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The Buyout Game – An Opinion

By Martin J. Greenberg

When is a contract not a contract? Where does job movement and free agency run rampant? Where is employment a continuous carousel? None other than in the world of college coaching.

A five-year term contract means nothing because the university and coach can cut the contract short if they are willing to pay the price. The university can cut short a contractual commitment by terminating the coach without cause. This probably most often occurs when the coach is failing to put a winning team on the court or field, or when the coach is failing to garner adequate fan support, or when the coach is failing to garner financial support from alumni and boosters, or when the coach is failing to compete with conference opponents and noted rival universities, or when the coach is failing to bring in student-athletes representative of the university's mission, or when there is a change in the president or athletic director who wishes to replace the coach with his or her own, or for any other potential cause not listed in the pertinent contractual provisions.

Cut-shorts are essentially breaches of the contractual terms and result in some form of agreed upon liquidated damages, which normally involve the payment of some portion of the contract package to the coach for the remaining term. However, such payments are normally subject to the coach's obligation to mitigate damages by undertaking good faith efforts and affirmative steps to procure comparable employment.

In most instances it is difficult for an early terminated coach to find comparable employment because of the taint of dismissal and the university is most likely contractually obligated for the entire contract package or some portion thereof for the remaining term. Defined compensation pursuant to the contract offsets liquidated damages payable for termination without cause.

On the other hand, a coach has the same option to terminate early, to breach his contract term, by simply paying a predetermined buyout price as liquidated damages. Since coaching contracts are personal service contracts, the university cannot force the coach to perform, but only prevent the coach from performing services for another competitor. So, universities have resorted to buyouts regardless of when the contract is terminated.

This system of encouraging contract breach has resulted in a coaching carousel -- commitments that are short term, loyalties that are waning, universities poaching and tortiously interfering by invitation with the contract rights of their competitors -- that creates an interesting employment landscape. For instance, Steve Alford ("Alford") became the head basketball coach of the University of New Mexico on June 26, 2007. Alford signed a term sheet dated March 18, 2013 in which a new ten-year contract was to commence on April 1, 2013. The term sheet was specifically contingent upon reaching agreement on a final written employment agreement. Alford announced his resignation to take the head basketball coach job at the University of California – Los Angeles ("UCLA") on March 30, 2013, just two days before his new contract was to begin on April 1, 2013. Bobby Petrino, recently hired by the University of Louisville (January, 2014), once signed an extension for one job, and then interviewed for another coaching position five days later.

Buyouts, whether they are paid by the coach or the recipient university, are simply the cost of doing business in the world of college coaching and indeed are an expensive cost.

In 2012, University of Tennessee fired Derek Dooley ("Dooley") as head football coach. Dooley was owed $5,000,000 and his staff was owed another reported $4,000,000. In addition, Tennessee had to pay another $1,400,000 to the University of Cincinnati for hiring Butch Jones as part of Jones' buyout responsibility. Dooley had four years remaining on his contract. Following Dooley's firing, Auburn University fired its head football coach, Gene Chizik ("Chizik"), two seasons after the Tigers went unbeaten and won the national championship. Auburn owed in excess of $11,000,000 in buyouts to its coaching staff, including $7,500,000 to Chizik who had three years remaining on his contract. Chizik was to be paid $208,334 per month for thirty-six months. Auburn hired Gus Malzahn as Chizik's successor and agreed as well to pay $750,000 more to Arkansas State University to cover Malzahn's buyout requirement.

In June of 2012, Ron Guenther ("Guenther") retired after nineteen years as University of Illinois' Athletic Director, and Mike Thomas was hired as his replacement. Shortly thereafter, Thomas fired head football coach Ron Zook ("Zook"), women's basketball coach Jolette Law ("Law"), and men's basketball head coach Bruce Weber ("Weber"). Illinois is exposed to more than $7,000,000 in buyouts to three departed coaches, all of whom had multiple years left on their contracts. Zook had $2.6 million remaining over two years, Weber had $3.9 million over three years, and Law had $620,000 over two years. All three coaches had received contract extensions from Guenther within three years of their firing. And, of course, the University of Illinois was required to expend additional money to obtain new coaches. Tim Beckman replaced Zook and the University paid $130,000 buyout to the University of Toledo, plus $59,642.60 to cover tax implications. John Groce was hired as the new basketball coach and the University of Illinois paid his $200,000 confidential buyout to Ohio University.

It becomes simple; unhappy with the current coach, the university fires the coach without cause and is obligated to pay contractual liquidated damages. In many instances that does not end the story in that the university will then seek to poach another university's coach. The university will incur an additional payment of the liquidated damages required under the obtained coach's early termination liquidated damage clause. This simply becomes a circuitous and expensive proposition.

2012 was a banner year for University buyouts, including:

School	**Coach**	**Buyout**
California	Jeff Tedford	$6,900,00
Colorado	Jon Embre	$1,625,000
Florida International	Mario Cristobal	$900,000
Kentucky	Joker Phillips	$2,550,000
N.C. State	Tom O'Brien	$1,200,000
Purdue	Danny Hope	$600,000
South Florida	Skip Holtz	$2,500,000
Southern Mississippi	Ellis Johnson	$2,100,000
Boston College	Frank Spaziani	$3,300,000

In an article appearing on December 11, 2012 in USA Today entitled "NCAA Football Coach Firing, Hiring Buyouts May Top $50M," Steve Berkowitz stated that:

> Colleges making football head-coaching changes so far this season potentially will have to pay more than $50 million in expenses associated with contract buyouts alone, a USA TODAY Sports analysis of coaches' contracts and other documents finds.

> The analysis takes into account amounts schools might owe head and assistant coaches they have fired, as well as damages that schools have agreed – or are likely – to pay on behalf of head-coaching hires who had been working as the head coach at another NCAA Bowl Subdivision school.

Although these buyout amounts may sound onerous and overwhelming to college athletic departments, many are payable in installments over a number of years and have various repayment options. Some are offset by broadly defined future income earned by a mitigation of damages covenant. Other buyouts terminate upon the coach being hired by another University.

2013 saw the firing of Craig Robinson ("Robinson"), President Barack Obama's brother-in-law, from Oregon State University on May 5, 2013. Robinson could not survive the defection of key players and a dwindling fan base and the prospects of a major step back next season for a program that hasn't been to an NCAA tournament in 24 years. Robinson, who was under contract through 2016/17, received a buyout of approximately $4.2 million to be paid over 38 months. Wayne Tinkle of the University of Montana replaced Robinson at a cost of $140,000.

Tubby Smith ("Smith") arrived at the University of Minnesota in 2013 amid great fanfare and high expectations, a coach with a national championship on his resume. He was expected to revive a men's basketball program that had descended to the lower levels of the Big 10. Smith was fired in March of 2013 and received a buyout of approximately $2.5 million. Smith's firing, along with the firing of all of Smith's assistant coaches and ensuing hiring replacements, is likely to cost the University of Minnesota at least $6 million. Rick Pitino's son Richard was hired as the replacement coach at a cost of about $250,000 buyout to Florida International University.

2014 started with a bang. Charlie Weis ("Weis") was fired midseason (September 2014) by the University of Kansas after a disappointing 6 win – 22 loss record. Sometimes coaches benefit more financially from not winning, and being a fired head football coach can become a lucrative occupation. Kansas will have to pay $5.625 million to fulfill Weis' contractual buyout between the time of firing and December 2016.

Notre Dame fired Weis in 2009 after he went 35-27 in South Bend over five years. According to a USA report, the total price of Notre Dame's buyout (the liquidation of which is still ongoing) was $19 million. That means Weis will make $24.665 million over the course of his life for not working. Weis has been called "College Football's Most Successful Failure." It's said that "he's walking proof that when you get paid in America, you stay paid." He has also been referred to as "one of the most lavishly compensated failures in college coaching for the foreseeable future."

Brady Hoke ("Hoke") was fired as head football coach of the University of Michigan ("Michigan") in December 2014. Nine losses by Michigan in the last 13 games, no Big Ten championships, no victories against Ohio State, and a 1-3 record against Michigan State was just enough to cause termination. After having invested $11.4 million in Hoke, Michigan will owe Hoke a buyout of $3 million as a result of his termination without cause.

Will Muschamp ("Muschamp") was 27-20 in four seasons at the University of Florida ("Florida") and 17-15 in SEC play. Florida dismissed Muschamp in November of 2014 without cause at a buyout cost of approximately $6.3 million. Auburn University immediately hired Muschamp as defensive coordinator for the 2015 campaign, which will mitigate the buyout cost. To replace Muschamp, the University of Florida hired away Colorado State University ("CSU") coach Jim McElwain ("McElwain"). The buyout turned to be an enormous investment. McElwain signed a six-year deal with CSU with a compensation package that averaged $3.5 million a year. Florida negotiated a buyout with CSU where CSU will receive approximately $7 million, but not all at once. CSU will receive $3 million over a six-year period from Florida (the University of Florida Athletic Association), $2 million directly from McElwain over an unspecified period of time, and a $2 million guarantee from Florida for playing a non-conference game against the Gators in Gainesville between 2017 and 2020.

The number of wins and losses didn't get Bo Pelini ("Pelini") of the University of Nebraska ("Nebraska") fired; it was the way some of those losses occurred. Pelini was 66-27 and led the Cornhuskers to three league championship games in the Big Ten. Pelini was dismissed after a seven-year stint marked by an inability to restore the football team to national prominence and too many embarrassing defeats. Pelini's buyout approaches $7.9 million. However, shortly after his firing he was hired by President Jim Tressel at Youngstown State as head football coach, which may reduce Nebraska's exposure.

A mistake today in choosing the wrong coach is an expensive proposition. Two recent examples are illustrative of the expense that universities can contractually incur if the wrong choice is initially made.

Steve Alford entered into a Full Time Coach, Talent Fee & Camp Agreement – Men's Basketball on March 30, 2013, with UCLA. Paragraph 5.3 deals with the university's termination of Alford without cause:

> In addition to, and exclusive of, the provisions of Sections 2, 4, 5.1, and 5.2 of this Agreement, there is also reserved to University the right to terminate this Agreement without cause at any time. The parties hereto agree that in the event this right to terminate is exercised, University shall only be obligated to pay as follows: The amount of Base Salary, Talent Fee and Deferred Compensation identified in Sections 3.1, 3.2, and 3.3 of the Agreement during the remainder of the contract year (ending April 30) in which the terminations occurred; and
>
> I. If the University terminates without cause prior to April 30, 2016, the amount of $10,400,000, paid in substantially equal monthly installments through April 30, 2020;
> II. If the University terminates without cause prior to April 30, 2017, the amount of $7,800,000, paid in substantially equal monthly installments through April 30, 2020;
> III. If the University terminates without cause prior to April 30, 2018, the amount of $5,200,000, paid in substantially equal monthly installments through April 30, 2020;
> IV. If the University terminates without cause prior to April 30, 2019, the amount of $2,600,000, paid in substantially equal monthly installments through April 30, 2020.

> The Director, at his option and in his sole discretion, may elect to make any payment(s) made pursuant to this Section 5.3 in a lump sum within one hundred and eighty (180) days of such termination or in equal installments ending as of the date of this Agreement would have terminated but for the exercise of University's right to terminate without cause.

Bret Bielema ("Bielema") entered into an employment contract with the University of Arkansas on December 4, 2012. Paragraph 15 of the contract indicates that if the University terminates Coach for its convenience then the sums owed to Coach for the guaranteed agreement shall be based upon the following sums:

YEAR	**AMOUNT**
First Contract Year (12/04/12 – 12/31/13)	$12,800,000
Second Contract Year (1/1/14 – 12/31/14)	$12,800,000
Third Contract Year (1/1/15 – 12/31/15)	$12,800,000
Fourth Contract Year (1/1/16 – 12/31/16)	$9,600,000
Fifth Contract Year (1/1/17 – 12/31/17)	$6,400,000
Sixth Contract Year (1/1/18 – 12/31/18)	$3,200,000

The University of Arkansas Razorbacks shelled out a million dollars to free Bielema of his University of Wisconsin contract obligations and signed him to a six-year, $18 million deal in 2013. Bielema was 3 (wins) and 9 (losses) in the 2013 campaign and 7 (wins) and 6 (losses) in the 2014 campaign. The SEC is unrivaled when it comes to its demand for immediate success. If Bielema's contract were terminated at any time before December 31, 2015, the University would owe him a $12.8 million buyout. The brunt of the payment would not be immediate, i.e. it would be paid in monthly installments through 2018. The simple fact is that removing Bielema now is a prohibitively expensive option for the University of Arkansas.

Rutgers University ("Rutgers") Head Football Coach Kyle Flood ("Flood") recently renegotiated his Employment Agreement that was dated January 31, 2012. Under his original contract, Flood was to receive liquidated damages for termination without cause in the following amounts:

Termination between January 30, 2012 and February 1, 2013:	$1,000,000
Termination between February 2, 2013 and February 1, 2014:	$850,000
Termination between February 2, 2014 and February 1, 2015:	$700,000
Termination between February 2, 2015 and February 1, 2016:	$500,000
Termination between February 2, 2016 and February 1, 2017:	-0-

The first Amendment to the January 31, 2012 Employment Contract regarding liquidated damages for termination without cause now reads as follows:

> In the case of termination of Mr. Flood by the University without cause, Rutgers shall pay Mr. Flood $1,400,000 and no other amount or item. The amount to be paid shall be paid minus all applicable and appropriate payroll deductions on a bi-weekly basis in equal installments in accordance with regular University payroll procedures, from the date of termination through February 28, 2019.

Early termination without cause is an expensive proposition.

A recent study published online in the journal <u>Social Science Quarterly</u> entitled "Pushing Reset: The Conditional Effects of Coaching Replacements on College Football Performance" as co-authored by University of Colorado at Boulder Professor Scott Adler, University of Colorado at Denver Professor Michael Berry, and Loyola University Chicago Professor David Doherty indicates that firing a coach for poor team performance is not a surefire way to turn things around and in some cases may actually harm the team's future performance. The study concluded:

1. Using data from Football Bowl Subdivision (Formerly Division 1-A) teams between 1997 and 2010, about 10 percent of coaches are fired for poor performance in any given year. (In order to come to their conclusions, the authors began

in 2008 using a matching technique to compare those teams to similarly positioned teams that didn't fire their coaches. Entry conditions were factored into the effects of a coaching change, and win-loss record was the only dependent variable studied.)

2. Looking at results for the four years after a coaching replacement, bringing in a new coach had a negligible effect on the team's win/loss record.

3. When teams were really bad, they often experienced a small, short-lived improvement after a coaching change before returning to their former lowly state.

4. The most surprising aspect of the research was the outcome of what happened to teams that won about half of their games the year before their coach was fired. The research found that the mediocre teams often did worse after they had replaced their coaches.

"The reasons for this are not clearly understood, but may stem from an adjustment period required by a coach at a new university, the time players need to learn a new system, and disruptions made to recruiting networks," said E. Scott Adler, an associate professor of political science at the University of Colorado and the lead author of the study. Statistically speaking, Adler said, "There's not much to be said for every few years dumping a coach who's had a couple bad seasons. In the long run, you are about in the same situation down the road if you had done nothing and ridden out the storm."

Conclusion

A coach's contract is like a premarital agreement in that it spends as much time defining the terms of the divorce as the package. The amount and frequency of buyouts for college coaches' contracts will only continue to snowball. In the "win for me now" mentality of college athletics, the business of coaching is a carousel that creates a self-sustaining industry.

On average, 20% of universities are searching for a new head football coach at the end of the season. Those universities have to balance the cost of buying out a coach's contract against the prospect of another unsuccessful season. The business of hiring the wrong coach can create a financial disaster for a university.

Funding buyouts can be an expensive proposition. According to a USA Today study that examined 119 Football Bowl Subdivision athletic departments in 2010, an average of 60% of their income is derived from the university's general fund and/or student fees. Some universities have massive reserve funds that are historically used to cover big-ticket items like coaches' buyouts, such as the University of Nebraska and their recent $7.9 million buyout of former head football coach Bo Pelini.

The question today, and going forward, is whether a university and its athletic department can afford to not pull the trigger and move on to the next head coach. The cost to hire an even bigger named coach in an effort to restore the fortune of the university's athletic department is in the millions. However, the subsidization of athletics, especially for coaches' buyouts, can create monetary and fiscal problems for a university.

Buyouts, if executed, are expensive. A decision needs to be made on the part of the university president, athletic director, and even donors as to whether the cost of hiring a big name coach, a return to conference relevancy, and an increase in fan interest is worth the cost of firings and buyouts. The concept of college athletic economics – paying coaches not to coach – is bad economics. One possible solution is athletic directors receiving bonuses for retaining coaches to the end of their contractual obligations, rather than jumping to the best "available" coaching prospect.

With the continued expansion of stadia size and the rising cost of ticket prices, universities are forced to balance the risk of retaining a coach resulting in loss of ticket sales against the cost of paying the large buyout from that coach's contract. The money to be made in sustaining ticket sales from selling the "hope" of a new coach is greater than the cost of the buyout, the potential empty seats, the loss of fan interest, and donor contributions.

The idea of buyouts, given recent budget crises of states and higher education, in addition to subsidies for universities, has become a political issue as well. State legislators, as a part of the budget process for funding for universities, are questioning the use of athletic department funds. Legislators have begun to ask whether or not school presidents and athletic directors are acting fiscally responsible by paying coaches and other universities these massive buyouts. NCAA President Mark Emmert has stated that coaching salaries are not sustainable. In a system where student-athletes are not compensated, the money saved by universities by not paying their players is spent on the best head coach who can land top recruits. In an unrestricted market with a limited quantity of skilled coaches, universities will continue to pay top dollar in an attempt to find the coach that will lead their team to prominence. In the end, the NCAA may be powerless from stopping the next coach and the university from taking the jump. The only thing that may be preventing a university from buying their next new head coach is how much money is left in the reserve fund.

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