

# **DeMaurice Smith's Reckless Spending, Anti-Union Choices, and Anti-Player Results**



**November 15, 2017**

## EXECUTIVE SUMMARY

There's a troubling trend in the NFL Players Association that goes beyond this year's headlines of national anthem debates and disciplinary appeals. In spite of being a union charged with representing players' interests, the NFLPA leadership has used players' membership dues to pay corporate anti-labor law firms tens of millions of dollars to pursue losing litigation efforts doomed from the start by the disastrous concessions DeMaurice Smith made in agreeing to the 2011 CBA.

This new report, "DeMaurice Smith's Reckless Spending, Anti-Union Choices, and Anti-Player Results" chronicles the reckless spending of the NFLPA, following the money trail from NFLPA leadership to law firms with anti-union agendas on the receiving end. The main findings from the report include:

- Since 2009, the **NFLPA has spent over \$113 million in legal expenses** and has still lost challenge after challenge.
- The NFLPA has funneled almost all of those legal fees to **corporate law firms** that profess their **anti-union** bona fides on their websites.
- From 2009 to 2016, during Smith's tenure, the NFLPA spent \$42 million on legal fees regarding CBA related "Representational Activities." This is **over 8 times more than the Major League Baseball Players Association**, which spent approximately \$5 million during the same time period, and it is **more than 28 times the \$1.5 million the National Basketball Players Association** spent during the same time period.
- Notwithstanding the NFLPA's representational fees, NFL players, due to the 2011 CBA and its consequences, **have forfeited billions of dollars to the owners** – some reports say \$10 billion – and **suffer under unchecked Commissioner disciplinary authority** further cemented in courtroom losses.
- Adding insult to injury, the NFLPA leadership has disenfranchised the players – the very people they are charged with protecting – by secretly amending the NFLPA constitution to circumvent the traditional three-year election process and create a system to **reinstall the incumbent with the great majority of the players none the wiser.**

The report also goes beyond the numbers to reveal how NFL players can reclaim their rights and take control of their futures by taking back their union.

# **DeMaurice Smith's Reckless Spending, Anti-Union Choices, and Anti-Player Results**

## **INTRODUCTION**

The National Football League's players have the least effective representation of any athletes in major American team sports. This results largely from the fact that the NFLPA's leadership lacks worker-oriented experiences and values. Starting from the top with DeMaurice Smith, the NFLPA leadership brings corporate values and anti-union resources to bear. Not surprisingly, despite spending tens of millions of dollars on management-side legal services, the NFLPA has been completely ineffective in advancing player rights.

We examined Department of Labor filings and other publicly available resources and found that the NFLPA under Smith has spent lavishly on corporate anti-labor law firms that relish diminishing worker rights. No other labor union in America would trust its members' fate to, and spend its members' dues so extravagantly on, anti-union law firms. But few if any labor unions in American history have been led by someone who hails from anti-worker and pro-management law firms.

NFL players have had the worst of all scenarios. Tens of millions of dollars in union dues have been spent recklessly, and they have had the worst possible results economically and non-economically. This report provides the hard numbers, the unfortunate results, and the game plan for a successful path forward for NFL Players.

## **I. RECKLESS, ANTI-UNION SPENDING COMPARED TO OTHER PLAYER UNIONS**

We conducted an analysis of the fees paid by the National Football League Players Association (NFLPA) disclosed in Schedule 15 (Representational Activities) of the NFLPA's LM-2 Department of Labor filings, which are typically CBA enforcement related activities, from 2009 to 2016. Below, we analyze both the amount spent and the firms with which the union contracted for legal services over the period, highlighting that most of the firms are serving America's largest corporations, which tout their anti-union labor services. We also found some examples of one firm – Latham & Watkins – representing the business interests of NFL owners while also representing the union. Lastly, we contrast the amount spent on legal services and the union-orientation of the firms the NFLPA hired with those of firms hired by the Major League Baseball Players Association (MLBPA), the union widely viewed as the most successful advocate of professional athletes' interests.

## NFLPA LAW FIRMS AND LEGAL SERVICES

Between 2009, when DeMaurice Smith was elected, and 2016, the NFLPA spent \$42.3 million on representational activity legal fees (an average of \$5,292,014 per year), which amounts to 61.3 percent of the \$72.1 million it spent on representational activity during the period.<sup>1</sup> We define CBA-related legal fees as all of the entries in Schedule 15 that had the terms “attorney” or “attorneys” in the ‘type/class’ or ‘purpose’ fields.

**Table A: National Football League Player Association Legal Fees and Total Expenses for Representational Activities 2009 – 2016**

Year	Legal Fees Schedule 15	Total Expenses Schedule 15	Legal Share of Total
2009	\$ 5,222,564	\$ 7,442,802	70.2%
2010	\$ 6,347,670	\$ 10,334,596	61.4%
2011*	\$ 6,426,582	\$ 8,610,652	74.6%
2012	\$ 6,294,895	\$ 10,380,431	60.6%
2013	\$ 4,143,452	\$ 6,836,481	60.6%
2014	\$ 5,642,908	\$ 9,016,521	62.6%
2015	\$ 5,557,363	\$ 9,192,393	60.5%
2016	\$ 2,700,681	\$ 7,020,564	38.5%
<b>Total</b>	<b>\$ 42,336,115</b>	<b>\$ 68,834,440</b>	<b>61.50%</b>

*\*Note: the NFL's 2012 LM-2 that is available only covers July 2011 - March 2012. March 2011-June 2011 is not included.*

**Source:** Schedule 15 (Representational Activities) of NFLPA LM-2s from 2009-2016

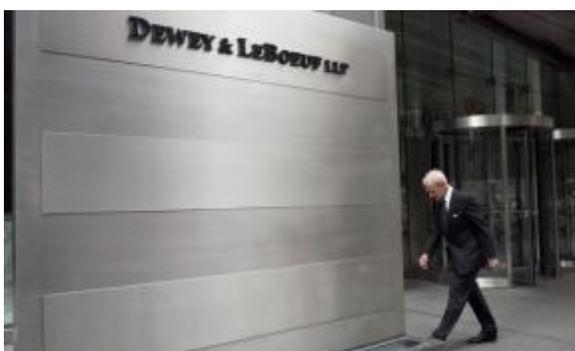
These dollars were spent overwhelmingly at a small number of corporate law firms, many of which profess their anti-union bona fides on their websites. The majority are employer-side firms that boast of their union avoidance practices. Some highlights:



**WINSTON & STRAWN** received 42.6 percent of the NFLPA’s legal fees over the period, or more than \$16.3 million.

From the website:

*“Our attorneys... successfully represent clients, including multi-employer bargaining associations, in litigation involving state court injunctions against labor organizations for mass picketing. Notably, we have been adverse to all of the largest unions in the United States, including the Teamsters, United Auto Workers, Services Employees International Union, International Association of Machinists, United Food and Commercial Workers, United Steelworkers of America, and other labor organizations.”<sup>2</sup>*



DEWEY & LeBOEUF

Another \$11.6 million went to **DEWEY & LeBOEUF**, a firm that filed for bankruptcy in May 2012, earning the distinction as the largest law firm to collapse in United States history.<sup>3</sup> The firm's leaders were indicted for fraud for their roles in allegedly manipulating the company's books to obtain loans while hiding the firm's financial plight. Former top executives, including the firm’s Chairman, Steven Davis, conspired to falsify income statements in an attempt to forestall its collapse in 2012, the firm’s former finance director testified in July 2015.<sup>4</sup>



**LATHAM & WATKINS**, where Smith worked for years, was the NFLPA’s third most highly paid law firm, receiving \$5.8 million. NFL Owners’ businesses are among their clients.

The firm brags on its website that it has experience “assisting with strike preparation and management [and] defending against union organizing drives” and provides Union-Management services, including:

- *Providing counseling and training for non-union employers to remain union free*
- *Providing close support of collective dismissal procedures*
- *Representing employers in all types of National Labor Relations Board procedures<sup>5</sup>*

Indeed, as the chart below indicates, the top six law firms used by the NFLPA during Smith’s tenure are all anti-union.

**Table B: National Football League Player Association Top Attorney Payees, 2009 - 2016**

Name	Purpose	Pro Union	Anti Union	Firm Description
WINSTON STRAWN LLP	CBA MATTERS		✓	Union avoidance services featured on website
DEWEY & LEOEUF	CBA MATTERS		✓	Now Bankrupt corporate law firm
LATHAM WATKINS LLP	CBA MATTERS		✓	Union avoidance services featured on website
GIBSON DUNN & CRUTCHER LLP	CBA MATTERS		✓	Union avoidance services featured in document on website
WEIL GOTSHAL & MANGES	CBA MATTERS		✓	Union avoidance services featured on website
NORTON ROSE FULBRIGHT US LLP	CBA MATTERS		✓	Union avoidance services featured in document on website
RICHARD A. BERTHELSEN	CONSULTING SERVICES	✓		Served as Senior Legal Consultant at the NFLPA and worked at the NFLPA from 1972-2012

In addition to spending \$70 million dollars on anti-union law firms for CBA related representation, the NFLPA has spent over \$20 million on in-house counsel salaries and another \$20-plus million on other legal fees. In all, as set out in Table C, between 2009 and 2016, the NFLPA has spent over \$113 million on legal expenses in unsuccessful attempts to overcome the deeply disadvantageous 2011 CBA. Adding insult to injury for the players, the NFLPA increased union dues and agent fees to help cover these legal expenses. In summary, Smith entered a terrible CBA, spent tens of millions in legal expenses to try to recover from it, and increased player dues to fund that losing battle.

**Table C: National Football League Player Association Legal Fees and Total Representational Expenses 2009 – 2016**

Year	Internal Counsel Schedule 14	Total Expenses Schedule 15	Other Legal Fees Schedule 18	Total Legal Fee Related Expenses
2009	\$2,534,514	\$7,442,802	\$10,378,990	\$20,356,306
2010	\$2,534,514	\$10,334,596	\$4,391,214	\$17,260,324
2011	\$2,652,519	\$8,610,652	\$1,350,446	\$12,613,617
2012	\$2,262,963	\$10,380,431	\$1,122,365	\$13,765,759
2013	\$2,906,540	\$6,836,481	\$4,344,393	\$14,087,414
2014	\$2,559,454	\$9,016,521	\$1,498,711	\$13,074,686
2015	\$2,401,024	\$9,192,393	\$781,985	\$12,375,402
2016	\$2,424,586	\$7,020,564	\$918,135	\$10,363,285
<b>Total</b>	<b>\$20,276,114</b>	<b>\$68,834,440</b>	<b>\$24,786,239</b>	<b>\$113,896,793</b>

\* Internal Counsel Legal Fees for the years 2009 and 2010 are approximated averages based on 2011-2016 due to the DOL filings in 2009 and 2010 not including titles for internal staff.

**NFLPA Leadership Straight from Corporate America**

While Unions typically are, and should be, headed by worker advocates, the NFLPA has become a tool of Corporate America – thus the allegiance to corporate law firms – and it starts from the top. Before being selected as Executive Director of the NFLPA, DeMaurice Smith had a lengthy career at Latham & Watkins, a corporate law firm used by NFL Owners, and a stint at Patton Boggs, a leading lobbyist firm advancing special interests adverse to American workers. He had no experience fighting for workers, and it must have delighted NFL owners to have someone with corporate values rather than worker values at the helm of the NFLPA.



Upon attaining the Executive Director position, rather than bring in worker rights advocates to lend perspective and ground the organization in a workers-first culture, Smith hired a leadership team from anti-worker law firms. Ira Fishman, the NFLPA's COO and second in command, was, like Smith, a partner at Patton Boggs, and Ahmad Nassar, the Vice President of Business and Legal Affairs, worked at both Patton Boggs and Latham & Watkins before joining the NFLPA. It is extraordinary to have anti-worker law firm alumni at the helm of a major union.

## **NFLPA AS COMPARED WITH MLBPA**

The MLBPA is not nearly as litigious or tied to corporate interests as the NFLPA. For comparative purposes, we conducted an analysis of attorney fees paid by the MLBPA. As we did with the NFLPA, we reviewed the fees disclosed on Schedule 15 of the MLBPA's LM-2s. With the MLBPA, we focused on the five-year period 2012-2016 and defined 'legal fees' as all of the entries that had the term "legal counsel" in the 'type/class' or 'purpose' fields.

Table D provides the total expenditures on representational activities as well as on the subset of those expenditures spent on legal fees for the period January 2012-December 2016.

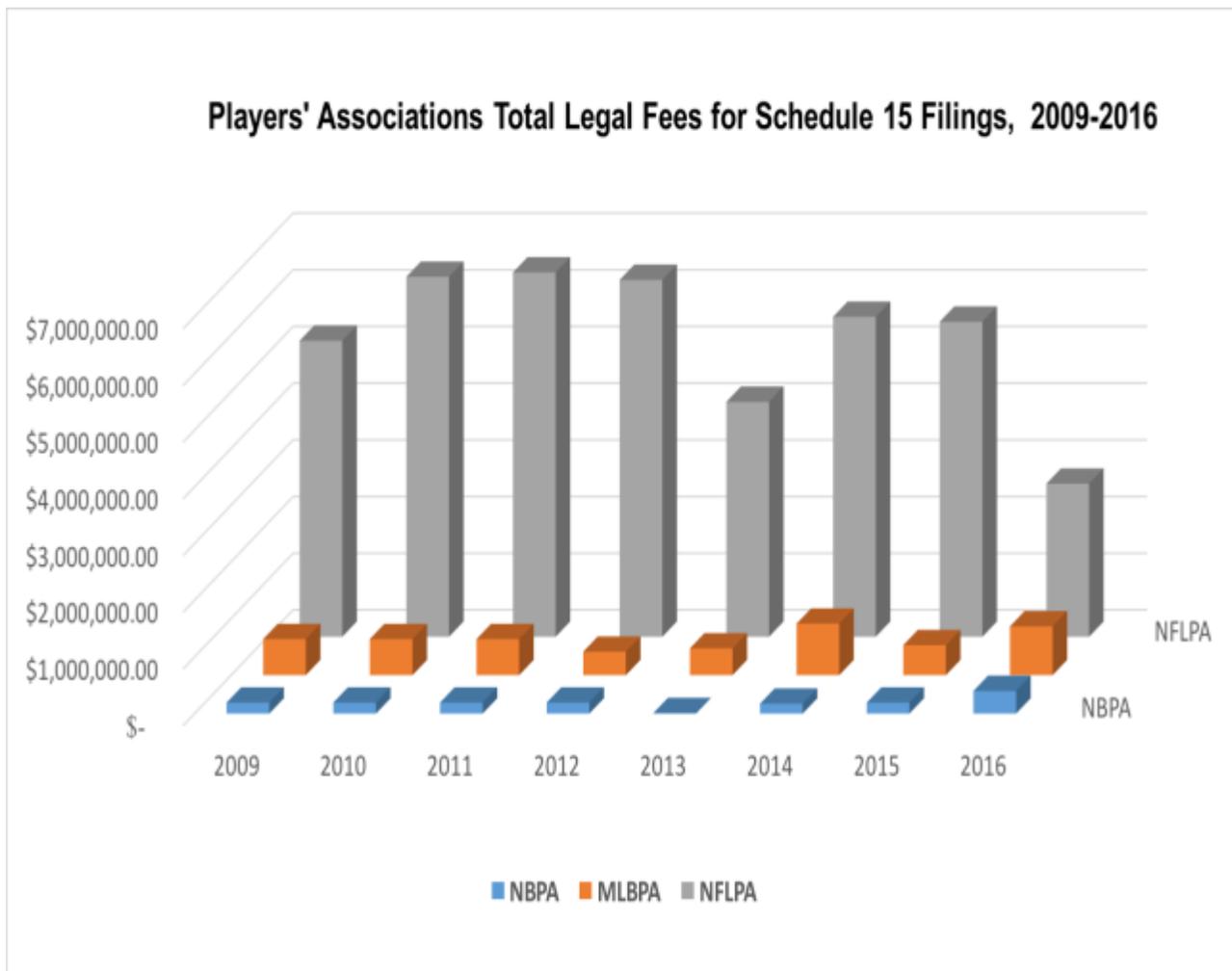
**Table D: Major League Baseball Player Association Legal Fees and Total Expenses for Representational Services, 2012-2016**

<b>Year</b>	<b>Legal Fees Schedule 15</b>	<b>Total Expenses Schedule 15</b>	<b>Legal Share of Total</b>
<b>2012</b>	\$ 413,198	\$ 2,172,481	19.0%
<b>2013</b>	\$ 472,216	\$ 2,085,370	22.6%
<b>2014</b>	\$ 908,275	\$ 2,424,123	37.5%
<b>2015</b>	\$ 528,795	\$ 2,027,967	26.1%
<b>2016</b>	\$ 860,135	\$ 4,120,706	20.9%
<b>Total</b>	<b>\$ 3,182,619</b>	<b>\$ 12,830,647</b>	<b>24.8%</b>

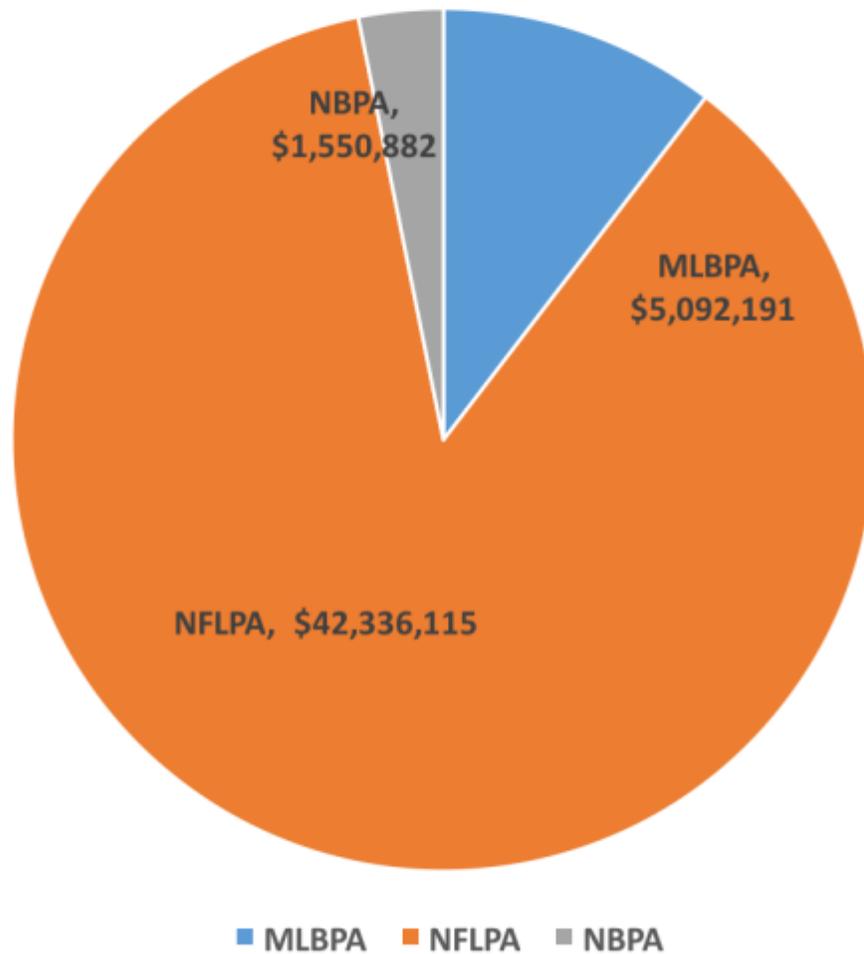
**Source:** Schedule 15 (Representational Activities) of MLBPA LM-2s from 2012-2016

Over the five-year period, the MLBPA spent \$3.1 million in schedule 15 legal fees (an average of \$636,523 per year in comparison with the NFLPA average of \$5,292,014 per year), which amount to one-quarter of the total spent on representation activities. During that same period, the NFLPA spent \$24.4 million on legal fees, amounting to 57.3 percent of all representation activity costs.<sup>6</sup> That is, the NFLPA spent more than seven times what the MLBPA spent over the same period on legal services and also spent a much larger share of its total representational expenses on lawyers.

In addition to a comparison of the amount spent, an examination of the law firms the MLBPA hired over the period provides a stark contrast to the NFLPA. We examined the top ten law firms or individual attorneys – together receiving 89 percent of the payments the union made for legal counsel – over the 2012-2016 period. Of those 10 firms, six are bona fide labor-side/player-side firms. For example, the largest payee, Altshuler Berzon, is a highly reputable labor-side practice and received one of every six dollars the MLBPA spent on legal counsel over the period. A few of these firms also specialize in sports law and the representation of players, including Jeff Fannell Associates and Farrell Reisinger.



## Players' Associations Total Legal Fees for Schedule 15 Filings, 2009-2016



## II. ANTI-PLAYER RESULTS

Despite the NFLPA's extraordinary spending on legal services and *because* of its fundamentally corporate, anti-union, orientation, the NFLPA has miserably failed its players. NFL players receive the lowest pay and they have the shortest careers in major American professional team sports even though the NFL collects far more revenue than its sister leagues. In addition, NFL players suffer under the most disadvantageous disciplinary structure. Worse still, they are locked into this status as second-class citizens vis a vis their basketball and baseball playing brethren for a ten-year term, the longest CBA term in American sports. This is all courtesy of the NFLPA's current leadership.

## **ECONOMICS**

Through the 2011 CBA that Smith negotiated, the players have forfeited hundreds of millions of dollars annually. In sharp contrast to the prior CBA, under which player revenue outpaced owner revenue, the 2011 CBA accelerates owner revenue at a pace that *far exceeds* player revenue. Indeed, from 2011-2016, owner revenue outpaced player revenue by roughly \$2.5 billion, and that gap will continue to grow. To quote a league insider cited by the Washington Post's Mark Maske in a November 10, 2017 article, the 2011 CBA is, all told, "worth \$10 billion to the good for [the owners]." <sup>7</sup> And to quote the Boston Globe: "No matter how you slice it, the owners obliterated the NFL Players Association and . . . DeMaurice Smith in the 2011 negotiations." <sup>8</sup> It is well-established that under the 2011 CBA, the players fell behind from the start and have stayed behind.

Moreover, while the players suffered massive economic setbacks in the wake of Smith's CBA, the average NFL franchise value more than doubled, from \$1.02 billion to \$2.34 billion. <sup>9</sup> Smith has been unable to leverage that extraordinary increase to the benefit of the players. Compounding matters, the average NFL career span has dropped during Smith's tenure.

## **COMMISSIONER DISCIPLINARY AUTHORITY**

Commissioner Goodell enjoys extraordinary, unchecked disciplinary authority – more than any other American sports league commissioner does. Smith's 2011 CBA, in particular Article 46, which Smith carried over from the previous CBA and doubled down on, grants the Commissioner authority to do whatever he chooses with player discipline: empowering him to investigate rule violations, impose sanctions for the rule violations and preside over appeals of his own decisions. The system for resolving labor disputes in this country, particularly discipline, is based on appeals to independent arbitrators. The U.S. Supreme Court has long ago proclaimed that labor relations would be best served with the expeditious resolution of labor disputes through final, fair and binding arbitration. This advises that the Commissioner must not have the unilateral and unfettered discretion and authority to make the final decision on player discipline, but Smith gave it to him in the 2011 CBA.

## **LOSSES IN COURT**

Although Smith knowingly agreed to the CBA that grants the Commissioner this authority, Smith has spent tens of millions of dollars in legal fees trying unsuccessfully to wrestle it away through the courts. The litigations, however, have failed, further cementing the Commissioner's unchecked power. In upholding the Commissioner's authority, the federal courts have pointed directly at the CBA as supporting that authority and have refused to undercut it. The Courts' language follows:

The United States Court of Appeals for the 8<sup>th</sup> Circuit in the Adrian Peterson Case (2016):

“Allowing the Commissioner or the Commissioner's designee to hear challenges to the Commissioner's decisions may present an actual or apparent conflict of interest for the arbitrator. But the parties bargained for this procedure, and the [NFLPA] consented to it. See CBA art. 46 § 2(a). It was foreseeable that arbitration under the Agreement sometimes would involve challenges to the credibility of testimony from Goodell or other League employees. When parties to a contract elect to resolve disputes through arbitration, a grievant ‘can ask no more impartiality than inheres in the method they have chosen.’” NFLPA v NFL, 831 F.3d 985, 998 (8th Cir. 2016).<sup>10</sup>

The United States Court of Appeals for the 2<sup>nd</sup> Circuit in the Deflate-gate Case (2016):

“Here, the parties contracted in the CBA to specifically allow the Commissioner to sit as the arbitrator in all disputes brought pursuant to Article 46, Section 1(a). They did so knowing full well that the Commissioner had the sole power of determining what constitutes "conduct detrimental," and thus knowing that the Commissioner would have a stake both in the underlying discipline and in every arbitration brought pursuant to Section 1(a). Had the parties wished to restrict the Commissioner's authority, they could have fashioned a different agreement.” NFL Mgmt. Council v. NFLPA, 820 F.3d 527, 548 (2d Cir. 2016).<sup>11</sup>

The NFLPA also has spent enormous sums in various federal courts in what, at this writing, appears to be another loss in the Ezekiel Elliott case.

## **COLLUSION CASE**

The NFLPA recklessly and irresponsibly spent several years and millions of dollars litigating a collusion case stemming from the 2011 lockout settlement, even though, *in the lockout settlement itself*, the NFLPA had definitively waived the right to bring such a claim. They wasted union dues on this case to distract attention from the embarrassing fact that the salary cap decreased in the first year of the 2011 CBA negotiated by Smith. United States District Court Judge Michael Davis, who decided the matter, explained in his opinion that the NFLPA agreed to dismiss all “unknown claims” in order to settle and that “belated regret over that [NFLPA] decision is not a basis for relief.”<sup>12</sup>

The Courts have forced Smith to live with the deals he made, and those deals are unfortunately greatly harming the players.

## **10 YEAR DEAL**

The 2011 Smith CBA, which contains the above-referenced disadvantageous provisions, is locked in for 10 years with no opt out opportunity,<sup>13</sup> making it the longest CBA in professional sports. The MLB-MLBPA CBA is a 5 year deal.<sup>14</sup> The NBA-NBPA CBA is a 7 year deal, with an opt out opportunity after 6 years.<sup>15</sup> The NHL-NHLPA CBA is a 10 year deal, with an opt out opportunity after 8 years.<sup>16</sup> Only the NFLPA locked its members into a no opt out 10 year deal, and it did so having negotiated the worst deal of the four.

## **PLAYER DISENFRANCHISEMENT – SECRET CONSTITUTIONAL AMENDMENT**

For decades, the NFL's players, through their Club's Player Representatives, have had the opportunity to elect their Executive Director every three years. This year, however, they were disenfranchised. The election was preempted by way of a secretive constitutional amendment about which the vast majority of players had no knowledge, let alone consent. Instead of the players having choice, 14 members of a handpicked Selection Committee – only 6 of whom are Player Reps – voted to extend Smith's tenure without the benefit of competition. Corporate Lawyers are famous for using "fine print" to diminish the rights of American's workers. That is exactly what Smith and his team of corporate lawyers did to NFL Players. They stripped them of their voting rights and ability to control their destiny without their knowledge or proper consent. NFL Owners gleefully applauded the news.<sup>17</sup>

Having been immunized from competition, Smith has no incentive to do better for the players than he has over his previous ineffective nine years in office. Competition produces the best. With no player choice, and therefore no competition, players are not getting the best. It is critical that NFL Players have a choice.

### **III. GAME PLAN FORWARD: PLAYERS CAN CONTROL THEIR DESTINY**

While the NFLPA's anti-union and anti-player choices and culture have diminished players economically and non-economically, NFL players can stand up for their rights. The NFLPA Executive Committee can immediately disavow the use of anti-labor law firms and give the long overdue pink slip to their pro-corporate executives.

There is a big difference between genuine unionism and phony unionism. Spending tens of millions of dollars on union busting law firms that are ineffective in advancing player rights is phony unionism. This money can and should be redeployed to refund player dues or to advance player programs and player rights.

There is a big difference between a pro-worker effective union leader and a corporate lawyer masquerading as a union leader. Players can choose to have pro-union leadership that will meaningfully advance their rights. That starts by restoring player rights in the NFLPA constitution. With a two-thirds vote, the 32 player representatives – who were disenfranchised as a group with the secretive NFLPA Constitutional amendment – can amend the constitution to restore and expand democracy to advance player rights. By doing so before March 2018, they can insist on maintaining their tradition of having an open debate and an open competition every three years for an Executive Director to advance player interests, and therefore, obtain once and for all a player-first NFL future.

NFL Players can move forward and control their own destiny with this Game Plan by: (1) replacing anti-worker law firms and resources with labor-oriented law firms, in house counsel staff and pro-player resources, and demanding union dues be reduced or redeployed; (2) ushering out pro-corporate executives with a nine year losing streak, including the incumbent Executive Director; and (3) restoring democracy and elections every three years to strengthen the union and advance player interests.

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<sup>1</sup> Schedule 15 (Representational Activities) of NFLPA's LM-2s from 2008-2016.

<sup>2</sup> Winston and Strawn, "Traditional Labor Law, Overview," <http://cdn2.winston.com/en/what-we-do/services/labor-employment-executive-compensation-and-employee-benefits/index.html#!/en/what-we-do/services/labor-employment-executive-compensation-and-employee-benefits/labor-employment-services/traditional-labor-law.html?aj=ov&parent=3376&idx=6>.

<sup>3</sup> Peter Lattman, "Dewey & LeBoeuf Files for Bankruptcy," The New York Times, May 28, 2012, <https://dealbook.nytimes.com/2012/05/28/dewey-leboeuf-files-for-bankruptcy/?r=0>

<sup>4</sup> Joseph Ax, "Dewey executives cooked books, ex-finance director says at trial," Reuters, July 13, 2015, <http://www.reuters.com/article/us-dewey-trial/dewey-executives-cooked-books-ex-finance-director-says-at-trial-idUSKCNOPN2AR20150713>

<sup>5</sup> Latham and Watkins LLP, "Union-Management Relations," <https://www.lw.com/practices/Union-ManagementRelations>

<sup>6</sup> Schedule 15 (Representational Activities) of NFLPA's LM-2s from 2012-2016.

<sup>7</sup> Kent Babb and Mark Maske, *The NFL is reeling, and the Jerry Jones-Roger Goodell rift doesn't help* Washington Post, Nov. 10, 2017, [https://www.washingtonpost.com/sports/the-nfl-is-reeling-and-the-jerry-jones-roger-goodell-rift-doesnt-help/2017/11/10/2f60432a-c62b-11e7-afe9-4f60b5a6c4a0\\_story.html?utm\\_term=.a5ae08e5d4e2](https://www.washingtonpost.com/sports/the-nfl-is-reeling-and-the-jerry-jones-roger-goodell-rift-doesnt-help/2017/11/10/2f60432a-c62b-11e7-afe9-4f60b5a6c4a0_story.html?utm_term=.a5ae08e5d4e2)

<sup>8</sup> Ben Volin, *Now more than ever, we realize NFL players won*, July 21, 2013, <https://www.bostonglobe.com/sports/2013/07/20/nfl-owners-destroyed-players-cba-negotiations/ia3c1ydpS16H5FhFEiviHP/story.html>

<sup>9</sup> Mike Ozanian, *The Most Valuable NFL Teams 2016*, Forbes, Sept. 14, 2016, <https://www.forbes.com/sites/mikeozanian/2016/09/14/the-nfls-most-valuable-teams-2016/> - 59a648c93068;

Kurt Badenhausen, *The Most Valuable NFL Teams*, Forbes, August 25, 2010, <https://www.forbes.com/2010/08/25/most-valuable-nfl-teams-business-sports-football-valuations-10-intro.html>.

<sup>10</sup> *National Football League Players Ass'n v. National Football League*, 831 F.3d 985, 998 (8th Cir. 2016) (emphasis added).

<sup>11</sup> *National Football League Management Council v. National Football League Players Ass'n*, 820 F.3d 527, 548 (2d Cir. 2016) (emphasis added).

<sup>12</sup> *White v. National Football League*, No. 92-906 (MJD), at \*2-3, \*28 (D. Minn. Sept. 8, 2015) (emphasis added).

<sup>13</sup> NFL Players Association, *Collective Bargaining Agreement*, August 4, 2011 <https://nflabor.files.wordpress.com/2010/01/collective-bargaining-agreement-2011-2020.pdf>;

Greg Rosenthal, *The CBA in a nutshell* Pro Football Talk, NBC Sports, July 25, 2011 <http://profootballtalk.nbcsports.com/2011/07/25/the-cba-in-a-nutshell/>;

Gary Myers, *NFL collective bargaining agreement includes no opt-out, new revenue split, salary cap, rookie deals* NY Daily News, July 26, 2011 <http://www.nydailynews.com/sports/football/nfl-collective-bargaining-agreement-includes-no-opt-out-new-revenue-split-salary-cap-rookie-deals-article-1.162495>

<sup>14</sup> Maury Brown, *Breaking Down MLB's New 2017-21 Collective Bargaining Agreement* Forbes, November 30, 2016, <https://www.forbes.com/sites/maurybrown/2016/11/30/breaking-down-mlbs-new-2017-21-collective-bargaining-agreement/> - 6448222311b9; <http://m.mlb.com/news/article/210125462/details-of-mlb-mlbpa-labor-agreement/>

<sup>15</sup> *2017 NBA Collective Bargaining Agreement- Principal Deal Points* <http://official.nba.com/wp-content/uploads/sites/4/2017/01/NBA-2017-CBA-Principal-Deal-Points.pdf>

<sup>16</sup> *Collective Bargaining Agreement Between National Hockey League and National Hockey League Players' Association, September 16, 2012 – September 15, 2022* [http://www.nhl.com/nhl/en/v3/ext/CBA2012/NHL\\_NHLPAA\\_2013\\_CBA.pdf](http://www.nhl.com/nhl/en/v3/ext/CBA2012/NHL_NHLPAA_2013_CBA.pdf)

<sup>17</sup> Barry Wilner, *DeMaurice Smith re-elected as head of NFL players' union* Chicago Tribune, September 21, 2017, <http://www.chicagotribune.com/sports/sns-bc-fbn--players-union-smith-20170920-story.html>