

2016 NATIONAL SPORTS LAW
NEGOTIATION COMPETITION

ROUND ONE

“Fourth and I”

GENERAL FACTS FOR BOTH TEAMS

The National Football League (“NFL”) is the most popular professional sports league in the United States as it has the highest revenue and is the most watched television product of all the U.S. sports leagues. The NFL was founded on August 20, 1920, in Canton, Ohio and has since merged with other football leagues and gained an immense amount of popularity globally.

The NFL’s Collective Bargaining Agreement (“CBA”) is in place to reflect the negotiation agreements between the National Football League Players Association (“NFLPA”) and the NFL team owners. The CBA sets forth the distribution of league revenues, sets health and safety standards, defines medical and pension benefits players are allowed to receive, and lays out rules of free agency, releasing players, and trading players.

The CBA’s Appendix A lays out the standard contract that teams give to players when they sign. Appendix I of the CBA allows teams to release a player without compensation at any time if their conduct is reasonably judged by the team to be unsatisfactory (known as the lack of good faith performance clause). Standard contracts also provide that players must follow the rules the NFL has laid out in their Code of Conduct manual. Arbitrators are appointed by the NFL to handle contractual disputes. The NFL gives each individual team the freedom to adjust their team contracts for other agreements that are made before contract formation.

Article 9 of the NFL CBA defines ‘Unrestricted Free Agents’ (“UFA’s”). UFA’s are free to negotiate and sign with any team and teams have no limitations on contacting and signing them. UFA’s are no longer, or have never been, associated with a team, so draft picks, monetary, or player compensation between teams does not apply.

The NFL generates significant revenue from star players in their league because they sell the most jerseys, make the most public appearances, and are responsible for a major portion of ticket sales and interest in the league.

The Parties

NEW ENGLAND PATRIOTS

Among the most popular and most valuable franchises in the NFL is the New England Patriots (“Patriots”). The Patriots are a decorated, yet also a controversial franchise. In the past thirteen years, the Patriots have won four Super Bowls, the most of any team in that time period. In the same thirteen years, the Patriots have been involved in multiple scandals with the NFL. One incident was “Spygate” in 2007, when the Patriots filmed the opposing team’s defensive coaches play calls during a game from an unauthorized location in order to gain a competitive advantage.

Another widely known controversy with the Patriots was “Deflategate,” which took place during the 2015 AFC Championship game, when Patriots equipment managers allegedly deflated the game balls to a PSI (pounds per square inch) below the allowable league level that allegedly involved MVP quarterback Tom Brady. Both incidents resulted in punishment from the NFL and subsequent litigation regarding Deflategate that ended in 2016.

NFL teams need to make money and make sound business decisions, but they cannot ignore players and teams who have legal issues. Other major professional sports have learned from the NFL’s controversial history of dealing with domestic violence poorly, and they have become extremely sensitive to the issue. Major League Baseball suspended Aroldis Chapman thirty games for his alleged domestic violence dispute, but there was no arrest or legal action taken. Major League Baseball also suspended Jose Reyes after his arrest until criminal proceedings and investigations concluded, and with the option to extend his suspension if more evidence came out about his alleged domestic violence issue. The National Basketball Association suspended Jeff Taylor twenty-four games after his arrest and conducted their own private investigation.

RAY RICE

Ray Rice (“Rice”) is a professional football player who formerly played for the Baltimore Ravens, who drafted him in the second round of the 2008 NFL Draft out of Rutgers University. In the prime of running back Ray Rice’s career, he was a superstar and fan favorite. Now more than ever, athletes are worldwide celebrities with social media and broadcast media on every type of platform.

As a result of the 24/7 news cycle, public opinion holds leagues and teams accountable for off-field actions of their players and they face public scrutiny for the discipline players receive for their actions. With the support of the NFL, as long as there are no future off the field issues and the public outcry is not overly burdensome; the Patriots are interested in helping Rice get back on the field after his widely publicized off-field domestic violence incident. The Patriots organization have had their share of controversy, but their on-field success of taking chances on troubled-players like wide receiver Randy Moss is well documented.

In his years with the Ravens, running back Ray Rice became one of the best players in franchise history, was well liked within the locker room, and in the Baltimore community. This included being a spokesperson for a domestic violence prevention organization. However, Rice has not played in the NFL since the end of the 2013-2014 season when he was arrested for third-degree aggravated assault for striking his now-wife, Janay Palmer, in the face, and knocking her unconscious in an Atlantic City casino elevator where the incident was caught on camera.

Before the video was made public, the NFL suspended Rice for two games and the Ravens fined Rice. When video of the assault was released several months following the assault by TMZ, the NFL subsequently suspended Rice indefinitely and Rice was released from the Ravens and his contract was terminated. The incident led to a complete policy change by the NFL over domestic violence issues. When the shocking video of the assault became known, the public perceived that NFL officials were not serious about domestic violence and attempted to cover up what really happened between Rice and Palmer.

Rice appealed his suspension on the grounds of double jeopardy and the second suspension being in violation of his Constitutional rights and in violation of the CBA. In November 2014, Rice won his appeal and was reinstated into the NFL as an unrestricted free

agent. Despite Rice's availability to sign, no team has signed him. Rice also sued the Ravens for the pay that he should have received for the weeks that he was suspended. Rice and Ravens settled privately and ended all litigation.

Rice's wife has publically supported him after the incident, saying that she is committed to him and will not leave because he has sought out help with counseling and anger management. Recently, Rice's wife started a battered women's shelter in their hometown in New Jersey, which is funded solely by Rice. In further support of the issue, Rice has donated to various charities focusing on women's issues and domestic violence.

As discussed, until recently, no teams have expressed an interest in signing Rice to a UFA contract. While teams have continued signing players with domestic abuse issues (most notably Greg Hardy who was arrested for brutally beating his girlfriend and then threatening her life while tossing her on a bed of guns), Rice has compared his situation to that of former Major League Baseball (MLB) player Barry Bonds. Bonds argued that MLB owners illegally colluded to keep him out of the game after his use of steroids became known.

Rice has been working out and staying in NFL-ready playing shape with the hope of signing with a team to continue his career. Rice feels he has made significant strides in the right direction to improve his reputation and character. He has spoken to Ravens draftees, coached in collegiate all-star games, and has been open and available to discuss his past and how to change the future.

Signing With the Patriots

In the past, the NFL has reinstated players who have been suspended, making them UFA's in some cases. However, there was always something the suspended players had to do for the NFL to improve the image of both sides and to show the player has changed. For example, when Adrian Peterson was suspended in 2015 for physically abusing his son with a "switch," in order to be reinstated, he had to complete counseling at the direction of a medical expert.

Within every player's contract, there is a 'Morality Clause' that provides in incidents where a players conduct would question the player's, or that of the team's/NFL's, character,

public image, brand, etc., by the team's discretion the player would be suspended indefinitely. Teams can suspend players indefinitely for Morality Clause violations when they feel the player is not an accurate and positive representation of their organization. The NFL Commissioner also has this authority and has used it on players like Tom Brady, Adrian Peterson, and Ray Rice.

Additionally, players with past issues are frequently required to run a youth/charitable program to give back to their local community and better their public images. Disciplined players are generally required to promote the NFL's brand in such efforts. Lastly, the player may need to fulfill specific conditions that would help the player overcome their flaws.

For example, Marshawn Lynch was required to work with a youth football program after his incidents with not talking to the media in 2014 and 2015. In Rice's case, in addition to the charity work and counseling he has done, the programs may have to be for a determined time period, a number of public outreach events, and involve multiple appearances by Rice in different charitable endeavors, either run by him or the NFL.

The NFL may want to keep Rice away from certain organizations it feels would not benefit his image or the league's image (it is on record that the Dallas Cowboys would be a bad environment for him). The NFL does not want Rice to return to the Baltimore Ravens based on the possibility of a lingering negative feeling within the organization towards Rice. Rice and his agents will ultimately sign wherever if given the opportunity, including in other professional leagues, unless an agreement is made between the parties to sign with the Patriots.

Directions

The Patriots are represented by their general counsel. Rice is represented by his lawyers who are NFLPA certified. The parties should discuss and possibly agree to the details of Rice's contract. The parties should also discuss and possibly agree to the types of programs, public appearances, and other community outreach efforts for Rice. The parties should be creative in discussing issues and solutions each side believes is important.

CONFIDENTIAL FACTS FOR THE NEW ENGLAND PATRIOTS

Even with the bad press Ray Rice has brought to the NFL through his domestic violence situation, his polarizing persona will bring in viewers and added attention to the four-time Super Bowl Champion New England Patriots. The Patriots believe they will be viewed positively in the public eye for attempting to forgive a person like Rice and working to improve his life while he competes at a high level on and off the field for the franchise.

The Patriots have had success in rehabilitating the public image of other players who have had issues with their character and public appeal. Perhaps their biggest success story was wide receiver Randy Moss. The team, including the coaching staff, had candid conversations with Moss and his agent throughout the negotiations of bringing the talented, but troubled wide receiver onto the team. They required Moss become involved in the community and required him to attend six events for a charity of his choice, as well as attend six Patriots-sponsored community outreach events each season he was with the team.

While Moss was not entirely open to the idea of getting involved in the community and dealing with the media that often, the Patriots worked with Moss's advisors to limit the media interviews that would occur at these community events, and controlled who would get access to him. This setup and attention to detail from the Patriots Community Outreach Department and the Patriots Foundation allowed Moss to thrive in this environment. Moss enjoyed interacting with underprivileged kids in the community and his image was rehabilitated significantly.

Even after Moss and the Patriots parted ways under acrimonious circumstances, he has said openly that his years with the Patriots were his best and the most enjoyable years of his NFL career.

The NFL is starting a program during the 2016-2017 season that gives monetary bonuses to teams who sign formerly suspended and punished players and can keep them on their rosters with no legal issues for the entire season. This program is the result of an arbitration quietly held and brought by three current NFL players against the NFL that claimed they were being discriminated against for their off-field issues despite being rehabilitated. This program has not been officially announced, but the Patriots have a front office executive on the planning

committee, and the NFLPA has agreed to it and to keep it out of public view for the next two seasons.

Signing Rice could be a risk, but with huge rewards. If the Patriots can keep Rice on the roster the entire season, the Patriots will receive a \$6 million dollar bonus for successfully implementing the program. Rice was also one of the best running backs in the league when he was with the Ravens and it is a position where the Patriots are roster-thin. The Patriots also believe Rice will be extra-motivated to perform for taking a chance on him.

In negotiations with Rice, the Patriots are looking for Rice to attend mandatory domestic violence counseling and education on a weekly basis. The Patriots believe the more Rice understands about this topic, the more of a leader he will be in the clubhouse. This is the value the team sees Rice being able to provide the team – leadership and real life experience. Since Patriots head coach Bill Belichick began coaching the team, the Patriots have not relied on star running backs. Instead, they have relied on role players and veterans taking a backseat to more talented, youthful players, and quarterback Tom Brady.

The Patriots will also be looking for Rice to be involved with two charitable programs for a total of three to six hours per week in the offseason, not including Rice's counseling. The first program includes a new Patriots flag football league being created for underprivileged and inner city kids. The Patriots Football League ("PFL") will take place every week in different areas of the greater Boston area. Teams are picked each week. The PFL is focused on getting kids to play football in a safe environment, while giving participants a sense of pride each week. The PFL season will last for four months. There are no practices, however, one night each week the kids are invited to play in pickup games with volunteers and Patriots players acting as coaches. The Patriots want ten players each week to go to these events, and they want Rice to commit to all 16 weeks of the PFL. The league will take place during the offseason and/or will not interfere with practices and the NFL game schedule.

The second charitable program the Patriots want Rice to volunteer for is the *NFL Play 60* program. This program focuses on getting kids to be active and exercise for 60 minutes each day. The *NFL Play 60* program has camps in seven cities this year, and in 2017, it hopes to expand. The Patriots want Rice to be one of five Patriots players to head up the camp in the Boston area. These camps will only require Rice to be at the event for two (2) hours and it will

take place during the offseason and/or will not interfere with practices and the NFL game schedule.

The Patriots see it as a win/win situation. They get the benefit of having players involved in their community and strengthening the Patriots' image and brand in their region. Rice can get out and meet people, changing his public image and reputation. Finally, it provides for good public relations and a great "comeback story."

For both of these charitable endeavors, the Patriots are willing to provide a dedicated media relations member of their staff to filter the media questions for Rice, and if there are problems, interviews will be cut short. The Patriots do not want Rice to be appearing frequently in public unless it is for charity or for team related activities in order to keep the two parties out of the limelight until the public accepts Rice's return completely. While the Patriots cannot stop Rice from doing certain things, there will be suspension and/or termination provisions written in the contract if Rice is found doing things that do not benefit either party, like appearing at clubs, partying, inappropriate activity on social media, or any incidents the Patriots feel necessary to suspend him for the betterment of the team. This policy is optional as a part of the new program, but should be pursued as it protects the team.

The Patriots are seeking to sign Rice to a one or two-year performance based contract for the veteran's minimum listed in the CBA. The CBA states veterans with 4-6 years of experience receive a minimum \$760,000.00 (USD) salary per season. If Rice were to sign for the minimum or anything less than \$1.1 million, there would likely be performance-based bonuses. The Patriots will not go above \$2.5 million per season in total contractual value. However, the team would prefer to keep the cost for securing Rice's services under \$1 million in guaranteed money, not including bonuses.

The Patriots are willing to be flexible on performance bonuses because they are not fully guaranteed, as Rice must perform what is stated to get the bonuses. As for the mandatory counseling and charity, the Patriots can be flexible, but only if Rice is asking for reasonable changes to the Patriots plans and the overall message, and the overall purpose is followed.

CONFIDENTIAL FACTS FOR RAY RICE

Rice would love to be an NFL player again, especially for a team that can give him a chance at winning a Super Bowl like the Patriots. However, until recent weeks, he had not even been able to get even an interview with an NFL team. He has contemplated filing a collusion lawsuit against the NFL and its franchise owners, but his lawyers have explained the difficult nature of collusion cases, the lengthy and expensive court battle, his chances of re-signing with an NFL team being completely wiped out, and his position as an unsympathetic plaintiff. Instead, Rice wants to do whatever he can do to get back on the field before he ages out of the NFL.

Rice is aware that teams will attempt to make him go to counseling before signing. Rice and his wife feel that this was just an isolated incident and he does not need any medical treatment in the form of counseling. However, he is willing to continue his marital counseling that his he and wife have been participating in every two weeks.

After the incident, Rice and his wife went to counseling to save their marriage and he attended private sessions to make sure that he was mentally stable. This counseling was beneficial for Rice and his wife and things are going better for him now. Rice has found acceptable ways to express his emotions, while the couple has developed a number of communication strategies to help each other feel safe, supported, and listened to within their marriage and family environment. Rice feels he and his new team could implement a similar supportive environment.

Currently, Rice is funding 100% of a battered women's shelter his wife is running in New Jersey. Rice's wife has publically supported him and wants him to play in the NFL again and has put the entire situation behind her and the family. They both feel that the counseling is helping and they want to continue this for the near future.

Rice believes his counseling with his wife should be considered when he is speaking with the Patriots. He has been away from being an active player for several years and he wants to devote as much time as possible to develop his football skills. He is willing to go to more counseling, but he cannot and will not force his wife to go with him to more counseling. If the Patriots ask Rice to go to additional counseling, he is willing to do so as long as the current

sessions with his wife will be applied to the requirements the team seeks. Furthermore, Rice would prefer that the Patriots do not require counseling, and just accept that he and his wife are currently in a program and are going to continue for the foreseeable future.

Rice wants to begin his community activism immediately when he signs with a team. Rice believes his community outreach efforts will help him rehabilitate his image in the city and region where he is playing. It will also be good for the community.

Currently, Rice has a few organizations in the Boston area in mind. If Rice signs with the Patriots, Rice and his wife have decided to tackle both sides of domestic violence. Janay Rice wants to work with abuse victims, while Ray Rice wants to work with men who are young and have had domestic violence and/or anger incidents/issues. Rice has learned that many young men abuse people in their own homes, including their spouses because they are emulating the dynamic they witnessed as children. Rice and his wife want to provide education to both victims and abusers to stop the cycle of violence. They have allocated two hours each week (one hour, twice a week) to lead counseling groups and education sessions at proper treatment provider center. If the Patriots require other charitable endeavors, Rice will not go over four (4) hours total per week.

When it comes to football, Rice has recently been in contact with the Los Angeles Rams and the San Francisco 49ers who have expressed an interest in signing him. Rice's first choice would be to join a winning team like the Patriots as long as he can get what he wants out of the contract, but joining the Los Angeles Rams in their first season in Los Angeles or the San Francisco 49ers in their relatively new stadium would be a good backup plan for him. He sees Los Angeles as a place where he can quickly rehabilitate his image through the media, even if he is the second or third running back on the roster Todd Gurley and others.

In San Francisco, he is drawn to the possibility of getting more playing time, increasing his value, even if it means accepting only year-to-year contracts at this stage in his career. If Rice signs with a California team, he would demand a higher contract value because of the state's high taxes. Obviously, he wants to maximize the value for what he is able to get.

Rice is optimistically looking for as long a contract as possible, possibly between two and four years. He believes he can be a leader in the locker room and that he has value for a team like the Patriots who need skill and leadership at the running back position. Rice knows he can

still play, and he believes he can play well into his thirties if he given the opportunity to show what he can do.

Rice is not looking to break the bank with this contract. He understands teams see him as a gamble, but he believes he should have the opportunity to make between \$2-3 million each season. Like any other player, he wants to receive as much guaranteed money as possible, but Rice is playing the long game.

Rice knows that his post-football career is more important than his playing career. Rice believes he can go into coaching and motivational speaking, but in order to do either of these careers, he feels he has to get back on the field and make a team. Rice is willing to take a lower annual salary base if it is guaranteed and the bonus structure is reasonable. Rice believes he can be at least the Patriots number two running back. Additionally, Rice is willing to donate his entire salary for the first year of the contract to charity.

Except for “NFL Comeback Player of the Year” award, he is looking for bonuses based on playing time rather than accolades/awards. He is confident that if he can get back on the field that he will win the “Comeback” award and would like to be financially rewarded if he takes home that award.

If Rice is unable to sign with the Patriots, his fallback is the 49ers, with the Rams as a last option. He knows the 49ers have the salary cap space to bring him in and keep him on the roster, and they can use his veteran leadership.

At the end of the day, Rice knows that he does not have the ability to dictate terms of his contract as he could when he was the star running back with the Ravens. Rice is willing to be reasonable with the Patriots. Rice wants to participate in community events to help the community and to rehabilitate his image, but he wants his football skills to be his main priority. Rice does not want to exceed four (4) hours each week to his outside endeavors.

Rice is a different person today than he was when he assaulted his wife. His goal for this negotiation is to convey this to the Patriots representatives and land a deal bringing him back to the NFL.