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ENTERTAINMENT & SPORTS LAW SYMPOSIUM

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## **Athlete Representation from a Sports Attorney's Perspective: Show Me the Money...It's Not Just About the Contract**

Presenter:

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### **I. THE TROUBLE WITH ROD TIDWELL**

Rod Tidwell was a charismatic and talented receiver for the Arizona Cardinals. His intensity playing the game was not overlooked for long. "Help me, help you!" and "Show me the money!" were the words that echoed in this fine receiver's head as he selected agent Jerry Maguire.

Eventually, Rod's star began to rise. Rod plays so well in his breakout performance but appears to receive a serious injury when catching a touchdown. Fortunately, he recovers, however, and dances for the crowd, which cheers wildly for him.

After the game, Jerry and Rod get renewed confidence for a lucrative new contract for Rod. Jerry did get Rod that contract and the two embrace in front of other athletes and sports agents to show how their relationship has progressed from a strictly business one to a close personal one. Tidwell's contract extended this veteran receiver's career three more years and was worth \$6 million. Of the \$6 million, Tidwell received more than half in up front signing bonus.

After receiving the lucrative deal, Rod Tidwell accumulated a tab from his spending habit so large that it would make Ivana Trump blush. Although with the best of intentions, Tidwell purchased homes for his mother, brother and close personal friends. And of course, Tidwell was seen at the Vegas casino at the high stakes table. Tidwell's excessive spending quickly depleted his bank account. However, Tidwell continued to draft "bad" checks. Tidwell was arrested and released that day. He was charged with writing bad checks and theft. The Vegas prosecutor who was sitting front row at Tidwell's breakout game decided not to pursue the charges. Nonetheless, the incident made headline news and TMZ.

The next year was the start of his new contract. "No worries," Maguire told Tidwell about his contract. "Your signing bonus" is guaranteed. However, Maguire, not having the proper legal training to make such a claim was wrong. Tidwell's contract like many NFL contracts contained a provision allowing a team to collect nearly 100% of the signing bonus if the athlete breaches the "Signing, Reporting and Playing Bonus Addendum."

“Player understands, acknowledges and agrees that the Bonus is earned over the entire term of the Contract and his right to retain the Bonus is expressly conditioned on his adherence to all provisions of the Contract for all remaining years of his Contract. In the event Player fails or refuses to report to Club, or fails or refuses to practice or play with Club at any time for any reason whatsoever including, but not limited to, voluntary retirement and incarceration, Player’s injury of a breach of Paragraph 3 of the Contract or as a result of participation in hazardous activities which involve a significant risk of personal injury and are non-football in nature or Player is suspended by the NFL or Club for Conduct Detrimental, or Player is suspended for violating the NFL Policy and Program for Substance Abuse, the NFL Policy on Anabolic Steroids and Related Substances, or the NFL Personal Conduct Policy, or if Player makes any public comment to the media, including but not limited to the newspaper, magazine, television, radio or internet that breaches Player’s obligation of loyalty to Club and undermines the public’s respect for the Club, Club coaches, or Club management under Paragraph 2 of Player’s NFL Player Contract and Article LV, Section 6 of the Collective Bargaining Agreement or Player otherwise breaches the Contract during the duration of the above contract years, then Player shall be in default of this Contract.”

Tidwell was called into the General Manager’s office months after the incident. Tidwell received news that he was to repay the entire bonus back to the team for breach of contract and conduct detrimental to the team. Tidwell, with his head in his hands, simply replied, “I don’t have it.” The team gave Tidwell a deadline to repay. Tidwell contacted Maguire (who collected his 3% commission of the contract’s gross amount) to see if there was any other alternative. Maguire directed Tidwell to a loan officer. Unfortunately, Tidwell was unable to secure the entire amount needed to repay back the team. Eventually, Tidwell was released mid-season.

By an agent’s standard, Maguire did a good job. Tidwell received a lucrative contract. So why does Tidwell become the rule and not the exception of athletes that have nothing once their playing career is over?

While agents address the financial needs of their clients, agents often do nothing to change the landscape on how the athlete will view his career, his purpose, or his legacy – to address, in other words, the legal needs. Those needs left unaddressed would eventually leave the athlete standing in the same position as he entered the game. What is needed is an advisor who can look beyond the contract, understand the contract terms, prepare strategy for future success and deliver sound advice. Here, Tidwell needed an advocate working with him as a “whole client” not just a signing contract.

## **II. ATHLETES MEAN BUSINESS.**

Athletes sign contracts for hundreds of thousands or millions of dollars.

But what happens to that money and the ability to create income over a lifetime? Remember the Sports Illustrated article in March 2009: “How (and Why) Athletes Go Broke”? Financial analysts report that more than 70% of athletes go bankrupt within three years after their playing

days are finished. Often that is because agents fail to treat their client's playing careers as businesses. As such, athletes don't take the LEGAL STEPS necessary to protect their families and their assets!

That's where working with a sports attorney – in a trusted advisor role – can help position the athlete to take advantage of corporate and tax opportunities. A sports attorney can address questions such as: Who manages your contractual relationships? Do you know when critical dates will expire? Who owns your image and name and your other intellectual property? How do you account for the money from endorsement contracts or special appearances? Do you own investment or income property? Does a corporate entity protect you from liability? Do you know how much you can gift to someone without creating tax issues? Do you want to create a foundation? What will you do in the post play reality? Can you trademark your identity?

A sports attorney can help you understand and manage the factors that can make or break the accomplishment of the athlete's lifetime goals. These factors go beyond the X's and O's of contract negotiation. A sports attorney examines how athletes can benefit by taking a holistic legal approach to their careers as businesses.

The holistic approach combines legal issues and business affairs management. An athlete is more than just an athlete. As an athlete, you are really the CEO of a diverse company – you, your name, your brand, your intellectual property, your endorsements, your assets, and your foundation! Athletes mean business. Every CEO needs a legal advocate and a business affairs officer to help them run a successful business.

### **III. HOW DOES HOLISTIC REPRESENTATION BY A SPORTS ATTORNEY WORK?**

Agents have played an important role in the representation of athletes. However, that representation has been, and will always be, narrowly focused on the contract. Sports attorneys, however, can engage legal disciplines that go beyond the negotiation room to create a strong client and sustainable business. The holistic model encourages intertwining several disciplines to serve the athlete's needs.

At the core of any holistic community of advocates is a commitment to "client-centered" practice. Sports attorneys do not represent the industry. Therefore, we do not submit to the industry routine detrimental to our clients. Client-centered means empowering clients to identify the challenges they face and to work with advocates to overcome those obstacles. It begins with a strategic purpose.

Supporting the core principle of client centered practice, holistic models of advocacy have two critical components:

1. Advocacy through interdisciplinary work groups and
2. A strategy for the post play career.

The centerpiece of a holistic office and the primary way to reinforce the interconnectedness of the issues that athletes face is through interdisciplinary work groups. Whole client representation can be best accomplished in a law office setting utilizing interdisciplinary teams of lawyers (with different specialties), mentors, and support staff. For example, the firm would host lawyers who focus in areas such as estate planning, non-profit organization, contract negotiation, employment law, litigation, and corporate start-ups. Why do athletes need any of this? There are many reasons. For instance, do you own investment properties and all of them are in your own name or all are in one entity? What if a catastrophic injury occurs at one of these properties that results in liability over and above your insurance? Does that liability come back to haunt you personally? Or does it affect all of your properties? Not if set up properly. Many other areas provide fertile ground for assisting an athlete in creating and protecting business investments.

Providing a team of advocates for the athlete is rewarding and challenging. The ability to work collaboratively with experts from different disciplines on behalf of clients is rewarding, because it ensures a unique ability to address both the athlete's specific needs and sets the athlete up for future post play career goals.

#### **IV. THE FUTURE OF REPRESENTATION**

Sports attorneys serve a critical purpose by aggressively spotting legal issues and providing analysis to the situation. Unfortunately, zealous contract negotiation by agents is not itself enough to make a real difference in the lives of young athletes. Many times young athletes are plagued with negative attention from woovers selling magic beans. The simple truth is that every athlete needs a lead blocker. An athlete's success requires a different kind of advocate...one who will fight for them on a number of fronts, not just at the negotiation table where oftentimes the negotiation only involves "where do I sign?".

The movement toward holistic representation is a powerful response to the reality that an athlete's career is oftentimes made more complicated by the lack of attention to detail. The holistic model that responds to the athlete's total picture incorporates a variety of legal disciplines.

No matter how holistic representation is structured, translating this idea into reality is difficult. It requires a cultural shift away from the traditional conception of dealing with "narrow focused representation" to a broader approach geared to provide special attention to the needs of the athlete. Because holistic representation relies on interdisciplinary work groups of legal disciplines, mentors, and business community involvement, we find it works best in the organized setting of a law firm. Organizing affiliations with other lawyers and ensuring easy access to a centralized group of professionals, mentors, and advisors is absolutely critical.

Holistic representation is more than just a challenge. It is a critical opportunity to fundamentally alter the lives of athletes. By engaging the whole client, holistic advocacy actually improves the industry of sports by finally delivering on the long-held but seldom attained goal of individualized and delicately-calibrated representation. This is the formula that makes legends.

## V. TIDWELL'S COMBACK

After much self-reflection, Tidwell terminated his advisors and hired an attorney to get on the right track. Tidwell's attorney also had experience negotiating sports contracts. Tidwell, who had at least three more years left in him, decided to engage the services of a Sports attorney. The two formed a team of lead blockers which not only consisted of lawyers, but business executives in the Arizona community. Tidwell and his attorney established a Limited Liability Company which served to manage his sports career. Tidwell understanding his role as CEO of Tidwell, LLC, began to understand how to attain the "Quan."

Tidwell's team assisted with tax advice, gift tax forgiveness, and established legal creative ways to accomplish his desire to have his family benefit from his football success -- but not at the expense of going broke.

Tidwell's long-term ambition was to enter law school. At the direction of his Sports attorney, Tidwell interns at his attorney's office in downtown in the NFL offseason. This strategic plan is to set Tidwell up for his career post play.

Tidwell procured another lucrative contract with another great team. He is now enrolled at Arizona State School of Law.

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