



WHAT EVERY PLAYER SHOULD KNOW ABOUT MORALS CLAUSES

WORDS BY **BRIAN R. SOCOLOW**

THE RECENT SCANDALS IN THE SPORTS WORLD HAVE PAINFULLY DEMONSTRATED TO SOME ATHLETES THAT THE SALARY CLAUSE IN THEIR PLAYER CONTRACTS AND ENDORSEMENT CONTRACTS IS NOT THE ONLY CONTRACTUAL TERM THAT DESERVES SUBSTANTIAL ATTENTION DURING THE NEGOTIATION PROCESS.

Most player contracts and endorsement contracts contain a “morals clause,” which gives the athlete’s team, league or company paying the athlete to endorse its products the right to terminate a contract or otherwise punish a player who engages in criminal or unseemly behavior.

Although a morals clause may sometimes be treated as “boiler plate” in contracts, violation of a morals clause can have a huge economic impact, from loss of salary paid by a team to the loss of lucrative endorsement deals. Rather than waiting until some incident has landed them in the headlines to look at the morals clause in their contract, players

should understand in advance what triggers the clause and what each side is allowed to do if the clause is invoked.

The list of athletes and other sports professionals who have been suspended or terminated from teams, fired from coaching jobs, or lost lucrative endorsement contracts because of illegal, immoral or unethical conduct that violated a morals clause in their contract has grown longer recently. Michael Vick was convicted of bankrolling an illegal dog fighting operation and sentenced to 23 months in prison. When the allegations against Vick made headlines in July, 2007, Nike announced it had suspended, but not terminated, its endorsement agreement with him, but following Vick’s guilty plea in August, Nike announced it had terminated his endorsement contract. Vick was also sued by the Atlanta Falcons for the return of \$20 million in bonuses he had received, but a recent court ruling has allowed him to keep most of it. Adam (Pacman) Jones was suspended for the entire 2007 season by the NFL, without pay, after five arrests and violating

probation. Go back a few years and it was Kobe Bryant who lost numerous endorsements (some of which he has regained) because of sexual assault charges against him, or former University of Washington football coach Rick Neuheisel, who was fired for violating NCAA rules that prohibited gambling (he is now the UCLA coach).

Negotiating morals clauses in player contracts can be very different than negotiating them for endorsement contracts. Major league player contracts usually don’t allow much room for negotiation because they contain uniform language for all players. Led by the NFL’s personal conduct policy, player contracts nowadays are likely to contain more specific and stringent restrictions on player conduct off the field. They may require the player to dress neatly in public, to conduct himself according to the highest standards of honesty and sportsmanship, and to refrain from doing anything that would be detrimental to the best interests of the team or league.

But language specific to particular player contracts can be negotiated. Yankees designated hitter Jason Giambi admitted to having used steroids, which could have been cause to terminate him, but the Yankees declined to do so, perhaps because of his value to them, but also because reportedly during the negotiation of his contract language that could have provided grounds for termination based on steroid use had been changed. Whether a team invokes a morals clause to terminate a player is “a value question based on how valuable a player is to the team,” says Paul Cobbe, a partner at Sosnick Cobbe Sports, who represents several major league baseball players. According to Cobbe, “questions about a morals clause usually come up after the fact.” The close attention paid to that provision in Giambi’s contract before he signed may have saved him millions of dollars in guaranteed salary, or having to litigate with the Yankees about whether his steroid use provided grounds for termination of his contract. He did reportedly lose some of his endorsement contracts, including Nike and Pepsi, after a newspaper leaked his testimony to a grand jury about using



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steroids other players caught up in Major League Baseball's investigation of performance enhancing drugs may force similar consequences.

A morals clause in an endorsement deal can be much more detailed than a standard player contract and allows for more negotiation, depending on the player's bargaining position. Companies insist on a morals clause because the company is investing a large sum of money to have a player be the public face for the company's products; the company builds its advertising and marketing campaign around the player so that the player's talents and achievements become associated with the company's products. Problems arise when the player's talents and achievements are overshadowed by scandal or criminal conduct. When the association between the player-endorser and the company begins to damage the company, the company understandably wants to part ways.

When negotiating the morals clause in an endorsement agreement, one of the most important issues is what kind of behavior will trigger the clause. In general, a player will want a short list of actions that will trigger the clause, such as a conviction on criminal charges or violation of league rules. A company paying for the endorsement services will want a broadly-worded clause that lets the company determine, in its sole discretion, if the player's actions warrant termination or a fine. For example, there are many kinds of behavior that fall short of a criminal conviction that could tarnish a company's image, such as public fights, arrests for drunk driving, drug use, criminal accusations (even if the charges are later dropped), and domestic scandals. A company may also want to be able to take action if the player-endorser criticizes its product or management.

Another issue is what actions the company can take if a player-endorser violates the morals clause. Sometimes a company prefers not to terminate a contract, but wants to show that it disapproves of an endorser's actions; some agreements allow a company to levy fines and/



or recoup payments rather than terminate for a morals-based contractual violation. The company may also demand a clause recognizing its sole right to pull an athlete's product from stores, such as happened with Michael Vick, or not using the athlete's image or likeness in advertisements.

Players may also try to negotiate some sort of "due process" protections in a morals clause. Ian Pulver, a Toronto-based hockey agent who represents NHL player Scott Gomez, said that players could try to negotiate a provision that would prevent a team or company that is paying endorsement fees from terminating or suspending a contract without first giving the player a chance to defend himself in an expedited manner.

A relatively new twist is a reverse-morals clause, which allows a player to terminate an endorsement agreement if the company engages in fraud or other criminal activities. "Morals clauses should flow both ways," says Pulver. This

type of clause, although not very common, came about after the Enron scandal that ruined that company's image and business.

Morals clauses are now standard in most sports contracts, partly because players and sports professionals are under increased scrutiny by tabloids and the news media.

Small transgressions that might have gone unnoticed by the general public a few years ago are now splashed across Internet pages in a matter of hours. When sports teams and leagues, and the companies who pay players to endorse their products, are

faced with the question of how to respond to big and little scandals, one of the first things they

do is turn to the morals clause in the player or endorsement agreement. This means that professional athletes should pay close attention to the morals clause during contract negotiations, boiler plate or not.

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