

What the Warriors-Durant Contract Teaches about Sports Law and Business Controversies

The holiday weekend's news included the announcement that one of the NBA's top free agents chose to leave an upstart small-market club in Middle America for the record-setting, dominant Western Conference champions in a large-market with fans including lots of internet billionaires already incurring Bernie Sanders' wrath. This has caused immediate negative reactions, but a moment's pause suggests some interesting and nuanced implications for sports law and business controversies facing most professional sports leagues.

First, the decision is the latest but most direct result of the unique NBA collective bargaining agreement that places a cap on how much an individual can earn. Under NFL rules, a club could theoretically choose to pay 52 or 22 players the league minimum and then devote the entire rest of their club salary cap to a single star. The NHL has a far softer limit based on the percentage of the cap devoted to a single player. Because of the NBA's approach, Kevin Durant, like LeBron James and many others, has no incentive to pick a club other than one he personally feels like playing for. (This point is detailed in a recent Forbes commentary: <http://www.forbes.com/sites/jimpagels/2016/07/04/individual-max-contract-rules-destroy-any-semblance-of-nba-parity/#47a0c5ef7f0e>). *This is a conscious policy trade-off: the owners don't want to have to make hard (and sometimes wrong) decisions about how much to pay for stars, and the union wants to spread the wealth around its members.*

Second, the torrent of criticism failed to acknowledge that one of the legitimate goals of any sports business system is to reward those who shrewdly sign long-term contracts where the other party "out-performs" the contract payment. The only reason the Warriors can stay under the cap and feature Steph Curry, Klay Thompson, Draymond Green and still sign Kevin Durant for the single-player maximum is because they signed Curry to a contract paying him far below his fair market value, at a time when his injuries made his future value unclear. One of the fundamentals of American contract law is that contracts share the risk: Curry took the risk that he would not return from his ankle injuries and was guaranteed lifetime security with \$44 million over 4 years in return for the chance that he would - as he

did – come back greater than ever and be worth almost twice that amount of a “max” player. Durant is a reward to a risk well taken by the Warriors’ front office.

Third, the Warriors still would likely have been unable to consummate the deal except for the huge jump in the salary cap for next year, reflecting the huge increase in NBA revenues. The entire foundation of the salary cap is that it limits owner spending but guarantees players a fixed percentage of all revenues. Given the one-year leap in revenues, it might well have made more sense to “smooth” the salary cap increase over a number of years, but the league and union negotiators were unable to reach agreement.

Here is an under-emphasized lesson in this. There is a very strong likelihood, given the economic interests involved, that if Commissioner Adam Silver were free to reach any deal he thought proper with NBPA chief Michelle Roberts, an agreement would have been in place to limit the cap increase for next year, in return for a variety of more valuable medium- and long-term concessions to the players. But Silver doesn’t have the same freedom to make deals on behalf of the entire NBA that General Motors CEO Mary Barra might make with the United Auto Workers. Silver needs support of a majority of owners. GM shareholders only care about the bottom line, and if a new UAW deal helps Chevy and hurts Cadillac, Barra is not going to be that solicitous of Johan de Nyscchen (President of the Cadillac division). Silver, in contrast, needs to be very solicitous of big market owners, especially those who perceive their team needs substantial and immediate improvement, which includes not only the Lakers and Knicks but a team that came out second-best in the playoffs.

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