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MEDIATION, COMPROMISES SAVE 2011-2012 NFL SEASON

Court-ordered mediation saved the 2011-2012 National Football League (NFL) season as the League's longest-ever work stoppage, and its first since 1987, threatened to cancel the season. Sam Farmer, *NFL is back in business as player representatives OK 10-year deal*, Los Angeles Times, (July 25, 2011), <http://articles.latimes.com/2011/jul/25/sports/la-spw-nfl-lockout-20110726>.

The NFL, as we know it, operates through the successful coexistence of two separate entities; the NFL itself, and the NFL Players Association (NFLPA). *Brady, et al. v. NFL*, 644 F.3d 661, 663-64 (8th Cir. 2011). The NFL, or "the League," refers to the entity that comprises the interests of the League's thirty-two team owners, while the NFLPA is an association representing the players' interests. *Id.* Since 1968, the League's general stability has been achieved through the NFL and NFLPA periodically agreeing to renewable Collective Bargaining Agreements ("CBAs"). *Id.* The recent dispute between the NFL and NFLPA arose when the NFL allowed the CBA to expire in March with no agreement waiting to replace it, despite two years of negotiations to create a new agreement. *Id.* at 666-67.

By allowing for the CBA to expire, League officials hoped that a promptly implemented player lockout, which would prevent players from collecting payments under contracts, would pressure the players financially, giving the owners a strategic economic advantage in negotiations to create a new CBA. *Id.* at 663. Several players brought suit to enjoin the League from implementing the lockout, claiming the planned lockout violated the 1890 Sherman Antitrust Act as an illegal group boycott and price-fixing arrangement. *Id.* at 666-67. The players alleged additional Sherman Act violations based on the League's plans to implement a price ceiling on recently drafted rookie prospects, placing a salary cap on current players, and new restrictions on free agents. *Id.*

Bringing their case before Judge Susan Richard Nelson at the United States District Court for the District of Minnesota, the players successfully enjoined the NFL from continuing its player lockout. *Brady et al. v. NFL*, 2011 U.S. Dist. LEXIS 44523 (D. Minn., Apr. 25, 2011). However, appealing Judge Nelson's ruling, the League was successful in reinstating the lockout, as the 8th Circuit Court of Appeals granted both temporary and permanent stays of the district court's ruling before finally upholding the lockout and remanding the case. *Brady et al. v. NFL*, 638 F.3d 1004 (8th Cir., Apr. 29, 2011) (granting temporary stay); *Brady et al. v. NFL*, 640 F.3d 785 (8th Cir., May 16, 2011) (granting permanent stay); *Brady*, 644 F.3d 661 (8th Cir., July 8, 2011) (upholding lockout).

Concurrent with the ongoing injunction proceedings, Judge Nelson, undeterred by the failure of prior negotiations, issued court-mandated mediation to create a new CBA. *NFL Lockout: Mediation Between League, Players To Resume Thursday*, CBS Broadcasting Inc., (April 12, 2011), <http://newyork.cbslocal.com/2011/04/12/nfl-lockout-mediation-between-league-players-to-resume-thursday/>. Following Judge Nelson's order, U.S. Magistrate Judge Arthur Boylan began mediation by meeting with the parties first in separate caucuses starting April 12. *E.g.*, Albert Breer, *Judge meets with NFL counsel*;

mediation to start Thursday, NFL.com, (April 13, 2011), <http://www.nfl.com/news/story/09000d5d81f3af14/printable>. Though exact details of the mediation are unknown due to confidentiality, comparing the parties' pre-mediation desires with the resulting solution and new CBA illuminates concessions made during mediation.

Team owners, clamoring for a more sustainable financial model, wanted to expand the NFL's regular season from sixteen to eighteen games, obtain greater revenue sharing, institute a salary cap, limit rookie players' contracts, and restrict free agency. *E.g.*, Clark Judge, *Lockout Judgments [sic]: Winners, losers, turning points*, CBSSports.com, (July 24, 2011), <http://www.cbssports.com/#!/nfl/story/15348620/>. The players, like the owners, wanted greater revenue sharing of NFL profits, as well as higher minimum salary levels, expanded team rosters, and reduced offseason workouts, including training camp. Clark Judge, *Lockout Judgments*.

With the season nearing, players still unable to receive payment on their contracts, and a favorable 8th Circuit court ruling upholding the player lockout, it seemed that the owners were gaining leverage in negotiations for a new CBA. Momentum shifted, however, when the NFLPA informed the owners that it had secretly purchased insurance that would pay players if the 2011 season were cancelled. *E.g.*, Charlie Wilmoth, *NFL Lockout: NFLPA Informs Owners Of Secret Lockout Insurance*, SBNation.com, (July 14, 2011), <http://www.sbnation.com/2011/7/15/2277523/nfl-lockout-2011-news-demaurence-smith-owners-nflpa/in/1706829>. Then, on July 21, mediation successfully concluded as the owners announced their vote to approve a new CBA, pressuring the NFLPA to accept the agreement.

This unexpected resolution was likely the result of the owners anticipating several problems if a new agreement had not been reached before the scheduled start of the 2011 season. Facing disgruntled fans clamoring for a resolution to the dispute, escalating financial pressure of losing millions of dollars in television deals, Andrew Sharp, *NFL Lockout: The Owners Think Everyone's Stupid, Including You*, SBNation.com, (July 22, 2011), <http://www.sbnation.com/nfl/2011/7/22/2287259/nfl-lockout-2011-owners-players-agreement-cba>, and realizing that the players had a financial foundation to continue CBA negotiations, League owners approved the new CBA based on negotiations with the player representatives. *E.g.*, Nate Davis, *NFL, players announce new 10-year labor agreement*, USA Today, (July 25, 2011) <http://content.usatoday.com/communities/thehuddle/post/2011/07/reports-nfl-players-agree-to-new-collective-bargaining-agreement/1>. The players unanimously accepted the CBA just days later, on July 25, effectively ending the four-month dispute. *Id.* Through court-mandated mediation, both sides compromised and achieved an attractive resolution to their dispute.

While the owners realized their goals of greater revenue sharing, a rookie wage system, and a salary cap, they were unable to accomplish some of their biggest changes, such as lengthening the regular season and restricting free agent players. Clark Judge, *Lockout Judgments*. Though the players will receive a decreased share of the League's revenue, they were able to deny the owners free agency regulation, obtain assurances in team cash spending, and provide greater benefits for players. Nate Davis, *10-year labor agreement*. Many safety-related issues were incorporated into the new CBA, such as

limited practice times, greater injury protection, less frequent full-contact practices, and obtaining lifetime medical insurance. *Id.*

Most importantly, both parties utilized mediation to draft and approve a new CBA, guaranteeing NFL fans football through the 2020 season. And for that, we can all be grateful.

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