ROLLOVER CLAUSES STILL UTILIZED IN COLLEGE COACHING CONTRACTS

By: Martin J. Greenberg

In a contractual framework, a rollover clause or automatic renewal clause, or Evergreen clause as they are sometimes called, automatically renews a contract after the anniversary date for an additional term without any additional agreement or signature.[1] These contracts have been used in supply and services businesses.[2] They have also found their way into the world of college coaching.

If a university is satisfied with the coach's performance after the completion of each season, the contact may contain a provision extending the contract term for an additional year. If so extended, it means that at all times the remaining term of the contract at the commencement of each succeeding season is the same as the original term of the contract. This is commonly referred to as a rollover clause or rolling horizon provision in the context of coaches' contracts.

To illustrate, Coach Smith has a five-year contract with a rollover provision. At the end of each season, the university automatically, or with Coach Smith's consent, has a right to extend the contract an additional year, provided the university is pleased with the performance of the coach. Thus, if the university continues to exercise its rollover provision, Coach Smith will have at all times a five-year contract.

Rollover clauses can be written in four varieties: (1) where there is an automatic right of the university to rollover or extend; (2) where the rollover is subject to the mutual consent of the university and coach; (3) where the rollover increases the term to the original term in the event that a rollover does not occur in one year; (4) where the rollover provision is subject to the right on the part of the coach to terminate the contract in the event the rollover does not occur in successive years without the need to comply with a release or buyout provision; and (5) where the rollover is contingent upon meeting certain performance standards such as wins or tournaments or bowl championships.

As an alternative to rollovers, predetermined dates for extension based upon a mutual agreement between the parties as well as escalators in compensation and term extension based upon performance levels could also be utilized.

---

[1] *What is a Rollover Contract?: Costly Perils and Benefits Automatic Renewal Contracts,* YAHOO!VOICES (May 10, 2010), http://voices.yahoo.com/what-rollover-contract-5972828.html.
[2] *Id.*

My first experience in negotiating a rollover provision was when I represented Rick Majerus, in the early '90s, relative to his first contract with the University of Utah. The rollover provision as negotiated is as hereinafter contained:

> Term of Employment - Rollover The term of this Agreement shall be for a period of five (5) years commencing on August 1, 1991 and ending on July 31, 1996. In addition thereto, the University shall have the right to extend the term of this Agreement with the prior written approval of the Employee for one (1) additional year following the completion of each Men's Varsity Basketball season, (but in no event later than May 1st of each year) during the term of this Agreement. Upon the completion of each season, the Employee will meet with the Athletic Director of the University to review the season. Following such review, a decision shall then be made by the Athletic Director of the University to review the season. Following such review, a decision shall then be made by the Athletic Director whether or not to exercise this one-year extension option for that year. In the event of a decision to exercise such extension option, then the University shall extend the term of this Agreement for an additional one (1) year in accordance with such decision. If this extension option is not exercised in a given year, however, but is exercised in a subsequent year in the above-described manner, the University may in that event, with the Employee's consent, increase the term of such subsequent extension to a full five (5) year period form the effective date of such extension. In the event the term of employment is not extended by the University in any two (2) successive years, then the Employee shall have the right to terminate his employment under and pursuant to the terms of this Agreement without the necessity of complying with the release provisions as more specifically described in Paragraph 9.3 hereinafter.[3]

Majerus' rollover required the mutual consent of the university and coach.[4] The intent of the rollover provision was to increase the term each year to the original term.[5] The rollover provision also was intended to increase the term to the original term in the event that a rollover did not occur in one year.[6] The Majerus provision also was subject to the right of the coach to terminate the contract in the event rollovers did not occur in successive years.[7]

The trend for major college coaches today seems to be for long, fixed-term agreements. It was recently announced that coach Keith Dambrot of the

---

[3] Employment Agreement by & between Univ. of Utah & Rick R. Majerus (Jul. 1, 1990).
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.*

University of Akron agreed to a ten-year contract.[8] Oregon State's football coach Mike Riley, as well as Texas basketball coach, Dale Barnes also have ten-year contracts.[9] Mack Brown, Texas football coach, has a nine-year contract.[10] Alabama football coach, Nick Saban, and Kentucky men's basketball coach, John Calipari, each have agreements that were recently extended to give them eight more seasons.[11] Rick Pitino, University of Louisville basketball coach, has a seven-year contract.[12]

Apparently universities still continue to use rollover or rolling horizon provisions. The letter agreement dated November 29, 2011, between Washington State University and Mike Leach, its new head football coach, contains a rolling horizon provision:

> Term: The Term of the Agreement shall commence as December 1, 2011 and conclude on December 31, 2016, covering an initial period of five (5) years and (one month: December 1, 2011 - December 31, 2012). After the second full contract year has elapsed on December 31, 2013, this Agreement shall become a rotating five (5) year Agreement. On December 31, 2013, the period of the Agreement shall again become five (5) contract years, running from January 1, 2013, through December 31, 2018, unless prior to January 1, 2013, written notice is given by either party stating that the period of the Agreement shall conclude instead on December 31, 2016, thereby stopping the automatic extension rotation. If neither party provides said notice to the other party by December 31, 2013, the Agreement thereafter becomes a full five (5) year commitment and the same notice provision shall apply every December 31st thereafter, permitting either party to stop the Agreement's automatic extension rotation and set a termination date on the first December 30th which is four (4) full contract years subsequent to the applicable December 31 notice date, provided that timely notice is given hereunder. If notice is provided stopping the automatic extension rotation, the rotation will not start anew unless and until both parties agree in writing to renew the automatic extension rotation.[13]

The Contract for Employment of Men's Head Basketball Coach Gregg Marshall

---

[8] *Akron Locks Up Coach Keith Dambrot,* ESPN MEN'S BASKETBALL (Jul. 21, 2012), http://espn.go.com/mens-college-basketball/story/_/id/8186223/akron-zips-give-coach-dambrot-new-10-year-deal.

[9] Steve Berkowitz, *Akron Coach to get 10-year Deal, One of the Longest in Div. 1,* USA TODAY (June 20, 2012), http://usatoday30.usatoday.com/sports/college/mensbasketball/story/2012-07-20/Akron-coach-could-get-10-year-contract/56371100/1.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] Letter of Agreement between Washington State Univ. & Mike Leach, (Nov. 29, 2011).

with Wichita State University dated May 18, 2011, also contains a rollover provision:

> 1.1 Term of Employment. The term of this Contract for Employment shall be on a seven-year rolling basis beginning on April 16, 2011 and initially ending on April 15, 2018. The parties agree and understand that as of April 16, 2012, and each following April 16, another year will be added to the Contract for Employment to provide for a continuing seven-year term; provided, however, that on April 1, 2013, and every other April 1 thereafter, i.e. April 1, 2015, April 1, 2017, April 1, 2019, etc. ICAA may provide Mr. Marshall with written notice that the automatic extension of one additional year will not occur.[14]

Mark Dantonio's contract as Head Coach of Michigan State University's Football Program contains the following rollover clause:

> A. Term
>
> 1. Unless terminated earlier in accordance with other subsections of this Section III, this Agreement shall continue to be effective for a rolling five (5) year term, and shall automatically extend, beginning on January 15, 2012, for one additional year effective on January15th of each year, unless the University provides the Coach with written notice, between the end of any football season and the following January 15th, that term of this Agreement will not be extended. If such notice is provided, the term of this Agreement shall expire at the end of the then-current term without any additional extensions and without the need for any additional notice, unless it is subsequently terminated at an earlier ate in accordance with other subsections of this Section III.
> 2. In the event that the University provides the Coach with notice under Section III.A.1 above that the Term of this Agreement will not be extended, the Coach shall have thirty (30) days from the date of such notice3 to decide whether he will remain as Head Coach of the Program or whether he will resign his employment as Head Coach and accept liquidated damages as follows:
>   a. One Million Seven Hundred Fifty Thousand Dollars ($1,750,000) if such notice is provided at any time on or before January 15, 2016.

[14] Contract for Employment by & between Wichita State Univ. Intercollegiate Athletic Ass'n, Inc. & Gregg Marshall (May 18, 2011).

b. Eight Hundred Seven Five Thousand Dollars ($875,000) if such notice is provided at any time after January 15, 2016.[15]

Likewise, Thomas Izzo's contract as Head Coach of Michigan State University's Men's Basketball Program contains a rollover clause:

> III. Term of Employment
>
> A. Term. Unless earlier terminated in accordance with this Section III, this Agreement shall be effective for a rolling seven (7) year term, commencing as of July 1, 2009, and automatically extending for one (1) additional year effective on June 30 of each year, unless, on or before April 15 of any year, the University provides the Coach with written notice that the term of this Agreement will not be extended. If such notice is given, the term of this Agreement shall expire at the end of the then-current seven (7) year term, without any additional extensions and without the need for any additional notice, unless it is earlier terminated in accordance with Section III.B.[16]

An additional example of a rollover provision is found in UCLA's Head Coach Agreement with Ben Howland:

> 5. a. The period of employment shall begin June 1, 2008, and end April 2, 2015, unless sooner terminated or extended in accordance with the terms and provisions of this 2008HC Agreement. Such period shall hereinafter be referred to as the "Term."
>
> b. Commencing April 15, 2009, between April 1 and April 30 of each year this 2008 HC Agreement remains in effect, the parties may mutually agree in writing to extend the Term of this 2008 HC Agreement for one additional year. This right may not be exercised if either party has advised the other that he/it is exercising any of his/its rights to terminate this 2008 HC Agreement or if this 2008 HC Agreement has terminated. Except as expressly provided for herein, "termination" means that the right and obligations of the parties under this 2008 HC Agreement shall cease to exist as of the date of termination.[17]

An Amendment to the Employment Agreement of Louisiana State University

---

[15] Employment Agreement by Michigan State Univ. & Mark J. Dantonio. III TERM OF EMPLOYMENT § A (Oct. 7, 2011).

[16] Employment Agreement by Michigan State Univ. & Thomas Izzo, III TERM OF EMPLOYMENT §(a)(July 1, 2009).

[17] 2008 Head Coach Agreement by & Between the Regents of the Univ. of Cal. on behalf of this campus at Los Angeles & Ben Howland, §5(a)-(b) (2008). [hereinafter UCLA]

Head Football Coach Les Miles dated December 7, 2007, contains a rollover provision:

> Term. The term of this Agreement shall commence on January 1, 2008 and end on December 31, 2012, unless terminated sooner in accordance with Section 13 of this Agreement or extended by mutual written agreement of the parties. The Chancellor is authorized to extend the term of this Agreement at his discretion for up to two years to December 31, 2014, subject to the terms and conditions specified herein. In addition, during the term or extended term, in each succeeding year after the 2008 football season, the Chancellor is authorized after the conclusion of the regular intercollegiate football season to extend the term or extended term by one year.[18]

Some coaches have rollovers or extensions based upon meeting certain performance plateaus.

The University of Oregon's contract with Head Football Coach Charles "Chip" Kelly has a rollover provision based upon wins or Bowl participation:

> 3.01 Term of Agreement
>
> a. The term of this Agreement shall begin on June 15, 2010, and end on June 14, 2016. Each period from June 15 to June 14 during the term of this Agreement and any extension thereof shall be called a "Contract Year."
>
> b. If the University's intercollegiate football team wins at least 12 games in the 2010 season or participates in the Bowl Champion Series (BCS) Championship Game at the end of the 2010 season (in January 2011), one Contract Year shall be added to this Agreement. This additional year shall be on the terms and conditions of this Agreement in effect during the 2015-2016 Contract Year.
>
> c. If the University's intercollegiate football team wins at least 12 games in the 2011 season or participates in the Bowl Championship Series (BCS) Championship Game at the end of the 2011 season (in January 2012), one Contract Year shall be added to this Agreement. This additional year shall be on the terms and conditions of this Agreement in effect during the 2015-2016 Contract Year.
>
> d. For each Contract Year beginning with the Contract Year that commences on June 15, 2012, if the University's intercollegiate football team wins at last 11 games (one of which must be a bowl game win) or wins at least 10 games (one of which

[18] Amendment to Employment Agreement by & between Board of Supervisors of Louisiana State Univ. Agriculture & Mechanical Coll. & Les Miles, 2 ¶ 2(Dec. 7, 2007).

> must be a BCS Bowl Game win), one Contract Year shall be added to this Agreement. Any such additional year shall be on the terms and conditions of this Agreement in effect during the Contract Year immediately preceding the additional Contract Year.[19]

Jeff Tedford's, Head Football Coach of the University of California at Berkeley, Contract Addendum contains a rollover provision based upon wins:

> Contract Extension. The term of this Employment Contract shall be extended by one year for each season (including the bowl season) that the University of California, Berkeley Football team wins nine games. In the event of any such extension all of the other terms of this Employment contract will remain as set forth in the Employment Contract and the Contract Addendum, and unless otherwise agreed in writing, the compensation after the 2015 contract year (and any subsequent extended years) shall remain the same as that set for the 2015 contract year subject to any increase earned from the 2015 contract year (and/or subsequent extended years) pursuant to Paragraph 8. Any reference in this Employment Contract to the term shall be deemed to include any extended years pursuant to this Paragraph 2.[20]

Tubby Smith's University of Minnesota Basketball Coach Amendment to Employment Agreement also contains an extension provision based on winning and playing:

> Contract Extension. The University agrees to extend the Employment Agreement and its Amendment for one year in the following circumstances:
>
> a. Winning the Big Ten Regular Season Championship; or
> b. Winning the Big Ten Tournament Championship; or
> c. Playing in the NCAA Tournament Sweet Sixteen or better.
>
> In each year, the contract extension shall be for a maximum of one additional year. Additional one year extensions may be earned in other years. The extension shall be from May 1 following the end of the existing Term of Employment through April 30 of the following calendar year, and all other terms and conditions of the existing Employment Agreement shall apply to the extension period.[21]

[19] Employment Agreement between the State of Oregon on behalf of the Univ. of Oregon & Charles "Chip" Kelly ¶ 3.01 (a)-(c) (Dec. 27, 2010).
[20] Contract Addendum between the Regents of the Univ. of Cal. & Jeff Tedford ¶2 (Jan. 1, 2009).
[21] Amendment to Employment Agreement between the Univ. of Minn. & Orlando Tubby Smith (Jul. 1, 2012).

Finally, Kyle Whittingham's, Head Football Coach at the University of Utah, Employment Agreement contains a rollover provision based upon wins.

> 4. Term of Employment. The original term of this Agreement shall commence on December 29, 2008, and end on December 30, 2013 (the "Original Term"). For each twelve regular game football season in which the Football Program achieves at least 9 winning regular season games and/or six winning league games the Original Term shall be extended automatically for one addition year upon the same terms and conditions ("Extension Years"). Extension Years may only be awarded if Coach Whittingham has otherwise met all of his obligations under this Agreement. No other extensions, renewals or modifications of this Agreement shall be valid unless made in writing and signed by both Parties. The term of this agreement shall include the Original Term plus any Extension years earned according to this Paragraph (hereinafter the "Term").[22]

Paul Hewitt was hired as the head basketball coach of the Georgia Tech Yellow Jackets in the year 2000. Hewitt was fired in 2011 after compiling a 190-162 record in eleven seasons with the Yellow Jackets, leading the school to five NCAA tournament appearances, including 2004 when the Yellow Jackets played in the national championship game before losing to Connecticut.[23] Georgia Tech made the NCAA tournament just once in the last four seasons, but most troubling, Hewitt's team managed only one winning record in the ACC through his entire tenure, going 72-104 in conference play.[24] Reasons given for his firing included his record, sagging fan interest in the team, a diminution in attendance, Hewitt's inability to respond well to criticism, and dissatisfaction of big money donors.[25]

After the Final-Four season, Hewitt inked in 2005 a new six-year contract, which contained under Term of Employment a rollover provision:

> a. This Agreement is for a term of six (6) consecutive years, beginning April 15, 2004 and ending on April 14, 2010, subject to earlier termination in accordance with the terms of Section 10 herein (such period being hereinafter referred to as the "Term").
> b. The first year of this Agreement shall begin on April 15, 2004 and shall end on April 14, 2005. Thereafter, each year shall begin

[22] Employment Agreement between Univ. of Utah and Kyle Whittingham (Dec. 29, 2008).
[23] *Georgia Tech Fires Coach Paul Hewitt,* ESPN MEN'S BASKETBALL (Mar. 13, 2011), http://sports.espn.go.com/ncb/news/story?id=6209623.
[24] *Id.*
[25] Jeff Shultz, *Paul Hewitt was Undone at Georgia Tech by More Than Losing,* ACJ (Mar. 12, 2011), http://blogs.ajc.com/jeff-schultz-blog/2011/03/12/paul-hewitt-was-undone-at-georgia-tech-by-more-than-losing/.

on April 15th and conclude on the following April 14th. Each such period shall hereinafter be referred to as a "Contract Year."

c. It is the intention of the Parties to create an automatic "rollover" provision so that the term of this Agreement will always have six (6) years remaining after the automatic rollover occurs. Commencing April 15, 2005 and on April 15th of each year thereafter, the Term of this Agreement shall be automatically extended by one (1) additional year so that, on April 15th of each year, the Term of this Agreement shall be six (6) years unless the Association determines that an extension rollover not be made and notifies Hewitt of its decision in writing not less than thirty (30) days prior to April 15th in any year during the Term. In the event the Association timely notifies Hewitt in writing that such extension rollover should not be made in accordance with the immediately preceding sentence, then this Agreement shall be deemed terminated by the Association without cause (as hereinafter defined) and Association shall compensate Hewitt in accordance with the terms of Section 10 of this Agreement.[26]

Hewitt's contract also provided that if the Association terminates Hewitt's employment without cause, the Association will compensate Hewitt for the Association's obligation under this Agreement by paying Hewitt in equal monthly installments over the remaining term (as though his employment had not been terminated) the minimum compensation for each contract year that remained in the term immediately prior to termination without cause.[27] Following such termination without cause, Hewitt shall be free to accept any employment whatsoever without restriction or limitation and with no further obligation to Association.[28] In essence, then, Hewitt was not required to mitigate damages.

On March 12, 2011, before the effective date of the automatic rollover, Hewitt was fired from his head coaching position at Georgia Tech.[29] The firing exposed Georgia Tech to a five-year buy-out, which equates to approximately $7.2 million.[30] Shortly after his firing, Hewitt replaced Jim Larranaga at George Mason University. It's been reported that Hewitt will earn at George Mason University a base salary of $659,750 in the first season of a five-year contract.[31] In addition, Hewitt receives a longevity bonus of $85,000 for each year he remains at George Mason University.[32]

---

[26] First Amended Employment Contract by & between Georgia Tech Athletic Ass'n & Paul Hewitt (April 15, 2004).
[27] *Id.*
[28] *Id.*
[29] *Georgia Tech Fires Coach Paul Hewitt, supra* note 7.
[30] *Id.*
[31] Patrick Stevens, *George Mason's Play to Determine Hewitt's Pay,* WASHINGTON TIMES (Oct. 25, 2011), http://www.washingtontimes.com/news/2011/oct/25/gmus-play-to-determine-hewitts-pay/.
[32] *Id.*

Athletic director Dan Radakovich said it was necessary to bite the bullet given the dwindling attendance and unhappiness among big money donors.[33] Radakovich said that he and the Athletic Association would honor the contract and the payment would be paid monthly over the next five years.[34] Radakovich said it was a decision that, regardless of the current contractual decision put in place, we needed a change.[35]

In addition, Radakovich said, "We are where we are. This is big boy basketball right now.[36] We are dealing with a contract that is in place and we will honor that contract."[37] Radakovich noted that he would not have a similar automatic renewal for the next coach.[38]

Hewitt's situation is illustrative of one of the downsides or dangers of a rollover clause; that is, without an obligation to mitigation damages, coaches who are fired prematurely and without cause are able to "double dip," that is, receive the termination pay specified in their prior contract plus receive the income that they are earning from their current job.

I wish to thank law student Alyssa Curtis for her assistance with editing and footnoting this article.

[33] *Yellow Jackets Fire Hewitt,* FOX SPORTS (Mar. 12, 2011), http://msn.foxsports.com/collegebasketball/story/georgia-tech-fires-paul-hewitt-as-basketball-coach-031211.
[34] *Georgia Tech Fires Coach Paul Hewitt, supra* note 7.
[35] *Yellow Jackets Fire Hewitt, supra* note 33.
[36] *Georgia Tech Fires Coach Paul Hewitt, supra* note 7.
[37] *Id.*
[38] *Id.*