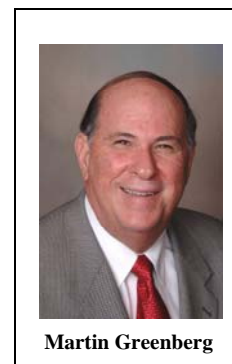


Good Drafting Makes Good Contracts

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Sports contracts deserve the same precision of draftsmanship as any other legal document. When drafting sports contracts, our goal as lawyers should be precision and expression conferring a singular meaning. The document should be clear on its face so that it is not subject to third-party intervention. In essence, when drafting sports contracts we should adopt the principle of S.U.C.S. (Simplicity – Understanding – Clarity - Standardization) or K.I.S.S. (Keep It Simple Stupid).¹



Although the principles of S.U.C.S. have been promoted for over a decade, parties today continue to violate them while drafting sports contracts. Mistakes particular to sports contracts are repeated, resulting in mediation or arbitration between the parties.² Recently, Louisiana State University learned first hand why sports contracts, perhaps even more than others, must be drafted with particular attention to the principles of S.U.C.S.

Pokey Chatman (Chatman) was an integral part of the Louisiana State University (LSU) women's basketball program as a player and a coach for 17 years. Chatman was a point guard for LSU from 1988 until 1991 and in 1991 received Kodak All-American honors in her senior year.³

During the 2003-04 basketball season, Chatman was appointed LSU's interim head coach replacing the legendary Sue Gunter. As acting head coach, the Lady Tigers finished the 2003-04 regular season with a 15-5 record and ended the season in the women's Final Four. In Chatman's tenure as a head basketball coach, LSU teams amassed an overall 90-14 record, including a 47-3 record after her first 50 games, which constitutes the second-best record after 50 games for a head coach in women's basketball history. Chatman received numerous awards in recognition of her coaching accomplishments, such as the Black Coaches Association Coach of the Year in both 2004 and 2005, the 2005 United States Basketball Writers Association Coach of the Year, and the 2005 Naismith National Coach of the Year.⁴

<i>Season Team</i>	<i>Record</i>	<i>Head Coaching Record</i>	<i>NCAA Tournament</i>
2003-04	LSU	15-5 (Acting head coach)	Final Four
2004-05	LSU	33-3	Final Four
2005-06	LSU	31-4	Final Four
2006-07	LSU	26-7	Resigned before Tournament
Totals:		90-14 (105-19 including 2003-04)	

Despite her amazing accomplishments, on March 7, 2007, Chatman announced her resignation as head

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¹ Martin J. Greenberg, *Drafting of Player Contracts & Clauses*, 4 MARQ. SPORTS L.J. 1 (1993).

² *Id.* at 58.

³ LSU sports.net, *Pokey Chatman Bio*, May 16, 2007, <http://www.lsusports.net/ViewArticle.dbml>.

⁴ *Id.*

women's basketball coach⁵. Chatman cited her reasons for resigning as wanting to pursue other career and business opportunities in the private sector. Her Employment Agreement, which was dated July 1, 2006, ended on June 30, 2009.⁶ The resignation was effective April 30, 2007, after the NCAA Tournament.

It was later reported that Chatman resigned as the head women's basketball coach at LSU after the university became aware of an *alleged* inappropriate sexual relationship between Chatman and a former player on Chatman's team.⁷ In her resignation letter, signed by both her and Athletic Director Skip Bertman, Chatman agreed, "It is my understanding that this resignation relieves me of any and all obligations relating to leaving the university prior to the term of my employment agreement, and further I understand that it relieves the university of any obligation to me under my employment agreement after the effective date. I understand that this resignation is irrevocable upon acceptance."⁸

Article 12, paragraph B of Chatman's Employment Agreement (Termination by Coach) indicates that if the Coach leaves the employment of the University "prior to the term of the Agreement, Coach shall pay to the University in lieu of all other legal remedies, liquidated damages in the amount of Two Hundred Thousand and No/100 (\$200,000.00) Dollars for each year remaining on the contract as defined in Article 2 of this agreement."⁹

Chatman had two years left on her contract, but LSU officials chose not to impose a \$400,000 early departure penalty. After Chatman's resignation, the LSU women's basketball team played in the NCAA Tournament under interim coach Bob Starkey. The team made it to the national semi-finals (the Women's Final Four) before losing to Rutgers. LSU has since hired Hall of Fame Coach Van Chancellor as Chatman's permanent successor.

Contract and legal entanglements followed Chatman's resignation. Prior to her resignation, Chatman hired Baton Rouge attorney Mary Olive Pierson, who threatened to sue LSU for the remaining two years of her client's contract in a letter dated April 13, 2007.¹⁰ Pierson argued that Chatman was entitled to an annual salary of \$250,000 pursuant to Article 3 (Salary) of the Employment Agreement as well as payments of \$175,000 for fiscal year 2007-08 and \$180,000 for fiscal year 2008-09 pursuant to Article 8 for Radio/Television/Internet Payments.¹²

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Pierson alleged that LSU forced Chatman's resignation without just cause. "I don't believe her consent

⁵ Karen Gross, *Pokey Chatman Announces She is Stepping Down as Head Coach of the LSU Women's Basketball Team*, http://www.associatedcontent.com/pop_print.shtml?content_type=article&content_type=171224 (last visited July 5, 2007).

⁶ Employment Agreement between Board of Supervisors of Louisiana State University and Agriculture and Mechanical College and Pokey Chatman, July 1, 2006 [hereinafter *Employment Agreement*] at 1.

⁷ ESPN Women's Basketball, Sources: *Chatman Quits Amid Sexual Misconduct Claims*, <http://www.wvltv.com/local/stories/ww1041707khpokey.19fa2c98.html> (last visited July 5, 2007).

⁸ WVLTV, Associated Press, Lawyer: *Pokey Chatman Did Not Willingly Leave LSU*, Apr. 27, 2007, <http://www.wvltv.com/local/stories/ww1041707khpokey.19fa2c98.html>.

⁹ Article 12, paragraph (b) of Chatman's Employment Agreement dated July 1, 2006.

¹⁰ Glen Guilbeau, *Chatman, LSU remain at odds*, Shreveport Times, June 8, 2007.

¹¹ *Employment Agreement*, July 1, 2006 at 1.

¹² *Id.* at 4.

to the resignation was fairly obtained or freely given,” she said.¹³

Pierson also maintained that LSU promised to pay Chatman the money earned pursuant to Article 6 (Post-Season Bonuses) at the time of her resignation. Even though Chatman did not coach the team in the NCAA Tournament Pierson maintained that Chatman was eligible through her contract for NCAA post-season bonus dollars. Article 6 states:

Post-Season. In the event the Women’s Basketball team participates in post-season Women’s Basketball games, the University agrees to pay Coach as additional compensation for the extra services required of Coach in the preparation for and participation in post-season Women’s Basketball games as follows:

- a. \$20,000 for SEC Tournament Championship
- b. \$15,000 for share of SEC Regular Season Championship
- c. \$30,000 for SEC Regular Season Championship (outright)
- d. \$10,000 for an appearance in the 1st/2nd Round of the NCAA Tournament
- e. \$10,000 for NIT Championship
- f. \$25,000 for an appearance in the NCAA “Sweet Sixteen”
- g. \$50,000 for an appearance in the NCAA “Elite Eight”
- h. \$75,000 for an appearance in the NCAA “Final Four”
- i. \$150,000 for NCAA Championship

The additional sum or sums, if payable, shall be paid within sixty (60) days following the post-season Women’s Basketball game in which the University participates.¹⁴

Parts “a” through “c” and “e” do not apply for the 2006-2007 season as LSU did not win SEC titles and went to the NCAA Tournament instead of the NIT. Pierson contends that parts “d,” “f,” “g,” and “h” do apply as the Lady Tigers reached the Final Four under interim coach Bob Starkey before losing to Rutgers in the national semifinals.

Under the possible bonus breakdowns, the Employment Agreement states, “[m]ore than one (1) post-season game incentive may be earned during the season; however, the additional compensation shall not exceed \$50,000 (for items a through c above) plus the highest achieved incentive (for items d through i) for a maximum of \$200,000.”

Pierson interpreted the bonus language to be cumulative, thus resulting in bonuses of \$170,000. Pierson arrived at her \$170,000 total by adding “d” (\$20,000), “f” (\$25,000), “g” (\$50,000) and “h” (\$75,000).

LSU general counsel Ray Lamonica interpreted the bonus language to equate to the highest single achievement incentive, which would be \$75,000.¹⁶ LSU arrived at \$75,000 by counting only “h” because the last line of the last sentence states “the highest achieved incentive (for items d through i).”¹⁵ Lamonica said the phrase “highest achieved incentive” is key. “Notice, incentive is not plural in that sentence,” he said. “The highest achieved incentive is h, which is \$75,000.”¹⁷

¹³ WWLTV, *supra* note 8.

¹⁴ *Employment Agreement*, *supra* note 6, at 2.

¹⁵ Glenn Guilbeau, *Chatman Would Drop Suit VS. LSU for Bonus Money*, June 9, 2007, http://www.usatoday.com/sports/college/womensbasketball/2007-06-09-chatman-lsu_n.htm.

¹⁶ Glen Guilbeau, *Chatman, LSU Remain at Odds*, SHREVEPORT TIMES, June 8, 2007.

Yet another confusing section of the bonus language is “d,” which states “\$10,000 for an appearance in the 1st/2nd Round of the NCAA Tournament.” Does that mean \$10,000 or \$20,000? Thus, the bonus totals in Chatman’s Employment Agreement can be interpreted in two different ways, one equaling \$160,000 or \$170,000 and the other equaling \$75,000.

Rather than Chatman suing the University for the package compensation enumerated in the Employment Agreement or the University suing Chatman for the early departure and agreed upon liquidated damages, June 20, 2007, the parties mutually agreed to a settlement of \$160,000 from LSU, ending all contractual ties, claims, or future threats of lawsuits by either party.¹⁸

Chatman ultimately settled her disputes, but the settlement was based upon a contract that was subject to various interpretations.

The ambiguous nature of the employment agreement arose out of a common mistake made in the drafting of sports contracts. The parties failed to clarify the cumulative or noncumulative nature of Article 6, the post-season bonus.¹⁹ While the contract clearly states that “[m]ore than one (1) post-season game incentive may be earned. . .” It then proceeds to describe the conditions of accumulation with little clarity.²⁰ Rather, in a confusing and lengthy sentence the drafters explain all of the conditions subsequent as if intending to create a dispute requiring legal resolution. If the parties had separated the conditions or clarified the meaning with an example, then the intent would have been better articulated.

Furthermore, the drafters should have been more specific in describing the conditions precedent to Chatman receiving post-season bonuses. The Employment Agreement merely states that, as further compensation for any “extra services required of COACH in the preparation for and participation in post season” additional money will be paid for team accomplishments. What qualifies as preparation or participation? Some teams begin the season with the set goal of a championship. Thus, one could argue then that each day of practice and each regular season game is in preparation for the post-season. The contract does not clearly define when preparation for the post-season begins or what level of participation is required to receive the bonuses. These mistakes also go against the principles of S.U.C.S.

Contracts that do not adhere to the principles of S.U.C.S. will land the draftsman, coach, and school in dispute resolution, whether that is through mediation, arbitration, settlement proceedings, or court action.²¹ Thus, it should be the goal of contract drafters to employ the principles of S.U.C.S. and avoid ambiguous contract language.

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¹⁷ Guilbeau, *supra* note 15.

¹⁸ Glen Guilbeau, *Chatman Accepts Contract Settlement from LSU*, June 16, 2007, http://www.usatoday.com/sports/college/womensbasketball/sec/2007-06-15-chatman-settlement_n.htm.

¹⁹ Martin J. Greenberg, *Drafting of Player Contracts & Clauses*, 4 MARQ. SPORTS L.J. 1 (1993).

²⁰ *Employment Agreement*, July 1, 2006 at 2.

²¹ Greenberg, *supra* note 19.

²² *Id.*

Along these lines, individuals drafting sports contracts should be mindful of these common errors.²²

1. *Shorthand Style-Use of Non-Definitional Words* - Often words that are unique to the sports industry are employed. These words are non-definitional in themselves, possessing different definitions depending upon the context of their use. Such words might include; “cut,” “league year,” “active list,” “salary guarantee,” “season,” “roster,” and “plays.”
2. *The Use of Excessive Legal Verbiage and the Absence of Specificity* - Legal verse and prose lead to drafting confusion and excessive verbiage. It is essential that any condition precedent or condition subsequent be stated with specificity, providing for the time and upon which events the condition will be met or will fail.
3. *Failure to State with Specificity the Rating or Assessment System that Will Earn the Player/Coach the Bonus* - For example, in the bonus clause “...player will receive \$25,000 if he leads the League in pass receptions...,” does the language mean that the player will earn the bonus if he leads the league in the number of passes caught, or if he leads the league in the average yards per reception, or if he leads the league in total yardage as a result of a total number of receptions caught?
4. *Awarding of Bonuses that Are Subject to Ambiguous or Nonexistent Statistical Achievements* - Such as the number of tackles (assisted or unassisted) or quarterback ratings.
5. *Failure to State whether the Bonuses, Regardless if within a Performance or Honors Bonus Category, Are Cumulative or Noncumulative.*
6. *In the Case of Honor Bonuses, a Failure to State which Reporting Agency Qualifies the Player/Coach for the Bonus* - Such as Associated Press, United Press International, Newspaper Enterprise Association, The Sporting News, Pro Football Weekly, USA Today and Pro Football Digest to name a few.
7. *Failure to State whether the Particular Bonus Provision Is Subject to a Qualifying Standard-* For example, with the contractual language, “Player is to receive a bonus of \$25,000 if he leads the league in kick-off returns.” Player may have one kick-off return and lead the league, but what is intended is that the player have a minimum number of kick-off returns in order to qualify for the bonus.
8. *Failure to State what Happens to the Contract Provision in the Event that the Player is Traded or Assigned or Coach is Fired or Resigns.*
9. *Failure to State which Records Will Constitute the Official Records to Determine Achievement of a Performance Bonus, Such as Conference, League, or Team Records.*
10. *Failure to State What Effect, if Any, Injuries May Have upon the Player’s or Coach’s Opportunity to Either Achieve or Earn Bonuses.*