

Disability and Death Clauses in College Coaches' Contracts

By Martin J. Greenberg

I. INTRODUCTION

There is little in the literature about two clauses that have an enormous impact on the economics of college coaches' contracts. They are the death and disability clauses. If either were to occur, subject to the dictates of the contract, it could mean a termination of the contractual obligations of the university and an end to the coaches' income stream. If the coach dies, the contract and the obligations of the university thereunder normally terminate. Disability on the other hand is more complicated. What is the definition of disability, who determines disability, and how long is one able to be disabled before the contract terminates? These issues are not only perplexing, but need to be expressly addressed in the coaches' contracts.

The case of Terry Hooppner ("Hooppner") is illustrative of the issues. Hooppner was hired on December 17, 2004 as the head football coach at Indiana University, after having coached at Miami University in Ohio for six seasons, compiling a 48–25 record and taking the team to two consecutive bowl games in 2003 and 2004.¹ Hooppner was hired in 2004 to rebuild Indiana's floundering football program.² He immediately nicknamed the Hoosiers' home field "The Rock" and then had a limestone boulder added to Memorial Stadium to reinforce the message.³ In two years at Indiana, he was 9–14.⁴

On December 27, 2005, Hooppner underwent surgery to remove a tumor from his right temple.⁵ On September 12, 2006, he announced he would undergo a second surgery the next day

¹ *Terry Hooppner: Timeline*, 13WTHR Indianapolis, <http://www.wthr.com/story/6679762/terry-hooppner-timeline> (last visited Jan. 30, 2015).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

because doctors feared the tumor had returned. Former Ball State coach, Bill Lynch (“Lynch”), replaced Hoepfner on an interim basis.⁶ On September 24, 2006, Hoepfner resumed his full time duties as coach.⁷ On October 14, 2006, he gave the Hoosiers their biggest win while he was coach, upsetting No. 15 ranked Iowa, 31–28.⁸ But on March 18, 2007, Hoepfner issued a statement saying he was again leaving the team.⁹ Lynch again filled in as interim coach.¹⁰ On June 15, 2007, after Hoepfner’s death, Indiana named Lynch head coach for the 2007 season.¹¹

Hoepfner was beloved by Indiana aficionados, and he had, even during the worst of times, a wonderfully optimistic attitude.¹² This attitude was reflected in Hoepfner’s favorite poem “Don’t Quit:”¹³

When things go wrong as they sometimes will,
When the road you're trudging seems all uphill,
When the funds are low and the debts are high
And you want to smile, but you have to sigh,
When care is pressing you down a bit,
Rest, if you must, but don't you quit.

Life is queer with its twists and turns,
As every one of us sometimes learns,
And many a failure turns about
When he might have won had he stuck it out;
Don't give up though the pace seems slow --
You may succeed with another blow.

Success is failure turned inside out --
The silver tint of the clouds of doubt,
And you never can tell how close you are.
It may be near when it seems so far.
So stick to the fight when you're hardest hit --
It's when things seem worst that you must not quit.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² “Don’t Quit” -- *Hep’s Poem*, RT BLOG (June 20, 2007), <http://rt-blog.blogspot.com/2007/06/dont-quit-heps-poem.html?m=1>.

¹³ *Id.*

(author unknown)¹⁴

So, in Hoepner's case, he had undergone two brain surgeries since 2005 and was on his third medical leave from the team.¹⁵ "The disability provision in Hoepner's contract, which is similar to language in other coaches' contracts, allows the contract, which ran through June 2012, to be terminated for physical or mental disabilities."¹⁶ Since Hoepner reported to the Athletic Director, Rick Greenspan, the process for determining whether or not the disability was a terminal event was in the hands of the athletic director.¹⁷ However, Greenspan never initiated the process.¹⁸ The contract called for both the coach and the university to agree on a doctor to perform the exam to determine disability, but it appears that it never even went that far.¹⁹ The contract also indicated that if they could not agree on a doctor, then Dr. Vidya Kora, the president of the Indiana State Medical Association, would appoint one.²⁰ The university president would then have had to approve the doctor.²¹ It does not appear that the procedures to determine disability and ultimately termination ever occurred.²²

Instead, in early May 2007, Hoepner issued a statement through the university, saying he continued to receive medical treatment and remained "inspired to return to coaching when my health permits."²³ Unfortunately, Hoepner died on June 7, 2007.²⁴ Obviously, invoking the

¹⁴ *Id.*

¹⁵ *With Hoepner's Health in Question, Contract Status Uncertain*, ESPN (June 7, 2007), <http://espn.go.com/espn/print?id=2896928&type=story>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *See id.*

²³ *Hoepner's Contract Could be Voided by Indiana*, USA TODAY (June 8, 2007, 2:38 PM), http://usatoday30.usatoday.com/sports/college/bigten/2007-06-07-indiana-hoepner-contract_N.htm.

²⁴ Terry Hutchens, *Indiana Football Coach Terry Hoepner Dies*, USA TODAY (June 20, 2007, 1:36 AM), http://usatoday30.usatoday.com/sports/college/football/bigten/2007-06-19-iu-hoepner-obit_N.htm.

disability provision is a tough and difficult call and the impact of these clauses upon the coach and the university needs to be analyzed and further reviewed. Before such a review, however, another good example of a university faced with a disability issue is that of Jerry Kill.

Jerry Kill (“Kill”) was hired as head football coach for the University of Minnesota (“Minnesota”) on December 6, 2010, taking over from Tim Brewster who was fired during the middle of the season.²⁵ Kill’s first season as head coach was not particularly noteworthy as he posted a 3-9 record; however, Kill was the center of attention not because of football, but because of his health issues.²⁶

In the past, Kill has had episodes of epileptic seizures including:

1. 1992, Pittsburg State²⁷
2. October 2000, Emporia State²⁸
3. November 2001, Southern Illinois²⁹
4. October 2005, Southern Illinois³⁰
5. October 2005, Southern Illinois³¹
6. October 2006, Southern Illinois³²
7. September 2010, Northern Illinois³³

Minnesota knew Kill had a history of seizures when they hired him in December of 2010.³⁴ Kill suffered a seizure two games into Kill’s first season at Minnesota, when on

²⁵ WIKIPEDIA, http://en.wikipedia.org/wiki/Jerry_Kill (last visited Jan. 30, 2015).

²⁶ *Id.*

²⁷ *Jerry Kill: Winning Help Everything?*, LATE NIGHT HOOPS (Sept. 18, 2013), <http://latenighthoops.com/jerry-kill-winning-helps-everything/#.U1e9GfldW31>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

September 10, 2011, he was rushed to the hospital after he suffered a seizure and collapsed on the sidelines during the final seconds of Minnesota's loss to New Mexico State.³⁵ On September 25, 2011, he was admitted to the Mayo Clinic after suffering another seizure and a 37–24 loss at home to North Dakota State.³⁶ Seizures forced Kill to miss an entire game for the first time in his career on October 5, 2011, when Minnesota played at Michigan.³⁷ On November 19, 2011, Kill suffered a seizure on the flight home after a 29–13 loss to Northwestern.³⁸

On October 14, 2012, he suffered a postgame seizure after a 21–13 home loss to Northwestern and was released the following day.³⁹ Kill missed the entire 2nd half of the Michigan State game on November 24, 2012, due to suffering another seizure at halftime.⁴⁰ During the home win on September 14, 2013, against Western Illinois University, he suffered a seizure just before halftime and missed the entire second half of the game.⁴¹

Even though Kill missed parts of four games in three years with the Gophers because of seizures, and took a two-week leave to address his epilepsy issue, Minnesota saw fit to extend Kill's contract to the 2018 season and increased his pay for the 2014–2015 season to \$2.1 million.⁴² Kill was the lowest paid coach in the Big 10 during the 2013 campaign, at \$1.2

³⁴ John Feinstein, *Jerry Kill's Status as Minnesota Football Coach is Complicated by History of Seizures*, The Washington Post (Oct. 3, 2013), http://www.washingtonpost.com/sports/colleges/jerry-kills-status-as-minnesota-football-coach-is-complicated-by-history-of-seizures/2013/10/06/0a2f96c8-2d32-11e3-8ade-a1f23cda135e_story.html.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Dennis Dodd, *Minnesota Coach Jerry Kill has Seizure, Misses Michigan Game*, CBS SPORTS (October 5, 2013, 01:11 PM), <http://mweb.cbssports.com/ncaaf/writer/dennis-dodd/24020294/minnesota-coach-jerry-kill-has-seizure-not-coaching-at-michigan>.

³⁸ *Jerry Kill: Winning Helps Everything?*, LATE NIGHT HOOPS (Sept. 18, 2013), <http://latenighthoops.com/jerry-kill-winning-helps-everything/#.U1e9GfldW31>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Gopher's Coach Kill Suffers Seizure*, CBS MINNESOTA (Nov. 19, 2011, 11:23 PM), <http://minnesota.cbslocal.com/2011/11/19/coach-kill-suffers-seizure/>.

⁴² Marcus R. Fuller, *Gophers' Jerry Kill gets Contract Extension and Big Raise*, TWINCITIES.COM (Feb. 22, 2014, 12:01 AM), http://www.twincities.com/sports/ci_25207957/gophers-jerry-kill-gets-contract-extension-and-big; GoA Upher, *Minnesota Football: Coach Kill Rewarded with Raise and One Year Contract Extension*, THE DAILY GOPHER

million.⁴³ His extension will pay him an average of \$2.3 million over the next five years putting him amongst the middle of Big 10 coaches' salary packages.⁴⁴

The extension also addresses what happens if Kill can't coach for an extended period of time for health reasons.⁴⁵ The new contract states in Paragraph 3.8, Automatic Termination:

Notwithstanding any other provision of this Agreement, this agreement shall terminate automatically if (a) Coach dies, or (b) if Coach is unable to perform one or more essential functions of the job of head coach of Team, with or without reasonable accommodation, due to Coach's medical condition for 90 continuous calendar days. If Coach is unable to perform one or more essential functions of the job of head coach of Team, with or without reasonable accommodation, for 45 continuous calendar days during the football season, which shall be defined as the beginning of the first day of summer football practice through the last football game of the year due to Coach's medical condition, payment under this contract shall be suspended, and Coach may seek disability benefits under all applicable University disability benefits programs or plans then in effect. If Coach is unable to perform one or more essential functions of the job of head coach of Team, with or without reasonable accommodation, for 70 continuous calendar days during the football offseason, which shall be defined as after the last football game of the year and through the beginning of first day of summer football practice due to Coach's medical condition, payment under this contract shall be suspended, and Coach may seek disability benefits under all applicable University disability benefits programs or plans then in effect. Throughout the term of this Agreement, the University may require Coach to undergo fitness for duty examinations, upon reasonable notice, by a duly qualified physician selected by the University, to the full extent permitted by applicable law.

If this Agreement terminates under subsection (b) of this Section 3.8, Coach shall remain a University employee on leave of absence until his employment with the University ends and may seek disability benefits under all applicable University disability benefit programs or plans then in effect. In the alternative, Coach may elect to waive the right, if any, to seek disability benefits under all applicable University disability benefit programs or plans then in effect. In the alternative, Coach may elect to waive the right, if any, to seek disability benefits under all applicable University disability benefits programs or plans then in effect, and to receive a lump sum payment in the amount of Six Hundred Thousand and no/100 Dollars (\$600,000) from the University. The payment shall be subject to

(Feb. 22, 2014, 10:18 PM), <http://www.thedailygopher.com/2014/2/22/5438236/coach-jerry-kill-raise-contract-extension-minnesota-football-gopher-football-gophers-football>.

⁴³ Fuller, *supra* note 42.

⁴⁴ Upher, *supra* note 42.

⁴⁵ Second Employment Agreement between Jerry Kill and Regents of Univ. of Minn., III. Termination ¶3.8 (Feb. 17, 2014) (on file with author) [hereinafter Second Kill Contract].

withholding for applicable federal and state income taxes, federal social security taxes, and all other applicable taxes and deductions. Such payment shall be made within sixty (60) days following the date of Coach's notice of termination.

Notwithstanding any other provision of this Agreement, this Agreement also shall terminate automatically if Coach is employed on a full-time or part-time basis for an individual or entity other than the University, including during any notice period under Section 3.2 of this Agreement. If the Agreement terminates pursuant to this Section 3.8, Coach or his estate shall only be entitled to the compensation earned under this Agreement as of the date of that event.⁴⁶

The extension agreement also addresses Post-Coaching Employment (Paragraph 3.9, Post-Coaching Employment).⁴⁷ It indicates that the University and Coach "may mutually agree to transition Coach from the position of head football coach to an agreed upon position with the University;" and that "position will be compensated at an annual salary of \$200,000, and will have a title and duties assigned by the President and Director Athletics [*sic*]."⁴⁸

In Kill's original employment agreement, which was executed on October 24, 2011, the provision for permanent disability included at Paragraph 3.8, Automatic Termination, was far different from the one contained in his extension agreement:

Notwithstanding any other provision of this agreement to the contrary, this Agreement shall terminate automatically if Coach dies or becomes permanently disabled from performing his duties under this agreement. If this event occurs, Coach or his estate shall be entitled to all compensation earned under this Agreement as of the date of the event.⁴⁹

In September of 2013, Jim Souhan, a columnist for the Minnesota Star-Tribune, questioned Kill's fitness for the field in light of the seizures he had suffered as previously

⁴⁶ *Id.*

⁴⁷ *Id.* at ¶3.9.

⁴⁸ *Id.*

⁴⁹ Employment Agreement between Jerry Kill and Regents of the Univ. of Minn., Ill. Termination ¶3.8 (Oct. 24, 2011) (on file with author) [hereinafter First Kill Contract].

enumerated during football games.⁵⁰ Souhan indicated that “Kill is not healthy enough to lead.”⁵¹ Souhan went on to state: “[t]he face of your program can’t belong to someone who may be rushed to the hospital at any moment of any game, or practice, or new conference. No one who buys a ticket to TCF Bank Stadium should be rewarded with the sight of a middle-aged man writhing on the ground. This is not how you compete for sought-after players and entertainment dollars.”⁵² A controversy ensued and Star-Tribune’s Editor-in-Chief, Nancy Barnes weighed in by saying:

Many of you have written over the weekend to express your anger or concern regarding Jim Souhan’s columns and blog posts following Coach Kill’s seizure during Saturday’s football game. On behalf of the Star Tribune, I apologize. In no way did we intend to suggest that people with epilepsy, or other disabilities, should be hidden away. Nor did we intend to be callous or insensitive to their struggles.⁵³

At a “Gopher Road Trip” meet-and-greet, Kill indicated he would be coaching on the field for the 2014–2015 football season and indeed he was on the sidelines.⁵⁴ Not only was Kill on the sidelines, he was named the Big Ten Coach of the Year for 2014, the first Gophers’ coach to win the award since Glen Mason in 1999.⁵⁵ “Kill has been a prominent advocate of epilepsy-

⁵⁰ Kevin Hoffman, *Star Tribune Apologizes for Jim Souhan Column About Coach Kill’s Epileptic Seizures*, MINNEAPOLIS NEWS THE BLOTTER (Sept. 17, 2013, 07:35 AM), http://blogs.citypages.com/blotter/2013/09/star_tribune_apologizes_epileptics_coach_kill_seizure.php?print=true.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Jerry Hinnen, *Games this Fall*, CBS SPORTS (May 21, 2014, 12:10 PM), <http://mweb.cbssports.com/ncaaf/eye-on-college-football/24568950/jerry-kill-ill-be-on-the-sideline-for-minnesota-games-this-fall>.

⁵⁵ Tyler Mason, *Gophers’ Kill Named Big Ten Coach of the Year*, FOX SPORTS NORTH (Dec. 2, 2014, 7:11 PM), <http://www.foxsports.com/north/story/gophers-kill-named-big-ten-coach-of-the-year-120214>; *Gophers Football: Jerry Kill Named Big Ten Coach of the Year*, TWINCITIES.COM (Dec. 2, 2014, 12:01 AM), http://www.twincities.com/sports/ci_27053829/gophers-football-jerry-kill-named-big-ten-coach.

related causes, recently donating \$100,000 to the new ‘Chasing Dreams’ initiative of the Epilepsy Foundation of Minnesota.”⁵⁶

II. COACHING AND STRESS

The job of being a college head coach is a most stressful job at best. The Wall Street Journal has listed the job of NCAA Basketball Coach as the fifteenth most stressful job in America.⁵⁷ Another source lists an athletic coach as the seventeenth most stressful job of 2013.⁵⁸

“Most Division I head coaches reached this level because they’re Type-A workaholics, but the ever-increasing demands on them have forced some to push themselves so hard that their health suffers. With 100-plus-hour workweeks, a recruiting cycle that covers the entire calendar and more media scrutiny than ever, college football head coach has become the most stressful job in sports. It also might be the most dangerous.”⁵⁹

“A coach is normally defined as ‘one who trains intensively by instruction, demonstration, and practice.’” This definition certainly does not recognize the current job environment and employment conditions of the modern-day college coach.”⁶⁰

“The coach of today is required not only to be an instructor, but also to act as a fundraiser, recruiter, academic coordinator, public figure, budget director, television, radio and internet personality, and alumni glad hander. A coach must also handle any other role that the

⁵⁶ Jerry Hinnen, *Games this Fall*, CBS SPORTS (May 21, 2014, 12:10 PM), <http://mweb.cbssports.com/ncaaf/eye-on-college-football/24568950/jerry-kill-ill-be-on-the-sideline-for-minnesota-games-this-fall>.

⁵⁷ Will Chris Holley, *Stress Jobs*, ARCHURE <http://www.archure.net/psychology/stressjobs.html> (last visited Jan 30, 2015).

⁵⁸ Josef, *20 Most Stressful Jobs of 2013*, People & Politics (Aug. 27, 2013), <http://list25.com/25-most-stressful-jobs-of-2013/?view=all>.

⁵⁹ Andy Staples, *College Football Head Coach: The Most Dangerous Job in Sports*, SPORTS ILLUSTRATED (Jan. 20, 2010), <http://www.si.com/more-sports/2010/01/20/coaches-danger>.

⁶⁰ Martin J. Greenberg, *College Coaching Contracts Revisited: A Practical Perspective*, 12 MARQ. SPORTS L. REV. 127, 130 (2001) [hereinafter Greenberg Contracts Revisited].

university's athletic director or president may direct him to do in the best interests of the university's athletic program."⁶¹

Imagine if every decision you made at work was scrutinized by millions of people and your livelihood was essentially tied to the performance of a bunch of college students. It's a 24/7 job that once a week requires a major presentation. The conference room is a stadium packed with crazy fans and television cameras.

While it would be a stretch to say coaching is hazardous to one's health, the fact is the lifestyle is not conducive to staying fit. Late nights in the film room, meals grabbed here and there, hours away from family and precious little down time — all of it contributes to stress.

Mike Leach, former Texas Tech Coach and now coach at the University of Washington described the job as follows: "There is nothing healthy about it." He said eating right and getting regular exercise was almost impossible for him during the football season.⁶² "It wasn't just the practices, meetings and game planning that consumed his day. Being the football coach at a major university is a lot like being the CEO of a huge company, multimillion-dollar salary included."⁶³ "There's the stress of dealing with the day-to-day and the ups and downs of 120 different people, most of them ages 18-22," stated Leach.⁶⁴ "There is also the politics that go into a university and some of the bureaucracy."⁶⁵

⁶¹ *Id.*

⁶² Ralph D. Russo, *24/7: Major College Football Coaches Work to Balance Stressful Jobs with Healthy Living*, Los Angeles Times (Sept. 02, 2010, 5:43 AM), <http://www.latimes.com/sports/sns-ap-fbc-hazards-of-coaching-story.html>.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

Add to that media obligations and the time it takes to act as an ambassador for the program with fans and alumni, and it's no surprise Leach says he would generally sleep 4-6 hours a night.⁶⁶

"It's a business more than it used to be," said Arizona State coach Dennis Erickson.⁶⁷ "We just went out and coached, everybody was friends in the profession and you just went out, had a good time and coached your rear ends off. You didn't worry about the outside stuff."⁶⁸

Ron Stoops Sr. died of a heart attack at age 54, on the field after a high school game in Youngstown, Ohio.⁶⁹ So University of Oklahoma Head Football Coach Bob Stoops is fully aware of the stress on football coaches.⁷⁰ "That's just been part of how we live," Stoops said.⁷¹ "Always been that way. The lifestyle's different. Not everyone understands it. Not all spouses understand it. I don't know that the general public realizes, from late July through January, it's seven days a week, and you get home 8 (p.m.), 9 , 10, 11, sometimes midnight, one, depending on how you're scheming things."⁷² "It's a different lifestyle that isn't for everybody. But the guys that are in it, you love it."⁷³

"I think any job is stressful because I think everybody wants to be successful at their job," University of Colorado football coach Mike MacIntyre said. "Our job is just the three hours that it's out there, everything is under the microscope, so it all boils up at one time."⁷⁴ "That's

⁶⁶ *Id.*

⁶⁷ *Stress is Professional Hazard for Coaches*, FOX SPORTS (Updated Sept. 24, 2013, 12:32 AM), <http://msn.foxsports.com/collegefootball/story/Stress-takes-toll-on-college-football-coaches-092210>.

⁶⁸ *Id.*

⁶⁹ Berry Tramel, *Oklahoma Football: Bob Stoops Knows the Stresses of Coaching*, NEWSOK (Nov. 4, 2013), <http://m.newsok.com/oklahoma-football-bob-stoops-knows-the-stresses-of-coaching/article/3900961>.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Stress of Coaching Big Time Sports Can Be Unhealthy*, CBS 4 (Nov. 10, 2013, 4:15 PM), <http://denver.cbslocal.com/2013/11/10/stress-of-coaching-big-time-sports-can-be-unhealthy/>.

the difference — the intense scrutiny put on coaches. Every coach wants to win, but it's compounded by pressure and criticism from outside sources."⁷⁵

"The lifestyle of a head football coach is grueling and inherently unhealthy. Stress, sleep deprivation, depression, shame over subpar performances and family neglect, loneliness and outside obligations can grind a man to the nub."⁷⁶

"It's not glamorous," Bill Parcells said.⁷⁷ "It's a very lonely job, and people don't understand that."⁷⁸

"You can die coaching," said Herman Edwards, the former coach of the Jets and the Kansas City Chiefs.⁷⁹ "I'm not trying to be funny, but it can kill you."⁸⁰

"There's an unwritten code: don't get sick," said Bob Davie, the former Notre Dame coach.⁸¹ "In my 28 years of coaching, I never missed a day." He said that stress accompanied him everywhere – the treadmill, trips with his wife. "Never a respite."⁸²

"Coaching is an unbelievably demanding occupation," sports psychologist Dr. Cal Botterill said.⁸³ "Half the time, they're working 24/7. They hardly get any breaks."⁸⁴

In some cases coaches have experienced, as a result of their job, serious health problems related to the stress and pressure. Some examples follow:

⁷⁵ *Id.*

⁷⁶ Tim Graham, *Coaching: A Demanding and Stressful Job*, THE BUFFALO NEWS (Updated Nov. 10, 2013, 1:41 PM), <http://www.buffalonews.com/sports/bills-nfl/coaching-a-demanding-and-stressful-job-20131110>.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ George Vecsey, *Football Coaches Find Stress and Satisfaction*, THE NEW YORK TIMES (Sept. 24, 2010), http://www.nytimes.com/2010/09/25/sports/football/24vecsey.html?_r=0&pagewanted=print.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ Tim Graham, *Coaching: A Demanding and Stressful Job*, THE BUFFALO NEWS (Updated Nov. 10, 2013, 1:41 PM), <http://www.buffalonews.com/sports/bills-nfl/coaching-a-demanding-and-stressful-job-20131110>.

⁸⁴ *Id.*

- a. Former Florida State coach Pat Kennedy had repeated ulcers and mysterious illnesses during the season.⁸⁵
- b. Duke Coach Mike Krzyzewski was forced to sit out an entire basketball season due to health problems.⁸⁶
- c. Former Maryland Coach Gary Williams missed the ACC tournament with a stress-related illness.⁸⁷
- d. In February 1994, Northwestern basketball coach Ricky Byrdsong's frustration over his team's 0-6 start in the Big Ten came to a head when he asked for an indefinite leave of absence and turned over his coaching duties to Assistant Coach Paul Swanson.⁸⁸
- e. Phil Ford, the Wooden Award winner in 1978, took a medical leave of absence in 1999 while an assistant coach at the University of North Carolina following his second DUI in two years.⁸⁹
- f. On December 6, 2009, after returning home following the team's loss in the 2009 SEC championship game, Urban Meyer was admitted to a Gainesville hospital suffering from chest pains and dehydration.⁹⁰ On December 25, 2009, he announced he would resign as head coach due to health and family concerns.⁹¹ Meyers stated "I have ignored my health for years, but recent developments have forced me to re-

⁸⁵ Greenberg Contracts Revisited, *supra* note 61, at 131.

⁸⁶ Don Markus, *Coach K Will Miss Season*, BALTIMORE SUN (Jan. 23, 1995), http://articles.baltimoresun.com/1995-01-23/sports/1995023058_1_coach-mike-krzyzewski-duke-blue-devils.

⁸⁷ Greenberg Contracts Revisited, *supra* note 61, at 131.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Brett McMurphy, *Meyer: 'I thought I was dying' in '09*, ESPN (Sept. 20, 2014, 9:17 PM), http://espn.go.com/college-football/story/_/id/11558783/ohio-state-buckeyes-coach-urban-meyer-says-was-mentally-broke-florida-gators-2009?src=mobile&rand=ref%7B%22ref%22%3A%22https%3A%2F%2Fwww.google.com%2F%22%7D.

⁹¹ *Meyer to Coach Final Game at Sugar Bowl*, ESPN (Updated Dec. 27, 2009, 12:39 PM), <http://sports.espn.go.com/ncf/news/story?id=4772952>.

evaluate my priorities of faith and family.”⁹² Meyer admitted that he had suffered frequent chest pains and occasional severe headaches.⁹³ Meyer again changed his mind on December 27, 2009, and announced he would take an indefinite leave of absence instead of resigning.⁹⁴ Florida’s Athletic Director Jeremy Foley announced Meyer’s resignation on December 8, 2010.⁹⁵ Meyer, however, did resume his coaching career on November 28, 2011 when he accepted the head coaching position at Ohio State University.⁹⁶

Urban Meyer signed two agreements when he was hired by Ohio State University: one with the university that demands performance and another with his family, which demands much more.⁹⁷ As a condition of accepting the Ohio State University head football coaching job, and in order to obtain his family’s blessing, Meyer entered into a contract with his daughters which is basically to govern a new lifestyle based upon his previous experience with health issues.⁹⁸ That contract signed with his kids, written on pink notebook paper, states as follows:

1. *My family will always come first.*
2. *I will take care of myself and maintain good health.*
3. *I will go on a trip once a year with Nicki -- MINIMUM.*
4. *I will not go more than nine hours a day at the office.*
5. *I will sleep with my cellphone on silent.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Tony Barnhart, *Will Meyer be Florida’s Head Coach for the 2010 Season*, MR. COLLEGE FOOTBALL (Dec. 27, 2009, 2:30 PM), <http://blogs.ajc.com/barnhart-college-football/2009/12/27/meyer-changes-mind-will-take-indefinite-leave-of-absence/>.

⁹⁵ *Meyer to Coach Final Game at Sugar Bowl*, *supra* note 92.

⁹⁶ *Sources: Urban Meyer Joins Ohio State*, ESPN (Nov. 28, 2011, 2:23 PM), http://espn.go.com/college-football/story/_/id/7289592/urban-meyer-joins-ohio-state-buckeyes-coach-1-year-hiatus-sources-say.

⁹⁷ Wright Thompson, *Urban Meyer Will be Home for Dinner*, ESPN (Updated Aug. 22, 2012, 11:06 AM), <http://espn.go.com/espn/print?id=8239451&type=story>.

⁹⁸ *Id.*

6. *I will continue to communicate daily with my kids.*
7. *I will trust God's plan and not be overanxious.*
8. *I will keep the lake house.*
9. *I will find a way to watch Nicki and Gigi play volleyball.*
10. *I will eat three meals a day.*⁹⁹

- g. On August 24, 2012, Rick Majerus announced he would be taking a medical leave from his job as head coach and would not be coaching the 2012–2013 season for the Saint Louis Billikens.¹⁰⁰ On November 19, 2012, it was announced that Majerus would not return to the position of head coach.¹⁰¹ Majerus died of heart failure in a Los Angeles hospital on December 1, 2012.¹⁰² Majerus's health had always been a job-related issue.¹⁰³ During his time with the University of Utah there were three seasons where he did not finish the season due to medical reasons, including his final season.¹⁰⁴ He had missed six games at Saint Louis University over the years.¹⁰⁵ Prior to coming to Saint Louis University, Majerus had had seven heart bypasses.¹⁰⁶
- h. On October 17, 2011, it was announced that Texas A&M's men's head basketball coach, Billy Kennedy, was dealing with the early stages of Parkinson's disease and

⁹⁹ *Id.*

¹⁰⁰ Tom Timmermann, *Majerus Takes Medical Leave at SLU, Won't Coach in 2012-13*, ST. LOUIS POST-DISPATCH (Aug. 24, 2012), http://www.stltoday.com/sports/college/slu/majerus-takes-medical-leave-at-slu-won-t-coach-in/article_70e09f5c-ee36-11e1-a8f7-0019bb30f31a.html.

¹⁰¹ Dick Weiss, *College Basketball's Rick Majerus, Who Coached at Marquette, Ball State, Utah and Saint Louis, Dies of Heart Failure at 64*, N.Y. DAILY NEWS (Dec. 1, 2012), <http://www.nydailynews.com/sports/college/college-basketball-coach-majerus-dies-heart-failure-article-1.1211737>.

¹⁰² *Id.*

¹⁰³ Tom Timmermann, *Majerus Takes Medical Leave at SLU, Won't Coach in 2012-13*, ST. LOUIS POST-DISPATCH (Aug. 24, 2012), http://www.stltoday.com/sports/college/slu/majerus-takes-medical-leave-at-slu-won-t-coach-in/article_70e09f5c-ee36-11e1-a8f7-0019bb30f31a.html.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

- would be taking a medical leave of absence for treatment.¹⁰⁷ Kennedy did, however, return on November 14, 2011, to coach the game against Southern.¹⁰⁸
- i. College of Charleston men's basketball head coach, Bobby Cremins, returned to coaching after a long stint at Georgia Tech in 2006.¹⁰⁹ Cremins took a medical leave of absence on January 27, 2012, which lasted for the duration of the 2011/2012 season.¹¹⁰ Cremins retired from coaching on March 19, 2012 citing physical exhaustion.¹¹¹
 - j. Wake Forest men's basketball head coach from 2001-2007, Skip Prosser, collapsed in his office on July 26, 2007, after having jogged on campus.¹¹² Medical personnel performed CPR and used a defibrillator.¹¹³ Prosser was rushed to the hospital, but died from an apparent "sudden massive heart attack" at age 58.¹¹⁴

In November, 2013, The Denver Post published an article entitled "A look back: Coaches and Heart Health Scares, Heart Problems, Heart Attacks" which listed numerous health issues that coaches have had on the job.¹¹⁵ The list included:

¹⁰⁷ *Texas A&M Hoops Coach Kennedy Taking a Medical Leave of Absence*, FOX NEWS (Oct. 27, 2011), <http://www.foxnews.com/sports/2011/10/27/texas-am-hoops-coach-kennedy-taking-medical-leave-absence/>.

¹⁰⁸ *A&M Men's Coach Billy Kennedy Returns to Sideline as Aggies Roll*, THE DALLAS MORNING NEWS (Updated Nov. 14, 2011, 3:55 AM), <http://www.dallasnews.com/sports/college-sports/texas-aggies/20111113-am-men-s-coach-billy-kennedy-returns-to-sideline-as-aggies-roll.ece>.

¹⁰⁹ Gene Sapakoff, *Sapakoff: Bobby Cremins was a Great Idea for the College of Charleston, Back in 2006*, THE POST AND COURIER (Aug. 21, 2014, 5:49 PM), <http://www.postandcourier.com/article/20140821/PC20/140829835>.

¹¹⁰ *Coach Bobby Cremins to Take a Medical Leave of Absence*, COLLEGE OF CHARLESTON NEWS (Jan. 27, 2012, 7:16 PM), <http://news.cofc.edu/2012/01/27/coach-bobby-cremins-to-take-medical-leave-of-absence/>.

¹¹¹ *Coach Bobby Cremins Retires*, ESPN (Updated Mar. 19, 2012, 7:49 PM), http://espn.go.com/mens-college-basketball/story/_/id/7710476/college-charleston-coach-bobby-cremins-retires.

¹¹² Joedy McCreary, *Wake Forest Coach Skip Prosser Dies*, WASH. POST (July 27, 2007, 3:23 AM), <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/27/AR2007072700352.html>.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Joan Niesen, *A Look Back: Coaches and Heart Health Scares, Heart Problems, Heart Attacks*, DENVER POST (Nov. 3, 2013, 11:23 AM), <http://blogs.denverpost.com/broncos/2013/11/03/a-look-back-coaches-and-heart-health-scares-heart-problems-heart-attacks/22932/print/>.

- a. University of Michigan Football Coach Bo Schembechler, who in 1969 at the age of 40, suffered a heart attack the day before the Wolverines played in the 1970 Rose Bowl. He also had a quadruple bypass surgery in 1976, another heart attack in 1987, and yet another quadruple bypass surgery after his second heart attack.
- b. University of Miami Football Coach Lou Saban had double bypass surgery in the summer of 1977 at age 55, but recovered by the time Miami's season started.
- c. University of Alabama Football Coach Bear Bryant died of a heart attack less than a month after retiring.
- d. University of South Carolina Football Coach Joe Morrison, age 51, passed away from a heart attack in February 1989, after logging his 100th win as a head coach in the 1988 season.
- e. University of Utah Basketball Coach Rick Majerus had a seven-vessel heart surgery, which was just one saga in his years-long battle with heart problems. He eventually died of heart failure in 2012.
- f. University of Texas-El Paso Basketball Coach Don Haskins suffered a heart attack during halftime of a game. He then had triple bypass surgery.
- g. University of Miami (OH) Basketball Coach Charlie Coles collapsed in 1998, suffering from a heart attack during a game against Western Michigan.
- h. University of Cincinnati Basketball Coach Bob Huggins suffered a heart attack in September of 2002 before the team's season began, and he was back in time for the Bearcats' first practice two weeks later.

- i. Georgia Tech Football Coach Chan Gailey experienced chest pains in 2005 during the offseason, which were later determined to be a heart attack. He then underwent an angioplasty to clear a blocked artery.
- j. Michigan State University Football Coach Mark Dantonio checked himself into the hospital in 2010 with chest pains after his team beat Notre Dame in overtime. It was determined he had suffered a heart attack. Dantonio had a stent put in a blocked artery, and he returned to coaching in October 2010 after missing two games.¹¹⁶

III. COACHING CONTRACT EXAMPLES

Because death, illness, leaves of absences and disability are common occurrences during a coach's career, disability and death provisions in a coach's contract are of the utmost importance. What follows are some representative and illustrative clauses from current and terminated coaches' contracts dealing with what happens in the event of death or disability:

1. Paul Johnson, Georgia Tech, December 10, 2007

ARTICLE V: LONG-TERM ILLNESS OR INCAPACITY

If COACH cannot or does not substantially perform his duties as the ASSOCIATION'S Head Football Coach because of illness or medical or psychological incapacity of any type whatsoever for a cumulative total of more than six (6) months in any year, the Athletic Director may terminate this contract, with the approval of the President of the ASSOCIATION or his designee, upon thirty (30) days notice to COACH and the ASSOCIATION shall be relieved of all liabilities and/or obligations under the Contract following such termination, except as otherwise expressly provided in Article VI.

No final determination or action shall be taken on whether COACH is considered incapacitated for purposes of this Article until the following procedure is utilized. After the initial determination by the Athletic Director and President, COACH and the ASSOCIATION shall each appoint a licensed physician and these physicians shall mutually agree upon a third licensed physician to review the medical evidence. Their findings are non-binding, but shall be admissible and used in any subsequent proceeding. If the parties to this contract are unable to

¹¹⁶ *Id.*

reach agreement regarding the application of this Article, then the arbitration provisions set forth in Article VII shall apply.

ARTICLE VI: DEATH OR PERMANENT DISABILITY

If COACH dies or becomes permanently physically or mentally disabled during the term of this Contract to such an extent that he is unable to substantially perform satisfactorily his duties as the ASSOCIATION'S Head Football Coach, this Contract shall terminate forthwith. No final determination or action shall be taken on whether COACH is considered mentally or physically disabled until the following procedure is utilized. After the initial determination by the Athletic Director and President, COACH and the ASSOCIATION shall each appoint a licensed physician and the licensed physicians shall appoint a mutually agreed upon third licensed physician to review the medical evidence. Their findings are non-binding, but shall be admissible and used in any subsequent proceeding. In the event of COACH'S death during the term of this Contract, the Association shall pay to COACH'S estate any salary due him up to the end of the month in which COACH dies, as well as the portion of any unpaid payments to him or Paul Johnson Consulting for radio, television, sideline shoes and apparel, speaking or personal appearances earned prior to death or disability as well as the death benefit of any other life insurance benefits to which his heirs or estate are entitled, but the ASSOCIATION shall otherwise be relieved of all liabilities and obligations under this Contract following such termination. If the parties are unable to agree upon the application of this Article, then the arbitration provisions set forth in Article VIII shall apply.¹¹⁷

2. Daniel Dykes, University of California, December 7, 2012

10. TERMINATION BY DEATH OR DISABILITY OF COACH

If Coach dies, this Contract shall thereupon terminate and all future obligations between the parties under this Contract shall cease. In the event that Coach becomes disabled and there is no reasonable accommodation that will enable him to perform all of his essential job functions under this Contract and his inability to perform has continued or will continue beyond a reasonable period of time, as determined by the University consistent with applicable law, this Contract shall thereupon terminate and all future obligations between the parties under this Contract shall cease. In the event of Coach's inability to continue to perform all of his essential job functions under this Contract by reason of some other occurrence beyond the control of either party to this Contract, this Contract shall thereupon terminate and all future obligations between the parties under this Contract shall cease. Because of the exigencies of operating an NCAA Division I program, Coach acknowledges that a termination pursuant to this Section 10 shall not be deemed a termination without cause under Paragraph 12 below.¹¹⁸

¹¹⁷ Employment Agreement between Paul Johnson and Georgia Tech Athletic Ass'n, art. V-VI (Dec. 10, 2007) (on file with author) [hereinafter Johnson Contract].

¹¹⁸ Employment Contract between Daniel Dykes and The Regents of the Univ. of Cal., Termination by Death or Disability of Coach, ¶10 (Dec. 7, 2012) (on file with author) [hereinafter Dykes Contract].

3. Timothy D. Beckman, University of Illinois, December 9, 2011

4.5 DISABILITY, DEATH, OR INABILITY. This Agreement will terminate automatically upon the Head Coach's death or disability (which for purposes of this section shall mean the Head Coach is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which continues for at least six (6) consecutive months and can be expected to result in death or can be expected to last for a continuous period of not less than 12 months). If the University or the Head Coach terminates this Agreement due to disability or for any other reason beyond his control (e.g. severe family or personal issues that make it impossible or impracticable for the Head Coach to continue his employment), Head Coach shall have no liability whatsoever to the University as a result of such termination. All obligations of the University to make further payments and/or to provide other consideration, under this Agreement or otherwise, except to the extent already vested, shall cease immediately in the event such death or disability occurs.¹¹⁹

4. William J. Donovan, University of Florida, April 16, 2003

G. TERMINATION FOR DEATH OR DISABILITY OF COACH. This Agreement shall terminate automatically upon the death of Coach or if Coach becomes totally disabled within the meaning of the provisions of the group disability insurance benefits provided to Coach under paragraph 7. If such disability insurance is not available or not provided for any reason, this Agreement shall terminate automatically whenever in the sole judgment of Association, the physical or mental incapacity of Coach shall have prevented him from performing his duties for a period of not less than nine (9) months.¹²⁰

5. Kyle Flood, State University of New Jersey, January 31, 2012

XVII. (D.) TERMINATION UPON DEATH OR TOTAL AND PERMANENT DISABILITY.

This contract will also terminate upon Mr. Flood's death or upon total and permanent disability (as determined by the Director in compliance with law), with all earned but unpaid amounts being paid in the case of death to his estate. Total and permanent disability shall mean physical or mental incapacity of a nature that prevents Mr. Flood, in the sole judgment of the Director, from performing the essential functions of his position with or without reasonable accommodation.¹²¹

6. Timothy Fitzpatrick Floyd, University of Texas at El Paso, April 1, 2010

VI (C.) TERMINATION FOR DISABILITY/DEATH:

¹¹⁹ Employment Agreement between Timothy D. Beckman and University of Ill., Disability, Death, or Inability, ¶4.5 (Dec. 9, 2011) (on file with author) [hereinafter Beckman Contract].

¹²⁰ Amendment to Head Coaching Agreement between William J. Donovan and the Univ. of Florida, 13. Termination ¶1G (Oct. 26, 2011) (on file with author) [hereinafter Donovan Contract].

¹²¹ Employment Contract between Kyle Flood and The State Univ. of N.J., XVII. Compliance Provisions ¶1D (Jan. 31, 2012) (on file with author) [hereinafter Flood Contract].

If Floyd dies or becomes permanently disabled to the extent that, in the judgment of the Athletic Director, Floyd cannot satisfactorily perform the duties of head men's basketball coach ("Inability To Perform"), this Agreement shall terminate and all obligations of UTEP to compensate Floyd pursuant to this Agreement shall cease as of the date of such death or disability. UTEP shall be obligated to compensate Floyd or Floyd's estate in accordance with this Agreement for services performed prior to the termination date and, Floyd or Floyd's estate shall be entitled to those benefits, if any, that are payable under any UTEP sponsored group employee insurance or benefit plan in which Floyd is or was enrolled.¹²²

7. James L. Mora, Jr., University of California-Los Angeles, December 13, 2011

11.a. In the event Coach is unable to continue to perform his obligations under this 2012 HC Agreement by reason of illness or some other occurrence beyond the control of either party hereto, and such inability to perform has continued or will continue beyond 3 months, as determined by the Director in his/her sole discretion, this 2012 HC Agreement shall thereupon terminate. Upon such termination, neither party shall have any further obligation to the other except that University shall pay Coach any compensation and bonuses earned but not yet paid, and expenses incurred but not yet reimbursed, as of the commencement of the inability to perform as contemplated in this Section 11.a. In construing this Paragraph 11, the term "bonuses earned but not yet paid" shall apply only to the following bonuses: Any "Coach of the Year" bonus as set forth in Paragraph 7.c; the "regular Season Wins" bonus and the "PAC-12 Performance" bonus set forth in Paragraphs 7.b and 7.c, respectively, provided, however, that Coach actually coached each game counted as a win in computing the bonus(es); and the "Post-Season Appearances" bonus as set forth in Paragraph 7.d, provided, however, that Coach coached each game of the regular season on which any Bowl invitation was based, and further provided that Coach shall not receive any bonus based on Team appearance in a Bowl game unless Coach coached during that Bowl game. Because of the exigencies of operating an NCAA Division 1-A football program, Coach acknowledges and agrees that a termination pursuant to this Paragraph 11.a shall not be deemed a termination without cause under Paragraph 12, below. Additionally, Coach acknowledges and agrees that because of the special and unique nature of the services Coach is to render, as set forth more fully in Paragraph 11.c, below, a termination pursuant to this Paragraph 11.a shall not give rise to any claims or causes of action under any law, rule, or regulation relating to disability, including, without limitation, the Americans With Disabilities Act and the Fair Employment and Housing Act.¹²³

8. John Vincent Calipari, University of Kentucky, March 31, 2009

7(d) In the event Coach shall become disabled during the term of this Agreement, the University shall continue to provide all salary and benefits to Coach provided for pursuant to Paragraphs 5(b) and (c) and 6(a), (c), (d), and (e) of this Agreement as if Coach were fully performing such duties for a six month period beginning on the date of the disability, and upon such expiration date this Agreement shall terminate; provided, however, if by reason of Coach's

¹²² Head Coach Agreement between Timothy Fitzpatrick Floyd and The Univ. of Tex. at El Paso, VI. Termination §C. (April 1, 2010) (on file with author) [hereinafter Floyd Contract].

¹²³ Head Coach Agreement between James L. Mora, Jr. and The Regents of the Univ. of Cal., ¶11.a. (Dec. 13, 2011) (on file with author) [hereinafter Mora Contract].

disability, Coach shall receive disability insurance payments from any disability insurance policy paid for by the University, the University's obligations to Coach to pay salary pursuant to Paragraph 5(b) and (c) shall be reduced by the amount of disability payments received by Coach; and provided further that any such termination of this Agreement shall not effect Coach's right to continue to receive all disability insurance payments provided pursuant to the disability insurance policy referenced in Paragraph 6(c). The definition set forth in the University's group disability insurance policy (under which Coach shall be covered) for "disability" shall govern the determination of disability for purposes of this subparagraph. In addition, all deferred compensation money set forth in the Deferred Compensation Agreement shall accelerate and immediately vest and become payable to Coach.¹²⁴

9. Gus Malzahn, Auburn University, December 4, 2012

22. PHYSICAL OR MENTAL DISABILITY/INABILITY TO PERFORM: In the event of Coach's physical or mental disability or inability to perform his duties under this agreement for a period of time which would cause a substantial adverse impact on University's intercollegiate athletic programs, in lieu of any other University disability benefit otherwise available to University employees, University will pay to Coach a sum equal to sixty percent (60%) of his annual base salary for the remainder of this contract, such payment to be made on a date that is ninety (90) days after a determination has been made that Coach's physical or mental disability will not allow him to perform his duties under this Agreement, and upon such payment, his employment will be terminated without further obligation of either party, but Coach will continue to have the right to receive any post-employment benefits to which he is entitled by law or University policy because of his prior employment by University. This paragraph is not intended to confer any death benefit, nor shall it be applied in any manner which violates applicable law concerning handicaps or disability. Determination of such disability or inability shall be made by University in accordance with applicable law and University policies and procedures after due notice to Coach and after reasonable opportunity for hearing by or on behalf of Coach.¹²⁵

10. Brady Hoke, University of Michigan, March 28, 2011 (Terminated)

4.05 DISABILITY, DEATH, OR INABILITY. This Agreement will terminate automatically upon the Head Coach's death or disability (which for purposes of this section shall mean the Head Coach is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which continues for at least six (6) consecutive months and can be expected to result in death or can be expected to last for a continuous period of not less than 12 months). If the University or the Head Coach terminates this Agreement due to disability or for any other reason beyond his control (e.g. severe family or personal issues that make it impossible for the Head Coach to continue his employment), Head Coach shall have no liability whatsoever to the University as a result of such termination. All obligations of the University to make further payments and/or to provide other consideration, under this Agreement

¹²⁴ Employment Agreement between John Vincent Calipari and University of Ky., 7. Termination by University ¶7(d) (Mar. 31, 2009) (on file with author) [hereinafter Calipari Contract].

¹²⁵ Employment Agreement between Gus Malzahn and Auburn Univ., Physical or Mental Disability/Inability to Perform, ¶22 (Dec. 4, 2012) (on file with author) [hereinafter Malzahn Contract].

or otherwise, except to the extent already vested, shall cease immediately in the event such death or disability occurs. To the extent applicable, the Coach (or his beneficiaries) shall also be eligible to receive disability and/or life insurance benefits, but only to the extent that such benefits are available to him or his beneficiaries, as the case may be, under the rules established by the University and the University's insurance carrier.¹²⁶

11. Kyle Whittingham, University of Utah, May 31, 2011

7.(F.) The death or disability of Coach Whittingham. Disability is defined as the inability to perform the essential duties or functions of the Football Coach for a period of greater than six (6) consecutive months. The determination of disability shall be made by the University in its sole discretion. If Coach Whittingham becomes disabled, he shall continue to receive his salary and benefits for the six month period from the date of disability and, thereafter, shall only be entitled to receive any disability benefits to which he is entitled under any disability program in which he is enrolled.¹²⁷

12. Kevin Sumlin, Texas A&M University, January 1, 2014

5.1(a)(5) Termination by University for Cause. [The University has the right to terminate for cause if Sumlin encounters] substantial physical or mental incapacity lasting in excess of ninety (90) days in any one three hundred sixty five (365) day period which cannot reasonably be accommodated by the UNIVERSITY and which interferes with SUMLIN's ability to perform the essential functions of the duties and responsibilities set forth herein.¹²⁸

13. Bret Bielema, University of Arkansas, August 20, 2013

17. Disability of Coach. The University provides a long-term disability insurance policy for basic coverage to all benefits-eligible employees, including Coach, at no charge to the employees. All benefits-eligible employees, including Coach, have the option to purchase additional long-term disability coverage at their own expense. In the event Coach becomes disabled and unable to perform the essential functions of his position, with or without reasonable accommodations, during the Term of this Employment Agreement, the University shall continue to provide Coach's Annual Salary and all benefits required by this Employment Agreement until such time as an eligibility determination for Coach to receive basic coverage benefits (or additional coverage purchased by Coach) is made; provided, however, that the following conditions are met: (a) the University continues to provide basic coverage under the long-term disability policy to all benefits-eligible employees; and (b) Coach and/or his personal representatives shall cooperate and take all necessary steps to receive the basic coverage (or additional coverage purchased by Coach). During the waiting period (expressed as a period of days or months) under such disability insurance policy, Coach covenants and agrees that the

¹²⁶ Employment Agreement between Brady Hoke and University of Mich., Disability, Death, or Inability, ¶4.05 (Mar. 28, 2011) (on file with author) [hereinafter Hoke Contract].

¹²⁷ Employment Agreement between Kyle Whittingham and University of Utah, 7. Termination by Univ. for Cause ¶F. (May 31, 2011) (on file with author) [hereinafter Whittingham Contract].

¹²⁸ Amended and Restated Coach's Employment Agreement between Kevin Sumlin and Texas A&M Univ., Termination and Suspension ¶5.1(a)(5) (Jan 1, 2014) (on file with author) [hereinafter Sumlin Contract].

University may reassign and/or place Coach on paid administrative leave in a non-coaching position at the same Annual Salary and benefits. The University's obligation to pay Coach his Annual Salary and provide benefits as required by this Employment Agreement shall cease on the last working day of the month immediately preceding the month of Coach's initial payment under the long-term disability policy. If Coach's application for coverage is denied, Coach shall exercise all of his appeal rights under the policy. If Coach is not deemed eligible under the disability insurance policy, then the appropriate University officials and Coach shall meet to discuss the matter and Coach's employment status, including, but not limited to, all issues under the Americans with Disabilities Act and any other applicable law.

Additionally, for the avoidance of any doubt, if Coach terminates this Agreement due to a disability or illness that prevents Coach from fulfilling his obligations, then Coach shall not be responsible to repay any portion of the Coach's Payment as provided in this Employment Agreement ("Repayment Exception"); provided, however, if Coach invokes this provision and terminates this Agreement due to a disability or illness but accepts another coaching or administrative position with a college, university or professional coaching organization at any time within 12 months thereafter, then the Repayment Exception shall not apply, and Coach shall be responsible to comply fully with the Coach's Payment obligation of this Employment Agreement.

18. Death of Coach. This Employment Agreement and any amendments hereto shall terminate automatically in the event of Coach's death before the end of the Term or any extensions of the Term. In the event of his death, Coach directs the University to pay any final compensation owed to Coach prior to his death to his estate.¹²⁹

Orlando "Tubby" Smith, Texas Tech University, April 2, 2013, Employment Contract.(B.) Inability to Perform. In the event of the inability of Coach to continue to perform his obligations under this Agreement by reason of a substantial physical or mental illness, injury, or some other occurrence beyond the control of either party hereto, and such inability to perform has continued or will continue beyond a period of at least ninety (90) days within a 120-day period which cannot reasonably be accommodated by the University and which prevents Coach from being able to perform essential functions of the duties and responsibilities set forth herein, the University reserves the right to terminate this Agreement. In such event, all future obligations between the parties hereto shall cease.¹³⁰

14. John J. Fisher, Jr., Florida State University, January 5, 2010

V.(G.) Termination by Disability or Death. It is expressly understood and agreed that this is a personal service agreement between the University and the Coach and that in the event of the incapacity of the Coach, as certified by two (2) physicians selected or approved by the University, or his untimely demise, this Employment Agreement shall terminate and the

¹²⁹ Employment Contract between Bret Bielema and Board of Trustees of the Univ. of Ark., ¶¶17-18 (Aug. 20, 2013) (on file with author) [hereinafter Bielema Contract].

¹³⁰ Employment Contract between Orlando "Tubby" Smith and Texas Tech Univ. V. Termination ¶B. (April 2, 2013) (on file with author) [hereinafter Tubby Smith Contract].

University and SB shall have no further financial obligation hereunder except for the payment of compensation as though termination were by the Coach pursuant to subsection V.F. herein.¹³¹

15. Gary L. Andersen, University of Wisconsin, January 2, 2013 (Terminated)

4. For death or disability. Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically and shall be null and void if Coach dies or becomes totally or permanently disabled within the meaning of the applicable retirement system or of any University income continuation program definition or is otherwise unable to perform the essential functions of the position. In the event Coach becomes disabled as defined in the applicable University retirement system or income continuation program or is otherwise unable to perform the essential functions of the position, University agrees to continue Coach's annual gross base salary less applicable withholdings for ninety (90) days from the date of disability. Said ninety (90) days shall include the use by Coach of all accumulated sick, vacation, and personal leave. Termination hereunder is not subject to the provision for liquidated damages set forth in Article V, Section A.3 above.¹³²

16. Nick Saban, University of Alabama, January 4, 2007

5.01(a) Termination for Death or Disability. This Contract shall terminate automatically upon the death of Employee. If this Contract terminates because of Employee's death, Employee's annual base salary and all other forms of compensation, perquisites, and benefits shall terminate as of the calendar month in which death occurs, except that Employee's personal representative or other designated beneficiary shall be paid all such death benefits, if any, as may be contained in any benefit plan now in force, or hereafter adopted by the University and due to Employee thereunder.

If Employee becomes sick or injured so he is limited from performing the essential and substantial duties of the position of Head Coach, then Employee may become entitled to long term disability benefits under the University's long term disability benefit program. Upon the date of Employee's approval for long term disability payments as provided for in the University's long term disability benefit program, this Contract shall terminate and all compensation, perquisites, and benefits provided by the University under this Contract, including Article IV hereof, shall cease, except for payment of such long term disability benefits which Employee is entitled to receive pursuant to the University's long term disability benefit program.

If Employee becomes sick or injured so he is limited from performing the essential and substantial duties of the position of Head Coach, but Employee is denied long term disability insurance benefits under the University's long term disability benefit program, then in such event this Contract shall terminate on the date such long term disability benefits are denied and all compensation, perquisites, and benefits provided for in Article IV and other provisions of the

¹³¹ Employment Agreement between John J. Fisher Jr. and Florida State Univ., V. Termination of Employment Agreement ¶G. (Jan. 5, 2010) (on file with author) [hereinafter Fisher Contract].

¹³² Employment Agreement between University of Wisconsin-Madison Division of Intercollegiate Athletics and Gary L. Andersen, V. Termination and Liquidated Damages, ¶A.4. (Jan. 2, 2013) (on file with author) [hereinafter Andersen Contract].

Contract shall cease; but Employee shall receive from the University monthly disability payments in an amount equal to one-twelfth (1/12) of sixty-six and two-thirds (66 2/3%) percent of Employee's current annual base salary which shall be paid on the last day of each month for a period of one (1) year from the Contract termination date, at the end of which time such disability payments shall cease.¹³³

17. Ruffin H. McNeill, Jr., East Carolina University, February 26, 2010

XIV.(D.) Upon death or permanent disability of the Coach during the term of this Contract, whereupon the Coach's estate or Coach shall be entitled to the amount of only his base salary due and owing and any bonuses and Broadcast Programs payments that have accrued and are owing as of the effective date of termination. "Permanent disability" shall mean physical or mental incapacity of a nature which prevents the Coach in the sole judgment of the University, from performing the duties as Coach under this Contract for a period of four (4) consecutive months. In the event of the Coach's death, the personal representative of the Coach's estate or other designated beneficiary, if any, shall be paid all such death benefits, if any, as provided in the Coach's benefit plan. In the event the Coach becomes permanently disabled, the Coach shall be entitled to receive payments pursuant to any disability benefits plan in which he may be enrolled.¹³⁴

18. Urban F. Meyer, Ohio State University, November 28, 2011

5.5 Death or Disability. Notwithstanding any other provisions of this agreement, this agreement shall terminate automatically and shall be null and void upon the death of Coach or if Coach becomes disabled (as defined in Section 409A (a)(2)(C) of the Internal Revenue Code) or is otherwise unable to perform any one of the essential functions of the job, with or without a reasonable accommodation for a period of ninety (90) consecutive days.

In accordance with Section 1.1 of this agreement, and as a condition of employment, Coach shall have a comprehensive physical examination by a licensed physician, mutually agreed upon by the parties, which confirms his fitness for duty. The cost of the examination and all tests and procedures related to the examination shall be borne by Ohio State. A certification which confirms his fitness for duty shall be submitted to the Director within thirty (30) days of execution of this agreement and every two (2) years thereafter. Coach shall address any necessary requests for accommodations to the University at his earliest opportunity.¹³⁵

19. Mark Helfrich, University of Oregon, January 20, 2013

6.1 Termination due to Death or Disability.

¹³³ Head Coach Employment Contract between Nick L. Saban and The Board of Tr. of The Univ. of Ala., Article V – Termination ¶5.01(a) (Jan. 4, 2007) (on file with author) [hereinafter Saban Contract].

¹³⁴ Head Football Coach Employment Agreement between Ruffin H. McNeill and East Carolina Univ., XIV. Termination ¶D. (Feb. 26, 2010) (on file with author) [hereinafter McNeill Contract].

¹³⁵ Employment Agreement between Urban F. Meyer and Ohio State Univ., 5.0 Termination ¶5.5 (Nov. 28, 2011) (on file with author) [hereinafter Meyer Contract].

a. This Agreement shall terminate upon Coach's death. This Agreement shall also terminate upon Coach's total disability (within the meaning of University's disability insurance for employees of Coach's classification or within the meaning of Oregon Public Employees Retirement System (PERS) regulations or federal Social Security Administration Regulations).

b. If this Agreement is terminated pursuant to this section because of Coach's death, Coach's compensation and all other benefits shall terminate as of the calendar month in which death occurs, except that his estate or other designated beneficiary shall be paid all such death benefits, if any, as may be contained in any benefit plan now in force or hereafter adopted by University and due to Coach pursuant to that plan. Coach's dependents' continued eligibility for benefits shall be in accordance with the standard eligibility of dependents of Officers of Administration at the University. In addition, University shall pay to Coach's estate any compensation already fully earned but not yet payable under this Agreement.

c. If this Agreement is terminated because Coach becomes totally disabled, Coach shall continue to receive the Guaranteed Salary and any other standard University fringe benefits provided for under this Agreement until such time as Coach becomes eligible for (even if subsequently paid retroactively) total disability benefits from PERS, Social Security, or a private or group insurer, whichever first occurs. At the end of such transition period, if any, all compensation and other University fringe benefits shall terminate.¹³⁶

20. Jim McElwain, Colorado State University, December 13, 2011 (Terminated)

6.(a.) Termination by Death or Disability. Subject to applicable state or federal law, in the event McElwain shall die during the period of his employment hereunder or become disabled such that McElwain is unable to carry out his job responsibilities for a period of three months or more, McElwain's employment and CSU's obligation to make payments hereunder shall terminate on the date of his death, or the date upon which, in the sole determination of the President, McElwain has failed to carry out his job responsibilities for three months because of a disability.¹³⁷

21. Charlie Weis, University of Kansas, December 9, 2011 (Terminated)

14. Termination for Death or Disability

In the event of either Head Coach's death or disability during the term hereof, this Agreement shall be terminated under the following conditions:

- A. Head Coach's death shall immediately terminate this Agreement and Head Coach's legal representative shall be entitled to receive Head Coach's salary pursuant to Section 4 (Salary), on the dates payments would have otherwise been made to Head Coach for a period of six (6) months from the date of his death. All other benefits

¹³⁶ Employment Agreement between Mark Helfrich and Univ. of Or., 6. Termination without Cause, ¶6.1(a)-(c) (Jan. 30, 2013) (on file with author) [hereinafter Helfrich Contract].

¹³⁷ Employment Agreement between Jim McElwain and Colorado State Univ. ¶6.(a.) (Dec. 13, 2011) (on file with author) [hereinafter McElwain Contract].

and payments pursuant to the provisions of this contract shall terminate upon his death.

- B. Except as provided in Section 14(c), below, if Head Coach's mental or physical incapacity precludes him from performing his duties herein and such condition shall continue for a period of more than 120 days, KU or Athletics shall have the right, upon twenty-one (21) days written notice to Head Coach or his legal representative, to terminate Head Coach's employment, and Athletics shall be obligated to pay Head Coach the compensation under Section 4 (Salary) and other payments due and owing under this Agreement prior to his incapacity, less any amounts due to Head Coach as the result of his participation in Athletics' long-term disability plan referred to in Section 10(F) of this Agreement, on the dates payments would have been otherwise made, for a period of six (6) months commencing with the date of his incapacity.
- C. In the event Athletics or Head Coach are unable to obtain disability insurance on Head Coach, or if Head Coach does not enroll in the disability insurance policy referred to in Section 10(F) of this Agreement, then if Head Coach's mental or physical incapacity precludes him from performing his duties herein and such condition shall continue for a period of more than 120 days, KU or Athletics shall have the right, upon twenty-one (21) days written notice to Head Coach or his legal representative, to terminate Head Coach's employment, and Athletics shall be obligated to pay Head Coach compensation under Section 4 (Salary) of this Agreement, on the dates payments would have been otherwise made, for a period of six (6) months commencing with the date of his incapacity.¹³⁸

22. Mark "Bo" Pelini, University of Nebraska-Lincoln, March 1, 2009 (Terminated)

Section 15. Incapacitation. Should Coach become incapacitated so as to be unable to perform the duties pursuant to this Contract, and such incapacitation shall continue for more than six (6) months, or if such incapacitation is permanent, irreparable, or of such a nature as to make performance of Coach's duties impossible, then either party may terminate this Contract, whereupon the respective rights, duties and obligations of the parties hereunder shall cease and each party shall be released and discharged from this Contract without further liability to the other, with the exception of any liability which the University may have to Coach under the Nebraska Workers' Compensation Law, and with the exception of any benefits which Coach may be entitled to receive under any disability insurance coverage provided in whole or in part by the University.¹³⁹

23. Charlie R. Strong, University of Texas-Austin, February 14, 2014

7.(E.) Termination for Disability/Death. If Coach dies or becomes permanently disabled to the extent that, in the judgment of the Men's Athletics Director, Coach cannot satisfactorily perform the duties of Head Football Coach, this Agreement shall terminate and all obligations of the University to compensate Coach pursuant to this Agreement shall cease as of the date of such

¹³⁸ Employment Agreement between Charlie Weis and University of Kan., 14. Termination for Death or Disability ¶¶A.-C. (Dec. 9, 2011) (on file with author) [hereinafter Weis Contract].

¹³⁹ Contract of Employment between Mark "Bo" Pelini and University of Nebraska-Lincoln, Incapacitation §15 (Mar. 1, 2009) (on file with author) [hereinafter Pelini Contract].

death or disability. The University shall be obligated to compensate Coach or Coach's estate in accordance with this Agreement for services performed prior to the termination date and Coach or Coach's estate shall be entitled to those benefits, if any, that are payable under any University sponsored group employee insurance or benefit plan in which Coach is or was enrolled.¹⁴⁰

24. Richard A. Pitino, University of Louisville Athletic Association, Inc., July 1, 2012

6.2. In the event Employee becomes, in the opinion of a physician reasonably acceptable to Employer and Employee, so disabled as not to be capable of performing his duties hereunder for a period of six months or more, this Contract shall terminate. If said disability occurs during the period of the date of this Contract and March 31, 2013, Employee shall be entitled to receive the balance of the compensation which would have been due him pursuant to Sections 3.1.1 and 3.1.2 herein for a period of time commencing at the time of disability and ending at the earlier of termination of said disability or March 31, 2013, but for a period of no less than twelve months. Employer has purchased a long-term disability insurance policy from Lloyds of London on behalf of Employee under the terms of the Employment Contract between Employer and Employee dated June 25, 2007, and Employer maintains the right to increase the amount of said coverage in order to reimburse a portion of the cost of disability benefits that may be paid by Employer to Employee until March 31, 2013. Subject to Employer's ability to obtain an appropriate extension to Employee's long-term disability insurance policy, in the event Employee becomes, in the opinion of a physician reasonably acceptable to Employer and Employee, so disabled as not to be capable of performing his duties hereunder for a period of six months or more, and said disability occurs during the period of March 31, 2013 and June 30, 2017, it is the intent of Employer to pay Employee compensation pursuant to Sections 3.1.1 and 3.1.2 herein until the earlier of the termination of said disability or June 30, 2017. However, except as provided herein, Employer cannot assume the risk of self-insuring said payment to Employee. Therefore, Employer will use its best efforts to purchase long-term disability insurance on Employee from April 1, 2013 until June 30, 2017, for an amount equal to 100% of the employee's compensation as defined in Section 3.1.1 and 3.1.2. If such insurance is purchased and a disability benefit is paid from the policy due to Employee's disability, Employee will be entitled to receive a disability benefit from Employer equal to the balance of the compensation due him pursuant to Sections 3.1.1 and 3.1.2 herein for a period of time commencing at the time of disability and ending when the disability insurance benefit is no longer payable, but no later than June 30, 2017. If, after using its best efforts to purchase long-term disability insurance, said insurance cannot be purchased, and Employee becomes, in the opinion of a physician reasonably acceptable to Employer and Employee, so disabled as not to be capable of performing his duties hereunder for a period of six months or more, Employer will assign to Employee and Employee shall have the right to designate the beneficiary for the death benefit payable under the life insurance policy owned by Employer as describe in Section 3.1.15. The foregoing shall apply only if Employer is able to procure life insurance policy described in Section 3.1.15. Thus, if Employer is unable to procure life insurance and long-term disability insurance for Employee, then Employer shall not be required to make any payment or assign any benefits to Employee pursuant to this Section 6.2 on account of Employee's disability. Employee

¹⁴⁰ Restated Head Football Coach Employment Agreement between Charlie R. Strong and Univ. of Texas-Austin, 7. Suspension and Termination ¶E. (Feb. 14, 2014) (on file with author) [hereinafter Strong Contract].

agrees to take all medical exams and to provide all medical history that may be required as a condition to obtaining said additional long-term disability insurance.¹⁴¹

IV. CONCLUSION

After a review of many college coaches' contracts, the following can be concluded about death and disability clauses in coaches' contracts:

A. Death

1. Death will result in the termination of contractual obligations of the university.
2. In some contracts, the obligations of the university terminate at the end of the month in which the death occurs.
3. All obligations shall cease automatically, except if coach is entitled to any life insurance pursuant to his contract package, for expenses incurred but not yet reimbursed to coach, and compensation and bonuses earned but not yet paid. In essence, death ends the contractual obligations to the coach and his family.
4. Death is similar to termination for cause in that the contract ends.
5. In the termination for cause sections of the contract, death is listed in many coaches' contracts as a basis for termination for cause.

B. Disability

1. Disability, in essence, is the inability to perform the duties of the job of coach as a result of illness or medical or psychological incapacitation, or as defined in the disability policy obtained by the university for the coach or similar employees.

¹⁴¹ Employment Contract between Richard A. Pitino and University of Louisville Athletic Ass'n, Inc., Termination for Just Cause ¶16.2 (July 1, 2012) (on file with author) [hereinafter Pitino Contract].

2. In order to be considered disabled, there will be a designated amount of time in which the coach is unable to perform his duties, i.e. – 6 months, 9 months, or other reasonable periods of time.
3. The coach’s contract will contain a procedure to determine incapacity, which could involve a determination by one or more physicians, a determination in the sole judgment of the athletic director, or if there is a stalemate as to the determination, then an arbitration procedure. In essence, the determination of disability is a determination for a basis for termination for cause, and not a termination without cause.
4. Disability insurance for any period of time is the only means by which the coach receives additional payments, but less than his contractual amount post-termination.
5. Without disability insurance, the university’s obligations terminate.
6. In some contracts, the university provides a salary continuation program for the coach for a period of time or until the benefits of the disability policy commence.
7. In most instances the university will provide some form of disability insurance but the amounts therefor are not nearly sufficient to cover the entirety of the coach’s contractual package.

V. THE CONCEPT OF A GUARANTEED CONTRACT IN THE COACHING PROFESSION

Contract guarantees for players are commonplace in the National Basketball Association (“NBA”).¹⁴² Contract guarantees make certain that the player is paid and that the amount of

¹⁴² See generally Tom Penn, *NBA Players Have Best Deal*, ESPN (Updated Nov. 3, 2011, 1:17 PM), <http://espn.go.com/espn/print?id=7181583&type=story#>.

contractual base compensation (salary) and deferred base compensation are guaranteed in their entirety in the event that the player is terminated because of lack of skill, death, injury, illness, mental disability, or the salary cap.¹⁴³

It is all about guaranteed money.¹⁴⁴ “About 90 percent of all NBA contracts are fully guaranteed for payment on the day that they are signed by the player. That player simply needs to show up for work and he’ll get paid. He can lose his skill, be out of shape or for whatever reason perform poorly, yet his contract is secure.”¹⁴⁵

Sports agent Jimmy Sexton, who represents a large number of coaches and professional players, explained the effects of a guaranteed contract utilizing Memphis Grizzlies’ forward Rudy Gay as an example.¹⁴⁶ He said, “When you announce 5 years for \$80 for Rudy Gay, which everybody in Memphis will know about, you pretty much know that is a guaranteed contract. Unless he goes and does something totally egregious, or unless he becomes a bad players and the club wants to buy him out, in which he has got to agree to be bought out...he controls it, but for the most part over the next 5 years Rudy Gay is getting \$80-85 million dollars. No matter what. No matter if he’s good, bad, injured, if he dies he’s getting it. In the NFL, it’s not like that.”¹⁴⁷

“Unless negotiated otherwise, all NBA contracts are guaranteed. This comes back to haunt owners and franchises when guys like Gilbert Arenas play gun chicken in the locker room and then get injured, but it ensures that even the bench-riding veterans, the underperforming

¹⁴³ *See id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Pete Roussel, *Jimmy Sexton Explains the Difference Between NFL and NBA Contracts*, COACHING SEARCH (June 13, 2012), <http://coachingsearch.com/article?a=jimmy-sexton-explains-the-difference-between-nfl-and-nba-contracts>.

¹⁴⁷ *Id.*

rookies and the minimal impact role-players – i.e., guys who are not getting \$20 million from Nike – still get paid.”¹⁴⁸

The player contract entered between each player and an NBA team by which he is employed is a Uniform Player Contract in a form stipulated by the NBA Collective Bargaining Agreement.¹⁴⁹ The Collective Bargaining Agreement puts limitations on Amendments to the standard form contract.¹⁵⁰ Article II, Section 3 of the Collective Bargaining Agreement (Allowable Amendments), however, does permit an amendment to the NBA Uniform Player Contract that provides essentially for a guaranteed contract.¹⁵¹

Article II, Section 3 of the NBA Collective Bargaining Agreement states that:

(e) By agreeing upon provisions (to be set forth in Exhibit 2 to a Uniform Player Contract) stating that the Base Compensation provided for by a Uniform Player Contract (as described in Exhibit 1 to such Contract) shall be, in whole or in part, and subject to any conditions or limitations, protected or insured (as provided for by, and in accordance with the definitions set forth in, Section 4 below) in the event that such Contract is terminated by the Team by reason of the player’s:

- (i) lack of skill;
- (ii) death not covered by an insurance policy procured by a Team for the player’s benefit (“death”);
- (iii) disability or unfitness to play skilled basketball resulting from a basketball-related injury not covered by an insurance policy procured by a Team for the player’s benefit (“basketball-related injury”), or disability or unfitness to play skilled basketball resulting from any injury or illness not covered by an insurance policy procured by a Team for the player’s benefit (“injury or illness”), provided that a Contract can contain protection in only one of the three categories set forth in this Section 3(e)(iii); and/or
- (iv) mental disability not covered by an insurance policy procured by a Team for the player’s benefit (“mental disability”).¹⁵²

Article II, Section 3 also provides that:

¹⁴⁸ Eric Goldschein, *In Defense of Max Contracts – Or, Why NBA Superstars Should Shut Up*, SPORTSGRID (Oct. 8, 2014), <http://www.sportsgrid.com/nba/in-defense-of-max-contracts-or-why-nba-superstars-should-shut-up/>.

¹⁴⁹ See NBA Collective Bargaining Agreement art. II, §§3-4 (2011).

¹⁵⁰ NBA Collective Bargaining Agreement art. II, §§3-4 (2011).

¹⁵¹ NBA Collective Bargaining Agreement art. II, §3 (2011).

¹⁵² NBA Collective Bargaining Agreement art. II, §3(e) (2011).

(f) By agreeing upon provisions (to be set forth in Exhibit 3 to a Uniform Player Contract) limiting or eliminating the player's right to receive his Base Compensation (in accordance with paragraphs 7(c), 16(a)(iii), and 16(b) of the Uniform Player Contract) when the player's disability or unfitness to play skilled basketball is caused by the re-injury of one or more injuries sustained prior to, or by the aggravation of one or more conditions that existed prior to, the execution of the Uniform Player Contract providing for such Base Compensation. Notwithstanding the foregoing, with respect to Player Contracts entered into or extended after the date of this Agreement (but in the case of Extensions only with respect to the extended term), the provisions set forth in Exhibit 3 to a Uniform Player Contract shall not apply for a Season in the event such Contract is terminated during the period from February 1 of such Season through the end of that Season.¹⁵³

Article II, Section 4 of the NBA Collective Bargaining Agreement (Compensation Protection) addresses when players are compensated in the event of lack of skill, death, basketball-related injury, injury or illness, or mental disability:

(a) Lack of Skill. When a Team agrees to protect, in whole or in part, the Base Compensation provided for by a Uniform Player Contract in the event such Contract is terminated by the Team, pursuant to paragraph 16(a)(iii) thereof, by reason of the player's lack of skill, such agreement shall mean that, subject to any conditions or limitations set forth in Exhibit 2 to the Uniform Player Contract or expressly set forth elsewhere in this Agreement, notwithstanding the provisions of paragraphs 16(a)(iii), 16(d), 16(e), and 16(g) of such Contract, the termination of such Contract by the Team on account of the player's failure to exhibit sufficient skill or competitive ability shall in no way affect the player's right to receive, in whole or in part, the Base Compensation payable pursuant to Exhibit 1 to such Contract in the amounts and at the times called for by such Exhibit.

(b) Death. When a Team agrees to protect, in whole or in part, the Base Compensation provided for by a Uniform Player Contract in the event such Contract is terminated by the Team, pursuant to paragraph 16(a)(iv) thereof, by reason of the player's failure to render his services thereunder, if such failure has been caused by the player's death, such agreement shall mean that, subject to any conditions or limitations set forth in this Section 4(b), Exhibit 2 to the Uniform Player Contract, or expressly set forth elsewhere in this Agreement, notwithstanding the provisions of paragraphs 16(a)(iii), 16(b), 16(c), 16(d), 16(e), and 16(g) of such Contract, the termination of such Contract by the Team shall in no way affect the player's (or his estate's or duly appointed beneficiary's) right to receive, in whole or in part, the Base Compensation payable pursuant to Exhibit 1 to such Contract in the amounts and at the times called for by such Exhibit; provided, however, that: (i) such death does not result from the player's participation in activities prohibited by paragraph 12 of the Uniform Player Contract (as such paragraph may be modified by Exhibit 5 to the Player Contract), suicide, the abuse of alcohol, or the use of any Prohibited Substance or controlled substance; (ii) at the time of the player's failure to render playing services, the player is not in material breach of such Contract; (iii) if the Team, for its own benefit, seeks to procure an insurance policy covering the player's death, the player cooperates with the Team in procuring such an insurance policy, including by, among other things, supplying all information requested of

¹⁵³ NBA Collective Bargaining Agreement art. II, §3(e)-(f) (2011).

him, completing application forms, or otherwise, and submitting to all examinations and tests requested of him by or on behalf of the insurance company in connection with the Team's efforts to procure such policy; and (iv) if the Team, for its own benefit, has procured such an insurance policy, the player's estate and/or duly appointed beneficiary cooperates (in the manner described above) with the Team and insurance company in the processing of the Team's claim under such policy .

(c) Basketball-Related Injury. When a Team agrees to protect, in whole or in part, the Base Compensation provided for by a Uniform Player Contract in the event such Contract is terminated by the Team, pursuant to paragraph 16(a)(iv) thereof, by reason of the player's failure to render his services thereunder, if such failure has been caused by the player's disability and/or unfitness to play skilled basketball as a direct result of an injury sustained while participating in any basketball practice or game played for the Team, such agreement shall mean that, subject to any conditions or limitations set forth in this Section 4(c), Exhibit 2 to the Uniform Player Contract, or expressly set forth elsewhere in this Agreement, notwithstanding the provisions of paragraphs 7(b), 7(c), 16(a)(iii), 16(b), 16(c), 16(d), and 16(g) of such Contract, the termination of such Contract by the Team shall in no way affect the player's right to receive, in whole or in part, the Base Compensation payable pursuant to Exhibit 1 to such Contract in the amounts and at the times called for by such Exhibit; provided, however, that: (i) such injury does not result from an attempted suicide, the abuse of alcohol, or the use of any Prohibited Substance or controlled substance; (ii) at the time of the player's termination, the player is not in material breach of such Contract; (iii) if the Team, for its own benefit, seeks to procure an insurance policy covering the player's injury, the player cooperates with the Team in procuring such an insurance policy, including by, among other things, supplying all information requested of him, completing application forms, or otherwise and submitting to all examinations and tests requested of him by or on behalf of the insurance company in connection with the Team's efforts to procure such policy; and (iv) if the Team, for its own benefit, has procured such an insurance policy, the player cooperates (in the manner described above) with the Team and the insurance company in the processing of the Team's claim under such policy.

(d) Injury or Illness. When a Team agrees to protect, in whole or in part, the Base Compensation provided for by a Uniform Player Contract in the event such contract is terminated by the Team, pursuant to paragraph 16(a)(iv) thereof, by reason of the player's failure to render his services thereunder, if such failure has been caused by an injury, illness, or disability suffered or sustained by the player, such agreement shall mean that, subject to any conditions or limitations set forth in this Section 4(d), Exhibit 2 to the Uniform Player Contract, or expressly set forth elsewhere in this Agreement, notwithstanding the provisions of paragraphs 7(b), 7(c), 16(a)(iii), 16(b), 16(c), 16(d), and 16(g) of such Contract, the termination of such Contract by the Team shall in no way affect the player's right to receive, in whole or in part, the Base Compensation payable pursuant to Exhibit 1 to such Contract in the amounts and at the times called for by such Exhibit; provided, however, that: (i) such injury, illness, or disability does not result from the player's participation in activities prohibited by paragraph 12 of the Uniform Player Contract (as such paragraph may be modified in Exhibit 5 to the Player Contract), attempted suicide, the abuse of alcohol, or the use of any Prohibited Substance or controlled substance; (ii) at the time of such injury,

illness, or disability the player is not in material breach of such Contract; (iii) if the Team, for its own benefit, seeks to procure an insurance policy covering the player’s injury and/or illness, the player cooperates with the Team in procuring such an insurance policy, including by, among other things, supplying all information requested of him, completing application forms, or otherwise and submitting to all examinations and tests requested of him by or on behalf of the insurance company in connection with the Team’s efforts to procure such policy; and (iv) if the Team, for its own benefit, has procured such an insurance policy, the player cooperates (in the manner described above) with the Team and insurance company in the processing of the Team’s claim under such policy.

(e) Mental Disability. When a Team agrees to protect, in whole or in part, the Base Compensation provided for by a Uniform Player Contract in the event such Contract is terminated by the Team, pursuant to paragraph 16(a)(iv) thereof, by reason of the player’s failure to render his services thereunder, if such failure has been caused by the player’s mental disability, such agreement shall mean that, subject to any conditions or limitations set forth in this Section 4(e), Exhibit 2 to the Uniform Player Contract, or expressly set forth elsewhere in this Agreement, notwithstanding the provisions of paragraphs 16(a)(iii), 16(b), 16(c), 16(d), 16(e), and 16(g) of such Contract, the termination of such Contract by the Team shall in no way affect the player’s (or his duly appointed legal representative’s) right to receive, in whole or in part, the Base Compensation payable pursuant to Exhibit 1 to such Contract in the amounts and at the times called for by such Exhibit; provided, however, that: (i) such mental disability does not result from the player’s attempted suicide, or the use of any Prohibited Substance or controlled substance; (ii) at the time of the player’s failure to render playing services, the player is not in material breach of such Contract; (iii) if the Team, for its own benefit, seeks to procure an insurance policy covering the player’s mental disability, the player (and/or his duly appointed legal representative) cooperates with the Team in procuring such an insurance policy, including by, among other things, supplying all information requested of him, completing application forms, or otherwise and submitting to all examinations and tests requested of him by the insurance company in connection with the Team’s efforts to procure such policy; and (iv) if the Team, for its own benefit, has procured such an insurance policy, the player (and/or his duly appointed legal representative) cooperates (in the manner described above) with the Team and insurance company in the processing of the Team’s claim under such policy.¹⁵⁴

What follows is an example of a contractual guarantee provision for an NBA player:

**UNIFORM PLAYER CONTRACT
EXHIBIT 2 – Compensation Protection**

Player:

Team:

Date: August 2, 2014

<u>Season</u>	<u>Type of Protection</u>	<u>Amount of Protection</u>	<u>Additional Conditions or Limitations</u>
15-16	Skill: Injury or Illness;	100%	None

¹⁵⁴ NBA Collective Bargaining Agreement art. II, §4(a)-(e) (2011).

16-17	Mental; Death Skill: Injury or Illness;	100%	None
17-18	Mental; Death Skill: Injury or Illness;	100%	None
18-19	Mental; Death Skill: Injury or Illness;	100%	None
19-20	Mental; Death Skill: Injury or Illness;	100%	None

Automatic Stretch Provision: In the event that the Team terminates this Contract (resulting in the Player's separation of service from the Team), and the Team is obligated thereafter to make payments to the Player pursuant to this Exhibit 2, such payments shall be rescheduled as follows:

- (i) if the request for waivers on the Player is made during the period of September 1 through the following June 30, then (x) the Base Compensation owed to the Player pursuant to this Exhibit 2 with respect to the Salary cap year in which the request for waivers is made shall be paid in accordance with the payment schedule set forth in this Contract; and (y) the remaining Base Compensation owed to the Player pursuant to his Exhibit 2 shall be aggregated and paid in equal amounts per Season over a period equal to twice the number of Seasons (including any Player Option Year) remaining on this Contract following the Salary Cap year in which the request for waivers occurred (not including the then-current Season (or, in the case of requests for waivers made from September 1 through the first day of a Regular Season, the upcoming Season)), plus one Season; and
- (ii) if the request for waivers on the Player is made during the period from July 1 through August 31, then the remaining Base Compensation owed to the Player pursuant to this Exhibit 2 shall be aggregated and paid in equal amounts per Season over a period equal to twice the number of Seasons (including any Player Option Year) remaining

on this Contract following the date of the waiver (including the upcoming Season), plus one Season. In all circumstances described above except where specifically noted otherwise, the Base Compensation in each Season shall be paid in accordance with the schedule set forth in paragraph 3 of this Contract.

Initialed:

Player

Team

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As agents for NBA players attempt to negotiate various guarantees provided for in the NBA Collective Bargaining Agreement, so too should coaches' representatives attempt to have the university guarantee their contractual package. Is there such a thing as a guaranteed contract in college coaching? Probably not. However certain elements of the contract can be guaranteed.

A coach's contract can be cut short based on termination for cause. Cause is usually defined in the employment agreement. In my article "You Get Hired to Get Fired" (24 Marq. Sports L. Rev. 141 (2013)), I discussed the need for specific language defining the basis for termination for cause and a due process procedure to protect the coach in the event that the athletic director or university president determines there is sufficient cause for termination.¹⁵⁶ The article also suggests that the ultimate decision as it relates to whether there is a basis for termination for cause should be decided by an independent and impartial third-party arbitration rather than the athletic director or university president.¹⁵⁷ The article also suggests the elimination of distinguishing between termination for cause and termination without cause, and

¹⁵⁵ NBA Collective Bargaining Agreement, exhibit 2 (2011).

¹⁵⁶ Martin J. Greenberg, *You Get Hired To Get Fired*, 24 Marq. Sports L. Rev. 141, 215 (2013).

¹⁵⁷ *Id.* at 216.

just have a single termination provision with an agreed upon amount of liquidated damages and a broad mutual release.¹⁵⁸

The second area of protection is when the coach is terminated without cause. Termination of a coach without cause usually involves a failure by the coach to win games, dwindling ticket sales, unhappiness among big donors, loss of interest in the program, inability to compete against conference or state rivals, changes in administration (athletic director or president), or any other cause not listed in the termination for cause contractual provisions.¹⁵⁹ In my article “Coaches’ Contracts: Terminating a Coach without Cause and the Obligation to Mitigate Damages” (23 Marq. Sports L. Rev. 339 (2013)), I enumerate the protections that could be included in the coach’s contract when the coach is being terminated without cause.¹⁶⁰ Those protections included taking a lesser amount of liquidated damages for and in consideration of omitting the obligation to mitigate damages, among others.¹⁶¹

The other significant areas in which a coach may be terminated is by death or disability, i.e. the purpose of this article. Providing insurance may be key to a “guaranteed” contract for a coach. The assistance of sophisticated insurance and tax counsel is necessary in these endeavors.

Life insurance is a contract between an insured (insurance policy holder) and an insurer, where the insurer promises to pay a designated beneficiary a sum of money (the insurance “benefits”) in exchange for the payment of a scheduled premium, upon the death of the party that is the insured.¹⁶² Generally, life insurance falls into two categories:¹⁶³

¹⁵⁸ *Id.* at 214,16.

¹⁵⁹ Martin J. Greenberg, *Coaches’ Contracts: Terminating a Coach Without Cause and the Obligation to Mitigate Damages*, 23 Marq. Sports L. Rev. 339, 341 (2013).

¹⁶⁰ *Id.* at 339.

¹⁶¹ *Id.* at 390-91.

¹⁶² *Life Insurance*, WIKIPEDIA http://en.wikipedia.org/wiki/Life_insurance (last visited Jan. 30, 2015).

¹⁶³ *Id.*

1. Protection Policies – These policies are designed to provide a benefit in the event of a specific event, i.e. - death, typically in a lump sum payment. A common form of this policy is term insurance.¹⁶⁴
2. Investment Policies – This form of policy has as its main objective the facilitation of growth of capital by regular or single premiums payments, such as whole life, universal life, and variable life policies.¹⁶⁵

For the purposes of protecting a coach if he/she dies and the contract has a remaining term, probably term insurance would be the first option. Term insurance has some beneficial features for the protection of the coach in the event he dies during the term of the employment contract. Term insurance creates income replacement in a lump sum that is designed for a specific period, usually covering the term of the coaching contract.¹⁶⁶ Term insurance typically is less expensive than whole life or permanent forms of life insurance, and the premiums are typically fixed during the term of the contract and the proceeds are paid to beneficiaries generally income tax free.¹⁶⁷

Insurance and tax counsel are necessary in these transactions in the structuring of the contractual relationship between the coach and the university. Does the coach receive additional income in order to purchase the insurance to guarantee the contract? Does the university purchase the insurance much like a corporation would purchase a key man policy, wherein the university would receive the insurance proceeds for the years for which the coach was paid and the coach's estate would receive the amounts for which the coach was not paid making the contract guaranteed. What are the income tax ramifications of these various relationships? The

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *What is Life Insurance?*, FIDELITY <http://www.fidelity.com/life-insurance-planning/what-is-life-insurance?print=true> (last visited Jan. 30, 2015).

¹⁶⁷ *Id.*

university will certainly provide some form of life insurance as an employment benefit, but certainly not enough to cover the replacement cost of the coach's package in the event he dies before the contract ends.

John Protiva of Brookfield, Wisconsin and a 56 year veteran in the insurance business said that "the coach's main objective in any contract negotiation should be income preservation and family maintenance and the unlikely event of death needs to be addressed and protected against from a contractual standpoint. While decreasing life insurance seems to be a natural for this situation, the use of such insurance is currently not in vogue. I would probably suggest a level term policy, or in the alternative, a universal life insurance policy, for these situations."

A universal life insurance policy is a type of permanent life insurance designed to provide lifetime coverage.¹⁶⁸ Unlike whole life insurance however, universal life insurance policies are flexible and they allow the coach to lower or raise the premium amount based upon the amount of savings needed throughout the insured's lifetime.¹⁶⁹ Like whole life insurance, universal life insurance has a tax deferred savings component.¹⁷⁰ However, because of the lifetime coverage and savings component, universal life insurance will typically have a higher premium than term life insurance.¹⁷¹

Protiva made the following comments:

1. A prior agreement could be made to award the cash savings from the policy to the coach as a bonus or severance pay at the end of his employment contract if the university owns the policy, or if the coach owns policy – he may continue on with the policy and build up cash reserves and also maintain the death benefit.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

2. The ownership and beneficiary of a life insurance policy should be decided with competent legal and tax advice.

3. On one hand, the life insurance policy could be owned by the coach's spouse (who also could be beneficiary). Tax counsel should confirm whether a sizable life insurance benefit would be estate tax free.

4. Legal counsel should advise if a trust should be created, with the spouse as owner and beneficiary of the trust, thus having proceeds estate tax free.

5. The death benefit paid to the beneficiary is income tax free. However, the premium paid by the university is taxed as income to the coach. The university could also pay to the coach the amount of income tax he incurs when the university pays the premiums.

6. There is some advantage to using a level benefit in that the excess payout over and above the contractual amount of dollars can be provided to the benefit of the estate. Thus the coach's family receives the full contractual amount initially guaranteed even though the coach is deceased. (Say death occurs in 2.5 years of a 5 year contract.) The balance remaining after the family's benefit is paid out could be used as a key man replacement fund by the university or to bear the costs of buying out a newly recruited coach's contract at a university of interest.

7. A Universal Life policy would have an advantage over a term insurance policy which is usually a 10, 15, 20-year contract. The reason being, that should the university decide to extend the coach's contract, the saving of premiums would be a possibility because of age and health conditions.

8. A university's obligation to compensate a coach only for services prior to the termination would suggest that a contractual agreement is necessary to guarantee the full benefit of the insurance is in force so that the balance of the full face amount of the benefit is guaranteed

to the coach's estate. The result is there is full compensation forthcoming on the coach's initial contract, not just funds prior to termination, but complete payout of original contract agreement. Thus the beneficiary receives the full contractual death benefit.

9. The level benefit is advantageous also if a deferred compensation payment is in force whereby the excess benefit to the university can pay it out of the insurance proceeds which are over and above the benefit paid to the coach's estate. This may also be prudent in event of Bowl Bonus and other awards.

Protiva further indicated that "because of the amount of stress and medical incidents that occur in a head coach's coaching career, the issue of disability insurance takes on extraordinary importance for purposes of providing protection for the family in the form of a paycheck, i.e. – income continuation and maintaining the standard of living. If the coach becomes partially or totally disabled, the best practice would be to negotiate current income continuation until the contract is terminated. Such continuation could be for the entirety of the contract package amount or some percentage, the same way that disability insurance is structured, i.e. a percentage of the compensation package. Supplemental policies to enhance what the university is offering also need to be looked at from an insurance perspective. This of course, once again, like life insurance, is an area that needs sophisticated insurance counsel. What is the definition of disability? What is the waiting period? Is the coverage for one's own occupation or gainful occupation? What is the duration of the benefits? If disability insurance covers 50-60% of the coach's income, is supplemental income continuation appropriate? Who pays for the insurance? What are the tax implications of the payments?"

Protiva made the following comments:

1. When the premiums are paid by the coach, the benefits received are income tax free. If paid by the university, the benefit is taxable to the coach.

2. The coach may choose the amount of time he will receive his disability income, 2, 5, 10 years, or to age 65. It may be prudent to have the policy issued to be in force beyond the contract period should the disability be long term.

3. When the coach purchases the disability policy, he can also choose the amount of time he will wait until the disability income starts: 30, 60, 90, 180 days. For example, the university could consider full income payment for the first 180 days, then the policy pays its benefit – thus saving on premiums.

4. The policy should be Guaranteed Renewable to age 65, a protection against a most severe illness or accident. Or better yet, non-cancelable, which would mean the premiums can never be changed, they are guaranteed as well as the benefit.

5. The coach's policy should cover the coach's own occupation, not just that he can perform any daily activities of another occupation.

6. Coach may receive a University employee benefit of a percentage of his annual base salary, for a limited time period (possibly excluding bonuses). Hence a long term, non-cancelable individual policy purchased by coach would fill out the protection.

7. The personal policy of the coach should have Waiver of Premium, which means that if the coach becomes disabled for more than 90 days, no premium payment is required. This is quite important because of the higher premiums for High Limit Coach coverage. The Cost of Living Adjustment (COLA) may be considered to help offset the coach's losses due to normal inflation and the coach's expected quality of life.

8. Finally, a type of tier approach could be advised. That is, coach has his own individual policy, his employee benefit group policy, and then a supplemental policy to obtain high limit benefits keyed to his earnings.

VI. CONCLUSION

Stress, illness, leave of absences, inability to perform, disability, and death are facts of life in the coaching employment environment, and have become common occurrences in the profession. College coaching is most certainly an at-risk profession. Attention needs to be directed at the contractual clauses addressing these unforeseen circumstances. The aforementioned can affect the coach's future, his income stream, and family stability. Obviously providing insurance and some form of income continuation is essential to the contract negotiation process. Because these issues are sophisticated, they need the special assistance of insurance and tax counsel. Contract guarantees as a result of these unforeseen occurrences need to be in the forefront of the contract representative's agenda. The contract representative must make certain that the coach's income preservation is achieved for not only the coach, but his family. Once again, it's not how much you make; it's what you take home in the form of guaranteed income.

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