1994).

Available at: <http://digitalcommons.lmu.edu/elr/vol14/iss2/6>

This Notes and Comments is brought to you for free and open access by the Law Reviews at Digital Commons @ Loyola Marymount University and Loyola Law School. It has been accepted for inclusion in Loyola of Los Angeles Entertainment Law Review by an authorized administrator of Digital Commons@Loyola Marymount University and Loyola Law School. For more information, please contact digitalcommons@lmu.edu.

WHITE v. NATIONAL FOOTBALL LEAGUE: THE MYTH OF FREE AGENCY IN THE NATIONAL FOOTBALL LEAGUE

I. INTRODUCTION

The issue of illegal restraint of player movement in the National Football League [hereinafter "NFL"] is not new. The court in *McNeil v. National Football League*¹ held that the NFL player restriction policy, known as Plan B,² was overly broad and restrictive in light of the NFL's underlying goal of maintaining a competitive balance within the league.³ This decision has led others to challenge the NFL's policies regarding player movement. One such challenge has been led by Reggie White, considered one of the premier defensive players in the league.⁴

*White v. National Football League*⁵ concerned a class action suit filed on behalf of all NFL players whose contracts were about to expire. Rather than having the case resolved through trial, the district court urged the players and management to reach a settlement. In order to induce a settlement, the court threatened to impose its own compromise solution.⁶ The parties ultimately agreed on a settlement ("*White Settlement*").⁷ The *White Settlement* supposedly marked the dawning of a new age of free agency for the NFL whereby any veteran player with at least five years of experience⁸ would be able to reap the rewards of unrestricted free agency.

1. 790 F. Supp. 871 (D. Minn. 1992).

2. Plan B free agency allowed each NFL club to "protect" 37 of its roughly 57 players. Those players who were not protected became unrestricted free agents. Thus those players who became free agents were the least valuable players of their current team. See Jeffery D. Schneider, Note, *Unsportsmanlike Conduct: The Lack of Free Agency in the NFL*, 64 S. CAL. L. REV. 797, 816 (1991).

3. See *Jackson v. National Football League*, 802 F. Supp. 226, 228-29 n.2 (D. Minn. 1992).

4. Richard Justice & Steve Berkowitz, *After Strike and Strife, Players Await Reward Better Benefits, Big Salaries Anticipated*, WASH. POST, Dec. 23, 1992, at B6.

5. 822 F. Supp. 1389 (D. Minn. 1993).

6. Judge David S. Doty threatened to impose his own plan if the parties failed to meet his January 6, 1993, deadline. See Michael Cimini & Susan L. Behrmann, *Five-year Impasse Ends in Football*, MONTHLY LAB. REV., Mar. 1993, at 50.

7. Codified in the Collective Bargaining Agreement [hereinafter "CBA"] of 1993.

8. This will be lowered to four years when player revenues are equal to sixty-seven percent of the Defined Gross Revenues [hereinafter "DGR"]. *White*, 822 F. Supp. at 1412-13.

The *White* Settlement, while an improvement over the 1982 Collective Bargaining Agreement ("CBA"), includes three very critical player restrictions. First, the *White* Settlement establishes a minimum experience requirement before a player qualifies for free agency status. Second, it imposes a salary cap⁹ which significantly affects the ability of a player to secure a contract reflecting his true market value. Finally, it allows teams to name "Franchise" and "Transition" players,¹⁰ which will restrict the movement of a team's most valuable players.

This Note examines the *White* Settlement and argues that its terms impose player restrictions which will stifle, rather than foster, player movement. Part II of this Note reviews the history of the free agency battle in the NFL. Part III examines antitrust laws which govern the NFL's employment policies. Part IV analyzes the consequences of the *White* compromise and demonstrates how the unrestricted free agency envisioned by the players will never reach fruition as a result of the *White* Settlement.

II. THE FREE AGENCY CONFLICT

Since its inception, the NFL has attempted to control player movement. The NFL has argued that by restricting player movement it would be able to maintain a competitive balance among its franchises.¹¹ However, the underlying reason behind restricting player movement appears to be to prevent bidding wars between teams for player talent. By giving teams complete control of their players movements, including those without contracts, it puts the owners in a superior bargaining position and, hence, has the effect of suppressing player salaries. Although the courts have been sympathetic towards the NFL's claim that it must preserve a competitive balance, most court battles end with the court either modifying or striking

9. *Id.* at 1413.

10. As of 1993 each team can designate one player a "Franchise" player which, while it guarantees that the player's salary will be commensurate with the average of the top five salaries at his position, never allows that player to truly test the free market. Further, the "Transition" player designation, which in 1993 could be used on two players, is a vestige of the Right of First Refusal/Compensation system which forces the signing team to pay compensation to the team losing the player, should that team decide not to match the contract offered to its player. *See id.* at 1413.

11. *Mackey v. National Football League*, 407 F. Supp. 1000, 1007 (D. Minn. 1975).

down player restrictions as overbroad or too restrictive.¹² By examining the history of the free agency battles in the NFL, this trend is exposed.

A. *The Mackey Decision: The Death of the Rozelle Rule*

The *Mackey* decision was the landmark case in the NFL concerning free agency. Prior to John Mackey filing antitrust claims against the NFL, players whose contracts had expired were governed by the "Rozelle Rule."¹³ The Rozelle Rule, named after then commissioner Alvin "Pete" Rozelle, gave the Commissioner "sole discretion" to grant whatever compensation he saw fit to the team losing the player.¹⁴ The effect of the Rozelle Rule was to stifle player movement¹⁵ and thus suppress salaries. Due to the arbitrary power of the Commissioner, teams did not sign free agents fearing that the compensation granted would not be commensurate with the player that they had obtained. The chilling effect of the Rozelle Rule was articulated by the *Mackey* court:

The Rozelle Rule substantially restricts players' freedom of movement. The existence of the Rozelle Rule substantially decreases players' bargaining power in contract negotiations. The players are not free to quit and obtain employment elsewhere with another NFL club. Under the Rozelle Rule each individual player is denied the right to sell his services in a free and open market. As a result, the salaries paid by each club are lower than if competitive bidding were allowed to prevail. Absent the Rozelle Rule there would be increased

12. See, e.g., *Jackson v. National Football League*, 802 F. Supp. 226 (D. Minn. 1992); *McNeil v. National Football League*, 790 F. Supp. 871 (D. Minn. 1992); *Mackey v. National Football League*, 407 F. Supp. 1000 (D. Minn. 1975).

13. The Rozelle Rule was unilaterally adopted by NFL clubs in 1963 as an amendment to the NFL Constitution:

Any player, whose contract with a League club has expired, shall thereupon become a free agent and shall no longer be considered a member of the team of that club following the expiration date of such contract. Whenever a player, becoming a free agent in such manner, thereafter signs a contract with a different club in the League, then, unless mutually satisfactory arrangements have been concluded between the two League clubs, the Commissioner may name and then award to the former club one or more players, from the Active, Reserve, or Selection List (including future selection choices) of the acquiring club as the Commissioner in his sole discretion deems fair and equitable; any such decision by the Commissioner shall be final and conclusive.

Mackey, 407 F. Supp. at 1004.

14. *Id.*

15. *Id.* at 1007.

movement in interstate commerce of players from one club to another.¹⁶

The ruling in *Mackey* gave the players an excellent opportunity to reap the rewards of a liberalized player market. However, rather than doing so, the players sacrificed the free agency victory in *Mackey* in exchange for other employment benefits in the 1977 CBA.¹⁷ Although the NFL was forced to abandon the Rozelle Rule, what followed was equally restrictive.

*B. The Right of First Refusal/Compensation,
The Players Strike and the 1982 CBA*

The Rozelle Rule was replaced by the Right of First Refusal/Compensation system. This system was designed to remedy the discretionary compensation which plagued the Rozelle Rule. Under the Right of First Refusal/Compensation scheme, once a player's contract expired he became a free agent with the right to negotiate with any interested team. If a player signed with a different team, the compensation to be paid to the team losing the player was determined by the player's new contract. According to a fixed scale codified in the 1977 CBA, the more the new contract was worth, the more compensation the new team was required to pay. Before compensation was paid, however, the losing team had the right to match the contract offered to the player. Should a team threatened with losing a player decide to match the offer, the player was denied the right to move but was paid according to the new contract.¹⁸

The problem with this new system, as described in *Powell v. National Football League*,¹⁹ was that "[u]nder the Right of First Refusal/Compensation system, every NFL club retains rights to 'its players' even though, in the case of veteran free agents, contractual rights to [the] player no longer exist."²⁰ The restrictive effect of the new rule, codified in the 1977 CBA, is clearly visible. By 1982, "fewer than 50 out of 600 players [eligible to receive offers as free agents] received offers from other NFL clubs after becoming free agents . . . [Of those] *only one* player actually moved from one NFL club to another in a transaction in which draft choice compensation was payable."²¹

16. *Id.* (paragraph numbers omitted).

17. *Powell v. National Football League*, 678 F. Supp. 777, 780 (D. Minn. 1988).

18. *Id.* at 779-80.

19. 678 F. Supp. 777 (D. Minn. 1988).

20. *Id.* at 779.

21. *Id.* at 780 (emphasis added).

Ironically, despite its restrictive nature, the Right of First Refusal/Compensation was re-implemented in the 1982 CBA after a 57-day players strike.²² Although the Right of First Refusal/Compensation system was somewhat modified,²³ and the players received a firm commitment from the NFL to provide over \$1.2 billion in additional benefits,²⁴ the players hope for true free agency was still not a reality.²⁵

*C. 1987 Strike and The Powell Litigation:
Challenging the Right of First Refusal/Compensation*

When the 1982 CBA expired in 1987, negotiations commenced as to the contents of the new CBA. The central contention was free agency. As the *Powell* court noted, “[n]egotiations both during and after the expiration of the Agreement failed to produce an accord regarding the free agency system, and on September 22, 1987, the members of the NFL Player’s Association (“NFLPA”) went on strike.”²⁶ Unlike the 1982 strike which halted NFL games for nearly two months, the NFL management was able to field games with replacement players within a week after the strike.²⁷ The strike ended on October 15, 1987, only 24 days after it began, with the NFL management in the same position it occupied before the strike.²⁸ The players, attempting to put the strike fiasco behind them, turned to the court and filed what became *Powell v. National Football League*.²⁹

The plaintiffs in *Powell* sought to obtain an injunction and ultimately a decree that the NFL player restrictions violated antitrust laws.³⁰ The core of the plaintiff’s case was that with the expiration of the CBA, “no labor exemption from the antitrust laws [designed to foster competition]

22. *Id.*

23. The 1982 Right of First Refusal/Compensation relaxed the salary levels at which draft choice compensation would be triggered. “For example, the salary level at which a third-round draft choice would have to be paid for a veteran free agent entering his fourth NFL season increased from \$55,000 in 1981 to \$90,000 in 1983.” *Id.* at 781.

24. *Id.*

25. “Of the 1,415 players who became veteran free agents during the term of 1982 Agreement (252 in 1983, 216 in 1984, 269 in 1985, 321 in 1986 and 357 in 1987), apparently only one player even received an offer from another club.” *Powell*, 678 F. Supp. at 781 n.6.

26. *Id.* at 781.

27. James W. Quinn, *A Look at the McNeil Litigation*, in PATENTS, COPYRIGHTS, TRADEMARKS, AND LITERARY PROPERTY COURSE HANDBOOK SERIES REPRESENTING PROFESSIONAL ATHLETES AND TEAMS, (Practising Law Institute forthcoming 1994).

28. See *Powell*, 678 F. Supp. at 781.

29. 678 F. Supp. 777 (D. Minn. 1988).

30. *Id.* at 777.

shields the player restraints from antitrust scrutiny.”³¹ The *Powell* court held that, “[t]ypically, the parties to an expired [collective bargaining] agreement have an obligation to maintain the status quo as to these provisions until a new agreement is concluded or until the parties reach an ‘impasse.’”³² The court went on to note that an impasse occurs “‘after good-faith negotiations have exhausted the prospects of concluding an agreement.’”³³ Applying the court’s standards, the players could not show that an impasse had occurred. Thus, the expired CBA continued to provide protection for the NFL’s player restriction policies which were agreed upon in the 1982 CBA.

On appeal, the Eighth Circuit reversed the lower court’s “impasse” standard in favor of determining whether an “ongoing collective bargaining agreement relationship” existed between players and management.³⁴ The Eighth Circuit further noted, the players still have an array of remedies available under the labor laws to resolve their differences, including strikes, renewed collective bargaining or claims before the NLRB [National Labor Relations Board] for a failure to bargain in good faith.³⁵ A dissenter argued that “the end result of the majority opinion is that once a union agrees to a package of player restraints, it will be bound to that package forever unless the union forfeits its bargaining rights.”³⁶

In order not to be bound by the “ongoing collective bargaining relationship” established by the Eighth Circuit, the NFLPA voted to terminate their union representation and, on November 6, 1989, the Committee advised the NFL that it would no longer engage in collective bargaining or represent players in grievances.³⁷ The NFLPA thus “terminated its status as a labor organization.”³⁸ With the demise of the NFLPA, the “ongoing collective bargaining relationship” had ceased to exist. Thus, the nonstatutory labor exemption which shielded the NFL from antitrust laws had also ceased to exist. Shortly thereafter, others challenged NFL employment policy on antitrust grounds.

31. *Id.* at 781-82.

32. *Id.* at 784.

33. *Id.* at 784 n.15.

34. *Powell v. National Football League*, 888 F.2d 559 (8th Cir. 1989).

35. *See id.* at 565-68.

36. *Id.* (Heaney, J., dissenting).

37. *Powell v. National Football League*, 764 F. Supp. 1351, 1356.

38. *Id.*

D. *McNeil v. National Football League: Challenging Plan B*

During the *Powell* litigation, the NFL, sensing it may be subject to antitrust attacks, unilaterally imposed what became known as Plan B.³⁹ The players in the *McNeil* case challenged Plan B specifically but also made references to player restrictions in general. The core of the free agency debate again centered on the antitrust violations.⁴⁰

The NFL contended that only a limited free agency, such as that offered by Plan B, was possible because of the need to maintain a competitive balance. However, an expert for the plaintiff, Stanford economist Dr. Roger Noll, countered that the NFL had "no legitimate basis at all in preserving or making better [a] competitive balance . . . [but rather Plan B was imposed to] lower player salaries."⁴¹ The jury returned a verdict in September of 1992, concluding that

the Right of First Refusal/Compensation Rules in Plan B have a substantially harmful effect on competition in the relevant market for the services of professional football players, that those rules significantly contribute to competitive balance in the NFL, but that the rules are more restrictive than reasonably necessary to achieve the objective of establishing or maintaining competitive balance in the NFL.⁴²

E. *Jackson v. National Football League:
Setting the Stage for White*

Following *McNeil*, several players whose contracts had expired but who were still restricted under Plan B, brought an action seeking a temporary restraining order preventing the NFL from enforcing the restrictions and declaring them free agents.⁴³ The court, relying on *McNeil*, concluded that Plan B irreparably harmed these four players and the NFL was not justified in continuing to violate the antitrust laws.⁴⁴ As

39. See *supra* note 2 and accompanying text.

40. The plaintiffs contended that Plan B violated Section 1 of the Sherman Act which prohibits all unreasonable restraints of trade affecting interstate commerce. See *McNeil v. National Football League*, 790 F. Supp. 871, 877-78 (D. Minn. 1992).

41. See Quinn, *supra* note 27.

42. *Jackson v. National Football League*, 802 F. Supp. 226, 228-29 n.2 (D. Minn. 1992).

43. *Id.* at 228. The four players were Keith Jackson, Garin Varis, Webster Slaughter, and D.J. Dozier. *Id.*

44. *Id.* at 231-35.

a result, these players became unrestricted free agents. Shortly thereafter, three of the four players changed teams while one remained unsigned.⁴⁵

III. THE ANTITRUST LAWS

The antitrust laws which govern labor practice in the United States are the main focus of litigation concerning player restrictions. Interestingly, the federal labor laws,⁴⁶ which were designed to promote collective bargaining as the proper means of resolving labor disputes,⁴⁷ directly conflict with the antitrust laws which favor unrestricted economic competition.⁴⁸ Because labor policy not only allows, but also encourages workers to form unions,⁴⁹ which by their very nature do not promote unrestricted economic competition,⁵⁰ the courts and the legislature have been faced with "harmonizing" labor and antitrust policies.⁵¹

A. *The Labor Exemptions: Providing a Shelter for Antitrust Violations*

The Supreme Court has undertaken to balance the effects of these opposing policies by attempting to establish "a proper accommodation between the congressional policy favoring collective bargaining under the NLRA [National Labor Relations Act] and the congressional policy favoring free competition in business."⁵² Indeed, the Supreme Court recognized a narrow zone in which labor laws are exempt from antitrust

45. Webster Slaughter of the Cleveland Browns and Keith Jackson of the Philadelphia Eagles, both premier players at their respective positions signed big-money contracts with new teams. Garin Varis, formerly of the New England Patriots was eventually signed by the San Francisco Forty-Niners. D.J. Dozier, the least touted of the unrestricted free agents, was never signed and remains out of football. See Quinn, *supra* note 27.

46. See Clayton Act § 6, 15 U.S.C. § 17 (1988); Clayton Act § 20, 29 U.S.C. § 52.

47. See, e.g., National Labor Relations Act § 1, 29 U.S.C. § 151 (1988).

48. See 15 U.S.C. §§ 1-2 (1988); see also Northern Pacific Railway Co. v. United States, 356 U.S. 1, 4 (1958) ("The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade.").

49. See Norris-LaGuardia Act § 2, 29 U.S.C. § 102 (1988).

50. For example, unions usually bargain with management on such issues as "wages, hours, and other terms and conditions of employment" and thus try to fix wages, hours, etc. at which employees will work. See National Labor Relations Act § 8(d), *id.* § 158(d).

51. See United States v. Hutcheson, 312 U.S. 219, 231 (1941).

52. Connell Construction Co., Inc. v. Plumbers & Steamfitters Local Union No. 100, 421 U.S. 616, 622 (1975).

violations.⁵³ These exemptions take two forms: the statutory labor exemption and the nonstatutory labor exemption.

The statutory labor exemption protects certain types of agreements that Congress has deemed necessary for the preservation of its underlying labor policies. These include agreements to organize a union, to make proposals, and to engage in strikes.⁵⁴

The nonstatutory labor exemption, conversely, places its focus on the results of the bargaining process. The Supreme Court has concluded that not all of what derives from a statutorily exempted collective bargaining agreement is automatically upheld under antitrust laws.⁵⁵ Rather, “[t]he availability of the nonstatutory exemption for a particular agreement turns upon whether the relevant federal labor policy is deserving of pre-eminence over federal antitrust policy under the circumstances of the particular case.”⁵⁶

B. Types of Analysis:

The Per Se Approach v. The Rule of Reason Approach

As the court in *Mackey* noted, “[t]he express language of the Sherman Act is broad enough to render illegal nearly every type of agreement between businessmen.”⁵⁷ However, the Supreme Court has addressed this concern by concluding that only those agreements which “unreasonably” restrain trade fall within the proscription of the Act.⁵⁸ The two types of analyses both focus on the reasonableness of the agreement. The stricter of the two is the “Per Se” approach.

The Per Se analysis deems any agreement illegal if it is “consistently unreasonable.”⁵⁹ The Supreme Court explained, “there are 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] without elaborate inquiry” into their purported justifications.⁶⁰ Therefore, should an agreement be

53. *Id.*

54. See *Hutcheson*, 312 U.S. at 231 n.2.

55. See *Connell*, 421 U.S. at 622-23.

56. *Mackey v. National Football League*, 543 F.2d 606, 613 (8th Cir. 1976) (citations omitted).

57. *Id.* at 618.

58. See *Northern Pacific*, 356 U.S. at 5; *Standard Oil Co. v. United States*, 221 U.S. 1, 31 (1911).

59. *Mackey*, 543 F.2d at 618.

60. *Northern Pacific*, 356 U.S. at 5.

deemed illegal under the Per Se approach, the agreement will have to be modified in order to fit within an exemption of the antitrust laws.⁶¹ Because of the harsh results of the Per Se analysis and the unique structure of the NFL, the courts have generally been unwilling to apply the Per Se analysis to the NFL.⁶²

The alternative to the Per Se analysis is the Rule of Reason approach. "The focus of an inquiry under the Rule of Reason is whether the restraint imposed is justified by legitimate business purposes, and is no more restrictive than necessary."⁶³ This then, is the main hurdle that future plaintiffs challenging this agreement must overcome.

IV. THE WHITE SETTLEMENT

The *White Settlement* has been hailed as the beginning of true free agency within the NFL.⁶⁴ However, this characterization seems unjustified. This analysis begins with an overview of the structure of the *White Settlement*, followed by an analysis of each aspect of the Settlement and concludes that, taken as a whole, they function to limit the actual ability of players to explore the free market.

A. Structure of the White Settlement

The *White Settlement* has three major components which concern player movement: the minimum experience requirement, the salary cap, and the Franchise/Transition player designations. Each will be considered in turn.

The minimum experience requirement is designed to limit the ability of players with less than four full seasons of experience to test the free agency market. Because the players are only allowed to negotiate with their own teams, the NFL has established minimum salaries which must be tendered to players who have not yet had the requisite NFL experience.

Players with three or four years of experience whose contracts have expired may be subject to a Right of First Refusal/Compensation system

61. This does not preclude the possibility, however, that the proponents of such an agreement may appeal to a higher court claiming that the use of the Per Se analysis was improper and then trying to justify the violations of antitrust law. See, e.g., *Mackey v. National Football League*, 407 F. Supp. 1000 (D. Minn. 1975).

62. See, e.g., *McNeil v. National Football League*, 790 F. Supp. 871 (D. Minn. 1992).

63. *Mackey*, 543 F.2d at 620 (citations omitted).

64. See, e.g., Cimini & Behrmann, *supra* note 6; Jerry Kirshenbaum, *To Market We Go*, SPORTS ILLUSTRATED, Jan. 18, 1993, at 12.

similar to the one present in the 1982 CBA, whereby movement to a new team results in the new team having to compensate the former team with draft picks based on the new contract.⁶⁵

Players with less than three years of experience are subject to their former team's exclusive negotiating rights, provided they are offered at least the NFL minimum salary which is currently at "\$100,000 for players with less than one year of experience, \$125,000 for players with one year of experience and \$150,000 for players with two years of experience."⁶⁶

A second aspect of the *White* Settlement is the salary cap.⁶⁷ According to the compromise, "[i]f in any season the league-wide total of player costs rises to sixty-seven percent of the Defined Gross Revenues ("DGR") . . . the salary cap provisions are triggered, and the cap will go into effect in the following season."⁶⁸ When the cap is triggered, the amount of money which can be spent on player salaries will be a defined percentage of the DGR.⁶⁹ Included in this salary cap is an "Entering Player Pool."⁷⁰ The "Entering Player Pool" limits the amount of money which can be spent on new draftees.⁷¹ By limiting the amount of money available to the rookie players, the NFL has attempted to shift the salary emphasis from potential to performance.⁷² Over the past several years the salaries of the top incoming rookies far exceeded those of established NFL veterans.⁷³ Further, the NFL has limited the player draft from twelve

65. *White v. National Football League*, 822 F. Supp. 1389, 1412 (D. Minn. 1993).

66. *Id.* at 1413.

67. *Id.*

68. *Id.*

69. If [the salary cap is] in effect, [it] . . . will limit the percentage of the DGR that can be expended on player costs as follows: in the first 'capped' year, total league-wide player costs may not exceed sixty-four percent of DGR; in the second year sixty-three percent; in the third year sixty-two percent; and in subsequent years sixty-two percent; subject to certain cap adjustments and removal provisions. The cap is to be equally allocated among the teams.

Id.

70. *White*, 822 F. Supp. at 1414.

71. The salaries of the rookie players are not to exceed the higher of: (i) 3.5% of the DGR, (ii) 2 million dollars times the number of teams in the league, or (iii) the previous year's pool.
Id.

72. See Larry Weisman, *Free-Agency Factor Helps Boost Salaries 33% in '93*, USA TODAY, Sept. 21, 1993, at 3C.

73. For example, in the 1992 draft, the last draft conducted without a rookie salary cap, the first two draft picks also became the two highest paid players in the NFL. See *Indianapolis Leads League in Average Pay*, USA TODAY, Feb. 12, 1993, at 10C.

rounds to eight rounds in 1993 and seven rounds for the rest of the agreement.⁷⁴

Finally, the *White Settlement* provides that "except for the few 'Franchise' and 'Transition' players to whom special rules apply, all players with at least five years of NFL experience whose contracts have expired may negotiate and enter into contracts with NFL teams as unrestricted free agents."⁷⁵ The Franchise and Transition designations serve to narrow the general rule that all players with at least five years of experience and whose contracts have expired will become free agents. The *White Settlement* established the following:

In any year, each team is permitted to designate one Franchise Player by tendering an offer of a one year contract at a salary amounting to the greater of (1) the average of the salaries of the five highest paid players at the designated player's same position, or (2) a twenty percent increase in the designated player's previous year's salary. A team thereby obtains exclusive negotiating rights to the Franchise Player, notwithstanding his years of experience.⁷⁶

Thus, a team which meets the above salary requirements will, at the very least, be able to retain that player it considers the most valuable or "Franchise" player on its roster.

The Transition designation serves a similar function. The *White Settlement* provides, "by tendering an offer of a one year contract at a salary amounting to the greater of (1) the average of the salaries of the ten highest paid players at the designated player's same position, or (2) a twenty percent increase in the designated player's previous year's salary,"⁷⁷ a team would retain exclusive negotiating rights over that player. A key distinction between the Franchise designation and the Transition player, other than the salary requirements, is that the opportunity to designate a Transition player will be available for only about half of the seven year agreement. Indeed, the *White Settlement* provides that "[i]n the first year of the Agreement, each team may designate two, and, in both the

74. *White*, 822 F. Supp. at 1413. Because a "round" is usually composed of each of the NFL teams choosing one player from the eligible college athletes, reducing the number of rounds from twelve to seven has the effect of making an additional 140 players per year unrestricted free agents.

75. *Id.* at 1412.

76. *Id.* at 1413.

77. *Id.*

second and final year of the Settlement Agreement, one, Transition players."⁷⁸

B. The Great White Hoax: Free Agency Reaches the League

According to Judge Doty, when the *White Settlement* was incorporated into the 1993 CBA it qualified for a labor exemption under antitrust law "for the length of the deal."⁷⁹ Like other CBA's which initially passed muster under the antitrust laws, this CBA will, in retrospect, be considered too restrictive and unjustified by legitimate business purposes.⁸⁰ An analysis of the three major components of the *White Settlement* reveals that, like the earlier CBA's which purported to provide players with "free agency," this CBA offers more style than substance.⁸¹

1. Minimum Player Requirements: The Four Year Rule

According to the *White Settlement*, players will need at least four years of service in the NFL to gain free agency. "This is a very long time in a sport that wrecks the human body. And let's face it, a lot of football players are just meat. When their knees are destroyed, there are always other players just out of college willing to throw themselves around on the field."⁸² Four years is not an arbitrary number, rather it is a number carefully chosen by management to assure that most players will never become free agents.⁸³ Also, according to the *White Settlement*, any player with no more than four years of experience would be subject to the Right of First Refusal/Compensation system which was present in the 1982 CBA.⁸⁴ Under such a system, the only player to move in the past decade

78. *Id.*

79. Mark Asher, *Doty Approves NFL Agreement; Judge Clears Final Hurdle to Free Agency, Salary Cap*, WASH. POST, May 1, 1993, at B1 (emphasis added).

80. This is a restatement of the Rule of Reason analysis of CBA's under the Sherman Act. The focus of the inquiry is "whether the restraint[s] imposed [are] justified by legitimate business purposes, and [are] no more restrictive than necessary." *Mackey v. National Football League*, 543 F.2d 606, 620 (8th Cir. 1976).

81. Each CBA since *Mackey* has purported to establish some sort of free agency. However, each CBA since *Mackey* has been challenged for unfairly restricting player movement. See discussion *supra* part II and accompanying text.

82. George Vecsey, *Sports of the Times; Rethinking the Salary Cap in the N.B.A.*, N.Y. TIMES, Jan. 8, 1993, at B7.

83. The average NFL career is less than four years. See Schneider, *supra* note 2 at 809 n.6.

84. *White v. National Football League*, 822 F. Supp. 1389, 1412 (D. Minn. 1993).

was Wilber Marshall.⁸⁵ This hardly amounts to "free agency" when one considers that literally hundreds of players became eligible to move under the Right of First Refusal/Compensation system during the past ten years, yet did not.

For players with less than three years experience the restrictions are more severe. These players, according to the agreement, "are subject to their former teams' exclusive negotiating rights, provided that they are offered" the required minimum salaries.⁸⁶ Thus, if the team management tenders at least the NFL minimum, the player is absolutely barred from moving.

The effect of the four year rule is to bar any player with less than four years of service from moving to another club. The minimum salary requirements are "peanuts" when compared with the NFL average.⁸⁷ Hence, what management has in effect done is to get almost all NFL players for the majority of their career at a price which is well below "fair market value." This amounts to the type of economic injury described in *Jackson*.⁸⁸ The potential injuries to the restricted players include "their inability to play for teams that may better utilize their skills, and thus maximize their value, their inability to switch to teams that would allow them to start or that . . . play on natural grass (which may prolong a player's career)."⁸⁹ Furthermore, given that "[t]he career of a professional athlete is more limited than that of persons engaged in almost any other occupation,"⁹⁰ the injury is compounded. These factors led the Jackson court to conclude that the players were irreparably harmed under the then existing player restrictions. A similar conclusion may be reached when the *White* Settlement comes up for renegotiation.

85. Larry Wesman, *League's New Salary Adjustments Unfair to Players, Lawyer Says*, USA TODAY, June 3, 1993, at 9C.

86. *White*, 822 F. Supp. at 1413.

87. See Weisman *supra* note 72. The average NFL salary was \$643,000, more than four times the minimum amount to be tendered to players with less than four years of experience. *Id.*

88. *Jackson v. National Football League*, 802 F. Supp. 226, 231 (D. Minn. 1992).

89. *Id.*

90. *Linseman v. World Hockey Ass'n*, 439 F. Supp. 1315, 1319 (D. Conn. 1977).

2. The Salary Cap

A critical component of the 1993 CBA was the imposition of a salary cap.⁹¹ Though the cap is only triggered if certain conditions are met, according to John Shaw, a member of the NFL management executive committee, “[f]rom all appearances and from figures I’ve seen recently, *we will trigger the cap [in 1994].*”⁹² When the salary cap is triggered, the amount of money that will be available to the players will be a fixed percentage of the DGR.⁹³

Although new to the NFL, the salary cap is a tool which has been used by the National Basketball Association (“NBA”) for the past decade. The NBA cap restricts the amount of money available for signing free agents from other teams, but does not limit the amount of money which the team may spend to retain its own players who have become free agents.⁹⁴ The legality of the salary cap has been challenged in the NBA as a violation of the Sherman Act.⁹⁵

a. Legality of the Cap: *Wood v. National Basketball Association*

The legality of the NBA salary cap was challenged by Leon Wood, a college basketball star, who was drafted by the Philadelphia 76ers in the first round of the 1984 college basketball draft. “At the time of the draft, the 76ers’ team payroll exceeded the amount permitted under the salary cap. The 76ers therefore tendered to Wood a one-year \$75,000 contract, the amount stipulated under the salary cap.”⁹⁶ The plaintiff claimed that players with similar talents were receiving disproportionate salaries due to their respective teams’ ability to alter their salary structure to accommodate

91. John Shaw, executive vice president of the Los Angeles Rams and one of the architects of the salary cap indicated that, “[a]t the heart of the negotiations was a trade-off of free agency for a salary cap.” T.J. Simers, *NFL Future Shock Near Reality; Pro Football: Several Accomplished Players Can Expect Pay Cuts or Loss of Jobs as a Result of Projected Salary Cap*, L.A. TIMES, Sept. 14, 1993, at C1.

92. *Id.* (emphasis added). Shaw added, “If we spend, as a league, 67% of our defined gross revenue on player costs, which is roughly 92% of total gross revenue, then we trigger a salary cap the next year.” *Id.*

93. *Id.* When the salary cap is triggered, the players will receive only 65% of the league’s DGR and it will ultimately drop to 62%. *Id.*

94. Mike Terry, *Hardaway and Magic Come to Terms: \$65 Million*, WASH. POST, Oct. 8, 1993, at C8.

95. *See Wood v. National Basketball Ass’n*, 809 F.2d 954 (2d Cir. 1987).

96. *Id.* at 958.

incoming players.⁹⁷ Wood argued that the salary cap “violate[s] Section 1 of the Sherman Act, 15 U.S.C. §1 (1982), and [is] not exempt from the Sherman Act by reason of the non-statutory ‘labor exemption.’”⁹⁸ The Second Circuit judge did not concur. According to Judge Carter, the salary cap is “the result of bona fide arms-length negotiation As such [the cap comes] under the protective shield of our national labor policy and [is] exempt from the reach of the Sherman Act.”⁹⁹ The judge, however, opened the door for incoming rookies to challenge the salary cap as a “breach of the duty of fair representation.”¹⁰⁰

Similarly, then, under the NFL salary cap, the players who were represented by the NFLPA would not currently have an antitrust claim against the League, though incoming rookies may have a claim for “breach of the duty of fair representation.”¹⁰¹

b. The Effect of the Cap: Counterbalancing Free Agency

NFL players point to the many lucrative contracts in the NBA and the high average salary as proof that they, too, may prosper under a salary cap. However, Charles Grantham, the Executive Director of the National Basketball Association Players Association (“NBAPA”), expressed the following foreboding thought: “it is my distinct impression that the football players are not going to prosper from the new salary cap the way basketball players did a decade ago. Different sport. Different time. Different agreement.”¹⁰²

The NFL agreement is essentially different in one critical area, the rigidity or inflexibility of its cap. The NFL salary cap is considered a “hard cap,” meaning the league cannot exceed the prescribed restrictions in any case. Conversely, the NBA has what is called a “soft cap” because it

97. *Id.* at 960.

98. *Id.* at 956-57.

99. *Id.* at 958.

100. *Wood*, 809 F.2d at 962. According to Judge Carter, because Wood was not a party to the CBA negotiations, he might properly claim that “such an arrangement [i.e., limiting the salary of one who was not represented in the CBA negotiations] might be illegal.” *Id.*

101. *Id.* The salaries received by incoming rookies under the salary cap was less than those of the previous year, the first time in several decades in which the salaries of incoming rookies has decreased. See Tony Grossi, *Cap Should Sack Rookie Holdouts*, PLAIN DEALER (Cleveland), May 6, 1993, at 2D.

102. See Vecsey *supra* note 82.

allows each team to spend an unlimited amount of money in order to keep their own free agents.¹⁰³

The soft cap has led to creative contracts which allow teams to completely circumvent the purpose of the cap. One such contract was signed by Chris Dudley, now of the Portland Trailblazers. Dudley, a free agent, was offered approximately three million dollars per year from his old team. However, he accepted a multi-year offer for more than one million dollars less per year with the Portland Trailblazers. The catch was that the contract with Portland, a team which is clearly at the salary cap limit, included an option for Dudley to become a free agent after one season. This contract allows Portland to re-sign Dudley after one year as its own free agent for any amount of money, none of which would count against the cap.¹⁰⁴ The Commissioner of the NBA, David Stern, attempted to void the contract as a "blatant and transparent attempt to circumvent the fundamental principles of the cap."¹⁰⁵ However, the Dudley contract was subsequently upheld by both a special master who investigated the matter and, more recently, in a federal court.¹⁰⁶ The NBA Commissioner expressed fears that the situation could spiral into "the kind of self-defeating salary wars that have plagued baseball."¹⁰⁷ These were just the type of problems the NFL sought to avoid in implementing the hard cap. Even so, the NFL teams have already begun to get creative with player contracts.

The Dallas Cowboys signed their star quarterback Troy Aikman to a long-term, fifty million dollar contract.¹⁰⁸ In order to avoid major salary cap problems in 1994 when the cap takes effect, the Cowboys front-loaded¹⁰⁹ the contract by paying Aikman a large percentage of the money immediately.¹¹⁰ Thus, rather than having Aikman's salary account for roughly 6.25 million dollars per year of the funds allotted for player

103. See Terry, *supra* note 94.

104. Sam Smith, *NBA Feeling Labor Pains, Cap Under Attack*, CHI. TRIB., Sept. 10, 1993, at 3.

105. *NBA Says Blazers Popped Salary Cap*, DET. FREE PRESS, Aug. 8, 1993, at B19.

106. *Dudley's Blazer Contract Gets Final Approval*, N.Y. TIMES, Oct. 28, 1993, at B19.

107. *Id.*

108. Randy Galloway, *Aikman is Wealthy; Jones is Wise; Owner Earns Credibility*, DALLAS MORNING NEWS, Dec. 24, 1993, at 1B.

109. Player agent Leigh Steinberg described how front loading will affect contracts in 1993: "Typically, if a player averaged \$1.5 million in a three-year contract, an old contract would be \$1.25 million for the first year, \$1.5 million for the second and \$1.75 the third. But this year, we've seen teams paying \$3 million in the first year." Glenn Dickey, *49ers Will Benefit From TV Rights War, Rise in Salary Cap Helps Protect Roster*, S.F. CHRON., Dec. 22, 1993, at B1.

110. *Id.*

salaries, it will amount to much less, freeing up money under the salary cap to sign other players. However, this type of salary structuring will only work in 1993, the only year the league is likely to operate without the cap.¹¹¹

It is clear from its structure that the NFL implemented the salary cap to undercut the effect of "unrestricted free agency."¹¹² The absolute cap guarantees revenues for only one group of people: the owners.¹¹³ The NFL owners have not only carved out a minimum of 35% of all Defined Gross Revenues, but have excluded revenues generated from NFL Properties, concessions, and luxury boxes from the DGR and, hence, the players.¹¹⁴

The problem with the cap from the players' standpoint is that it will provide a limited pool of money to be spent on salaries. The estimates have ranged from a low of \$26 million per team to a high of \$36 million per team to be spent on players each season.¹¹⁵ Jeffrey Kessler, a lawyer for the NFLPA stated, "[a]s far as the possibility of a \$26 million salary cap . . . [i]t's impossible [for it] to be \$26 million. The network television contracts would have to collapse off the face of the earth."¹¹⁶ The effect of the cap, according to Bobby Beathard, General Manager for the San Diego Chargers, will be quite severe on the players:

I've drawn up some scenarios on an overhead projector just to show our coaches what 1994 is really going to look like The 49ers have 23 players and have set aside \$23 million for them. Most people are guessing the cap to be around the \$33 million with \$4.5 million of that being set aside for players' benefits. That leaves \$28.5 million for salaries.¹¹⁷

111. The White Settlement eliminates the salary cap in the final year of the agreement (1999). *White v. National Football League*, 822 F. Supp. 1389, 1413 (D. Minn. 1993).

112. *See Simers, supra* note 91. "Salary Cap. By this time next year, those two words will probably have been the death knell for scores of athletes who shared one major flaw: They made too much money." *Id.*

113. *See White* 822 F. Supp. at 1413. At no time may the revenues exceed 64% of the DGR and shall be less for the majority of the agreement. *Id.*

114. Will McDonough, *Not So Fast On NFL Deal*, BOSTON GLOBE, Dec. 24, 1992, at 49. NFL Properties (NFL apparel, sports memorabilia, etc.), luxury boxes, and preferred stadium seating accounted for over \$150 million dollars or 10% of all revenues generated by the NFL in 1992. *Id.*

115. Mark Asher, *Salary Cap an Unknown in NFL Labor Agreement; 30 Million Limit Per Team Estimate for '94*, WASH. POST, Apr. 16, 1993, at C3.

116. *Id.*

117. *Simers, supra* note 91.

"That would also leave only \$5.5 million, under the 49ers plan, to pay *their remaining 25 to 30 players*."¹¹⁸

Unfortunately, this "means that teams like the Redskins, Giants, and 49ers, all of which are now nearly \$10 million over the cap, are in big trouble next season. They will have to dump good players just to stay upright."¹¹⁹ In fact, most teams are over the cap and will have to make significant player *cuts*.¹²⁰ Packer General Manager Ron Wolf commented on the players salaries which will put most teams over the projected salary cap for the 1994 season:

This is virgin territory for us old football guys. But my feeling is that this league is going to be in absolute turmoil next year. I don't think the players grasp what's going to happen. There are going to be players making \$700,000 this year, and if they want a job next year, they're going to have to take \$150,000.¹²¹

Wolf's prediction came true in November when the Cleveland Browns cut their star quarterback just five weeks after he signed a twenty seven million dollar contract.¹²² Though the Cleveland Browns do not openly admit it, it seems quite obvious that they were motivated by salary cap concerns.

The new television agreement between the NFL and Fox Television may provide some additional revenues for player salaries.¹²³ Some reports following the Fox deal proclaimed that it may boost the salary cap to as high as forty million per team.¹²⁴ However, this is probably not the case. The Fox Television deal provides for staggered payments, with a larger percentage being paid towards the end of the contract.¹²⁵ Thus, at least in 1994, there may not be a great increase in the projected cap.¹²⁶

In spite of the new Fox Television deal, it appears that most teams will still have to make significant cuts to remain below the salary cap.

118. *Id.* (emphasis added).

119. Peter King, *Perils of a New Era*, SPORTS ILLUSTRATED, Sept. 6, 1993, at 94.

120. *Id.*

121. *Id.*

122. Leonard Shapiro, *Browns Cut Kosar After Much Feuding Quarterback Signed 7-Year Deal Recently*, WASH. POST, Nov. 9, 1993, at E4.

123. See Dickey, *supra* note 109.

124. Leonard Shapiro, *And the Fourth Shall Be First: How Fox Stalked the NFL and Bagged TV Deal*, WASH. POST, Dec. 26, 1993, at D1.

125. Richard Justice, *Redskins Try to Fit New Cap for 1994, Must Important Numbers are Salaries*, WASH. POST, Dec. 22, 1993, at C1.

126. *Id.*

According to one expert, the league will get younger and no longer will teams be able to afford the quality veteran back-up, unless the player is willing to take a pay cut.¹²⁷ This system prevents players from achieving their true market value because it limits the total amount of revenues available to pay players.¹²⁸ As Beathard concluded, "Unfortunately, I think . . . [this] is a sign of the times."¹²⁹

The NFL, in retrospect, will not be able to justify the salary levels under the Rule of Reason analysis. The threshold question is "whether the restraint imposed is justified by legitimate business purposes and is no more restrictive than necessary."¹³⁰ The answer to the question is a resounding "No!" Only seven teams are below the projected salary cap limit of \$32 million dollars per year.¹³¹ In fact, cumulatively, the twenty-two teams that exceed the cap, do so by roughly \$131 million dollars or an average of about \$6 million per team.¹³² The NFL will not be able to justify the players only getting between about 62% and 65% of the DGR when these figures do not even include money from luxury boxes and NFL merchandise. Because the NFL will be operating at a very high profit margin, the player restrictions imposed by the *White Settlement* will be unjustified.

3. The Franchise/Transition Player Designations: Restricting The 84 Best Players in the League

The most restrictive aspects of the *White Settlement* are the Franchise and Transition player designations.¹³³ In the first year of the agreement over 300 players were eligible to move as unrestricted free agents; all of them except those designated as Franchise players were free to negotiate a contract with any NFL team.¹³⁴ The problem was that nearly 25% of

127. Ken Denlinger, *For Some, A Last Hurrah*, WASH. POST, July 22, 1993, at D1.

128. See Simers, *supra* note 91. "There are going to be cuts in pay, and there are going to be lots of young guys making little or no money. Everybody is looking at last year and thinking they are getting ready to break the bank. They are ignoring that little bitty thing—the salary cap." *Id.*

129. Bob Glauber, *NFL Veterans, Beware*, NEWSDAY, Aug. 29, 1993, at 10.

130. See Mackey v. National Football League, 543 F.2d 606, 662 (8th Cir. 1976).

131. See Wesiman, *supra* note 72. These teams are the Cincinnati Bengals, New England Patriots, Pittsburgh Steelers, Seattle Seahawks, Minnesota Vikings, Tampa Bay Buccaneers, and Los Angeles Rams.

132. *Id.*

133. See discussion *supra* part IV. A. Because each of the 28 teams may name one Franchise player in 1993 and two Transition players, a total of 84 players may be restricted with these designations.

134. See Asher, *supra* note 79.

those players were named either Transition or Franchise players.¹³⁵ Of the protected players, only the ones who were named plaintiffs in *White* changed teams and that is because the restrictions did not affect them.¹³⁶ The effect of the Franchise and Transition player designations is that the NFL superstars, i.e., those players who would command the highest salary in an open market, will never be able to test the "free market."¹³⁷ The NFL justifies the restrictions on two levels: (1) preserving a competitive balance and (2) the players who are so designated will be paid salaries commensurate with the highest paid players at their respective positions.

In terms of the first justification, statistics clearly indicate that the converse is true. Under a restricted system, the NFL has been dominated by only a handful of teams.¹³⁸ The courts have recognized this trend for some time. In *Smith v. Pro Football, Inc.*, the court noted that "despite the existence of all the league's restraints on player movement, the last three seasons nine teams have captured 22 of the 24 [playoff spots]."¹³⁹ By allowing players to move about, it would be less likely that only a few teams would dominate as is the case in baseball.¹⁴⁰

The NFL's second argument, at least ostensibly, appears to have merit. That is, by awarding the restricted players a salary which reflects the average of the top players at their position, it would appear that the league is essentially providing the players the monetary rewards of a free system without actually allowing them to move. According to Richard Bennet, an attorney for Wilber Marshall, the money promised to the players is a "cosmetic sham."¹⁴¹ The fact is, the top players will be denied their true worth. During the first few weeks, many lesser-named players were

135. *Id.*

136. Dave Goldberg, *Settlement Won't Send Players Packing*, L.A. TIMES, Jan. 7, 1993, at C6. Teams such as Philadelphia (Reggie White's former team) still named Franchise players because the NFL would award draft picks should the Franchise player, as was the case with Reggie White, change teams. *Id.*

137. The NFL protected list reads like a "who's who" among the NFL's elite players. The players include Steve Young, Neil Smith, Sean Gilbert, Wilber Marshall, Derrick Thomas, Junior Seau, Ronnie Harmon, Barry Foster, Reggie Cobb, Paul Gruber, Jumbo Elliot, Lomas Brown, Lorenzo White, Earnest Givens, Harold Green, Steve Emtman, Quentin Coryatt, Morton Anderson, Marco Coleman, Troy Vincent, Dale Carter, et al., all of whom are either Pro Bowl players or high draft picks. See *Teams Protect 66 From Free Agency*, PLAIN DEALER (Cleveland), Feb. 26, 1993, at 1D.

138. Over the past 15 years, 4 teams managed to win 12 of 15 NFL Championships (Super Bowls). WORLD ALMANAC 878 (1993).

139. *Smith v. Pro-Football*, 420 F. Supp. 738, 746 (D.D.C. 1976).

140. Between 1983-1992, only one team was able to win more than one Major League Baseball championship (Minnesota Twins (2)). WORLD ALMANAC 935 (1993).

141. See Weisman *supra* note 85.

experiencing salary increases of over 100%.¹⁴² The Franchise and Transition players, while they may receive an initial spike in salaries, will ultimately be compensated at a rate which is disproportionate to the players who are not protected.¹⁴³

In summary, the Franchise and Transition player restrictions are a blatant restriction on the league's best players. Because it can be shown that player restrictions do not have a direct relation to team success and thus, competitive balance, these player restrictions will likely be invalidated or bargained away following the expiration of the 1993 CBA.

V. CONCLUSION

The *White* Settlement imposed a radically different system of player restraints which were to govern player-management relations. While on the surface the restraints appeared to provide players with the free agency they long have coveted, it appears once again, the players have been duped.

The agreement has three fundamental restrictions which serve to control player movement. First, the minimum experience requirement establishes that any player with less than four years of service shall be subject to either the exclusive negotiating rights of his team or shall be subject to the right of first refusal/compensation.¹⁴⁴ In either case, history has shown that when such restrictions are imposed, players do not change teams and salaries do not increase.¹⁴⁵ Second, the salary cap dictates that at no time following the triggering of the cap will player salaries consist of more than 65% of the Defined Gross Revenues.¹⁴⁶

Of the revenues set aside for the players, the owners left out lucrative assets such as luxury boxes and merchandise sales, which total over \$150 million.¹⁴⁷ The cap, which is totally inflexible, will have the effect of gutting most NFL rosters of veteran players. Rather than creating a feeding frenzy among NFL teams, the cap will more likely create a fire sale among

142. "The average salary of the more than 90 free agents [who were not protected by their teams and] who have signed since March 1 [of 1993] is more than 140 percent above last year's average salary for all NFL players." Asher, *supra* note 79.

143. Once the player's salary is roughly equal to the average of the top players at his position, the Settlement provides that the player's contract will increase at a rate of twenty percent greater than the previous years contract. *White v. National Football League*, 882 F. Supp. 1389, 1413 (D. Minn. 1993).

144. See discussion *supra* notes 82-89 and accompanying text.

145. See discussion *supra* notes 18-25 and accompanying text.

146. See discussion *supra* notes 67-69 and accompanying text.

147. See discussion *supra* notes 112-13 and accompanying text.

teams as they struggle to get below the cap. Finally, the Transition and Franchise designations effectively eliminate any chance of free agency for the 84 top players in the league.¹⁴⁸ Not only will these designations serve to keep the top players at home, but will also substantially suppress the rate at which these top players salaries would grow.¹⁴⁹

While the *White Settlement* would have likely been a major victory for the players had they settled on only one of the restrictive measures of the *White Settlement*, agreeing to all three has placed the players in familiar territory . . . awaiting the next round of talks in 1999, in order to gain true free agency.

George Mavris

148. See discussion *supra* notes 75-78 and accompanying text.

149. See discussion *supra* notes 134-37 and accompanying text.

