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THE NFL FRANCHISE PLAYER RULE: LEGAL AND ECONOMIC JUSTIFICATIONS

I. Introduction

Restrictions on veteran free-agency in the National Football League (NFL) have been the source of much litigation between players and the NFL. However, the "Franchise Player" rule has met with few objections. While many would argue that the "Franchise Player" rule is contrary to the concept of a free market system, I would suggest that the franchise player rule, though restrictive in nature, is economically efficient because it eliminates the high transaction costs associated with negotiation. This paper discusses how the rule can be justified under both the "Rule of Reason" and the Coase theorem.

II. The History of Veteran Free Agency restrictions.

A. The Reserve System

The reserve system, determined to be an illegal restraint of trade in *Mackey v. National Football League* (NFL), was one of the oldest restrictions on veteran free agency.[1] Under the reserve system, every player who signs a contract with an NFL club was bound to play for that club, and no other, for the term of the contract plus one additional year at the option of the club.[2] The players' services were reserved perpetually to one team upon that player's entry into the league.[3] Players had virtually no leverage in contract negotiations because the reserve system created a monopsony which prevented free bidding by other buyers for the player's services. However, after players played out their contracts and the option clause, if the option was not exercised by their current team, they were able to negotiate freely with other teams to secure a new contract.[4]

The NFL's constitution and bylaws were amended in 1963 to adopt a provision now known as the "Rozelle Rule" which "acknowledged that when a player completed his contractual obligation to a club, usually by playing out the extra 'option' year for a 10% pay decrease after his contract expired, he became a free agent and could negotiate with

1. *See Mackey v. National Football League*, 543 F.2d 606,610 (8th Cir. 1976).
2. *Id.*
3. Jeffery D. Schneider, *Unsportsmanlike Conduct: The Lack of Free Agency in the NFL*, 64 S. Cal. L. Rev. 797, 800 (March 1991).
4. *Mackey*, 543 F.2d at 610

other NFL teams.[5] However, if the player signed with a new club, that team owed compensation in the form of current players and/or draft picks to the former team."[6]

The "Rozelle Rule" expired with the 1970 collective bargaining agreement (CBA) but the NFL Players Association (NFLPA) agreed to a more restrictive rule in the 1977 CBA even after its hard-fought victory in Mackey.[7] Veteran free agents, defined as a player who has signed at least one Players Contract with an NFL club, could become free agents of sorts, although their club had the option to match any offer made to a player and retain his services.[8] If the team refused to match the best offer made to the free agent, it was still entitled to compensation by the signing club in the form of a future draft choice.[9]

B. Plan B

In the 1982 agreement, the parties agreed to essentially the same system of free agency as the one contained in the 1977 agreement.[10] However, Plan B, implemented by the NFL in February of 1989, did offer a new form of free agency to a few players on each team.[11] Plan B provided that a team had the right to protect thirty-seven players on its roster at the conclusion of each NFL season and leave the remainder of its roster as free agents.[12] While it appeared that plan B may have been the free agency proposal that players had been waiting for, there were two problems. First, the list of unprotected players contained only unwanted or less wanted players.[13] Second, plan B removed benefits such as severance pay and pensions that had accrued prior to the introduction of the plan from players who changed teams, which provided a disincentive for players to exercise their rights as free agents.[14] The NFL owners argued that the inflation in salaries for newly created free agents had to be offset by a reduction in benefits.[15]

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5. *Id.*
6. Paul C. Weiler & Gary R. Roberts, Sports and the Law: Text, Cases, Problems 207 (Thomson West, 2004) (1993).
7. *Mackey*, 543 F.2d at 621 (holding that the "Rozelle Rule" was significantly more restrictive than necessary to serve any legitimate purpose).
8. Schneider, 64 S. Cal. L. Rev. at 814
9. *Id.*
10. *Id.* at 815.
11. *Id.* at 816.
12. *Id.*
13. *Id.* at 818.
14. *Id.*
15. *Id.* (citing Wilbon, Upshaw: NFL Proposal "Laughable," Wash. Post. Nov. 18, 1988, at D3, col. 1).

Protected players had the ability to move to other NFL teams only if their current team chose not to match any new offers received, and the new team paid compensation to the player's current team in the form of draft picks whose number and round varied with the size of the new salary offer.[16] Many veteran players were able to take advantage of the provisions of plan B and moved to other teams for sizeable signing bonuses and salary increases although none were star players.[17] In the summer of 1992, a Minneapolis jury, in *McNeil v. NFL*, found that plan B violated the rule of reason, which requires that a restraint be justified by legitimate business purposes and is no more restrictive than necessary.[18] In McNeil, eight football, players brought suit against the NFL for violating section 1 of the Sherman Act.[19] Section one provides that every contract in restraint of trade is illegal.[20] Specifically, the plaintiffs were challenging the NFL's Plan B restrictions on each team's protected thirty-seven players.[21] Only four of the eight plaintiffs were found to have suffered damages.[22] Subsequently, a class action suit was filed in Minneapolis with Reggie White of the Philadelphia Eagles as the named plaintiff.[23] The class was seeking to have the plan B system declared illegal as to all players not otherwise involved in litigation.[24] A settlement was reached between the NFL and the NFLPA in January 1993 for $195 million to satisfy the claims of the players who had been restricted by plan B and several other NFL policies that had generated lawsuits.[25]

Veteran players are now unrestricted free agents, at any time after five full years of service, when their contracts expire.[26] Players and teams are free to negotiate without penalty or restriction, including, but not limited to, draft choice compensation between clubs or first refusal rights of any kind.[27] The unrestricted free agent is not subject

16. *See supra* note 6 at 211.

17. *Id.*

18. *Id.* at 212.

19. *McNeil v. National Football League*, 790 F. Supp. 871, (D. Minn. 1992).

20. Sherman Act, 15 U.S.C. § 1, (West 2004).

21. *McNeil*, 790 F. Supp. at 873

22. *See supra* note 6 at 212.

23. *White v. National Football League*, 836 F. Supp. 1458, 1461 n.4 (D. Minn. 1993). In *White*, 5 NFL Players, represented by class counsel, challenged the legality of the NFL player reserve system. The named plaintiffs were Reggie White, Michael Buck, Hardy Nickerson, Vann McElroy, and Dave Duerson.

24. *Id.*

25. *Id.*

26. 2006 Collective Bargaining Agreement between NFLMA and NFLPA, available at http://www.nflplayers.com/images/fck/NFL%20COLLECTIVE%20BARGAINING%20AGREEMENT%202006%20-%202012.pdf. (Last visited on November 8, 2008).

27. *Id.* at 35.

to any limitations on the period of time before he may qualify as an unrestricted free agent again or to any limitations on the number of times he may be an unrestricted free agent.[28] Any veteran free agent with three or more accrued seasons, but less than five accrued seasons at the end of his last player contract becomes a restricted free agent subject to right of first refusal and draft choice compensation to the signing team.[29]

III. The Franchise Player Rule

Each season, every NFL team may designate a player who would otherwise qualify as a restricted or unrestricted free agent as a "Franchise Player."[30] During that season, the club has the exclusive right to negotiate with and sign the player to a contract.[31] The team must designate the "Franchise Player" between the 22nd day preceding the first day of the new league year and 4 p.m. New York time on the eighth day preceding the first day of the new league year.[32]

The designating team has the option of offering the "Franchise Player" one of two required tenders.[33] The first option is a one year NFL Player Contract for the average of the five largest prior year salaries for players at the position at which the player played the most games during the prior league year or 120% of his prior year salary, whichever is greater.[34] The second option is a one year NFL Player Contract for (1) the average of the five largest salaries for the league year as of the end of the restricted free agent signing period that league year for players at the position at which he played the most games during the prior league year or (2) the amount required under the first option, whichever is greater.[35]

If a team designates a player as a "Franchise Player" three times, on the third time, the team shall be deemed to have tendered the player a one year NFL Player Contract for the greater of (1) the average of the five largest prior year salaries for players with the highest such average; (2) 120% of the average of the five largest prior year salaries for players at the position at which the player played the most games during the prior league year; or (3) 144% of his prior year salary.[36] In

28. *Id.*
29. *Id.*
30. *Id.* at 42.
31. *Id.*
32. *Id.*
33. *Id.*
34. *Id.*
35. *Id.* at 68.
36. *Id.* at 68-69.

lieu of designating a player a "Franchise Player" for a third time, a team may designate a player as a "Transition Player," which gives the player the right to freely negotiate and sign with another team, subject only to the first team's right of first refusal.[37] If a team makes a "Transition Player" designation, it will be deemed to have tendered the player a one year NFL Player Contract for the average of the ten largest prior year salaries for players at the position at which he played the most games during the prior league year or 120% of his prior year salary, whichever is greater.[38]

In *White v. NFL*, several members of the class raised objections to the "Franchise Player" rule but their arguments were unavailing.[39] One of the arguments raised in opposition to the Rule was that Players would be deprived of any increase in the marketplace for the current year, and would always be one year behind other players for purposes of participating in market-wide salary increases.[40] The Court responded by saying that "'Franchise Players' may use contracts entered into by other players in the same position [in the current year] as a benchmark for their own negotiations, thereby benefiting from market increases in the current year. Thus, despite their designation, 'Franchise Players' will still receive substantial benefit from the increased competition for player services."[41]

Article XX, Section 2(a)(ii), of the 2006 amended CBA addresses the concern about unrealized market increases by providing for the average of the five largest salaries for the league year as of the end of the restricted free agent signing period that league year or the average of the five largest prior year salaries for players at the position at which the player played the most games during the prior league year or 120% of his prior year salary, whichever is greater.[42] In upholding the validity of the "Franchise Player" rule, the *White* court held that the Franchise Player rule conferred substantial benefits on the *White* class and noted that "Wilber Marshall, an objector and the Washington Redskins' designated 'Franchise Player,' recently signed a one year contract with the Houston Oilers for the 1993 season, under which he is to receive a salary of $2.75 million, plus an agreement that the Oilers will not designate him as a 'Franchise Player' for the 1994 season. The Washington Redskins have agreed to pay Mr. Marshall an

37. *Id.* at 69.
38. *Id.* at 71.
39. *White v. National Football League*, 836 F. Supp. 1458, 1481 (D. Minn. 1993).
40. *White v. National Football League*, 822 F. Supp. 1389, 1427 (D. Minn. 1993)
41. *Id.*
42. *See supra* note 35.

additional $150,000. Mr. Marshall's ability to obtain a contract with a new team at a salary more than $1 million greater than his required tender as a 'Franchise Player' confirms the court's prior conclusion, in its order of April 30, 1993, that the 'required tenders act merely as a floor and not a ceiling on the designated player's salary.'"[43]

A. *Analysis of the Rule Under the Rule of Reason*

Although there has been little litigation surrounding the "Franchise Player" rule, the rule can be easily justified by applying the "Rule of Reason" analysis. Under Rule of Reason balancing, the "key issue is . . . whether the [Franchise Player rule] is essential to the maintenance of competitive balance, and is no more restrictive than necessary to achieve that balance."[44] The *Mackey* court held that the "Rozelle Rule" was a restraint of trade in violation of section 1 of the Sherman Act. While the "Rozelle Rule" was not found to be a per se violation of the Sherman Act, it was found to be invalid under the Rule of Reason because it was more restrictive than necessary to serve any legitimate purposes it might have.[45]

1. *The Franchise Player rule as essential to the maintenance of the competitive balance of the NFL.*

The *Mackey* court acknowledged that the NFL has a strong and unique interest in maintaining competitive balance among its teams.[46] The NFL advanced several justifications in support of its position that the "Rozelle Rule" was essential to such balance.[47] Although the *Mackey* court found the proffered justifications unavailing as they related to the "Rozelle Rule," many of those justifications, if not all, are useful to demonstrate how the "Franchise Player" rule serves to maintain the competitive balance of the NFL.

One justification for the "Franchise Player" rule is that star players would flock to cities having natural advantages such as larger economic bases, winning teams, warmer climates, and greater media opportunities; that competitive balance throughout the League would thus be destroyed; and that the destruction of competitive balance would ultimately lead to diminished spectator interest, franchise failures, and perhaps the demise of the NFL, at least as it operates to-

43. *White*, 836 F.Supp. at 1481.
44. *Mackey*, 543 F.2d at 621.
45. *Id.* at 622.
46. *Id.* at 621.
47. *See id.* generally.

day.[48] The preference for warm weather, particularly after playing in cold weather environments for a few years, can serve as motivation for a free agent to leave their current team and move to a new team with a warmer climate.[49] There has been scientific data that suggests seasonal and weather changes may affect mood and happiness, thus motivating individuals to pursue settings most compatible with weather preferences.[50] At least one NFL player has moved to a new team for this specific reason.[51]

Due to independent management, all seeking to maximize their own wealth, and the ongoing expansion of teams, there is heightened direct competition for media exposure and fan support.[52] Thus, it is in a player's interest to sign with a team in one of the larger media markets in order to increase his own exposure and marketability. The League has acknowledged the inequity between the teams and shares revenues to prevent teams in major media markets from obtaining economic advantages that would destroy competitive balance.[53] Those economic advantages include the ability to attract the best talent and, as a result, sell a large number of tickets and attract a large television viewership.

Cities with larger economic bases are more attractive than cities with smaller economic bases for obvious reasons. First, the larger the economic base, the larger the disposable income of the fan base and the potential ticket sales. Second, in order to generate more revenue, NFL owners frequently turn to the cities to finance new or renovated stadiums.[54] Without a large economic base, there may not be enough tax revenue to finance new or renovated stadiums. Finally, cities with large economic bases are more attractive because they are better able to absorb the cost of stadium luxury suites and club seats, increasing the team's non-shared revenue, which improves its revenue compared

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48. *Id.* at 621.

49. Michael McCann, *It's Not About the Money: The Role of Preferences, Cognitive Biases, and Heuristics Among Professional Athletes*, 71 BKNLR 1459, 1502 (2006).

50. *Id.* at 1503.

51. In 1990, Jack Smerlas, who had played the previous eleven seasons in New York with the Buffalo Bills, was an unrestricted free agent and chose to sign with the San Francisco 49ers even though their offer was the least lucrative of the three offers he received and even though it lacked a guarantee. His representative said that Smerlas valued the warm weather of San Francisco in distinguishing between the offers. *Id.* at 1502-03.

52. *See* Robert D. Koch, *4th and Goal: Maurice Clarett Tackles the NFL Eligibility Rule*, 24 Loy. L.A. Ent. L. Rev. 291, 312 (2004).

53. Professional Sports Industry, Anticompetitive Practices Prohibition: Hearing Before the House Select Comm. on Professional Sports, 94th Cong. 78-79 (1977)(testimony of Pete Rozelle).

54. Travis T. Tygart, *Antitrust's Impact on the National Football League and Team Relocation*, 7 SPLAWJ 29, 34 (2000).

to other teams and puts the team in a better position to attract the top free agents to its team.[55] Additionally, the desire to win conference and league championships may cause players to sign with winning teams.

If players could leave their current team in favor of a new team that possesses a larger economic base, a winning team, a warmer climate, and greater media opportunities, competitive balance throughout the League would be destroyed because teams in less desirable markets would not be able to attract and retain the most talented free agents. As a result, the best players would end up on teams with the most desirable circumstances and the other teams would be limited to players that are not as talented. The destruction of competitive balance would ultimately lead to diminished spectator interest and franchise failures. The "Franchise Player" rule serves to eliminate the risk of the destruction of the competitive balance because it allows a team to retain the player it deems most important to the team's ability to remain competitive.

Another justification that has been advanced in favor of free agent mobility restrictions is the necessity to protect the clubs' investment in scouting expenses and player developments costs.[56] This justification can also be applied to the "Franchise Player" rule. Teams dedicate a large portion of their resources to scouting and developing the players they successfully recruit. The "Franchise Player" rule allows teams to receive some return on their investment, especially when the team has invested more than usual in scouting and developing a player based on the team's belief that the player will increase the team's ability to successfully compete in the league. The rule also encourages teams to make such investments because without rule, teams would fear that the player would leave when his contract expired and the new team would receive the benefits of the prior team's investment. In *Mackey*, the district court rejected this argument stating that these expenses are similar to those incurred by other businesses, and that there is no right to compensation for this type of investment. However, while it may not have been the case when Mackey was decided, it is now a common practice for businesses to require employees to sign a contract saying they will work for a specified minimum amount of time, especially when the business has paid for an employee's college education or has provided some other form training.[57]

55. *Id.* at 32.

56. *See supra* note 41.

57. This includes graduate degrees and training necessary for the performance of the employee's position.

It has also been argued that players must work together for a substantial period of time in order to function effectively as a team; that elimination of the [mobility restriction] would lead to increased player movement and a concomitant reduction in player continuity; and that the quality of play in the NFL would thus suffer, leading to reduced spectator interest, and financial detriment to both the clubs and the players.[58] The "Franchise Player" rule serves to facilitate team cohesion by ensuring that at least one of the team's valuable players will remain on the team. Since this player is the player most likely to leave the team due to his increased marketability, player continuity is increased simply by restricting his mobility. The reserve clause also promoted player continuity, but its terms were much more oppressive given that there was a pay decrease and it affected more players. While it is true that the "Franchise Player" rule has no effect on other unrestricted free agents, it is arguable that retention of a player capable of helping the team maintain its competitiveness makes the team more attractive to other players that might otherwise choose to sign with another team when their contracts expired. This would actually preserve the quality of play in the NFL and cultivate spectator interest and financial success for the clubs and the players.

2. Is the Franchise Player Rule More Restrictive than Necessary to Maintain Competitive Balance?

The foregoing discussion illustrates how the "Franchise Player" rule serves to maintain competitive balance in the NFL and is therefore reasonable. However, restrictions on player mobility can only be upheld if they are no more restrictive than necessary to achieve the stated objective.[59] The *Mackey* court cited several reasons why it believed that the "Rozelle Rule" was significantly more restrictive than necessary to serve any legitimate purposes it might have. First, the Court stated that "little concern was manifested at trial over the free movement of average or below average players."[60] It added, "[o]nly the movement of the better players was urged as being detrimental to football," and pointed out that the "Rozelle Rule" applied to every NFL player regardless of his status or ability.[61] The "Franchise Player" rule addresses the Court's concerns by focusing the impact of the Rule on the better players. While the "Rozelle Rule" applied to every player regardless of his status or ability, the "Franchise Player"

58. *See supra* note 41.
59. *See supra* note 1.
60. *Mackey*, 543 F.2d at 622.
61. *Id.*

rule is applied to retain the services of one player on a team, most likely the best player, in order to maintain the team's competitiveness. This process allows a team to focus its efforts on ensuring that the team is able to continue to be competitive, and ultimately profitable, without unnecessarily restricting the mobility of players who are not specifically tied to that goal.

Next, the Court pointed out that the "Rozelle Rule" was unlimited in duration and that it operated as a perpetual restriction on a player's ability to sell his services in an open market throughout his career. The "Franchise Player" Rule is different in that it is not unlimited in duration. A "Franchise Player" is signed to a one year contract only and every time he is designated as such his salary increases significantly.[62] Furthermore, after the third designation, the player is tendered a one year contract for the greater of (1) the average of the five largest prior year salaries for players with the highest such average; (2) 120% of the average of the five largest prior year salaries for players at the position at which the player played the most games during the prior league year; or (3) 144% of his prior year salary.[63] This graduated pay scale serves to discourage teams from making the designation unlimited in duration because eventually the salary increases will outpace the benefits gained from the "Franchise Player" designation.

Finally, the Court said that the enforcement of the "Rozelle Rule" was unaccompanied by procedural safeguards and, as a result, a player had no input into the process by which fair compensation was determined. The Court added that the player may be unaware of the precise compensation demanded by his former team, and that other teams might be interested in him but for the degree of compensation sought. The "Franchise Player" rule does not create such oppression because the player's compensation is determined by the market as described above and because the designated player is not permitted to negotiate with any team other than his current team.[64]

IV. THE COASE THEOREM AS AN ALTERNATIVE JUSTIFICATION FOR THE FRANCHISE PLAYER RULE.

Although the "Franchise Player" rule can easily be justified under the rule of reason analysis discussed above, it can also be justified in terms of its economic efficiency. One theory that can be used to analyze the efficiency of the rule is the Coase theorem. The Coase theo-

62. *See supra* note 35.
63. *Id.* at 68-69.
64. *Id.*

rem is the fundamental proposition of the law and economics movement. The theorem posits that in the absence of transaction costs and wealth or economic effects[65], when there are rules that place liability on one party for an act infringing upon the rights of others, the parties to a transaction will reach an efficient negotiated result that will always be the same regardless of whether the rule places liability on Party A or Party B.[66]

One example of how the theorem works in practice involves a situation where Party A and Party B engage in incompatible land uses.[67] In the example, A is given the right to pollute B's stream. This is worth fifty dollars to A, but B would pay A sixty dollars not to pollute.[68] In the absence of transaction costs, both parties would agree not to pollute because the sixty dollar payment A could receive from B represents a cost to A.[69] As a result, A would bargain for a payment higher than fifty dollars, the value of the right to pollute B's stream.[70] Likewise, A could offer B fifty dollars not to exercise his right if B was given the right to prevent the pollution.[71] In either case, an efficient result is reached because there would be no pollution.[72] This version of the Coase theorem is known as the invariant version of the theory and is the one always espoused by Coase.[73] The other version of the theorem is the efficiency version, which states that in the absence of transaction costs, when a liability rule changes, the allocation of resources may change although it remains efficient.[74] This is a weaker version of the theory, however, in that it is circular.[75] Put differently, it states that when there are no transaction costs, you get the results you get when there are no transaction costs.[76]

A. Background on the Coase Theorem and Law and Economics

The Coase theorem, introduced by Ronald Coase in his article, *The Problem of Social Cost* (1960), is an outgrowth of the law and eco-

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65. Daniel Q. Posin, *The Error of the Coase Theorem: Of Judges Hand and Posner and Carroll Towing*, 74 Tul. L. Rev. 629, 633 (1999).
66. Schneider, 64 S. Cal. Rev. at 843
67. *Id.*
68. *Id.*
69. *Id.*
70. *Id.*
71. *Id.*
72. *Id.*
73. *See supra* note 62 at 634.
74. *Id.*
75. *Id.*
76. *Id.*

nomics movement.[77] The law and economics movement began in Chicago in the 1940's under the guidance of Henry Simons and Aaron Director, who were both economists appointed the University of Chicago Law School.[78] Law and economics has been described as "the application of economic theory and econometric methods to examine the formation, structure, processes, and impact of law and legal institutions."[79] While there are several divisions of law and economics, the Chicago School is the most well known and the most influential.[80] In fact, the term "law and economics" usually refers to the Chicago School.[81] One of law and economics' most notable proponents is Richard Posner, a judge in the Seventh Circuit Court of Appeals. Judge Posner's 1973 publication of *Economic Analysis of Law* had a tremendous impact on legal education and scholarship.[82] His central premise was that "judicial opinions do or should display an economic logic."[83]

B. Assumptions of the theory

The Coase theorem assumes that (1) there are two agents in every transaction; (2) each agent has perfect knowledge about the other's utility functions; (3) a competitive market exists; (4) there are no transaction costs; (5) there is a costless and impartial dispute resolution system; (6) producers are profit maximizing and consumers are utility maximizers; and (7) there are no wealth effects.[84] As long as these assumptions are met, efficiency is unaffected regardless of which party is held liable.[85]

All of the above factors are present in player contract negotiations, with one exception: low transaction costs. First, the negotiations occur between two agents, the player and the team. Second, both of the parties possess nearly perfect knowledge about the other's utility function. Knowledge about other teams and others players is widely available in the NFL.[86] The rosters, payroll expenditures, injury reports,

77. *See* Jeremiah C. Humes, *Macroeconomic Analysis of the Law: The Missing Piece of the Law and Economics Puzzle*, 42 Washburn L.J. 957, 966 (2004).

78. *Macroeconomic Analysis of the Law: The Missing Piece of the Law and Economics Puzzle* at 964.

79. *Id.*

80. *Id.*

81. *Id.*

82. Daniel T. Ostas, *Postmodern Economic Analysis of Law: Extending the Pragmatic Visions of Richard A. Posner*, 36 Am. Bus. L.J. 193, 193-94 (1998).

83. *Id.*

84. *Id.* at 844.

85. *Id.* at 843.

86. *Id.* at 844.

and playing statistics of every NFL team is available to every owner.[87] Similarly, the CBA allows for the sharing of salary information between the teams and the players in the context of negotiations between the two so that players and teams are on even ground when negotiating player contracts.[88] Knowledge of the salaries of players who play the same position and have the same level of skill allows players to bargain for the fair market value of their skills. Third, a competitive market exists within the NFL for the player's services. Teams compete with each other for playing talent on a regular basis.[89]

Few or no situations have transaction costs that are minimal or non-existent.[90] However, the transaction costs associated with player contract negotiations are particularly high. High transaction costs serve as a barrier to efficient negotiations and reduce the overall amount of exchange.[91] It is important to reduce transaction costs because a player can only benefit from negotiations if the costs of bargaining do not exceed the benefits.[92] The NFL has many players and, as stated above, information about those players and their salaries is very accessible.[93] Additionally, the terms of the collective bargaining agreement provide a predetermined framework within which to negotiate and the NFL's in-house counsel takes care of most of the work during a transaction.[94] However, the disparity in bargaining power, the possibility of strategic behavior, and threat bargaining[95] create high transaction costs and interfere with the parties' ability to achieve their desired results.[96]

Fifth, disputes between player and teams are usually resolved by the Commissioner's office or through arbitration hearings,[97] which substantially reduces the time it takes to resolve disputes and minimizes the number of disputes that have to be resolved through litigation. Sixth, the players and the teams are both profit and utility maximizers.

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87. *Id.*

88. Robert H. Lattinville & Robert A. Boland, *Coaching in the NFL: A Market Survey and Legal Review*, 17 Marq. Sports L.Rev. 109, 112 (2006).

89. *Supra* note 3 at 844.

90. *Supra* note 69.

91. Stephen M. Mcjohn, *Default Rules in Contract Law as Response to Status Competition in Negotiation*, 31 Suffolk U. L. Rev 39, _ (1997).

92. *See id.*

93. *Id.*

94. *Id.*

95. This is a concept from Game theory which posits that given the opportunity to bargain, the parties might reach an inefficient result due to the threatened party and the threatener both maintaining resolve.

96. *Id; See* generally Wayne Eastman, *Everything's Up For Grabs: The Coasean Story in Game Theoretic Terms*, 31 New Eng. L. Rev. 1 (1996).

97. *Id.*

The goal of the players is to receive the fair market value of their skills and job security. The goal of the teams is to form the most talented team possible in order to get as many wins as possible. This results in more profits in the form of higher ticket and concession sales, more licensing fees, and more premium seating sales.

Finally, there are few wealth effects in player contract negotiations. While it is true that players who demonstrate greater ability receive higher pay, players who play the same position and have the same level of talent will generally be comparably paid.[98] Unrestricted free agents have the comfort of knowing that they can command what the market will pay for their services, with some exceptions.[99] Likewise, given the team's revenue sharing scheme, teams can rest assured that, in most cases, no other team will make the player an offer so high that it cannot match it.[100] Additionally the salary cap prevents teams who are spendthrifts from spending an exorbitant amount of money to secure the best players.[101] With the advent of unrestricted free agency came the potential for teams with greater revenue potential to consistently out-bid less affluent teams for the best players.[102] The salary cap allows the league to protect the competitive balance among the teams.[103] Although six out of the seven assumptions are met, the fact that there are high transaction costs means that player contract negotiations do not result in efficient results.

Despite the role of the NFLPA, the players in the NFL have a very weak bargaining position compared to that of the team owners.[104] Part of the reason for this inequity is players' dispensability and short career span in the NFL.[105] Career-ending injuries and injuries that reduce a player's skill are very common.[106] As a result, teams continuously attempt to upgrade the quality of their rosters, causing a con-

98. *See supra* note 23 at 42.

99. If a team is at or near the salary cap, the player may have to accept a lower salary in order to join that team.

100. If one team is at or near the salary cap and the other team is not close to reaching the salary cap, the latter may be able to offer the player more money irrespective of the fact that the teams have roughly the same amount of revenue as a result of the revenue sharing system. Under certain circumstances a team may go over the salary cap.

101. See Scott McPhee, First Down, Goal To Go: Enforcing the NFL's Salary Cap Using the Implied Covenant of Good Faith and Fair Dealing, 17 Loy. L.A. Ent. L.J. 449, 457 (1997).

102. *Id.*

103. *Id.*

104. Derek D. Yu, The Reconciliation of Antitrust Laws and Labour Laws in Professional Sports, 6 Sports Law. J. 159, 166 (1999).

105. *Id.* at 167.

106. Ethan Lock, The Scope of the Labor Exemption in Professional Sports, 1989 Duke L.J. 339, 355 (1989).

tinuous turnover of players.[107] Perhaps the most important factor that creates a disparity in bargaining power is the fact that a player's athletic skills will be of little use in earning income in another industry.[108] Unfortunately, this is the case both during and after their NFL careers, given the highly specialized nature of their skills and the fact that the NFL is the only buyer of, and indeed the only market for the players' services.[109] Consequently, players have neither the bargaining power nor the leverage necessary to bargain to their desired result because the teams know that the parties will eventually come to an agreement due to the players' inability to take their skills elsewhere.

The Coase theorem has traditionally been applied in situations where there were low transaction costs. However law and economics scholars have applied the Coase theorem in real world circumstances where transaction costs are high and the parties cannot bargain to an efficient result.[110] They do this by asserting that "in the case of high transaction costs, the decision maker should ascertain the result the parties would arrive at if transaction costs are low.[111] The decision maker should [then] give the parties that result," which achieves an efficient result without having to make any value choices.[112] One example of this is the rule in torts that states "the liability for avoiding a harm should be given to the party who can avoid the harm at the least cost."[113] Arguably, this is the rule they would arrive at themselves if they could bargain.[114]

When there is a disparity in bargaining power, transaction costs are increased and the Coase theorem appears to lose some of its utility. However, as demonstrated by the tort rule above, the theorem can be used to explain how rules produce efficient results in situations where transaction costs are high. The "Franchise Player" rule is one such rule and it is efficient because it provides the designated players and the teams what they would have bargained for if the transaction costs had been low. The "Franchise Player" rule also allows the parties to avoid the pitfalls of strategic behavior and status competition that often arises during the course of negotiations. The "Franchise Player" rule allows teams to designate one payer who would otherwise qualify as a free agent as a "Franchise Player" and the team has the exclusive

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107. *Id.*
108. *Id.*
109. *Id.*
110. *Supra* note 62 at 635.
111. *Id.*
112. *Id.*
113. *Id.*
114. *Id.*

right to negotiate with and sign him to a contract.[115] This rule serves the needs of both the designated player and the designating team in that it allows them to avoid the high transaction costs and the inefficient results associated with bargaining. The rule is particularly beneficial to the designated players because, as already discussed, players have little bargaining power due to their lack of job security and the non-transferability of their skills.[116]

The "Franchise Player" rule is efficient because it gives the parties what they would have bargained for if the transaction costs were low. Obviously, if transaction costs are low, the team would attempt to negotiate to keep its best player. The "Franchise Player" rule allows them to achieve that goal without drudging through the process of negotiation. If the old team was forced to compete with other teams on the free market in order to reenlist the player's services, it is possible that the old team would have to pay considerably more to sign him to a new contract. While this creates an efficient result for the player, the result is inefficient for the team. The rule guarantee's that the old team will sign the player and limits the amount it will have to pay for his continued services. The players also receive substantial benefits from avoiding negotiation. Not only does the player not have to negotiate with his current team to keep his job, he is also spared from the tedious process of negotiating with other teams once his contract expires. The Franchise Player rule also guarantees the player a pay increase equal to the average of the five highest salaries in the league the current year, or the salary of the five highest players in the position which the "Franchise Player" played the most games during the previous season, or 120% of the "Franchise Player's" prior year salary, whichever is greater.

The "Franchise Player" rule allows the designated player and his team to avoid the effects of strategic behavior.[117] Game theorists suggest that transaction costs are not the only barriers to achieving efficient results.[118] They state that, even when transaction costs are low, bargaining may result in inefficient results because parties' conflicting interests may induce strategic behavior in the form of withholding material information.[119] This creates asymmetric information and disadvantages the other party who assumes that they are bargaining at arms length. In the context of the NFL, strategic behavior could result in

115. *Supra* note 23 at 42.
116. McPhee, *supra* note 101 at 457.
117. *Supra* note 88.
118. *Id.*
119. *Id.*

players not disclosing such things as latent injuries hat could affect their ability to play. Similarly, strategic behavior might prevent teams from disclosing to a player that another team is interested in him that has more room under their salary cap and could pay him more money. Both situations cause inefficient results because the team may end up signing the player and agreeing to pay him more than he is actually worth[120] and the player may end up signing with a team that can only offer him a fraction of the salary that another could offer him due to the salary cap.[121]

The "Franchise Player" rule is also efficient because it allows the parties to avoid the costs associated with status competition. These costs arise from the desire to be the winner of a negotiation.[122] However, contrary to what one might think, the desire to be the winner can have detrimental effects on negotiations by shifting the parties' goal from achieving efficient results to winning a negation point.[123] Parties sometimes get sidetracked, often by their emotions, and go awry of seeking their original goals.[124] They become preoccupied with saving face and nothing is more important than prevailing over the other side.[125] In fact, parties sometimes become unable to agree to a transaction that gives them what they were originally bargaining for because to agree to such transaction would cause them to lose some degree of status.[126] This is more likely to be the case with players given the fact that they start out in a weaker bargaining position and have nothing except their status as an excellent player to use as currency in the negotiations. The "Franchise Player" rule allows both the designated player and his team to save face and maintain their status by eliminating opportunities for conflict and by allowing both parties to be the winner.

Another disadvantage to status competition is that one or both of the parties may not feel free to bargain for something that they really want because they believe that asking for it would create a loss in

120. The team has the right to terminate a player if he is injured. However, if certain criteria are met, he is entitled to 50% of his salary for the League year following the injury, up to a maximum payment of $275,000, unless the has negotiated more injury protection or a larger guaranteed salary into his contract. This provision is good for the 2006-08 League years.

121. The salary cap for the 2007 League year is $109 million. It will be 57.5% of Projected Total Revenues, less League-wide projected benefits, divided by the number of players playing in NFL during that year.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

status.[127] For example, a woman may be reluctant to attempt to negotiate into her employment contract a provision that would allow her to telecommute one day a week so that she could spend more time with her small children. Her reluctance is the result of the stigma associated with working mothers and she feels that requesting such provision would suggest that her family responsibilities would conflict with her ability to successfully perform her job responsibilities. Similarly, an NFL player might want to negotiate into his contract a provision stating that he needs a private dressing room on game days because he tends to get sick to his stomach when he gets nervous. He may feel that this is something he cannot ask for because nervousness is a sign of weakness in a football player and he does not want to be perceived as being weak. The "Franchise Player" rule makes it unnecessary to negotiate because the terms of the agreement are prescribed and the awkwardness associated with requesting something you think will cause you to suffer a loss of status is eliminated.

V. Conclusion

The "Franchise Player" rule provides substantial benefits to both the designated player and his team. Both the "Rule of Reason" and the Coase theorem serve as strong justification for the rule. Not only is the Coase theorem useful when there are low transaction costs, but it is also useful in providing what parties would have bargained for in cases where the transaction costs are prohibitive. Because the Franchise Player rule allows the parties to avoid threat bargaining, status competition, and strategic behavior, it produces more efficient results than bargaining over the terms of the players contract.

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127. *Supra* note 121.

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