Vanderbilt Journal of Entertainment & Technology Law

Volume 2
Issue 1 *Winter 2000*

Article 7

2000

The Changing Role of Agents in Professional Basketball

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The New NBA: The Changing Role of Collective Agents in Professional Basketball

By Bappa Mukherji

The 1990s were a period of unmitigated success for the National Basketball Association ("NBA"). Michael Jordan, the league's most popular player and one of the world's most recognized athletes, led his Chicago Bulls to six world championships in the decade and the NBA finals to higher television ratings. Even though Jordan announced his retirement in 1998, the league does not suffer from a lack of superstars poised to take his place. While the league may have lost Larry Bird as a player, it later regained him as a coach. Ervin "Magic" Johnson's retirement due to contracting HIV could have proven difficult for the league; instead, he was hailed as a hero for courageously

Bargaining Agreement

speaking out on his disease.

The players themselves shared in this success. The average player's salary in 1998 exceeded $2.2 million, the highest average for any professional team sport.[1] Contracts with values totaling over $50 million were commonplace. The Atlanta Hawks signed Dikembe Mutombo to a five-year contract that will pay him $56 million over its life;[2] the Orlando Magic re-signed Horace Grant to a five-year, $50 million contract; and the Portland Trailblazers signed Kenny Anderson to a seven-year, $50 million contract.[3] The sports page headlines screamed blockbuster deal after blockbuster deal. Seattle re-signed Gary Payton to a seven-year, $85 million contract;[4] the Washington Wizards agreed to a seven-year, $105 million contract with Juwan Howard;[5] the Miami Heat awarded Alonzo Mourning a seven-year contract worth $105 million;[6] and Shaquille O'Neal inked a seven-year, $120 million deal with the Los Angeles Lakers. This parade of record deals culminated with Kevin Garnett's six-year, $125 million contract with the Minnesota Timberwolves.[7]

The owners profited as well, despite paying these astronomical salaries, as they entered into lucrative television contracts with NBC and TNT in 1997. NBC purchased exclusive over-the-air network rights to the NBA through the 2001-02 season at a cost of $1.74 billion.[8] Time-Warner subsidiary Turner Broadcasting entered into a four-year contract extension with the league, granting it exclusive national cable television rights at a cost of $890 million.[9] The contracts more than doubled what the two companies has paid for the previous four-year contracts[10] and will net each franchise about $23 million over each of the four contract years.[11]

Despite these positive factors or perhaps due to them, the NBA and the Players Association recently went to war over how to divide the enormous revenues being generated by the league. The sides could not settle their differences and so the owners elected to lock out the players at the end of the 1997-98 season. The lockout dragged on through the summer and was not resolved prior to the scheduled beginning of the 1998-99 season. The NBA, which had taken great pride in never having missed a game due to a labor dispute, ended its streak. The lockout ended six months after it began, resulting in a shortened season and a new six-year collective bargaining agreement, or CBA.[12]

This Article will discuss the status of agents for NBA players after the adoption of the new collective bargaining agreement (the "1999 Agreement"). First, this Article will summarize the relevant provisions of the prior collective bargaining agreement (the "1996 Agreement") and illustrate how application of these provisions led the owners to declare a lockout. Next, it will review key provisions of the 1999 Agreement. It will conclude by discussing how the new CBA and the recent consolidation in the sports representation business will affect agents.

Provisions in the 1996 Collective Bargaining Agreement

The NBA Salary Cap

The concept of a team salary cap in professional sports is not new. As the name implies, a salary cap places a limit on the combined salary one team can pay its players in a given year. A cap serves two main purposes. First, imposing an upper limit on a team's largest operating expense provides team owners with some degree of cost certainty. Second, at least in theory, a cap promotes parity among the teams in a league by preventing one team or a small group of teams from signing all of the best (and presumably most expensive) players.

A salary cap has a long history in professional basketball. In its 1946-47 inaugural season, the league instituted a $55,000 salary cap and has maintained one since. The structure for the modern-day salary cap was introduced in the 1983 NBA Collective Bargaining Agreement. The innovation contained in the 1983 Agreement was a salary cap based on a percentage of the league's gross revenues, which consisted of gate receipts, local and national broadcast revenue, and preseason and postseason revenue.[13] The 1987 Collective Bargaining Agreement continued the use of a salary cap and guaranteed that aggregate player salaries would equal at least 53 percent of the league's revenues. Spurred by the emergence of such stars as Magic Johnson, Larry Bird, and Michael Jordan, the popularity of the NBA skyrocketed. Hand in hand with its growing popularity came new sources of revenue. When the time came to negotiate a new agreement with the league in 1996, the players demanded a share of these new revenue streams. As a result, the 1996 Agreement expanded the definition of gross revenues (which was termed "Basketball Related Income" or "BRI") to include a portion of the revenue generated from luxury suites, international television, and arena signage. The salary cap was equal to 48.04 percent of BRI under the 1996 Agreement.

Exceptions to the Salary Cap

Unlike the "hard" cap in the NFL, the NBA's version contained exceptions that allowed a team to exceed the salary cap under certain circumstances. For example, the 1996 Agreement contained the "$1 Million Exception." This clause allowed teams already over the salary cap to sign one or more players to one- or two-year contracts, provided that their aggregate first-year salary was less than $1 million. A team could utilize this exception only every other year.

The primary exception to the cap, however, dealt with what the CBA termed "Qualified Veteran Free Agents." This provision became popularly known as the "Larry Bird exception." In short, the Bird exception allowed teams to ignore the cap and re-sign certain veteran players at any price. In pertinent part, the rule reads:

> A team may re-sign its own free agent for any amount if he played for the team for some or all of each of the prior three consecutive seasons (or, if he changed teams, he did so only by assignment or by signing with his prior team during the first of the three seasons).[14]

In an era when star players in other sports jump from team to team chasing the highest salary, the purpose of this rule was to create an incentive for marquee players to stay with a single team.

The manner in which the 1996 Agreement dealt with rookies compounded the potential player cost problem associated with the Bird exception. The league wanted to ensure that a team could always sign a first-round draft pick regardless of the team's cap situation, limit the amount that teams had to pay to unproven rookies, and give a player's team the ability to re-sign him to a longer term contract if the team desired. To this end, the 1996 Agreement also instituted a three-year rookie salary scale that limited payments to first-round draft picks. A team could pay this rookie salary regardless of whether the team had room under the salary cap.[15] Furthermore, a club had the exclusive right to renegotiate with its own first-round draft choice after the player had completed two years of his initial three-year contract.

Designed to control costs, the rookie provisions backfired. The rookie renegotiation clause placed enormous pressure on teams to extend the contracts of valued "rookies" before they became free agents. Furthermore, the rookie scale contract lasted for a term of three years, while a player who had played for one team for three consecutive years qualified for the Bird exception. Thus, a team could extend the rookie scale contract without being hampered by the salary cap.

The Bird exception allowed player salaries to skyrocket. The salary cap for the 1997-98 season was $26.9 million per team. Utilizing the Bird exception, the Chicago Bulls were able to pay Michael Jordan $33.14 million during the 1997-98 season — more than the amount 17 teams paid for their entire rosters. The rookie-related provisions allowed Kevin Garnett to negotiate a six-year contract with the Minnesota Timberwolves during his second year in the league for $125 million. Meanwhile, veteran Alonzo Mourning inked a seven-year, $105 million contract with the Miami Heat, and Shawn Kemp signed a seven-year contract with the Cleveland Cavaliers that will pay him $107 million.[16]

These examples demonstrate that the exceptions defeated both purposes of the NBA salary cap. The owners had no cost certainty. During the 1997-98 season, the final year of the former collective bargaining agreement, 24 of the 29 teams exceeded the salary cap of $26.9 million per team.[17] Additionally, there was no real parity in the league. The Chicago Bulls, led by Michael Jordan and his $33 million plus salary, dominated the competition by winning six world championships in the 1990s.

The NBA Lockout

Escalating Player Salaries

Blaming escalating player salaries, team owners publicly lamented that 15 of 29 teams lost money during the 1997-98 season. Russ Granik, Deputy Commissioner of the NBA, stated that the league was becoming unprofitable as a result of player salaries increasing faster than revenue growth.[18] The owners claimed that the league's profitability had steadily declined over the four years prior to the lockout.[19] They further claimed that, overall, the league had posted a negative cash flow for the 1997-98 season.[20] The owners clearly implied that, unless salaries were reined in, the financial viability of the league was seriously in question.

Other sources did not paint the picture quite so bleakly. The Players Association, which receives annual audited financial statements for the league and the teams, concluded that only four clubs posted losses during the 1997-98 season.[21] Analysis conducted by FORBES indicated that only ten NBA teams were in the red.[22] While not privy to the financial statements of the teams, the FORBES analysts relied on publicly available information and informed estimates in reaching their conclusions. They noted that owners exclude most of the revenues from key sources when calculating profitability. Specifically, owners omit a portion of the revenues from arena naming rights, luxury suites, and team merchandise stores. Once the profits generated from these revenue streams are added, some of the unprofitable teams suddenly showed a profit.[23]

The owners clearly implied that, unless salaries were reined in, the financial viability of the league was seriously in question.

The players union responded that if the owners were in fact losing money, they had no one to blame but themselves.[24] After all, the teams had agreed to pay the salaries that they later claimed were so onerous. The collective bargaining agreement only guaranteed that aggregate player salaries would exceed 48.04 percent of Basketball Related Income; the owners essentially volunteered to pay the players more. As National Basketball Players Association Executive Director G. William (Billy) Hunter summarized: "We don't see any need to change the current process. Our position is, if you don't want to pay it, don't do it. Just say 'No.'"[25]

The same agreement that secured the salaries also empowered the owners to declare a lockout. The 1996 Agreement provided that owners could re-open the Agreement if aggregate player salaries exceeded 51.8 percent of BRI — approximately $900 million. This threshold was exceeded with players collecting an estimated 57.2 percent of BRI — almost $1 billion — during the 1997-98 season.[26] The NBA Board of Governors, by a 27 to 2 margin, voted to exercise its right to re-open the former CBA on March 23, 1998.[27]

The Owners' Positions vs. The Players' Positions

While other issues were addressed,[28] the greatest divide between the league and the Players Association concerned money. The owners sought to enact a hard salary cap, as in the NFL. A hard cap would necessarily eliminate the Bird exception. Naturally, the players wanted to keep the Bird exception and other exceptions to the salary cap. They argued that the Bird exception was necessary to reward the league's best players. Moreover, the players lobbied to introduce another exception to the cap similar to the $1 Million Exception, but with the exception amount tied to the average player salary in the league.

The 1996 Agreement contained a three-year rookie salary scale, giving clubs the exclusive right to renegotiate with their draftees during the second contract year. The Kevin Garnett signing proved just how financially taxing the prior system could be. To put the deal in perspective, Garnett alone received $21 million per year while the new television deal paid each team about $23 million annually. To allow teams more time to assess young players before deciding to sign them to long-term contracts, the league argued it needed to extend the length of rookie contracts. The Players Association agreed that a disproportionate amount was being paid to young players and hoped to see those funds redistributed to increase veterans' salaries. Further, the players wanted the league minimum salary to be tied more directly to the number of years a player had been in the league. The owners were willing to increase minimum salaries for veterans.

Finally, the two sides clashed over what percentage of the league's growing revenues should be paid to players. Obviously, the Players Association wanted the largest percentage possible, noting that the NFL pays its players over 63 percent of its revenues. The league countered

Maximum Player Salaries

Ray Allen negotiated a 6-year, $70.9 million contract with the Milwaukee Bucks. This table demonstrates the structure of Allen's contract and other maximum six-year contracts under the current salary cap. The maximum salary applies to the first year of a contract. A Qualifying Veteran Free Agent or Early Qualifying Veteran Free Agent (i.e., players with Bird rights) may have his salary increase in each subsequent year by an amount up to 12.5% of the player's salary in the first year of the contract.

	1-6 Years	6-9 Years	10+ Years
1st year	$9.000*	$11.000	$14.000
2nd year	$10.125	$12.375	$15.750
3rd year	$11.250	$13.750	$17.500
4th year	$12.375	$15.125	$19.250
5th year	$13.500	$16.500	$21.000
6th year	$14.625	$17.875	$22.750
Total Salary	$70.875	$86.625	$110.250

*in millions

that the NFL's definition of revenues was much more narrow than its definition of Basketball Related Income. The owners conceded, however, that player salaries should increase in proportion to league revenues.

The New Collective Bargaining Agreement

On January 6, 1999, the NBA and the Players Association reached an agreement that ended the six-month lockout and entered into a new collective bargaining agreement. The players approved the new agreement by an overwhelming 179 to 5 ratification vote on January 7, 1999.[29] The Board of Governors voted in favor of the agreement the following day.

Salary Cap and Escrow System

The new CBA raised the salary cap to $30.0 million for the 1998-99 season and to $34.0 million for the 1999-2000 season.[30] Thereafter, the salary cap will be based on BRI; specifically, the cap will be equal to 48.04 percent of the projected BRI for the year.[31] However, the salary cap for the 2000-01 season is guaranteed to be at least $35.5 million.[32]

Since exceptions to the salary cap were retained, teams may still exceed the cap. To protect teams against spiraling salaries, the new CBA limits aggregate player salaries to 55 percent of BRI in years four, five, and six of the agreement. If the league exercises its option on the seventh year, the players would be limited to receiving 57 percent of BRI.[33]

To help enforce the aggregate salary limits, the 1999 CBA established an escrow system that will become effective in the fourth year of the Agreement.[34] Under this system, ten percent of player salaries will be placed in escrow, with the players able to decide who among them must pay the escrow tax.[35] If aggregate player salaries exceed 55 percent of BRI, the league will be reimbursed (with interest) the amount of the overage by the escrow fund. Any money remaining in the escrow fund will be returned to the players with interest. If the overage exceeds the amount in the escrow fund, teams whose spending exceeds the combined percentage of the revenue split plus the escrow will pay a dollar-for-dollar tax to the league for redistribution on a league formula.

Player Salaries

The new CBA is unique among collective bargaining agreements in professional sports because it establishes a maximum salary that a player may be paid. Although a hard salary cap indirectly limits a player's salary, no professional sports union had ever agreed to a maximum salary for an individual player.[36] The impact of placing a ceiling on payments to a player was softened by the fact that the CBA guarantees that NBA players shall have the highest average salary for any professional team sport.[37] Additionally, no player was required to take a pay cut. A grandfather clause allows any player to sign for 105 percent of his salary in the last year of his prior contract.[38]

The maximum salary that a player may be paid is based on the number of years he has been in the league. In the first year of a contract, a player with fewer than six years in the league may be paid up to $9 million. If the salary cap for the first year of his contract exceeds $36.0 million, however, the player may be paid up to 25 percent of the salary cap for the first season.[39] A player with six to nine years in the league may be paid up to $11 million in the first year of his contract. If the salary cap exceeds $36.67 million that year, however, the player may be paid up to 30 percent of the amount of the salary cap in the first year.[40] Finally, players with ten or more years in the league may be paid up to the greater of $14 million or 35 percent of the salary cap in effect at the time the contract is executed.[41]

The new CBA continues to contain a three-year rookie scale. A first-round draft pick's salary will be determined solely by his draft position. However, the new CBA extends the length of rookie contracts. Teams would hold an option for the fourth year and a right of first refusal in the fifth year. Teams would have the exclusive right to renegotiate in the third year.[42] If a team elects to exercise its fourth-year option, the player's salary is predetermined for that year as well.

The new CBA dramatically raises the minimum salary levels as well. The entry-level minimum salary was increased. Under the new system, a player's minimum salary increases each year he is in the league. Rookies are guaranteed $287,000 and veterans entering their eleventh year are guaranteed at least $1 million. Minimum salaries above $500,000 will be paid from a league-wide fund. The purpose of the fund is to protect older players from getting cut in order for teams to save money.[43]

Exceptions to the Salary Cap

Bowing to player demands, the 1999 Agreement created a new exception to the salary cap. The "Mid-Level Salary Exception" operates in much the same manner as the $1 Million Exception[44] but with higher exception amounts. The exception provides that a team may sign one or more players during each year of the Agreement who call for an aggregate salary not in excess of the enumerated exception amount in the first year of the contract(s). For the 1998-99 season, the exception amount was $1.75 million. The exception amount increases to $2.0 million in the second year and climbs to $2.25 million for the 2000-01 season.

The Mid-Level Salary Exception differs from the $1 Million Exception in three main respects. The first difference is the calculation of the exception amount for the final three years (and the option year) of the Agreement. Instead of a fixed number, the exception amount for the Mid-Level Salary Exception is tied to the average player salary in the league. Thus, as the average salary in the league increases, the exception amount correspondingly grows. Second, contracts signed pursuant to the new exception may be up to six, rather than two, years in length. Finally, a team may utilize the Mid-Level Salary Exception every year instead of once every other year.

Effect of the 1999 Agreement on the Players

Under the first year of the new CBA, the average NBA salary increased from $2.37 million to $2.64 million.[45] The median salary increased from $1.4 million to $1.68 million. Salaries as a whole increased 17 percent.[46] The players received 59 percent of BRI in 1999, up from 57 percent in 1997-98.[47] Now, 71 percent of all players earn in excess of $1 million, up from 61 percent.[48] Fifty percent of all players earn between $1 million and $4 million annually, up from 44 percent.[49] Fifteen players signed contracts under the new Mid-Level Salary Exception.[50] Aside from the ten players going into the final year of their rookie scale contracts who signed six-year, $70.9 million extensions, only two players, Rik Smits of Indiana and Jayson Williams of New Jersey, received the maximum allowable salary.[51]

Trends Emerging in the Sports Representation Business

Ray Allen Negotiates His Own Salary

Shortly after the new CBA became effective, Ray Allen chose to fire his agent Mason Ashe and represent himself in contract negotiations with the Milwaukee Bucks.[52] The former University of Connecticut guard negotiated directly with team owner Herb Kohl. Allen believed that he deserved the maximum salary the team could offer and Kohl was willing to pay Allen the maximum. The two agreed that Allen would be awarded a six-year, $70.9 million dollar contract extension, the maximum salary allowed for a third-year player under the new CBA.[53] In that respect, Allen's contract is almost identical to the contracts signed by other rising stars Kobe Bryant,[54]

Application of the Mid-Level Salary Exception

How a Contract Might Be Structured

Example 1 depicts a player entering the 2000-01 season. The computation assumes that the player signs for the entire exemption amount, signs for the maximum six-ear term, and gets the maximum annual increase. The maximum annual increase is 10% of the salary for the first season of the contract. Thus, the player's salary may increase by an amount up to $225,000 each year.

Example 2 assumes that a player is entering the 2001-02 season, the first season that the exemption amount is based on the average player salary. The average player salary for 1999-2000 was $2.64 Million. If we assume that player salaries increase by an annual rate of 8%, the average player salary will climb to approximately $2.85 million for the 2000-01 season. The 1999 Agreement provides that the exemption amount for the 2001-02 season shall be 108% of the average player salary for the previous season. As a result, the exemption amount for the 2001-02 season would be just over $3 million. Again, the computation assumes that the player signs for the entire exemption amount, signs for the maximum six-year term, and gets the maximum annual increase.

	Example 1	Example 2
First Season of Contract	2000-01	2001-02
Exemption Amount	$2,250,000	$3,000,000 (est)
Year 1	$2,250,000	$3,300,000
Year 2	$2,475,000	$3,600,000
Year 3	$2,700,000	$3,600,000
Year 4	$2,925,000	$4,200,000
Year 5	$3,150,000	$4,500,000
Year 6	$3,375,000	$4,800,000
Total Contract Value	$16,875,000	$27,300,000

The foregoing examples demonstrate the largest contracts that a player could receive utilizing the Mid-Level Salary Exemption. The same amounts could be split between two or among several players.

Allen Iverson, Shareef Abdur-Rahim, and Antoine Walker.

Once the essential terms of the contract were finalized, Allen hired a team of representatives to review the deal. Allen utilized the services of two attorneys — Jeremiah DeBerry and high-profile litigator Johnnie Cochran — his business manager Mark Christie and accountant Michael Horsey. Instead of paying these representatives a commission based on the size of the contract, he paid them all an hourly rate of up to $500. Allen said of this arrangement: "I don't need somebody skimming millions off the top."[55] As he explained later, "It was merely a good business decision. I don't need an agent. I know how much money I'm going to make. If you're smart, and know what you're doing, you can negotiate what you're worth."[56]

Other players have taken Allen's lead. Charlotte Hornets all-star guard Eddie Jones has reportedly fired his agent Sal Difazio and plans to hire an attorney to help him negotiate his next contract.[57] Some recent draft picks such as former Utah standout Andre Miller also are forgoing agents in favor of attorneys.[58] Shortly after signing a maximum salary deal under the new CBA, Allen Iverson of the Philadelphia 76ers fired high-profile agent David Falk. Iverson said that he could have negotiated the deal himself, stating: "I fired him because I felt that with the new collective bargaining agreement, all I needed was [sic] my lawyers."[59]

Although Allen has been much ballyhooed in the press as a pioneer, he was not the first player to either represent himself or utilize the hourly services of an attorney to negotiate a contract. New York Knicks forward Buck Williams represented himself during the latter stages of his 17-year basketball career. Two-time league MVP Karl Malone hired an agent for the first time in 1998 after 13 years in the NBA.[60] Grant Hill has never utilized the services of an agent; instead, he is the client of Washington attorney Lon Babby. Tim Duncan, Jerome Williams, Christian Laettner, Cherokee Parks, and Pat Garrity are all also clients of Babby.[61] Even Allen himself admits: "It's nothing new. That's why it struck me as odd everybody was so surprised. I've seen and heard about guys doing it without agents before."[62]

Consolidation of Sports Representation Firms

It is clear that the economics of player representation are changing. Recently, SFX Entertainment ("SFX") and Assante Corporation ("Assante") have made aggressive entries into the sports representation business through rapid strings of acquisitions. Both companies proclaim the advantages of their size and ability to offer a wide range of services to clients. SFX seeks to represent athletes, teams, leagues, sports properties, and corporations in areas as diverse as talent representation and marketing, stadium and arena naming rights, television production and programming, licensing and public relations, event management, and online services.[63] Assante, on the other hand, boasts that it offers full-service talent representation, business management, and personal support services to its clients.[64]

Over a period of 18 months, SFX has acquired 14 sports marketing and management agencies and consolidated them into the SFX Sports Group.[65] In 1998, SFX began by acquiring high-profile basketball agent David Falk's agency, Falk Associates Management Enterprises or FAME, for a little over $120 million.[66] The company then quickly followed up by purchasing The Marquee Group, an international sports marketing firm, in an all-stock deal valued at almost $100 million.[67] Prior to the SFX buyout, Marquee had acquired ProServ, the sports representation agency founded by tennis star Donald Dell. SFX also has acquired such firms as Integrated Sports International (ISI), Tellen & Associates, Hendricks Management Company, and SME Design.

Assante, a Canadian entertainment and financial management company, announced its entry into the sports agency business by acquiring the business of Leigh Steinberg, one of the nation's leading agents, for up to $120 million.[68] Assante completed the acquisition of Steinberg, Moorad & Dunn effective November 9, 1999.[69] Assante teamed Steinberg, Moorad & Dunn with business managers NKS Management, Inc.[70] and Philpott, Bills & Stoll[71] to create Assante's Sports and Entertainment Group.[72] Less than two months later, Assante acquired Eugene Parker & Associates, Inc., which does business as Maximum Sports Management.[73] Prior to its acquisition, Maximum Sports Management had grown into the third largest representation firm of professional football players and represented over 60 football and basketball players.[74]

How the New Agreement Will Affect the Player-Agent Relationship

The NBA Players Association's Agent Regulation Program provides that an agent may be paid up to four percent of a player's contract. While the new CBA does not change the maximum percentage that agents can charge, changes in the 1999 Agreement may dramatically affect the manner in which they are compensated. Specifically, agents offering only contract negotiation services may be paid a smaller commission or by the hour.

Players Question the Need for a Traditional Agent

Many athletes perceive agents as a necessary evil.[75] They view agents as providing the single service of negotiating their contracts. Were it not for that one — albeit important — function, they would never employ agents at all. To the extent that an agent procures endorsement deals for the player, the agent is paid a separate commission. Not surprisingly, many players with this mindset believe that agents are overpaid.

Obviously, commission-based compensation encourages agents to negotiate top dollar for their clients. The 1999 Agreement, however, diminishes the force of such incentives by pre-determining how much certain classes of players will be paid. First, the maximum salary for a marquee veteran now has a ceiling. The maximum salary limitation, of course, will only apply to a select number of players each year.[76] While no player is guaranteed a maximum salary contract, most of the league's premier players will no doubt seek and be awarded one. The majority of these players, like Ray Allen, will be aware of their market value without consulting an agent. Were Allen to have paid the maximum four percent commission to negotiate his contract extension, the commission would have topped $2.8 million. Since it is not uncommon for players to ask their agents to reduce their commission rates, it is unlikely that Allen would have paid the maximum commission had he utilized an agent. For example, he paid his agent Lee Fentress $12,000 to negotiate his first contract, well below the four percent maximum. Under the 1999 Agreement, star players will have even greater reason to insist on lower agent fees.

Next, minimum salaries have been dramatically raised. Over 20 percent of players would have been paid the league minimum entering the 1998-99 season. By raising minimum salary levels for veterans, even greater numbers of players may be playing for the higher minimums in the future. The idea of paying a commission to receive the minimum salary is not particularly attractive to athletes.[77]

Finally, every rookie drafted in the first round will be paid a set salary for his first three years in the league. Regardless of representation, the first player selected in the year 2000 draft will sign a three-year, $9.5408 million contract with a first year salary of $2,947,200; the final player selected in the first round of the year 2000 draft will be eligible to receive a three-year, $1.9 million contract.[78] Similarly, the 1999 CBA spells out each first-round draft pick's salary in his fourth year, if his team exercises its option. What was once a matter of negotiation is now a matter of consulting a table.

Agents as Full Service Advisors

Certain agents do focus solely on contract negotiation and endorsements. The majority, however, provide a broad array of other services to their clients. They may provide tax planning and preparation; cash flow management and budgeting; retirement and estate planning; investment and trust management; insurance planning; assistance buying homes and automobiles; and other business management services such as liaising between the player and team management, banks, accountants, and attorneys. Agents also may help players establish charitable foundations and plan for life after sports.

Most agents provide personal management services as well. They may help coordinate travel arrangements; schedule personal appearances and press conferences for public relations and marketing; coordinate off-season workouts, training, and dieting; buffer the player from the outside world; and provide personal advice of all types. The types of services that agents provide is limited only by personality. Whether getting tickets to a jazz concert, hiring a cleaning service to take care of the player's house, ensuring that the player's pet is cared for during a vacation, or reminding a player to change the oil in his car, an agent is a counselor in the broadest sense.

> Under the 1999 Agreement, star players will have even greater reason to insist on lower agent fees . . . . What once was a matter of negotiation is now a matter of consulting a table.

While an attorney may be fully equipped to negotiate a contract or endorsement deal, establish a charitable foundation, or provide tax and estate planning advice, few attorneys are equipped to provide the full range of business and personal services required by many professional athletes. Under the 1999 Agreement, it would seem that a rookie has little reason to pay an agent a commission for negotiating his contract. The 1996 Agreement also contained a rookie salary scale providing the same reason to reduce the fees paid to an agent. Nevertheless, many rookies still paid their agents the maximum allowable commission. Presumably, then, some players truly do value the additional services provided by their agents or believe that a good agent can bolster their draft position.

If he so chooses, an athlete can get most of the services offered by an agent from other sources. An attorney can negotiate contracts and endorsements, provide tax and estate planning advice, and provide career and personal counseling. An accountant or financial advisor can prepare tax returns, pay bills, assist with purchasing homes or automobiles, create a retirement plan, and help acquire insurance. Investment advisors can manage a player's portfolio. Of course, all of these service providers must be compensated.

To the extent that most professionals are paid by the hour, clients seek to minimize their services. Thus, an athlete may fail to seek advice or counsel even when necessary to avoid the associated cost. More often, however, a young athlete may not even realize that he should seek counsel on a particular issue. Paying a trusted advisor a fixed fee or commission, on the other hand, eliminates the disincentive to seek advice when appropriate. Good agents are proactive; they initiate contact with their clients in order to discover and anticipate potential problems. An athlete can feel comfortable relating his experiences, simply chatting or discussing his concerns at length with his agent without fear of being invoiced for the conversation later.

Large, Consolidated Representation Company vs. Boutique Agency

Despite the rapid consolidation in the industry, there will always be a place for the small "boutique" agency in the world of professional sports. Economic necessity will force the large, consolidated agencies to focus on attracting established players and highly sought-after young players. They will not be able to justify devoting adequate resources to maintain smaller or less promising accounts. While almost all agents attempt to stay in close contact with their clients, an agent with just one superstar may actually travel with his or her client during the season. This level of service is something that a large agency with numerous clients will never be able to offer.

Additionally, most players will never have the renown to take advantage of the marketing leverage promoted by the large agencies. It is unlikely that one of the large corporate clients represented by SFX Sports Group will center an advertising campaign around a second-string small forward. The typical professional athlete must focus on smaller local endorsements in the team's city or the player's hometown. That player may be able to make an appearance at a local electronics store in exchange for a new stereo system.

The "one-stop shopping" approach taken by these large agencies suffers from other disadvantages as well. An athlete who entrusts one company to manage all aspects of his career from contract negotiation to endorsements, from marketing to cash and investment management will have a lack of diversity of opinions. For example, intelligent people may differ on whether an athlete should endorse a particular product or seek to be traded to a different team. If all of a player's career advice comes from a single source, there is a danger that the player will not have all sides adequately presented. Another disadvantage is the absence of checks and balances. A player would be better served having a team of professional advisors — including an agent, an accountant, and an independent financial advisor — watching out for the player and watching each other, rather than trusting a single organization to police itself.

After weighing the advantages of a large, consolidated company against a small boutique agency, many athletes — from superstars to minimum salary players — will choose the smaller firm. Thus, small boutique agencies promising strong personal service will continue to thrive. In fact, more of these agencies may spring up due to the valuations given to sports representation firms in this recent trend of consolidation. Some top agents and young agents with promising futures who are currently working for recently-acquired firms will likely open their own agencies, hoping for a lucrative buy-out offer.[79]

The Evolving Role of Agents in the NBA

As the NBA adjusts to the new agreement, more players are likely to engage attorneys to negotiate their contracts. Given the level of compensation some NBA players receive, the idea of paying an hourly fee instead of a commission is too attractive to ignore. Ray Allen may be perceived as the first, but he will certainly not be the last.

This trend by no means signals an end to agents or commissions. The 1999 Agreement reduces the uncertainty associated with contract negotiations, weakening the rationale to pay a commission for contract negotiation services. The emphasis now has shifted to the other services that an agent offers and the value of those services. Thus, agents who currently only negotiate contracts and secure endorsements will face enormous pressure to reduce commissions, work for a flat or hourly fee, or broaden their services.

A wave of consolidation has already begun, fueled by this desire to expand the services offered to athletes. These large, consolidated agencies will attempt to leverage their client base to create new revenue streams. Their impressive array of services and resources may appeal to many players. Instead of squeezing out the smaller firms, however, the rise of the mega-agency will open an opportunity for more boutique agencies promising to deliver strong personal service. A small firm, working in conjunction with other service providers, will be able to mirror the services of its larger competitors but have the advantage of diverse viewpoints and a more vigilant system of checks and balances.

Ray Allen's success in negotiating his own contract may lead other players to believe that they would not benefit from employing a zealous advocate or, more importantly, other professionals to help them manage their business affairs. Instead, the lesson that players should learn is not necessarily to fire their agents, but to become better-educated consumers of their representation services. ◆

1 If a full 82-game season had been played in 1998-99, the average NBA player salary would have been $3.0 million. See Tom Enlund, *Stern Takes His Case to Players: Commissioner's Memo Outlines Owners' Offer*, MILWAUKEE JOURNAL SENTINEL, Dec. 18, 1998, at 1, *available in* LEXIS, News Library.

2 Chris McCosky, *Pistons Notebook: Hawks Please Mutombo with $56-Million Contract*, THE DETROIT NEWS, Dec. 5, 1996, *available at* <http://www.detroitnews.com/96/sports/9612/05/12050207.html>.

3 *News from July 16* (visited Feb. 11, 2000) <http://www.ecsintl.com/~patricia/nba-daily/older/96-97/scores716.txt>.

4 See id.

5 Roscoe Nance, *Ruling on Howard Sends a Warning-Team Officials Say Message is that Rules Will Be Enforced*, U.S.A. TODAY, Aug. 14, 1996, at 9C, *available in* LEXIS, News Library.

6 Chris Sheridan, *Millions Keep Flowing as NBA Stays Busy*, THE STANDARD TIMES, July 15, 1996, *available in* <http://www.st.com/daily/07-96/07-15-96/d01sp083.htm>.

7 Michael K. Ozanian, *Fields of Debt*, FORBES 174, Dec. 15, 1997, *available in* LEXIS, News Library.

8 Sean Wolfe, *NBC, Turner Re-Sign with NBA at Double the Cost*, MEDIA CENTRAL, Nov. 12, 1997, *available in* <http://www.mediacetral.com/Magazines/MediaDaily/OldArchives/199711/1997111201.html>.

9 See id.

10 See id.

11 *David Stern and Russ Granik Teleconference* (posted Mar. 23, 1998) <http://www.nba.com/news_feat/00634674.html>.

12 The league has the option to extend the Agreement for an additional year. *See* 1999 NATIONAL BASKETBALL ASSOCIATION COLLECTIVE BARGAINING AGREEMENT, art. XXXIX, § 2 (Jan. 1999) [hereinafter 1999 NBA CBA].

13 Robert Bradley, *Labor Pains Nothing New to the NBA* (visited Feb. 12, 2000) <http://members.aol.com/_ht_a/apbrhoops/labor.html>.

14 Jeannie Roberts, *New Bird Rule Would Limit Increases in Stars' Pay* (posted Nov. 24, 1998) <http://www.aa.mlive.com/pistons/stries/19981124birdrule.html>.

15 The 1999 Agreement contains a similar "Rookie Exception" to the salary cap. *See* 1999 NBA CBA, *supra* note 12, at art. VII, § 6(f).

16 See Ozanian, *Fields of Debt*, *supra* note 7; Sheridan, *supra* note 6; *Tribute to Shawn Kemp* (visited Feb. 12, 2000) <http://www.citynet.com/~kammerer/kemp.html>.

17 Mike Monroe, *NBA at a Standstill: Owners Call a Lockout*, THE DENVER POST, June 30, 1998, at D-1, *available in* LEXIS, News Library.

18 *Vote Re-Opens Collective Bargaining Agreement* (posted Mar. 23, 1998) <http://www.nba.com/news_feat/00634302.html>.

19 *David Stern and Russ Granik Teleconference Transcript* (visited Feb. 12, 2000) <http://www.nba.com/news_feat/stern_granik_980629.html>.

20 See Michael K. Ozanian, *Selective Accounting*, FORBES, Dec. 14, 1998, *available in* <http://www.forbes.com/forbes/98/1214/6213124a.htm>; *David Stern and Russ Granik Teleconference Transcript*, *supra* note 19.

21 See *David Stern and Russ Granik Teleconference Transcript*, *supra* note 19.

22 See Ozanian, *Selective Accounting*, *supra* note 20.

23 See id.

24 John Donovan, *League at a Crossroads: NBA on Shaky Ground as Owners, Players Fight Over Money* (posted Oct. 30, 1998) <http://www.cnnsi.com/basketball/nba/1998/labor/news/1998/10/30/lockout/index.html>.

25 Id.

26 See *Vote Re-Opens Collective Bargaining Agreement*, *supra* note 18.

27 See id.

28 For example, the league asked for changes in the drug policy. Only heroin and cocaine were covered in the former drug agreement; marijuana was not on the list of banned substances. Owners sought to ban marijuana and institute mandatory or random drug testing. While the Players Association opposed mandatory drug testing in general, it conceded that it would be flexible on the point. On the other hand, the Players Association believed that the league overstepped its authority when it voided Latrell Sprewell's contract. It sought to more clearly spell out what authority the league and the commissioner had to discipline players. See generally, 1999 NBA CBA, *supra* note 12, at art. XXXIII, § 9.

29 *NBA, Players Agree on Deal, Save Season*, ROSWELL DAILY RECORD ONLINE (Jan. 7, 1999) <http://www.roswellrecord.com/010799/spt4.html>.

30 See 1999 NBA CBA, *supra* note 12, at art. VII, §§ 2(a)(3)-(4).

31 See id. at §§ 2(a)(1)-(2).

32 See id. at § 2(d)(1).

33 See id. at § 12(c)(3).

34 See id. at § 12(a).

35 Although the Agreement defines which players must contribute, it provides "that in the event the Players Association proposes to the NBA an alternative definition of 'Adjustment Player' that does not affect the NBA's ability to recover the [amount of the overage], then, subject to the NBA's approval, which shall not be unreasonably withheld, such alternative definition shall be used in lieu of the preceding definition." Id. at § 12(b)(1) (defining an "Adjustment Player" as a player who must contribute to the escrow).

36 See *NBA, Players Agree on Deal, Save Season*, *supra* note 29.

37 The Agreement provides:

> If with respect to the 1999-2000 NBA Season, or any Season thereafter during the term of this Agreement, the Players Association establishes in a proceeding before a System Arbitrator that the Average Player Salary for such Season was less than the average player salary for the last fully-compensated season in Major League Baseball ("MLB"), the National Football League ("NFL") or the National Hockey League ("NHL"), it shall have the right the [sic] terminate this Agreement.

1999 NBA CBA, *supra* note 12, at art. XXXIX, § 4(a).

38 See id. at art. II, § 7.

39 See id. at § 7(a)(1).

40 See id. at § 7(a)(2).

41 See id. at § 7(a)(3).

42 See id. at art. VII, § 7(c)(1).

43 See Mark Asher, *Details of the NBA's Labor Agreement*, WASH. POST, Jan. 7, 1999, at D6, *available at* <http://stylelive.com/spsrv/sports/nba/daily/jan99/07/agreement7.htm>.

44 The 1999 Agreement retained the $1 Million Exception. See id.

45 See *Average Salaries Jumped Last Season* (posted July 6, 1999) <http://sports.excite.com/nba/news.990706/sl-sports-nba-1165330>.

46 See id.

47 See id.

48 See id.

49 See id.

50 See id.

51 See id.

52 Allen was represented by agent Lee Fentress of Advantage International when he entered the league in 1996. See Asher, *supra* note 43.

53 Specifically, the contract pays Allen $9 million in the first year with annual increases of $1.1 million (12.5 percent). He will earn $14.6 million in the final year of the contract. See id.

54 See *Bryant Signs Six-Year Deal with Lakers; Third-Year Guard Wants to Stay in Los Angeles* (posted Jan. 29, 1999) <http://channel3000.com/sports/stories/sports-990129-190214.html>.

55 Roscoe Nance, *Allen Still Surprised by Fuss His No-Agent Deal Stirred Up*, USA TODAY, Feb. 25, 1999, at 10C.

56 Patrick Hruby, *Free Agents?: New NBA Rules Alter Player Reps' Roles*, WASH. TIMES, June 29, 1999, at B1.

57 See D. Orlando Ledbetter, *Deals Like Allen's Won't Mean End of Sports Agents* (posted Feb. 14, 1999) <http://www.jsonline.com/sports/sday2/dled21499.asp>.

58 See Hruby, *supra* note 56.

59 Falk still stands to make a four percent commission, or over $2.8 million, for negotiating Iverson's contract. Additionally, it is difficult to determine whether paying Falk such a large commission under the new CBA was the primary reason that Iverson fired Falk. Iverson also reported other reasons for being displeased with the services provided by Falk's agency, including unhappiness with endorsement deals. See Stephen A. Smith, *Iverson Fires Agent David Falk*, PHILA. ENQUIRER, Mar. 22, 1999.

60 See Nance, *supra* note 55.

61 See id.

62 Allen was, however, the first player to negotiate his own contract under the new CBA. See id.

63 See Brian J. Murphy, *SFX Buys FAME, Partners Paid $120 Million* (posted May, 1998) <http://www.sportinggoodsresearch.com/PreviewSamples/The_Sports_Marketing_Letter_Sample.htm>.

64 See *Assante Corporation Completes Acquisition of Sports Representation Powerhouse Steinberg Moorad and Dunn* (posted Nov. 9, 1999) <http:// www.assante.ca/media/nr24.cfm>.

65 See Murphy, *supra* note 63.

66 Falk and his partners, Curtis Polk and Michael Higgins, received a payment of $83 million in cash and $37.75 million worth of SFX stock. See id.

67 See Jill Goldsmith, *Marquee Player: SFX Buys Group for $100 Mil*, HOLLYWOOD REPORTER, July 24-26, 1998.

68 See *Sports Agent Steinberg Agrees to Sell His Firm*, WALL ST. J., Oct. 28, 1999, at 18B.

69 See *Assante Corporation Completes Acquisition of Sports Representation Powerhouse Steinberg Moorad and Dunn*, *supra* note 64.

70 Assante acquired NKS Management, Inc., a Los Angeles-based business management firm representing entertainment, sports, and executive clients, effective June 30, 1999. See *Assante Corporation Completes Acquisition of the Business Management Firm, NKS Management Inc.* (posted July 6, 1999) <http://www.assante.ca/media/nr16.cfm>.

71 Assante acquired Philpott, Bills & Stoll, a California-based business management firm specializing in representing entertainment industry clients, effective August 1, 1999. See *Assante Corporation Completes Acquisition of Second Business Management Firm for Sports and Entertainment* (posted Aug. 3, 1999) <http://www.assante.ca/media/nr17.cfm>.

72 See *Assante Corporation Completes Acquisition of Sports Representation Powerhouse Steinberg Moorad and Dunn*, *supra* note 64.

73 Assante announced the acquisition on December 22, 1999. See *Assante Acquires Another Major Sports Management Company; Acquisition of Eugene Parker and Associates, Inc. Vaults Assante Into Industry Leadership Position* (posted Dec. 22, 1999) <http://www.assante.ca/media/nr27.cfm>.

74 See id.

75 See Hruby, *supra* note 56.

76 For the 1998-99 season, the first under the 1999 Agreement, only 12 players received the maximum allowable salary; of these, ten were rookies going into the final year of their rookie scale contracts. See *Average Salaries Jumped Last Season*, *supra* note 45.

77 One might argue that an agent is particularly valuable to these players since they would not play in the NBA except at a league minimum salary. Thus, an agent has earned his fee by simply securing the player a spot on a team. However, most players being paid the league minimum in the NBA could play in Europe for more money if they so chose. See Jackie MacMullan and Phil Taylor, *Lock-out Limbo: The Journeyman* (posted July 14, 1998) <www.cnnsi.com/features/1998/weekly/980720/nbalock_journeyman.html>.

78 See 1999 NBA CBA, *supra* note 12, at Exhibit B-3.

79 See Murphy, *supra* note 63.