STEVE ALFORD - POSTSCRIPT - AN EXPENSIVE BUYOUT PROVISION

At the time I wrote the article in Greenberg's Coaching Corner entitled "Steve Alford - Coaching Free Agency is Just a Matter of Money," Steve Alford's (Alford) completed UCLA contract was not available. A contract entitled Full Time Coach, Talent Fee & Camp Agreement - Men's Basketball dated as of March 30, 2013, by and between The Regents of the University of California and Steve Alford was recently released pursuant to an open records request.[1]

In that article I referenced a statement by UCLA Athletic Director Dan Guerrero (Guerrero) that Alford would receive a $200,000 signing bonus, which was the amount Alford claimed he owed University of New Mexico (UNM) by virtue of his early termination.[2] On May 17, 2013, it was announced that UNM had agreed to accept $300,000 of their original million dollar demand for early termination as a result of the Term Sheet executed by Alford on March 18, 2013. UNM also announced that the settlement resulted in a net benefit of approximately $625,000 to UNM. The additional $325,000 represented compensation that was not paid to Alford in the form of bonuses, incentives, and deferred compensation.[3]

In the UCLA contract that Alford actually executed, paragraph 3.4, Signing Bonus, indicates as follows:

> Coach shall be paid, within 60 days of the execution of this agreement, a one-time signing bonus in the amount of $845,615.00 (eight hundred forty five thousand six hundred fifteen dollars and no cents). This sum shall,

[1] FULL TIME COACH, TALENT FEE AND CAMP AGREEMENT – MEN'S BASKETBALL BETWEEN THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, FULL TIME COACH (2013) [hereinafter *UCLA Alford Contract*].
[2] Martin Greenberg, *Steve Alford - Coaching Free Agency is Just a Matter of Money*, GREENBERG'S COACHING CORNER (June 24, 2013), https://law.marquette.edu/national-sports-law-institute/greenbergs-coaching-corner.
[3] *Id*.

among other things, compensate Coach fully for lost income, liquidated damages owed, and the tax consequences thereon, relating to his departure from his prior position at another institution.[4]

It is assumed that the monies provided pursuant to 3.4 (Signing Bonus) of Alford's new contract are the monies that he may have used to finally settle his early termination fee dispute with UNM. At the time Alford signed with UCLA, Guerrero stated that the signing bonus would not exceed $200,000. Later, an athletic department spokesman also said "we did not sweeten the deal," adding that "when Steve signed with us, we agreed we would compensate him for the amount of the buyout, including the tax consequences."[5]

The dispute with UNM revolved around whether Alford owed $200,000 for early termination as a result of his contract dated July 12, 2010, or $1 million as a result of the Term Sheet dated March 18, 2013. In effect, then, UCLA covered the buyout by way of a signing bonus.[6]

Although Alford had remained at his previous coaching positions for long periods of time, i.e. Iowa 1999-2007 and UNM 2007-2013,[7] UCLA wanted to make certain that Alford was absolutely bound for the foreseeable future through a hefty buyout fee. "By saddling Alford with such a large buyout—more than ten times what it would have been had he stayed at New Mexico, UCLA is essentially making it impossible for him to do to Westwood what he did to Albuquerque."[8] If,

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[4] *UCLA Alford Contract*, *supra* note 1 at ¶3.4.
[5] Ken Bensinger, *UCLA's Deal With Coach Steve Alford Has Unusually Huge Buyout Clause*, LA TIMES (July 9, 2013), http://articles.latimes.com/2013/jul/09/sports/la-sp-0709-steve-alford-20130709-30.
[6] Martin Greenberg, *Steve Alford - Coaching Free Agency is Just a Matter of Money*, GREENBERG'S COACHING CORNER (June 24, 2013), https://law.marquette.edu/national-sports-law-institute/greenbergs-coaching-corner.
[7] SPORTS REFERENCE COLLEGE BASKETBALL COACHES: STEVE ALFORD, http://www.sports-reference.com/cbb/coaches/steve-alford-1.html (last visited July 24, 2013).
[8] Bensinger, *supra* note 5.

for instance, Alford decided to leave UCLA before April 30, 2016, his buyout would be $10,400,000, which is approximately four times Alford's annual salary.[9]

Article 5.2 of Alford's contract, entitled Termination by the Employee, states as follows:

> There is reserved to Coach the right to terminate this Agreement at any time by providing written notice to the Director. Such termination by Coach must occur, however, at a time outside the Men's Basketball playing season or the Men's Basketball recruiting season as defined by the NCAA, with the exception of the thirty (30) days immediately following the last regularly scheduled game of the Men's Basketball season in the calendar year in which Coach so terminates this Agreement, so as to minimize the impact of such termination upon UCLA's Men's Basketball program. Exceptions to this provision can be approved only with the prior, express written agreement of the Director. Upon termination by Coach, all future rights and obligations between the parties under this Agreement shall cease; with the exception that, in the event Coach terminates prior to April 30, 2020, Coach termination, or "buyout," amount shall be:
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> I. $10,400,000 if prior to April 30, 2016;
> II. $7,800,000 if prior to April 30, 2017;
> III. $5,200,000 if prior to April 30, 2018; and
> IV. $2,600,000 if prior to April 30, 2019.[10]

UCLA's previous contract dated June 4, 2008, with Ben Howland (Howland) also contained an early termination provision. However, Howland's required early termination buyout is far less stringent than Alford's. Paragraph 11(c) of Howland's contract indicates:

> Therefore, and in consideration of the above, in the event Coach exercises his right to terminate early under Paragraph 11.b of this 2008 HC Agreement, Coach expressly agrees that he will not accept employment as a head men's basketball coach for another NCAA member men's basketball program or professional men's basketball team, except as provided for below:
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> i. In the event Coach terminates this 2008 HC Agreement and accepts employment at another PAC-10 Conference athletic program

[9] *Id*.
[10] *UCLA Alford Contract*, *supra* note 1 at ¶ 5.2.

> (including without limitation, any University of California PAC-10 institution) before April 2, 2015 or any extension of the Term, whichever is later, thereof, Coach agrees to pay UCLA liquidated damages in the amount of $1,500,000 (one million and five hundred thousand dollars) within 90 days of his acceptance of such employment.
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> ii. In the event Coach terminates this 2008 HC Agreement and accepts employment at non-PAC-10 Conference NCAA Division 1-A athletic program or with a professional men's basketball team before April 2, 2015, or any extension of the Term, whichever is later, Coach agrees to pay UCLA liquidated damages in the amount of $1,000,000 (one million dollars) within 90 days of his acceptance of such employment.
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> iii. Coach understands that this Paragraph 11.c is core to the overall 2008 HC Agreement, and that any breach of this Paragraph 11.c will substantially harm UCLA. Coach therefore understands and agrees that, in the event Coach breaches any of the terms of this Paragraph 11.c, UCLA shall be entitled to seek and enforce its full rights and remedies hereunder, including, without limitation, an action for full payment, damages and injunctive relief preventing Coach from commencing the new employment unless and until UCLA is fully paid $1,500,000 (one million five hundred thousand dollars) or $1,000,000 (one million dollars), as applicable hereunder.[11]

Early termination buyouts have become commonplace in college coaching contracts, but a buyout of $10,400,000 by a college basketball coach is "uncommon and perhaps unrivaled, especially among powerhouse programs."[12]

Rick Pitino, University of Louisville basketball coach, as well as Bill Self, University of Kansas basketball coach, both lack a buyout provision in their employment contracts.[13] Coach John Calipari, University of Kentucky basketball coach, does have a buyout cause in his contract that starts at $3 million and decreases each year during the term, i.e. $2 million the second year, $1 million the third year, $500,000 the fourth year,

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[11] 2008 HEAD COACH AGREEMENT BETWEEN THE REGENTS OF THE UNIVERSITY OF CALIFORNIA AND BEN HOWLAND ¶ 11(c) (2008).
[12] Myron Medcalf, *Steve Alford's Deal has $10M Buyout*, ESPN.COM (July 10, 2013), http://m.espn.go.com/ncb/story?storyId=9463127.
[13] *Id*. *See Also* EMPLOYMENT CONTRACT BETWEEN THE UNIVERSITY OF LOUISVILLE ATHLETIC ASSOCIATION, INC. AND RICHARD A. PITINO (2010); EMPLOYMENT AGREEMENT BETWEEN KANSAS ATHLETICS, INC. AND BILL SELF (2008).

and if he would terminate any time during the fifth year, he is not required to pay liquidated damages.[14] Bob Huggins, University of West Virginia basketball coach, has a $1 million buyout provision.[15] The buyout provision for Tom Crean, Indiana University basketball coach, is based upon the year in which the coach resigns or otherwise terminates his employment: Years 5-7, $8,000,000; Year 8, $1,000,000, Years 9-12, $500,000.[16] Matt Painter, head basketball coach at Purdue University, has a buyout of $1 million from July 1, 2013 through June 30, 2015[17]; $750,000 from July 1, 2015 through June 30, 2017[18]; on or after July 1, 2017, $500,000.[19]

With respect to recently executed (2012-2013) men's basketball coaching contracts, Richard Pitino, University of Minnesota basketball coach, has a buyout provision of $1,500,000 if he leaves before April 30, 2016, and $500,000 if he leaves between May 1, 2016 and April 30, 2019.[20] Tim Miles, University of Nebraska basketball coach, has a decreasing buyout depending upon when he resigns.[21] For instance, if he resigns on or before March 31, 2014, the buyout is $900,000; on or before March 31, 2015, the buyout is $800,000; on or before March 31, 2016, the buyout is $700,000; on or before March 31, 2017, the buyout is $600,000.[22] Bruce Weber, head basketball coach at Kansas State University, has a buyout clause in the

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[14] EMPLOYMENT AGREEMENT BETWEEN THE UNIVERSITY OF KENTUCKY AND JOHN VINCENT CALIPARI ¶ 8 (2009).
[15] EMPLOYMENT AGREEMENT BETWEEN WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS AND ROBERT E. HUGGINS ¶ V(D)(2) (2008).
[16] SECOND AMENDMENT TO THE BUYOUT AGREEMENT BETWEEN THE TRUSTEES OF INDIANA OF UNIVERSITY AND THOMAS CREAN, ¶ 4 (2008).
[17] EMPLOYMENT AGREEMENT BETWEEN PURDUE UNIVERSITY AND MATT PAINTER ¶ 5.2.2.2 (2009).
[18] *Id*. at ¶ 5.2.2.3.
[19] Id. at ¶ 5.2.2.4.
[20] EMPLOYMENT AGREEMENT BETWEEN REGENTS OF THE UNIVERSITY OF MINNESOTA AND RICK PITINO ¶ 3.3 (2013).
[21] CONTRACT OF EMPLOYMENT BETWEEN THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA AND TIM MILES ¶ 10(b)(2012).
[22] *Id*.

amount of one million dollars prior to May 1, 2014, and $500,000 prior to May 1, 2016.[23] New UNM basketball coach Craig Neal, who replaced Alford, has a buyout clause that requires him to pay $1 million if he leaves early.[24] Finally, Johnny H. Jones, Jr., basketball coach at Louisiana State University, has a buyout clause that requires him to pay $1 million in his first contract year, $850,000 in his second contract year, $650,000 in his third contract year, and $500,000 for the remaining term of the contract.[25]

The contract puts equal responsibility on UCLA in the event that UCLA wishes to terminate Alford without cause earlier than the end term of his contract. So, in essence, if the contract is terminated prematurely, both sides are equally responsible for paying out the terms left on the agreement.[26] Fundamentally, then, the contract calls for UCLA to pay Alford the same amount if he's fired—a mirror image termination clause.[27] "We wanted the commitment to be strong on both sides," UCLA Senior Associate Athletic Director Mark Harland said.[28] Paragraph 5.3, Termination without Cause, of Alford's contract states as follows:

> 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 this Agreement during the remainder of the contract year (ending April 30) in which the termination occurred; and

[23] MEN'S BASKETBALL HEAD COACH EMPLOYMENT AGREEMENT BETWEEN K-STATE ATHLETICS INC., KANSAS STATE UNIVERSITY, AND BRUCE WEBER ¶ 4.04(a) (2012).
[24] ADDENDUM TO EMPLOYMENT AGREEMENT OF HEAD COACH NEAL BETWEEN THE UNIVERSITY OF NEW MEXICO AND HEAD COACH/MEN'S BASKETBALL CRAIG NEAL ¶ 6 (2013).
[25] EMPLOYMENT AGREEMENT BETWEEN THE BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE AND JOHN "JOHNNY" H. JONES, JR. ¶ 12(c)(2) (2012).
[26] Bensinger, *supra* note 5.
[27] *Id*.
[28] *Id*.

I. If 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 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 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 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;[29]

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

It should be noted that Alford is not required to mitigate damages.

Thank you to third-year law student Ryan Session for his help in editing and footnoting this article.

[29] *UCLA Alford Contract*, *supra* note 1.