MORALITY AND MONEY: CONTRACTUAL MORALS CLAUSES AS FISCAL AND REPUTATIONAL SAFEGUARDS

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Action is indeed the sole medium of expression for ethics.
Jane Addams[1]

The inclusion of ethics and morals clauses in contracts is not a new phenomenon, in spite of recent media fanfare surrounding the termination of celebrity endorsement contracts pursuant to these types of clauses.[2] Businesses in the sports and entertainment worlds have been incorporating "morals clauses" into employment contracts for at least 85 years.[3] Today, corporations, other organizations, and individuals negotiate for express contractual terms of ethics and morality in a wide range of employment contracts, endorsement contracts, and other sponsorship contracts.[4]

Morals clauses, which are also referred to as public image, good-conduct, or morality clauses, are commonly used in the sports and entertainment industries to protect companies from being associated with a celebrity or athlete who has engaged in actions that could negatively impact the company for whom the athlete or celebrity works or that could negatively affect the sales of products the athlete or celebrity is endorsing.[5] The motivating force behind such negotiations is the straightforward power and protection that a morals clause provides. Typically, if the party bound by a morals clause violates that clause, the violation acts as a condition subsequent or a general breach, allowing the opposing party lawfully, summarily, and unilaterally to declare the termination of the contract.[6]

This article will provide a comparative analysis of the historical and modem applications of inclusion of morals clauses in contracts, as well as an analysis of the

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[1] JANE ADDAMS, DEMOCRACY AND SOCIAL ETHICS 119 (U. of Illinois Press 2002) (1902).

[2] *See, e.g.,* Jeff Leeds, *Verizon Drops Pop Singer from Ads,* N.Y. TIMES, May 10, 2007, at El; Darren Rovell, *Nike Can Terminate Vick Now,* CNBC SPORTSBlZ, Aug. 14, 2007, *available at* http://www.cnbc.- com/id/20266078.

[3] *See* Peter Sheridan, *When Hollywood Slaps the Wrist,* The Express, Aug. 26, 2006, at 15. *See also* Robert M. Jarvis, *Babe Ruth as Legal Hero,* 22 Fla. St. U.L. Rev. 885, 897 n.6 (1995) (citing Lawrence S. Ritter & Mark Rucker, The Babe: a Life in Pictures 1-5 (1988)).

[4] *See generally* Tom K. Ara, *Free Speech vs. Free Press: Analyzing the Impact* o/'Nelson v. McClatchy Newspapers, Inc. *on the Rights of Broadcast Journalists,* 32 LOY. L.A. L. REV. 499 (1999); Daniel Auerbach, *Morals Clauses as Corporate Protection in Athlete Endorsement Contracts,* 3 DEPAUL J. SPORTS L. CONTEMP. PROBS. 1 (2005); Noah B. Kressler, *Using the Morals Clause in Talent Agreements: A Historical, Legal, and Practical Guide, 29* COLUM. J.L. & ARTS 235 (2005).

[5] *See generally* Auerbach, *supra* note 4; Kressler, *supra* note 4. *See also* Rachel Abramowitz, *Which Way Now, Lindsay Lohan?,* L.A. TIMES, May 30, 2007, at El.

[6] *See* DAVID P. TWOMEY & MARIANNE MOODY JENNINGS, ANDERSON'S BUSINESS LAW AND THE LEGAL ENVIRONMENT 397 (20th ed., Thomson West 2008). *See also* Twentieth Century-Fox Film Corp. v. Lardner, 216 F.2d 844, 850-51 (9th Cir. 1954) (summarizing record of conviction and emphasizing relevant provisions of employment contract).

litigation and economic implications that have flowed from their inclusion. Through this examination, the article will demonstrate that, although the core language of these types of clauses has remained generally consistent,[7] the actual operation, application, and enforcement of these clauses have evolved dramatically. Essentially, the motivation behind the enforcement of most morals clauses has progressed from an imposition of the moral dictates of the religious majority in the pre-World War **II** era[8] to the advancement of a political agenda throughout the late 1940s and the 1950s[9] to the protection of the corporate treasury and the encouragement of socially responsible and ethical behavior in the present day.[10]

By detailing this progression of the use of morals clauses, this article will demonstrate the foundational validity of the majority of modern uses of ethics and morals clauses. That validity is premised on established legal principles related to broad freedoms to contract and on economic principles related to the necessity of these contractual clauses as financial and reputational protections. A review of the overall implications that flow from the article's analyses yields a clear conclusion: while morals clauses should not be used as a proxy to violate public policy or constitutional rights, modem morals clauses generally should be upheld by courts and arbiters as key, shielding safeguards for the fiscal health and ethical reputations of both corporations and individuals.

I. HISTORICAL APPLICATIONS OF ETHICS AND MORALS CLAUSES IN ENTERTAINMENT CONTRACTS

The inclusion of moral clauses in contracts can be traced to the aftermath of several Hollywood scandals of the early 1920s.[11] However, these early efforts to control morality through the use of moral clauses in contracts evolved from broader efforts to control obscenity and other forms of deemed immorality, which can be documented to the 1800s.[12] Throughout the Civil War era, the remainder of the 1800s, and the early 1900s, the United States government and private individuals,

[7] *Compare* Morals Clause of Clive Brook, as quoted by Heather Addison, Hollywood and THE Rise OF PHYSICAL CULTURE 83 (2003), *infra* text accompanying note 22, *with* Scott v. RKO Radio Pictures, Inc., 240 F.2d 87, 87-88 (9th Cir. 1957) (quoting morals clauses at issue in the "Hollywood Ten" morals clause cases) *with* Nader v. ABC Television, Inc., 330 F.Supp.2d 345, 346 (S.D.N.Y. 2004) (quoting morals clause at issue in the case).

[8] *See, e.g.*, Sheridan, *supra* note 3, at 15.

[9] *See, e.g., Scott*, 240 F.2d at 87 (affirming the trial court judge's decision that Adrian Scott, a screen director, was properly discharged from his employment contract pursuant to a morals clause after he refused to testify before the House Un-American Activities Committee ("HUAC")).

[10] *See, e.g.*, Memorandum/Order Denying Plaintiffs Motion for Preliminary Injunction and Plaintiffs Motion for Reconsideration, Revels v. Miss America Org., No. 7:02cvl40, at *14 (E.D.N.C. Oct. 2, 2002) (on file with authors).

[11] *See, e.g.*, ADDISON, *supra* note 7, at 83; Marty Jones, *Hollywood Scapegoat*, 39 AMERICAN HISTORY 40 (2005).

[12] *See, e.g.*, Margaret A. Blanchard, *The American Urge to Censor: Freedom of Expression Versus the Desire to Sanitize Society—From Anthony Comstock to 2 Live Crew*, 33 WM. & MARY L. REV. 741, 746 (1992) (stating that as early as 1842 customs law prohibited obscene material from being imported into the country).

such as Anthony Comstock, sought to enforce expansive restrictions of a "moral" nature on American citizens.[13] These restrictions often took the form of obscenity legislation and censorship ordinances.[14] This restrictive environment also had a significant impact upon the sports and entertainment industries in the early part of the twentieth century, creating such bodies as the National Board of Censorship and instituting morals clauses as standard issue in many sports and entertainment contracts.[15]

The early 1920s, therefore, was a time of intense public scrutiny of morality within the motion picture industry, which was triggered by several scandals—the most famous of which was the Roscoe "Fatty" Arbuckle scandal.[16] In 1921, Arbuckle was charged with the rape and manslaughter of a young actress, Virginia Rappe.[17] Gruesome allegations were put forth during the three trials of Arbuckle.[18] The Arbuckle trials and other sensational items regarding Hollywood celebrities dominated the news, generating a massive public outcry for increased standards of morality.[19]

In 1922, in response to this outcry, the Motion Picture Producers and Distributors of America ("MPPDA") hired William Hays to head the organization and to clean up Hollywood's tarnished image.[20] Under Hays' leadership, the MPPDA inserted moral clauses in the contracts of Hollywood stars, which allowed for the termination of the contracts if the celebrities committed moral turpitude.[21] The basic morals clause in 1920s' Hollywood consisted of language akin to the morals clause that was part of Clive Brook's 1925 contract with Warner Brothers, which stated:

[13] *See id.* at 745-61.

[14] *See id.* at 748-49 (citing the Comstock Act (An Act for the Suppression of Trade in, and Circulation of, Obscene Literature and Articles of Immoral Use, ch. 258, § 2, 17 Stat. 598, 599 (1873)) as the model for these types of legislation).

[15] *See, e.g., id.* at 762-63 (stating that the National Board of Censorship was, in effect, the industry's first attempt at self-regulation of morality in film. By 1913, the Board "had issued a list of standards used to evaluate films, which included prohibitions against obscenity, vulgarity, and certain representations of crime"). *See also* Francis G. Couvares, *Hollywood, Main Street, and the Church: Trying to Censor the Movies before the Production Code,* 44 AM. Q. 584, 586 (1992).

[16] *See generally* Jones, *supra* note 11. *See also* Richard Schulenberg, Legal ASPECTS OF THE Music Industry 138-39(1999).

[17] Jared Chamberlain, Monica K. Miller & Alayna Jehle, *Celebrities in the Courtroom: Legal Responses, Psychological Theory and Empirical Research,* 3 VAND. J. ENT. & TECH. L. 551, 554 (2006).

[18] *See* Howard Chua-Eoan, *Top 25 Crimes of the Century: The Fatty Arbuckle Scandal, 1920,* TIME.COM, *available at* http://www.time.eom/time/2007/crimes/4.html (stating that the primary allegations of the incident were as follows: "during a wild party, an obese Hollywood comedy star [took] advantage of a naive young actress, puncturing her bladder during forced sex . . . [and thereafter] she died a painful death of peritonitis").

[19] *See, e.g.,* MICHAEL E. PARRISH, ANXIOUS DECADES: AMERICA IN PROSPERITY AND DEPRESSION, 1920- 1941 167 (W.W. Norton & Company, Inc. 1994) (outlining the events of the Fatty Arbuckle trials, Mary Pickford's divorce from Douglas Fairbanks, and the murder of William Desmond Taylor as examples of Hollywood scandals in the early 1920s).

[20] *See* John Springhall, *Censoring Hollywood: Youth, Moral Panic and Crime/Gangster Movies of the 1930s,* 32 J. POPULAR CULTURE 135,137 (1998).

[21] *See* PARRISH, *supra* note 19, at 167.

> The Artist agrees to conduct himself with due regard to public convention and morals, and agrees that he will not do or commit any act or thing that will tend to degrade him in society or bring him public hatred, contempt, scorn or ridicule, or that will tend to shock, insult or offend the community or ridicule public morals or decency or prejudice the Producer or the motion picture industry in general... ,[22]

The fervor over morality, as defined by the religious majority of America in the 1920s, did not stop at the city limits of Hollywood. In actuality, this fervor permeated most of American culture, extending beyond calls for reform to the entertainment industry and progressing to the sports industry. This led to the inclusion of morals clauses in the contracts of many prominent sports stars.[23] For example, Babe "Ruth's 1922 contract with the New York Yankees contained a morals clause that required him to abstain from liquor and be in bed by 1:00 a.m. during the season."[24]

Morals clauses remained prominent as contractual provisions in most sports and entertainment contracts from the 1920s throughout the 1950s. In the late 1940s and the 1950s, it was a standard, if not required, practice for all talent contracts to include a morals clause.[25] Specifically, all of the established guild contracts (Screen Actors Guild employment agreements, Screen Writers Guild employment agreements, and Screen Directors Guild employment agreements) incorporated a morality clause of some sort.[26] However, while the standard inclusion and language of the morals clauses remained relatively consistent between the 1920s and the 1950s,[27] the motivation behind the enforcement of celebrity morals clause shifted drastically— from a religious force to a political one.[28]

With the onset of the Cold War and in response to Congress' growing suspicions that communism had pervaded the movie industry, morals clauses became Hollywood's political weapon of choice in its attempt to distance itself from the taint of the "Red Scare."[29] In 1947, the House Un-American Activities Committee (HUAC) held highly publicized hearings regarding communist infiltration and

[22] ADDISON, *supra* note 7, at 83.

[23] *See* Jarvis, *supra* note 3, at n.6.

[24] *Id. See also* Buster Olney, *Baseball: Players Seek Every Edge in Modern Training Culture*, N.Y. TIMES, Feb. 19, 2003, at Dl.

[25] *See* Gordon Youngman, *Negotiation of Personal Service Contracts*, 42 Cal. L. R. 2,8 (1954).

[26] *See id.*

[27] *Compare* Morals Clause of Clive Brook as quoted by ADDISON, *supra* note 7, at 83, *with* Scott v. RKO Radio Pictures, Inc., 240 F.2d 87, 87-88 (9th Cir. 1957) (quoting morals clauses at issue in the "Hollywood Ten" morals clause cases).

[28] *See generally* Harold W. Horowitz, *Loyalty Tests for Employment in the Motion Picture Industry*, 6 STANFORD L. REV. 438 (1954).

[29] *See id.* at 445.

subversion of Hollywood's motion picture industry.[30] Although many entertainment- industry figures testified freely before the committee, other individuals in the industry refused to testify.[31] Thereafter, the famous "Hollywood Ten," who refused to testify after asserting their First Amendment rights of association and freedom of speech,[32] were cited for contempt of Congress and eventually served prison terms for it.[33]

After the "Hollywood Ten" were cited for contempt, Hollywood studios, "[fjearing widespread boycotts amid a shrinking market share of consumer leisure spending . . . used the morals clause ... to terminate and disassociate from the scandalized" individuals, which included Lester Cole, Ring Lardner, Jr., and Adrian Scott.[34] Cole's employment as a Loew's screenplay writer was suspended pursuant to his contractual morals clause.[35] Similarly, Lardner was employed as a screen writer for Twentieth Century-Fox Film Corporation when he was discharged on November 28, 1947.[36]

> Scott, a screen director, was discharged by . . . RKO Radio Pictures, Inc., on November 26, 1947, after his participation as a witness in hearings before the Committee on Un-American Activities of the United States House of Representatives. At the time of the discharge, Scott was working with RKO under an unexpired written contract dated February 10, 1947.[37]

Cole, Lardner, and Scott each brought suit in response to the termination or suspension of their contracts pursuant to morals clauses.[38] These cases "marked the first time in the industry that the morals clause had become the subject of litigation."[39]

[30] *See* Daniel J. Steinbock, *Designating the Dangerous: From Blacklists to Watch Lists*, 30 SEATTLE UNIV. L. R. 65, 65-73 (2006) (recounting McCarthy era and focus of HUAC hearings).

[31] *See id.*

[32] *See* Martin H. Redish & Christopher R. McFadden, Symposium, *HUAC, the Hollywood Ten, and the First Amendment Right of Non-Association*, 85 MINN. L. Rev. 1669, 1681 (2001) (discussing the individuals who composed the "Hollywood Ten" and who asserted their First Amendment rights in refusing to testify before HUAC).

[33] *See* David Ray Papke, Symposium, *Hollywood Legal Films of the 1950s*, 48 UCLA L. REV. 1473, 1487 n.59 (2001) (stating that the "Hollywood Ten," which included screenwriters Alvah Bessie, Lester Cole, Ring Lardner, Jr., John Howard Lawson, Albert Maltz, Samuel Omitz, Adrian Scott, and Dalton Trumbo, and directors Herbert Biberman and Edward Dmytryk were eventually found in contempt of Congress for refusing to say if they were or ever had been members of the Communist Party)

[34] Kressler, *supra* note 4, at 238.

[35] *See* Loew's Inc. v. Cole, 185 F.2d 641, 645 (9th Cir. 1950) (discussing Cole's employment position at the time of his termination pursuant to a contractual morals clause).

[36] *See* Twentieth Century-Fox Film Corp. v. Lardner, 216 F.2d 844, 847 (9th Cir. 1954) (discussing Lardner's employment position at the time of his termination pursuant to a contractual morals clause).

[37] Scott v. RKO Radio Pictures, Inc., 240 F.2d 87 (9th Cir. 1957).

38 *See Scott*, 240 F.2d at 87; *Lardner*, 216 F.2d at 844; *Cole*, 185 F.2d at 641.

[39] Horowitz, *supra* note 28, at 445.

The language of the morals clauses at issue in *Scott v. RKO Radio Pictures, Inc.*,[40] *Twentieth Century-Fox Film Corp.* v. *Lardner,*[41] and *Loew's Inc. v. Cole*[42] was very similar. Scott's morals clause read:

> [T]he producer will conduct himself with due regard to the public conventions and morals and will not do anything which will tend to degrade him in society or bring him into public disrepute, contempt, scorn or ridicule, or that will tend to shock, insult or offend the community or public morals or decency or prejudice the corporation or the motion picture industry in general... [43]

Lardner's morals clause provided:

> That the artist shall perform the services herein contracted for in the manner that shall be conducive to the best interests of the producer, and of the business in which the producer is engaged, and if the artist shall conduct himself, either while rendering such services to the producer, or in his private life in such a manner as to commit an offense involving moral turpitude under Federal, state or local laws or ordinances, or shall conduct himself in a manner that shall offend against decency, morality or shall cause him to be held in public ridicule, scorn or contempt, or that shall cause public scandal, then, and upon the happening of any of the events herein described, the producer may, at its option and upon one week's notice to the artist, terminate this contract and the employment thereby created.[44]

Cole's contractual morals clause stated:

> The employee agrees to conduct himself with due regard to public conventions and morals, and agrees that he will not do or commit any act or thing that will tend to degrade him in society or bring him into public hatred, contempt, scorn or ridicule, or that will tend to shock, insult or offend the community or ridicule public morals or decency, or prejudice the producer of the motion picture, theatrical or radio industry in general.[45]

Despite the similarity in language of the morals clauses at issue in these three cases and despite the commonality in the actions of refusing to testify before

[40] 240 F.2d 87.
[41] 216 F.2d 844 (9th Cir. 1954).
[42] 185 F.2d 641 (9th Cir. 1950).
[43] *Scoli,* 240 F.2d at 87-88.
[44] *Id.* at 88.
[45] *Id.*

HUAC that triggered the enforcement of these morals clauses, the trial courts in which these cases were originally brought came to different resolutions for Cole, Lardner, and Scott. In Cole's case, the trial court, after a jury trial, made an additional finding that Cole did not breach his contract, entered judgment "that Loew's had no right to suspend Cole's employment or compensation, order[ed] his reinstatement, and award[ed] Cole $75,600 in back pay."[46] Similarly, Lardner originally prevailed in his contract case, with the jury expressly finding that Lardner did not violate his morals clause.[47] However, in Scott's case, although the jury found in his favor, "the trial judge granted a new trial upon the ground that the jury's verdict was against the weight of the evidence."[48] Thereafter, the trial judge entered findings and a judgment in favor of the defendant, holding the contract was breached by Scott, the breach was not waived, and the discharge was justified.[49]

Each of these cases was appealed to the United States Court of Appeals for the Ninth Circuit. The appellate court, unlike the district courts, swiftly resolved each case in a uniform manner, finding that Cole, Lardner, and Scott, through their refusals to testify and subsequent citations for contempt, violated their morals clauses and breached their contracts.[50]

These three "Hollywood Ten" cases, and other similar cases of the McCarthy Era,[51] provide the quintessential examples of how morals clauses were enforced in the 1940s and 1950s as an inequitable means to a political end. The problematic nature of these historical applications of morals clauses undeniably left an impact on the entertainment industry and has shaped, in part, how morals clauses are applied in the modem context. The modern-day enforcement of morals clauses sharply differs from the use and enforcement of the clauses in the 1940s and 1950s.

Today, most businesses and individuals exercise the right to terminate contracts pursuant to morals clauses as a strictly economic mechanism, rather than as a method to enforce majority religious or political ideology. ' As such, most modem applications of ethics and morals clauses in sports and entertainment contracts should be upheld as legally valid. An illustration of the types of modem applications of these clauses, which follows in the next two sections of this article, outlines the foundational validity of most modem morals clauses in the entertainment and sports industries.

[46] *Cole,* 185 F.2d at 646.

[47] *See Lardner,* 216 F.2d 844, 848 (9th Cir. 1954).

[48] *Scott,* 240 F.2d at 88.

[49] *See id.*

[50] *See Scott,* 240 F.2d 87 (affirming the trial judge's decision); *Lardner,* 216 F.2d 844 (reversing the trial court); *Cole,* 185 F.2d 641 (reversing the trial court).

[51] *See, e.g.,* RKO Radio Pictures, Inc. v. Jarrico, 274 P.2d 928 (Cal. Ct. App. 1954).

[52] *See* Richard Tedesco, *Sacked,* PROMO MAGAZINE, Sept. 1,2007, at 22.

II. Modern Applications of Ethics and Morals Clauses in Entertainment Contracts

A. *Morals Clauses in Entertainment Employment Contracts*

In many respects, Hollywood has come a long way since 1922, "when Will Hays was appointed as Hollywood's morality czar [and] introduced clauses that forced actors to at least present a façade of decency."[53] Indeed, because of the problematic nature of many of the standard 1940s and 1950s talent contract morals clauses, which were mainstays from the 1920s,[54] certain entertainment collective bargaining agreements, such as those of the Writers Guild of America and Directors Guild of America, now expressly prohibit the inclusion of morals clauses in entertainment employment agreements.[55]

Interestingly, the current bargaining agreements of the Screen Actors Guild and the American Federation of Television and Radio Artists (AFTRA) have yet to include a prohibition on the inclusion of morals clauses in contracts.[56] It appears that this lack of prohibition will continue to be the norm for these two guilds despite plans for renegotiation of these bargaining agreements.[57] However, despite the absence of collective bargaining agreement provisions prohibiting morals clauses for employment contracts of actors and artists, today's blockbuster stars have traded on their celebrity and have been successful in negotiating the exclusion of morals clauses from their studio contracts.[58]

Yet, those performers in the entertainment world who lack commensurate "star power" will often enter into talent contracts that expressly provide for ethical behavior as a condition of employment. An interesting and melodramatic example of litigation involving an express morals clause in an entertainment contract is *Michael Nader* v. *ABC Television, Inc.* ("ABC").[59] Nader, an actor who played a popular

[53] Sheridan, *supra* note 3, at 15.

[54] *See, e.g., Scott,* 240 F.2d 87; *Lardner,* 216 F.2d 844; *Cole,* 185 F.2d 641; *Jarrico,* 274 P.2d 928.

[55] *See* Ara, *supra* note 4, at 504. *See also* Kressler, *supra* note 4, at 236 n.6 (citing Writers Guild of America Minimum Basic Agreement art. 54 (2004); Directors Guild of America Basic Agreement § 17- 123 (2002)). The Basic Agreement of the DGA specifically provides, with respect to morals clauses, that "Employer agrees that it shall not include or enforce any so-called 'Morals Clause,' as the term is commonly understood in the motion picture and television industries, in any contract of employment or deal memo for the services of an Employee." Directors Guild of America Basic Agreement § 17-123 (2005), *available at* http://www.dga.org/contracts/ba2005-finalpdfs/19-ba2005-17.pdf.

[56] *See* Kressler, *supra* note 4, at 236 n.6 (citing American Federation of Television and Radio Artists National Code of Fair Practice for Network Television Broadcasting (2004); Screen Actors Guild Theatrical Motion Pictures and Television Contract (2001)).

[57] *See* Press Release, American Federation of Television and Radio Artists, AFTRA Members Begin to Develop Proposals for TV Network Code Negotiations (Sept. 10, 2007), *available at* http://www.-aftra.org/press/pr_2007_09_07_netcodeupdate.html (emphasizing wages and working conditions, rather than morals clauses, as the focal points for the 2008 negotiation strategy for the AFTRA National Code of Fair Practice for Network Television Broadcasting).

[58] *See* Sheridan, *supra* note 3, at 15 ("A-list stars have not seen one [morals clause] in 20 years. ... No high-powered attorney today would let his A-list star sign a morality clause").

[59] Nader v. ABC Television, Inc., 330 F. Supp. 2d 345 (S.D.N.Y. 2004).

character on the ABC soap opera "All My Children," agreed to an employment contract with ABC that contained a morals clause, which provided:

> 8. MISCONDUCT. If, in the opinion of ABC, Artist shall commit any act or do anything which might tend to bring Artist into public disrepute, contempt, scandal, or ridicule, or which might tend to reflect unfavorably on ABC, any sponsor of a program, any such sponsor's advertising agency, any stations broadcasting or scheduled to broadcast a program, or any licensee of ABC, or to injure the success of any use of the Series or any program, ABC may, upon written notice to Artist, immediately terminate the Term and Artist's employment hereunder. In the event ABC terminates Artist's services pursuant to the provisions of this Paragraph, ABC shall be discharged from all obligations hereunder by making any and all payments earned and payable on account of services performed by Artist prior to such date of termination. ... In addition to whatever other right ABC may have, ABC may also remove Artist's credit, if any, from all such programs on which such credit may have appeared.[60]

After the formation of the contract, Nader was arrested and charged with "one count of criminal sale of a controlled substance [cocaine] and one count of resisting arrest."[61] Pursuant to the morals clause of the employment contract, ABC terminated its contract with Nader.[62] In response, Nader brought suit, alleging that ABC discriminated against him on the basis of his "disability" of being addicted to cocaine, that ABC breached its contract with him, and that ABC committed various state law violations.[63] ABC moved for summary judgment on all claims, which was granted by the court.[64]

The court found, with respect to the alleged discrimination based on the disability claim, that ABC's termination of the contract pursuant to the morals clause was a "facially legitimate reason for termination, because the morals clause permits ABC to terminate any 'Artist' if 'in the opinion of ABC, Artist shall commit any act or do anything which might tend to bring Artist into public disrepute, contempt, scandal, or ridicule, or which might tend to reflect unfavorably on ABC.'"[65] Furthermore, the court determined that Nader failed to meet his burden "to adduce evidence that ABC's stated reason for termination was pretextual and that the real reason was discriminatory," which was its basis for granting summary judgment on the discrimination claim.[66] Additionally, the court firmly held that "ABC was well

[60] *Id.* at 346.
[61] *Id.*
[62] *See id.* at 347.
[63] *See id.*
[64] *Id.* at 347, 350.
[65] *Id.* at 347-48.
66 *Id.* at 348.

within its contractual right to terminate [Nader] 's employment for violations of the morals clause" and rejected Nader's claim that the morals clause was, "on its face, so vague, ambiguous or overbroad as to render it void."[67]

On appeal, the United States Court of Appeals for the Second Circuit wholly affirmed the district court's decision.[68] In affirming the district court's grant of summary judgment to ABC on Nader's breach of contract claim, the Second Circuit gave an equally strong endorsement of the validity of the morals clause at issue: "Nader provides no support for his claim that the morals clause was unenforceable for being too ambiguous or vague."[69] Further, the court went on to state explicitly that "morals clauses have long been held valid and enforceable."[70]

Given that the morals clause at issue in the *Nader* case is representative of most morals clauses that are included in modern entertainment contracts and in light of the district court's and circuit court's resolute findings of the validity of the clause, it is not surprising that there are relatively few reported cases involving litigation over morals clauses. Oftentimes, too, morals clauses will be included in contracts with strict arbitration clauses.[71] Negotiations over these types of arbitration clauses will likely coincide with other negotiations regarding the extent of a morals clause within an entertainment employment contract.[72]

When a celebrity lacks the star power to demand the exclusion of a morals clause from an entertainment contract, he or she may negotiate for a limitation on the morals clause itself. Essentially, when the question whether the morals clause will be included in a contract is taken off the bargaining table, celebrities will attempt to "seek narrow contractual language that allows for termination of endorsement [or employment] contracts *only* upon the indictment for a crime."[73]

These negotiations take place in light of the fact that the circumstances for unilateral termination of an entertainment contract will depend expressly on the terms of the contract itself and the nature of the employment.[74] Therefore,

> contract negotiations between [celebrities'] agents and the brand owners' [or studio's] lawyers often hinge on a definition of what is, and what is not, acceptable behaviour. The celeb[rity] will try to narrow the list of offensive actions to the bare minimum. The brand owner [or employer] will try to expand it as far as possible to guard

[67] *Id.*

[68] *See* Nader v. ABC Television, Inc., No. 04-5034-cv, 2005 U.S. App. LEXIS 19536, at *1 (2d Cir Sept 9, 2005).

[69] *Id.* at *5.

[70] *Id.*

[71] *See. e.g.*, Revels v. Miss North Carolina Pageant Org., Inc., 627 S.E.2d 280, 282 (N.C. Ct. App. 2006) (detailing a contract that included both a morals clause and an arbitration provision).

[72] *See* TWOMEY & JENNINGS, *supra* note 6, at 397.

[73] *Id.* (emphasis added).

[74] *See, e.g.*, SAMUEL WILLISTON, A TREATISE ON THE LAW OF CONTRACTS 54:45 (4th ed. 1990) ("The extent to which [dishonest, indecorous or immoral] behavior will justify a termination of the contract varies widely with the nature of the employment and to some extent with the customs of the community").

> against the least possible embarrassment. Where the line is drawn will depend on the celebrity's marketability.[75]

A successful limitation on prohibited conduct within a morals clause can have a tremendous effect on the prolonged continuation of a contract, even in the midst of scandal. The case of once-prominent sportscaster Marv Albert illustrates the impact of a limitation on the extent of application of a morals clause in an entertainment contract.

In 1997, NBC terminated its employment contract with Albert after he pled guilty to misdemeanor assault.[76] Prior to the guilty plea, Albert sat through a lurid, four-day trial, which "included allegations that Albert liked to wear women's underwear" and that he engaged in sexual assault.[77] Commentators argued that NBC could have fired Albert earlier than the guilty plea, perhaps upon his indictment for sodomy and assault charges, based on the standard language for morals clauses in most sportscasters' contracts, "which allows for the dismissal of an employee for saying or doing things that are 'degrading you in society or bringing you into public disrepute, or [offensive to] the community.'"[78] However, Albert, given his position as a preeminent sportscaster, likely had negotiated for a morals clause that hinged specifically on conviction, which would explain NBC's continuation of its contract with Albert throughout the graphic and disturbing trial. [q]

A review of the entertainment world reveals that many celebrities now have the wherewithal to avoid the inclusion of morals clauses in the strict context of entertainment employment contracts.[80] At the very least, many entertainers now have the capacity to seek certain limitations on the morals clauses that are included in their employment contracts.[81] Although the exclusion or limitation of morals clauses may be the trend in entertainment employment contracts, there are many other, modem entertainment contexts in which these clauses continue to be standard issue.

[75] Edward Fennell, *Canceling a Celeb's Contract? Not as Simple as Some Think,* LONDON TIMES, Sept. 27, 2005, at Law 9.

[76] *See* Gary Levin, *Albert's Guilty Plea Leaves Him Jobless,* DAILY VARIETY, Sept. 26, 2997, at 5.

[77] *Id.*

[78] Richard Sandomir, *Albert Lost His Case, His Job and His Dream,* N.Y. TIMES, Sept. 26, 1997, at C8.

[79] *Id. But see* Gary Levin, *NBC, MSG Take Albert Off Court After Guilty Plea,* VARIETY, Sept. 29, 1997, at 36 (stating that NBC . .. stood by [Albert] until [his guilty plea] despite contractual morals clauses that apparently would have provided means to release him"). These contrary media reports concerning the exact language and requirements of the morals clause in Albert's contract are representative of the secrecy in which morals clauses are often shrouded. Because of confidentiality provisions attached to many contracts that contain morals clauses and because there have been very few instances of litigation involving morals clauses and entertainment contracts, it remains difficult to analyze the full scope of these clauses in the entertainment world.

[80] *See generally* Sheridan, *supra* note 3, at 15.

[81] *See* TwOMEY & JENNINGS, *supra* note 6, at 397.

B. *Morals Clauses in Entertainment Endorsement Contracts*

Although the inclusion of a morals clause in entertainment *employment* contracts appears to be on the wane, morals clauses continue to thrive as key provisions of entertainment *endorsement* and *sponsorship* contracts of every stripe.[82] Morality "clauses are a [uniform] factor in advertising contracts, where models are expected to behave themselves or lose the deal."[83] Supermodel Kate Moss' advertising contracts with H&M, Chanel, and Burberry were all terminated, pursuant to a morals clause, after photographs of her, reportedly snorting cocaine, surfaced in the media.[84] Like fashion advertising contracts, the majority of contracts between celebrity endorsers and brand owners contain a morals clause.[85]

In addition to the increasing prevalence of morals clauses in celebrity endorsement contracts, the recent trend is that corporations are also expanding the scope of coverage of these clauses. As such, criminal conduct may no longer be the baseline trigger of the operation of a morals clause.[86] A key example of this expansion of coverage can be found in the May 2007 cancellation of R&B singer Akon's endorsement contract by the telecommunications company Verizon, pursuant to a morals clause, after amateur video surfaced of Akon online "simulating sex with an [underage] fan onstage during a club performance."[87] Additionally, Verizon "terminated its sponsorship of the pop star Gwen Stefani's tour, for which Akon [was] the opening act."[88] These actions by Verizon demonstrate the expansion of coverage of modem morals clauses and the peripheral repercussions that associated artists may face as a result of a violation of a morals clause.

Unlike the tightening of morals clauses in the entertainment employment contractual context, morals clauses in entertainment endorsement contracts are flourishing and expanding. Further, the inclusion of morals clauses in entertainment contracts is not limited solely to endorsement contracts; there are other entertainment agreements, such as pageant contracts, in which morals clauses are the norm.

[82] *See* Susanne Ault, *Sponsorships: Finding The Right Fit*, BILLBOARD, Oct. 11, 2003, at 52 (stating that "Many sponsors, including GM and Heineken, require artists to sign morality clauses before agreeing to back a tour"); Stephen Brook, *Brands Look to the Stars - Does Fame Lead to Fortune?*, THE AUSTRALIAN, Aug. 1,2002, at Ml.

[83] Sheridan, *supra* note 3, at 15.

[84] *See* Eugenia Levenson, *When Celebrity Endorsements Attack!*, FORTUNE, Oct. 17, 2005, at 42. *See also* Sheridan, *supra* note 3, at 15. It is important to note, however, that Ms. Moss was not damaged irreparably by the termination of these contracts. *See* Claude Brodesser-Akner, *Naughty Can Still Pay Nicely*, ADVERTISING AGE, Aug. 27, 2007, at 3 (stating that "Kate Moss rebounded to earn $9 million last year (mainly for brands running European campaigns), making her the second-highest paid model on the planet").

[85] *See* Abramowitz, *supra* note 5, at El (stating that it is "standard industry practice to include a morality clause in [endorsement] contracts").

[86] *See, e.g.*, TWOMEY & JENNINGS, *supra* note 6, at 397.

[87] Leeds, *supra* note 2, at E1.

[88] *Id.*

C. *Morals Clauses in Other Entertainment Agreements*

Morality clauses appear in a variety of other entertainment contracts that do not fit neatly within the classification of employment, endorsement, or sponsorship contracts. For example, in an attempt to "redeem the pageant industry after the string of scandals . . . involving misbehaving beauty queens," beauty pageants, such as the Miss America pageant, continue to require agreement to a morals clause as a prerequisite to entrance into the contest.[89] These types of contractual entertainment morals clauses carry with them the potential of interesting litigation outcomes. In fact, litigation involving a "beauty pageant" morals clause captivated public attention and news media outlets in 2002 with the controversy involving former Miss North Carolina, Rebekah Revels.[90]

In June 2002, Ms. Revels "entered into a contract with the Miss North Carolina Pageant Organization, Inc. ('MNCPO') pursuant to entering and winning the Miss North Carolina Pageant."[91] This contract contained a morals clause that "provided that Revels had not 'done any act or engaged in any activity which could be characterized as dishonest, immoral, immodest, indecent, or in bad taste.'"[92] Furthermore, a "subsequent clause stated [that] if any of the representations [of Ms. Revels] proved false, the contract would be terminated and Revels would forfeit her rights as Miss North Carolina."[93] The contract between Ms. Revels and MNCPO also contained an arbitration clause.[94] In addition to entering into this contract with MNCPO, Ms. Revels submitted an application to the Miss America Organization ("MAO"), which contained morals clauses.[95] The MAO application also contained an arbitration clause.[96]

After Revels entered into the contract with MNCPO and submitted her application to MAO, MAO was contacted on July 19, 2002 via email by Ms. Revels' ex-fiancé and informed of the existence of several topless photos of the reigning Miss North Carolina.[97] MAO forwarded this email to MNCPO.[%] MNCPO offered Revels the opportunity to resign or to have the contract terminated pursuant to the

[89] Miriam Shaviv, *The Straight and Narrow for Miss America*, N.Y. TIMES, Jan. 31, 2007, at 24. *See also* Tamer El-Ghobashy, *Jersey Will Keep Its Miss: Raunchy Pix Won't Bar Her From National Pageant*, N.Y. DAILY NEWS, July 13, 2007, at 12 (stating that all contestants in the Miss New Jersey pageant must sign a morals clause).

[90] *See, e .g.*, Jeffrey Gettleman, *One Miss North Carolina Pleads Her Case*, N.Y. TIMES, Sept. 11, 2002, at A30.

[91] Revels v. Miss North Carolina Pageant Org., Inc., 627 S.E.2d 280, 282 (N.C. Ct. App. 2006), *petition for discretionary review denied*, 635 S.E.2d 288 (N.C. 2006).

[92] *Id.*

93 Id.

94 See id.

[95] *See* Memorandum/Order Denying Plaintiff's Motion for Preliminary Injunction and Plaintiffs Motion for Reconsideration, Revels v. Miss America Org., No. 7:02cvl40, at *4 (E.D.N.C. Oct. 2, 2002) (on file with authors).

[96] *See* Revels v. Miss America Org., 599 S.E.2d 54, 55-56 (N.C. Ct. App. 2004).

[97] *See Revels*, 599 S.E.2d at 56; *Former Boyfriend Turns Over Photos*, ST. PETERSBURG TIMES, Oct. 16, 2002, at 2B.

[98] *See Revels*, 599 S.E.2d at 56.

morals clause. Ms. Revels chose to resign and she was succeeded by Misty Clymer, who became the new Miss North Carolina."

Thereafter, Revels filed suit in state court, claiming breach of contract and seeking specific performance against MAO only. She obtained a temporary restraining order that restored her title of Miss North Carolina.[100] On September 5, 2002, MAO removed the case to the United States District Court for the Eastern District of North Carolina, where Revels sought a preliminary injunction "to be fully reinstated as Miss North Carolina and allowed to compete in the Miss America finals." Revels' motion was based in part on an argument that she did not violate the morality clause of the application contract that she signed to participate in the Miss America pageant.[101]

The federal court denied Revels' motion for preliminary injunction, leaving Clymer as the sole Miss North Carolina.[102] Ultimately, the litigation returned to North Carolina state court on jurisdictional grounds after Revels' motion to add MNCPO was granted by the federal court.[103] Pursuant to its contract with Revels, MNCPO filed a motion to compel arbitration, which was granted, and the matter was referred to an arbitrator.[104] The arbitrator eventually dismissed Revels' claims, because of her failure to abide by his direction to provide copies of the photographs at issue; the dismissal and arbitration decision was upheld by the trial court.[105] Revels appealed, arguing "that the trial court erred in granting the motions to compel arbitration" and seeking a vacation of the confirmation of the arbitrator's award for MNCPO.[106] The North Carolina Court of Appeals held that Revels' contentions lacked merit and affirmed the decision of the trial court.[107]

MAO also filed a motion to compel arbitration of Revels' claims against it.[108] However, the trial court denied MAO's motion to compel arbitration, based on the fact that MAO "failed to prove the existence of a written agreement between plaintiff and MAO to arbitrate," because it was uncontested that MAO had never signed Revels' application to MAO.[109] The trial court's denial of MAO's motion to

99 *See* Gettleman, *supra* note 90, at A1.

100 *See Revels*, 599 S.E.2d at 56. *See also* Gettleman, *supra* note 90, at A1; *Former Boyfriend Turns Over Photos*, *supra* note 97, at 2B.

101 *See* Gettleman, *supra* note 90, at Al. *See also* Notice of Removal, Revels v. Miss America Org., No. 7:02cvl40 (E.D.N.C. Sept. 5, 2002) (on file with the authors); *Revels*, 599 S.E.2d at 56.

102 *See* Oral Order Denying Plaintiffs Motion for Preliminary Injunction, Revels v. Miss America Org., No. 7:02cvl40 (E.D.N.C. Sept. 12, 2002); Memorandum/Order Denying Plaintiffs Motion for Preliminary Injunction and Plaintiff's Motion for Reconsideration, Revels v. Miss America Org., No. 7:02cvl40 (E.D.N.C. Oct. 2, 2002) (on file with the authors); *Judge Leaves North Carolina Without Beauty Queen*, St. PETERSBURG TIMES, Oct. 9, 2002.

103 *See* Judgment, Revels v. Miss America Org., No. 7:02cvl40 (E.D.N.C. Dec. 5, 2002).

104 *See Revels*, 627 S.E.2d at 732.

105 *See id* at 733.

106 *Id.* at 733, 735.

107 *See id*

108 *See Revels*, 599 S.E.2d at 59.

109 *Id.* at 57.

compel was affirmed by the North Carolina Court of Appeals.[110] Thereafter, the trial court granted summary judgment to MAO on all of Revels' claims.[111]

In concluding the analysis of this protracted litigation involving morals clauses in pageant agreements and contracts, it is especially instructive to review the order of Judge Fox denying Ms. Revels' Motion for Preliminary Injunction, in light of the potential harm that Ms. Revels' pictures could cause to MAO:

> MAO faces the threat of crushing negative publicity. While there is always the possibility the photographs eventually will surface and be published, should that occur before the National Finals, such an event might not only cast a shadow over MAO's status as a cherished American institution, but also might distract public attention from the positive traits of other contestants. Because the media are so drawn to the lurid and sensational, less controversial contestants stand to suffer the loss of well-deserved attention and publicity. Furthermore, no matter how explicit the pictures may or may not be, their publication would mock the ideals of the Miss America pageant, and might compromise MAO's valid concern for the Miss America institution.[112]

Through the applications of modem inclusion of morals clauses in entertainment contracts, including the MAO and MNCPO clauses, one can note commonalities of language and circumstance. Furthermore, each of these examples illustrates the potential risks that an employer or brand owner may face when an errant celebrity endorser or employee acts in such a way as to bring disrepute to the corporate entity. Because of the economic and reputational implications that are tied to these risks, it is incumbent upon courts and other arbiters to uphold the validity of most morals clauses. Further examination of the modem applications of inclusion of ethics and morals clauses in sports contracts strengthens this conclusion.

III. MODERN APPLICATIONS OF ETHICS AND MORALS CLAUSES IN SPORTS CONTRACTS

A. *Morals Clauses in Professional Athlete Contracts*

Most standard professional athlete contracts contain some type ot morals clause.[113] For example, Section 11 of a standard National Football League ("NFL")

[110] *See id.* at 59.

[111] See Revels v. Miss America Org,, 641 S.E.2d 721, 725 (N.C. Ct. App. 2007), *petition for discretionary review denied,* No. 189P06-2, 2007 LEXIS 643, at *1 (N.C. 2007).

[112] Memorandum/Order Denying Plaintiffs Motion for Preliminary Injunction and Plaintiffs Motion for Reconsideration, Revels v. Miss America Org., No. 7:02cvl40, at *14 (E.D.N.C. Oct. 2, 2002)

113 *See* Katherine A. Kinser. *Family Law Issues That Impact the Professional Athlete* 15 J. Am ACAIX MATRIMONIAL LAW 337, 355 (1998). *See also* David Shoalts, *Maple Leafs Forward Suspended for 15*

player's contract provides that "if player has engaged in personal conduct reasonably judged by club to adversely effect or reflect on club, the club may terminate this contract."[114] A uniform player contract for the National Basketball Association ("NBA") has similar provisions.[115]

The enforcement of morals clauses in professional athlete contracts frequently depends on how valuable a player is to the team.[116] This means that teams may be more willing to enforce morals clauses against "middle of the road" players, as opposed to the stars of the team.[117] However, morals clauses have been enforced against prominent players, such as NBA player Latrell Sprewell.[118]

In December 1997, during a practice session, Sprewell took exception to the criticisms of his coach and attacked him.[119] He allegedly grabbed Coach P.J. Carlesimo by the throat and attempted to strangle him.[120] After being pulled off the

Games, THE GLOBE AND MAIL (Toronto, Ont.), Sept. 13, 2007, at SI (noting that National Hockey League contracts, like contracts in almost every other professional sport, contain morals clauses).

[114] Kinser, *supra* note 113, at 355.

[115] *See id.* (stating that Sections 5 (Conduct) and 8 (Prohibited Substance) of the NBA Uniform Player Contract provide as follows:

> 5. Conduct
> (a) The player agrees to observe and comply with all team rules, as maintained or promulgated in accordance with the NBA/NPBA collective bargaining agreement, at all times whether on or off the playing floor.
> (b) The player agrees ... not to do anything that is materially detrimental or materially prejudicial to the best interest of the team or of the league.
> (c) For any violation of team rules, any breach of provision of this contract, or for any conduct impairing the faithful and thorough discharge of the duties incumbent upon the player, the team may reasonably impose fines and/or suspensions on the player in accordance with the terms of the NBA/NPBA collective bargaining agreement.
>
> 8. Prohibited Substances
> The player acknowledges that in the event he is found, in accordance with Section 1 of the NBA/NBPA anti drug agreement, to have engaged in the use, possession, distribution of a "prohibited substance" as defined therein it will result in the termination of this contract and the player's immediate dismissal and disqualification from any employment by the NBA and any of its teams. Notwithstanding any terms or provisions of this contract (including any amendments hereto) in the event of such termination, all obligations of the team, including the obligations to pay compensation shall cease except the obligation of the team to pay the players earned compensation (whether current or deferred) to the date of termination).

[116] *See* Tedesco, *supra* note 52, at 22 (noting that the "nature of the [morals] clauses varies from broad behavioral bailout language to very specific parameters, depending on the leverage of the parties involved").

117 See id.

[118] *See* Ken Wright, *NBA Suspends Sprewell for a Year; Warriors' All-Star Assaulted Coach*, WASH. TIMES, Dec. 5, 1997, at A1.

[119] *See Sprewell Future Shaky after Hitting Carlesimo*, ST. PETERSBURG TIMES, Dec. 3, 1997, at *1C.*

[120] *See id.*

coach, Sprewell returned to the locker room to cool off.[121] Thereafter, he returned to the practice floor and again attacked Carlesimo, threatening to kill him.[122] Sprewell's actions resulted in a one-year ban from the NBA and the termination of the remainder of his $32 million contract with the Golden State Warriors.[123] The NBA team voided Sprewell's contract pursuant to the morals clause of the Uniform Player Contract, which "stipulates players must 'conform to standards of good citizenship and good moral character' and prohibits engaging in 'acts of moral turpitude.'"[124] However, after the termination of his contract, Sprewell appealed the decision to an arbitrator, who cut Sprewell's one-year suspension from the NBA by five months and who ruled that Sprewell could "collect the $ 16.3 million that remain[ed] on the last two years of his four-year, $32 million contract."[125] The arbitrator also ruled that the Warriors could "put Sprewell back on their roster or trade him .. . [and that as] a condition of his return, Sprewell must give assurances that 'upon resuming his playing career, fhe would] control and manage his temper.'"[126]

The enforcement of morals clauses in the sports industry is not limited to the basketball court; it extends to the football field, as well. On August 24, 2007, U.S. football star Michael Vick filed his written plea agreement on a federal dogfighting conspiracy charge.[127] By filing his plea agreement, Vick admitted to killing dogs and acknowledged his role in connection with an illegal, interstate, dogfighting enterprise.[128]

The NFL, like the NBA in Sprewell's case, enforced a morals clause against Vick within hours of the filing of his guilty plea on the federal dogfighting conspiracy charge.[i2g] Consequently, Vick was suspended indefinitely from the league without pay.[130] In a letter to Vick, NFL Commissioner Roger Goodell indicated that Vick's involvement in the betting operation was strictly forbidden by the NFL's personal conduct policy.[131] Goodell's letter to Vick stated:

> Your admitted conduct was not only illegal, but also cruel and reprehensible. Your plea agreement and the plea agreements of your co-defendants also demonstrate your significant

[121] *See id.*

[122] *See id.*

[123] Jennifer Frey, *NBA Player Apologizes for Attacking Coach,* WASH. POST, Dec. 10, 1997, at Al. *See also* Peter May, *Sprewell Pleads Case; Banned Player Seeks Leniency,* BOSTON GLOBE, Dec. 10, 1997, at FI.

[124] Wright, *supra* note 118, at Al.

[125] Thomas Heath, *Sprewell Returned to Warriors, Penalty Cut; He Can Play Starting Next Season,* WASH. POST, Mar. 5, 1998, at Bl.

[126] *Id.*

[127] *See Vick Fites Plea, Admits Role in Killing Dogs,* ASSOCIATED PRESS, Aug. 24, 2007, *available at* http://www.msnbc.msn.com/id/20417707/.

[128] *See Vick Pleads Guilty, Apologizes in Dogfighting Case*, ASSOCIATED PRESS, Aug. 27 2007, *available at* http://abcnews.go.com/search?searchtext=michael%20vick&from-100&to type ea ure.

[129] See Id.

[130] *See* Sam Farmer, *NFL Bans Vick for his Role in Dogfighting,* L.A. TIMES, Aug. 25 2007, at A1

131 See Bob Glauber, *Goodell Shelves Vick; QB Files Plea, then Suspended Indefimtely by NFL Commissioner,* NEWSDAY, Aug. 25, 2007, at A31.

> involvement in illegal gambling. Even if you personally did not place bets, as you contend, your actions in funding the betting and your association with illegal gambling both violate the terms of your NFL player contract and expose you to corrupting influences in derogation of one of the most fundamental responsibilities of an NFL player.[132]

Goodell also allowed Vick's former team, the Atlanta Falcons, to attempt to reclaim the $22 million bonus it had previously paid to Vick as part of a 10-year, $130 million contract he signed in 2004.[133]

The morals clause in Vick's employment contract with the Falcons demonstrates the extent of complex issues that a team must sort out when an athlete is convicted of criminal conduct or involved in ethical impropriety. Similar issues are at play in the negotiation of athlete endorsement contracts.

B. *Morals Clauses in Individual Athlete Endorsement Contracts*

Many athletes enjoy phenomenal financial success off the field from endorsement contracts.[134] However, reoccurring allegations of corruption in the sports industry have caused several companies to steer clear of sports sponsorships.[135] Those companies that are deciding to continue their endorsement deals with athletes are in many cases taking measures to protect themselves from the harmful consequences of scandal surrounding an athlete or a particular sport. Protective measures used by companies include being more cautious about which athletes they choose to endorse and doing more research before signing an athlete to an endorsement deal.[136] These measures have also caused many companies to use creative approaches in endorsement contracts, such as using retired or deceased athletes to promote their products.[137] Another protective measure taken by companies is monitoring the behavior of anyone who represents the brand.[138]

[132] *Id.*

[133] *See id.*

[134] Tiger Woods earns $100 million a year off the golf course; Indianapolis Colts Peyton Manning brings in $13 million; NBA superstar LeBron James earns $25 million a year in sponsorships; and Derek Jeter earns about $7 million in sponsorships. Other athletes, however, like Barry Bonds, are precluded from obtaining financial success from endorsement contracts, because their marketing potential is compromised by a negative reputation. Bonds' image has been hurt by claims of tax evasion and petjury, rumors of marital infidelity, alleged steroid use in the BALCO scandal, and an often combative relationship with the media. *See* Jason Dearen, *Bonds is Far From a Hit with Corporate Sponsors*, ASSOCIATED PRESS STATE & LOCAL WIRE, Aug. 25, 2007; Josh Dubow, *Bonds: Giants Won* V *Bring Me Back in '08*, Sept. 22, 2007, *available at* http://news.yahoo.eom/s/ap/20070921/ap_on_sp_ba_ne/bbn_giants_bonds_goodbye.

[135] *See* Alana Semeuls, *Sponsors Shift to Avoid Scandals; Some Drop Events but Others Use Monitoring to Help Keep their Images and Athletes Clean*, L.A. TIMES, July 27, 2007, at C1.

[136] *Id.*

[137] *See* Auerbach, *supra* note 4, at 3 (citing Barry Janoff, *The World Not According to Kobe*, BRANDWEEK, Jan. 12, 2004).

[138] *See* Semeuls, *supra* note 135, at Cl.

Frequently, companies protect themselves and their product from criminal or inappropriate actions of anyone representing their brand by including morals clauses in their sponsorship and endorsement contracts.[139] These clauses grant protection to companies by giving them the right to cancel agreements "in the event the athlete does something to tarnish his or her image and consequently, the image of the company or its products."[140] As such, morals clauses are mandatory in most sports endorsement contracts.[141] "Many think the centerpiece of an endorsement deal is in the bucks. But in many cases, the 'morals clause' is the key."[142]

Typically, the endorsee-company desires a broad construction of the morals clause, while the endorser-athlete wants something more limited for the clause, such as requiring criminal conduct as the sole basis for termination.[143] An example of a broad morals clause would refer to "any act involving moral turpitude" or the endorser becoming involved in "any situation or occurrence including, but not limited to, the use of drugs or alcohol or otherwise tending to bring himself into public disrepute, contempt, scandal or ridicule."[144] A broader morals clause may permit a company to terminate an endorser for controversial acts that do not involve a crime. [145] Conversely, a stricter morals clause would require full conviction of a felony prior to termination.[146]

Michael Vick's case and the specificity of the language in the morals clauses in Nike's endorsement contracts illustrate the contractual "tug of war" that takes place in many entertainment and sports endorsement contracts. When Vick filed his written plea agreement on the federal dogfighting conspiracy charge, he had an endorsement deal with Nike.[147] The same day that Vick filed his plea agreement, Nike issued a press release stating that it had terminated its contract with Vick.[14,] By terminating its contract with Vick, Nike wanted to distance the company from Vick's negative image caused by his inhumane treatment of animals.[149] Allegedly, Nike had

[139] *See id.*

[140] Auerbach, *supra* note 4, at 3 (citing Steve Carlin, *Forget What (Kobe's) Commercial Says: Image is Everything*, FT. WORTH BUS. PRESS, Sept. 5, 2003).

[141] *See* Edward Iwata, *Controversies Make Marketers Gun-Shy About Athletes*, USA TODAY, Dec. 10, 2004, at Cl 3 ;*A Broken Field of Marketing Dreams*, BRANDWEEK, July 14,2003.

[142] Mark Conrad, *Converse Gets Moral on Rodman*, Mark's Sportslaw News, Apr. 10, 1999, *available at* http://www.sportslawnews.com.

[143] *See id.*

[144] Auerbach, *supra* note 4, at 7 (citing Robert Freeman, *Morals Clauses for Multimedia Products Incorporating Celebrity Likeness*, 19 E-COMMERCE LAW & STRATEGY, no. 8, at 3 (Dec. 2002)).

[145] An example of a controversial, non-criminal act that resulted in the termination of an endorsement contract was when Kmart terminated its endorsement deal with Fuzzy Zoeller after he made racial remarks about Tiger Woods. *See Fuzzy Zoeller Recovering From Flap Over Racial Comments*, ASSOCIATED PRESS, Jan. 28, 1998.

[146] *See* Auerbach, *supra* note 4, at 8 (citing *National Basketball Players Association Collective Bargaining Agreement, Article VI, Section 4 (2001), available at* http://www.nbpa.com/cba/cba.html).

[147] *See* Rovell, *supra* note 2.

[148] *See* Nike Press Release, *Updated Nike Statement Regarding Michael Vick*, Aug. 24, 2007, *available at* http://www.nike.com/nikebiz/news/pressrelease.jhtml?year=2007&month=08&letter=i.

[149] As a result of the dogfighting allegations, Vick was also dropped by other endorsers including Rawling Sporting Goods and Upper Deck trading cards. *See* Farmer, *supra* note 130, at A1.

the right to terminate Vick, prior to conviction, pursuant to a morals clause.[150] If this was the case, questions arise regarding the possible reason why Nike might have a morals clause that gave it the right to terminate its contract with Vick without a criminal conviction. A possible answer to these questions is that Nike's ability to terminate Vick's contract was not the result of an individually negotiated contract provision, but rather of a morals clause that is standard in Nike's endorsement contracts.[1"1] It is purported that Nike's endorsement contracts allow the company to terminate its contract if the athlete does anything that harms the company.[152]

As opposed to the employment of a "standard issue" morals clause that Nike may use in all of its endorsement contracts, companies have the option of tailoring a morals clause to the endorser's specific circumstances. For instance, when Callaway Golf Company entered into an endorsement deal with golfer John Daly, where the company agreed to pay off $1.7 million of Daly's gambling debts and an additional $3 million per year, the company included a very specific morals clause that prohibited Daly from drinking or gambling.[153] Based on the specific language in the morals clause, Callaway terminated its relationship with Daly in September of 1999, when he failed to take the necessary steps to deal with his alcohol and gambling problems.[154]

Further, the specificity and strictness of the terms of some morals clauses included in endorsement contracts may be affected by the endorser's star power.[155] This means that the type of morals clause offered by a company to an athlete can differ depending on who the athlete is.[156] Consequently, an athlete like Tiger Woods can expect a weaker morals clause that may require conviction prior to termination, whereas individuals with less star power, such as Ray Allen or Vijay Singh, can expect a more stringent morals clause with the language possibly set at indictment or even arrest.[157]

However, even "star power" has its limits, as can be seen with the sports endorsement contract between Converse, an athletic apparel company, and Dennis Rodman.[158] Just before signing with Converse, Rodman had kicked a photographer during a nationally broadcast game. The NBA suspended Rodman because of the attack and Eastman Kodak and Carl Jr.'s, a West Coast hamburger chain, pulled

[150] *See* Rovell, *supra* note 2.

[151] *See id. See also* Shaun Phillips, *Nike May Boot Carey*, HERALD SUN, Mar. 15, 2002, at 7.

[152] *See id. See also* Stephen Dabkowski, *Nike Deal Ends and Carey Hit By Earnings Slump*, THE AGE, Feb. 22, 2003, at 5 (stating that "following revelations of [Australian soccer player Wayne Carey's] affair with teammate Anthony Stevens' wife and subsequent split with the Kangaroos, it was always speculated that Nike might use a morality clause in its contract to terminate the deal").

[153] *See* Ron Sirak, *Nice Birthday Gift: Wilson Drops Daly*, CHATTANOOGA TIMES FREE PRESS, Apr. 29, 1997, at D3; Alan Fraser, *Daly Career in Ruins as Callaway Loses Patience and Ends His Contract*, Daily Mail, Sept. 16, 1999, at 82.

[154] *See* Fraser, *supra* note 153. This was not the first time that John Daly had lost a large endorsement contract. Wilson terminated a $10 million deal as a result of Daly's drinking and gambling problems. *See* Auerbach, *supra* note 4, at 10; Sirak, *supra* note 153, at D3.

[155] *See* Auerbach, *supra* note 4, at 18.

[156] *See* Tedesco, *supra* note 52, at 22.

157 See id.

[158] *See* Gregg Krupa, *Converse Unties Knot with Rodman*, BOSTON GLOBE, Mar. 23, 1999, at C1.

television ads featuring Rodman.[159] Converse had notice of Rodman's bad boy antics; nevertheless, the company decided to sign him.[160] Yet, after a continuing series of unseemly events involving Rodman, Converse terminated the parties' endorsement contract, which was valued at $15 million.[161] Initially, Rodman vowed to fight Converse's decision to terminate his endorsement contract, but the contract's morals clause prevented him from legally challenging the decision.[162]

Although the sports industry has many examples of terminated endorsement contracts pursuant to morals clauses, such as the Rodman-Converse contract, a company's decision to exercise its option to terminate its endorsement contract may not be upheld when reviewed in arbitration, as was the case for former NBA star Chris Webber and Fila USA, an athletic apparel company.[163] Webber's endorsement deal with Fila provided for an arbitrator to determine whether any of his conduct violated its morals clause.[164] Fila dropped Webber as a spokesman after police at San Juan's International Airport in Puerto Rico found marijuana in his carry-on bag. Webber said the bag belonged to a companion, but he later paid a $500 fine and signed a statement acknowledging possession of the drug.[165] Webber appealed Fila's decision and a three member arbitration panel ruled that Fila wrongfully terminated his endorsement contract.

The requirement of arbitrating a dispute relating to the issue of a violation of a morals clause is not always an included term. In fact, stricter morals clauses grant the company exclusive authority to determine whether the athlete's conduct violates the morals clause.[166] A company may not always decide to enforce a morals clause in a sports endorsement contract against an athlete. Instead, the company may determine that the questionable behavior of the athlete will not harmfully affect the company and may be the very reason that the particular athlete was chosen as an endorser for the company. One such example of this was when Reebok decided not to terminate its contract with Allen Iverson after he was arrested and charged with felony assault in 2002.[167] Iverson's bad boy image did not negatively affect the success of the product he was endorsing for Reebok." In fact, Iverson s product

159 See id.

[160] *See* Auerbach, *supra* note 4, at 11-12; Conrad, *supra* note 142.

161 See Krupa, *supra* note 158, at C1.

[162] *See* Auerbach, *supra* note 4, at 11-12. This was not the first time that Converse had terminated an endorsement contract for an athlete engaging in behavior that caused "embarrassment and repute to both the athlete and Converse. In 1997, Converse terminated its endorsement deal with Latrell Sprewell after he attacked his coach during a Golden State Warriors practice. *See* Frey, *supra* note 123, at Al.

[163] *See* Steve Wyche, *Arbitrators Award Webber $2.61 Million; Fila USA Dropped Forward as Spokesman After Drug Incident*, WASH. POST, July 8, 1999, at D3. *See also* Heath, *supra* note 125, at B1 (in context of professional athlete employment contracts).

164 See Wyche, *supra* note 163, at D3.

[165] *See id.*

166 See Auerbach, *supra* note 4, at 15.

167 See id.

[168] *See Celebrity Endorsers Come with Risks.* 21:1 MARKETING MATTERS (AMA), *available at* http://www.marketingpower.com/content25816.php#Item 1.

continued to sell successfully after his arrest.[169] Therefore, Reebok's decision to stand by Iverson was a financially savvy decision for the company and its product.[170]

Even in the case of Michael Vick, Nike did not rush to judgment and refrained from terminating Vick's contract when he was first charged for his role in connection with illegal interstate dog fighting. Nike monitored the situation, to see how the case would play out and how Vick would respond to the charges.[171] Before Vick filed his plea agreement, on August 24, 2007, Nike issued two press releases, stating that the company considered any cruelty to animals inhumane and abhorrent.[172] However, the company did not terminate its contract with Vick until he actually filed his plea agreement.[173]

Nike's actions in Vick's case and Reebok's actions in Iverson's case show that a company must balance the benefits of enforcing the morals clause against an athlete—such as distancing the company from the embarrassment of the endorser caused by the questionable behavior—and the costs of abandoning the endorser- such as the relative backlash from deserting an idolized endorser.[174] This balancing determination also may take place during a sponsor's deliberation as to whether a sponsorship contract should be terminated pursuant to a morals clause.

C. *Morals Clauses in Sponsorship Contracts and Other Agreements*

Morals clauses are not included only in sports employment contracts and endorsement contracts between companies and athletes. These clauses have also been used to protect corporate sponsors in the sporting world. For example, Computer Sciences Corporation ("CSC"), a supplier of information technology services, made the decision to continue sponsoring its Tour de France team, despite the doping scandals that have plagued the race.[175] CSC's decision was largely based on the establishment of an extensive monitoring program and on the inclusion of morals clauses in its sponsorship contracts.[176] As part of this monitoring program, each member of CSC's racing team is required to submit to regular Tour tests.[177] Further, CSC's morals clauses allow it to terminate its sponsorship if there is evidence of systematic doping.[178]

[169] *See* Auerbach, *supra* note 4, at 15. *See also Celebrity Endorsers Come with Risks*, *supra* note 168.

[170] *See id.*

[171] *See* Nike Press Release, *Nike Statement Regarding Michael Vick*, July 19, 2007, *available at* http://www.nike.com/nikebiz/news/pressrelease.jhtml?year=2007&month=07&letter=d; Nike Press Release, *Updated Nike Statement Regarding Michael Vick*, July 27, 2007, *available at* http://www.nike.com/nikebiz/news/pressrelease.jhtml?year=2007&month=07&letter=f.

172 *See id.*

173 *See* Nike Press Release, *Updated Nike Statement Regarding Michael Vick*, Aug. 24, 2007, *available at* http://www.nike.com/nikebiz/news/pressrelease.jhtml?year=2007&month=08&letter=i.

[174] *See* Brent Hunsberger, *Nike Suspends Vick's Endorsement Deal*, OREGONIAN, July 28, 2007, at Cl. *See also* Auerbach, *supra* note 4, at 15.

[175] *See* Semuels, *supra* note 135, at Cl.

[176] *See id.*

[177] *See id.*

[178] *See id.*

Additionally, morals clauses are now included in Olympic sponsorship contracts. In 1999, many sponsors of the Olympic Games, including David D'Alessandro, president of John Hancock, threatened not to engage in future sponsorship commitments of the games after the alleged improprieties by the International Olympics Committee ("IOC") concerning bribery. [9] To prevent the loss of future sponsorships, the IOC agreed to include morals clauses in the Olympic sponsorship contracts.[ls0] The morals clauses provided the sponsors the protection of walking away from the Olympic Games if the corruption surrounding the Olympic Games worsened.[181] The morals clause could be triggered if the IOC breached its declared ethics standards.[182]

Morals clauses also provide protection for other types of agreements, such as stadium naming rights agreements. These types of clauses are now in place largely as a result of the controversy over the once-named Enron Field.[183] In 1999, the Houston Astros and Enron entered into a 30-year, $100 million naming rights contract, pursuant to which the Houston Astros ballpark was named Enron Field.[184] The Astros sought to remove Enron's name from the ballpark after Enron lost billions of dollars in shareholder equity and subsequently went bankrupt as a result of an accounting scandal. [185]

Following the corporate bankruptcy and complete collapse of Enron, the Astros sought judicial relief in federal bankruptcy court, requesting that the court "force Enron either to pledge to honor its obligations under a contract that [gave] the stadium its name or to reject the contract and free the Astros to negotiate a naming deal with somebody else."[186] The Astros had to resort to the judicial process and could not unilaterally terminate the naming rights contract with the scandal-ridden entity, as a result of the complete absence of a reverse morals clause provision.[187] Eventually, the Astros reached an agreement with Enron "to buy back the naming rights to Enron Field, their home stadium [for $2.1 million] and call it Astros Field until a new sponsor [was] found" in the form of "Minute Maid, a Houston-based unit of the Coca-Cola Company, [which] agreed to pay more than $100 million for a 28-year deal."[188]

[179] *See* Greg Krupa, *Olympic Sponsors to Get Morals Clause; Companies to be Allowed to Drop Support if IOC Hurts Event's Image,* BOSTON GLOBE, Apr. 20, 1999, at Cl.

180 *See* Mike Dodd, *Morals Clause Seals Hancock's Renewal of Sponsorship*, USA TODAY, Feb. 16, 2000, at 9C.

[181] *See* John Rees, *Top Olympic Sponsors Win Morals Clause,* SUNDAY BUSINESS, Feb. 20, 2000.

[182] *See id.*

183 See Auerbach, *supra* note 4, at n. 69 (citing DENNIS R. HOWARD & JOHN L. CROMPTON, FINANCING SPORT 273-75 (2d ed. 2004)).

184 *See* Edward Wong, *Astros' Ballpark No Longer Enron Field,* N.Y. TIMES, Feb. 28,2002, at D4.

[185] *See* Jonathan D. Glater, *Enron's Many Strands: A Sports Connection,* N.Y. TIMES, Feb. 6, 2002 at C9.

186 See id.

[187] Interestingly, Enron was not the first company to have its name removed from a stadium. Trans World Airlines took its name off the home stadium of the St. Louis Rams after declaring bankruptcy and PSI Net, Inc., an Internet company that fell victim to the dot-com bust, reached an agreement with the Baltimore Ravens to take its name off the team's stadium. *See* Wong, *supra* note 184, at D4. For a discussion of the meaning of "reverse morals clauses," *see infra* notes 213-14 and accompanying text.

[188] Wong, *supra* note 184, at D4. *See also Astros' Park is Minute Maid,* N.Y. TIMES, June 6, 2002, at D4.

Future naming rights deals, following Enron, will probably contain morals clauses, so that one party can exit the agreement in cases of financial, reputational, or performance problems of the other party.[189] Clearly, what is at the heart of the issue in these sports sponsorship contracts is at the heart of the issue in the discussion of all morals clauses in sports and entertainment contracts—the protection of financial resources and brand reputation.

IV. VALIDITY OF MOST MODERN APPLICATIONS OF ETHICS AND MORALS CLAUSES IN SPORTS AND ENTERTAINMENT CONTRACTS

Strict delineations of right and wrong are often absent in the discussion of many issues of ethics and morality, especially in the contexts of legality and broader social responsibility. This perspective was illustrated with particularity in Senator Hillary Clinton's commentary that "[t]he problem, in a nation that appears to be increasingly uptight about matters of morality, is where to draw the line."[190] Even so, from a review of the litany of modem applications of morals clauses in entertainment and sports contracts, it seems clear that most of these morals clauses should be upheld by courts and arbiters as being legally and ethically valid. The foundational and legal validity of modem morals clauses is premised on three key aspects: 1) morals clauses are presumptively enforceable pursuant to established contract and employment law;[191] 2) morals clauses provide legal remedies for necessary economic and reputational protections in the sports and entertainment industries and act as safeguards against unexpected financial and "image" losses;[192] and 3) morals clauses encourage socially responsible behavior, ward against "demoralization" in the sports and entertainment industries, and likely have a deterrent effect on criminal and unethical behavior, all of which can bolster the financial growth of these industries as a whole, thereby stimulating the national and global economy.[193]

Before outlining the reasons for the validity of most modem morals clauses, it is important to address first the "ugly past" of morals clauses and to emphasize that such applications should not be upheld in the modem context. Specifically, any operation of a contractual morals clause that infringes upon one's constitutional rights or violates public policy is not and should not be considered to be a legally valid enforcement of a contract right. The termination of the entertainment contracts in the late 1940s of MGM writer Lester Cole, Twentieth Century Fox writer Ring Lardner Jr., and RKO director and producer Adrian Scott pursuant to morals clauses, after each asserted his First Amendment rights of association and freedom of

[189] *See generally* Christian Maximilian Voigt, *"What s Really in the Package of a Naming Rights Deal? " Service Mark Rights and the Naming Rights of Professional Sports Stadiums,* 11 J. INTELL. PROP. L. 327 (2004).

190 Sheridan, *supra* note 3, at 15.

191 *See, e.g.,* WILLISTON, *supra* note 74, at 54:45.

192 See, e.g., Tedesco, *supra* note 52, at 22.

193 See, e.g., Leo L. Clarke, Bruce P. Frohnen, & Edward C. Lyons, *The Practical Soul of Business Ethics: The Corporate Manager's Dilemma and the Social Teaching of the Catholic Church,* 29 SEATTLE UNIV. L. REV. 139,163 (2005).

speech,[194] refused to testify before HUAC, and was cited for contempt of Congress, is exemplary of the type of contractual termination that should not be upheld in the modem context as it both infringes upon constitutional rights and is void as against public policy.[193] Analogously (and hypothetically), if Kanye West had lost an endorsement deal pursuant to the enforcement of a contractual morals clause when he stated during a live, televised telethon to raise money for Hurricane Katrina victims that "George Bush doesn't care about black people,"[196] then that type of modern morals clause application is not the type that should be upheld by a court as valid. Judicial affirmation of the enforcement of such a morals clause would violate West's First Amendment rights of freedom of speech or, more specifically, political speech.[197]

Although it is important to note the existence of these constitutional and public policy exceptions with respect to the proper enforceability of morals clauses in employment, endorsement, and sponsorship contracts, it is equally important to note that these exceptions are not prevalent in the modem sports and entertainment worlds. Most applications of enforcement of morals clauses in entertainment and sports contracts involve criminal or highly unethical behavior.[198] In the rare instances where certain public policy issues may be implicated through the termination of a sports or entertainment contract pursuant to a morals clause, most companies have refused to go through with the termination.[199] Having addressed these minor exceptions, this analysis will now proceed to an in-depth illustration of why modem morals clauses generally should be upheld by courts and arbiters as key, shielding

[194] It is of interest to note that the Hollywood Ten staked their refusals to testify on their First, rather than Fifth, Amendment rights. "[I]n all probability the Ten could have refused to answer that question by invoking the Fifth Amendment privilege against self-incrimination, although it would be a few years until the Supreme Court got around to ruling for the first time that an individual's membership in the Communist Party was, in fact, within the protection of the Fifth Amendment." Jeffrey M. Shaman, *On the Waterfront: Cheese-Eating, HUAC, and the First Amendment*, 20 CONST. COMMENTARY 131, 136-37 (2003).

[195] *See generally* Papke, *supra* note 33, at 1487; Kalah Auchincloss, *Congressional Investigations and the Role of Privilege*, 43 Am. Crim. L. Rev. 165, 175 (2006). *But see* Lawson v. United States, 176 F.2d 49 (D.C. Cir. 1949) (affirming convictions of Hollywood Ten members John Howard Lawson and Dalton Trumbo for refusing to answer questions posed by HUAC and finding that HUAC s questions regarding Communist affiliations did not violate Lawson or Trumbo's First Amendment rights).

[196] Lisa de Moraes, *Kanye West's Torrent of Criticism, Live on NBC*, WASH. POST, Sept. 3, 2005, at CI.

[197] Although such an endorsement contract between two private parties may not at face value appear to involve any type of state action, the Constitution would be implicated in this hypothetical as a court cannot provide a remedy in violation of one's First Amendment rights. *See, e.g.*, New York Times Co. v. Sullivan, 376 U.S. 254 (1964).

[198] *See, e.g.*, *supra* notes 76-79 and accompanying text.

[199] *See, e.g.* Dabkowsi, *supra* note 152, at 5 (stating that, although Nike contemplated terminating its contract with Australian soccer player Wayne Carey pursuant to a morals clause after his extramarital affair was revealed. Nike instead allowed the endorsement contract to expire on its own terms). *See also* Glenn Lovell, *Gay Leading Lady Anne Heche Under Scrutiny but Disney Denies Polling Moviegoers about Actress' Sexual Orientation*, TORONTO STAR, June 14, 1998, at B2 (quoting an anonymous source as saying that it was likely that, when Anne Heche "came out" as the lover of Ellen Degeneres, Disney looked at the morals clause in [Heche's] contract to see if they could dump her" and noting that Disney did not so terminate the contract).

safeguards for the fiscal health and ethical reputations of both corporations and individuals.

First, most morals clauses are presumptively valid and enforceable contractual clauses under established principles of contract and employment law. It is recognized in common law and in scholarly treatises that "in some kinds of work especially, any public immoral conduct, although having no direct relation to the employment and though not impairing the physical or intellectual capacity of the employee, will destroy the employee's usefulness to his or her employer."[200] This general principle extends to the application of the morals clause in all contracts, but it rings particularly true for the sports and entertainment industries.

In addition to the fact that morals clauses are in line with established principles of contract and employment law, most morals clauses also should be deemed foundationally valid as they provide needed economic protections to companies as safeguards against unexpected financial losses. One of the main benefits of including morals clauses in sports and entertainment contracts is to protect a company from monetary loss that can result after a party representing the company has engaged in unethical conduct that could damage not only the reputation of the party engaging in the conduct, but also the reputation of the company. [201] Even in the absence of criminal activity, the actions of Hollywood stars and sports celebrities can have a tremendous economic impact on corporations for whom they work or that they endorse. A key example centers on the box office failure of *Mission Impossible III*, with an opening of $10 million below its predecessor after star "Tom Cruise hopped on [the sofa during the Oprah Winfrey show] and later took issue with Brooke Shields' treatment for postpartum depression and lectured Matt Lauer about psychiatry."[202] Subsequently, Paramount Studios, by edict of CEO Sumner Redstone, terminated its contract with Cruise.[203]

This episode reveals how much of an impact a celebrity or sports star can have on the financial health of a multi-billion dollar corporation.[204] Furthermore, it illustrates how the misdeeds of a celebrity or sports star can transform into the misdeeds of the corporate employer or brand owner. Quite simply, unethical and immoral behavior on the part of a celebrity endorser or employee reflects poorly on the corporate brand owner or employer.[205] In the eyes of the consuming public of either products or media, the corporation "inherits the halo effect of the celebrity."[206]

[200] WILLISTON, *supra* note 74. at 54:45.

[201] *See, e.g.*, Tedesco, *supra* note 52, at 22 (stating that the inclusion of morals clauses in athlete sponsorship contracts will intensify in the post-Michael Vick era).

[202] Sean Smith, *Summer of Scandal!*, ENT. WKLY., Aug. 31, 2007, at 18 (discussing Sumner Redstone's decision to sever Paramount's relationship with Cruise). *See also* Daniel Henninger, *Wonder Land: Tom Cruise Learns Celebrity Is Risky Business*, WALL ST. J., Aug. 25, 2006, at A14.

[203] *See* David Usborne, *Mission: Accomplished, The Man Who Beat Tom Cruise*, INDEP. (LONDON), Aug. 26, 2006, at 32.

[204] *See* Meg James & Sallie Hofmeister, *Star is Collateral Damage of Studios' Profit Push*, L.A. TIMES, Aug. 24, 2006, at Cl.

205 *See, e.g.*, John Horn & Rachel Abramowitz, *In Hollywood, Candor is Playing a Bigger Part*, L.A. TIMES, Aug. 24, 2006, at A20.

[206] Brook, *supra* note 82, at M1.

This phenomenon can lead to substantial financial and reputational losses, for which a brand owner or employer should have an exit strategy by means of legal protection—legal protection in the form of an enforceable morals clause.[207]

Under an expansive view, this phenomenon has both direct and peripheral effects on the foundations of celebrity endorsement and their place in the American marketplace. Brand owners are now not only limiting which celebrities they will use to endorse their products; they are also limiting the types of products that will be endorsed in the United States, which has a broader effect on the national economy.[208] This makes logical business sense on an international scale, because when a celebrity or professional athlete is strongly associated with a brand, the public will likely impute the transgressions of the actor to the brand.[209] Such imputation can have significant, deleterious effects on the brand owners' fiscal and reputational wellbeing.[210]

Corporate fiscal health and reputation are not the only issues at play in the discussion of the propriety and inclusion of morals clauses in sports and entertainment clauses. Oftentimes, the celebrity endorser or sponsored entity will call for the negotiation of an ethics clause into an endorsement or sponsorship agreement as an individual protection, which will allow an artist or sponsored entity to terminate unilaterally the contractual agreement if the advertiser or sponsor comes into general disrepute.[211] "As entertainers become brands in their own right, they're increasingly seeking 'reciprocal morals' clauses [or reverse morals clauses] in their product-endorsement deals."[212]

The trend for inclusion of reciprocal or reverse morals clauses in entertainment contracts has grown out of "the increasing cult of celebrity [and] the public's heightened sensitivity following the recent hailstorm of corporate scandals. Specifically, celebrities and sponsored entities are seeking protection via reverse morals clauses to avoid the type of debacle that flowed from the Enron-Houston Astros naming rights contract.[214] Clearly, individual artists and sports teams want to avert this type of reputational and economic risk. Entertainers and

[207] *See* Tedesco, *supra* note 52, at 22 (stating that a morals clause is "a big loophole or a big hammer the sponsor holds over the athlete to end the relationship . . . . If [the athlete's] association with the brand is no longer a positive one, the brand is going to want an exit.").

208 *See* Brodesser-Akner, *supra* note 84, at 3 (citing the president of Brand Sense Partners, Ramez Toubassy, as saying that "the raft of celeb bad behavior isn't just affecting who 11 do the endorsing, it s also affecting what kinds of products are increasingly available for endorsement in America).

[209] *See* Benjamin A. Goldberger, *How the "Summer of the Spinoff" Came to Be: The Branding oj Characters in American Mass Media,* 23 LOY. L.A. ENT. L. REV. 301, 358 (2003). For an example of this phenomenon, *see id.* (quoting MCCREA ADAMS, ADVERTISING CHARACTERS: THE PANTHEON OF CONSUMERISM IN Signs OF Life IN the USA, 359, 381 (Sonia Maasik & Jack Solomon eds., 1997) and giving the example of "Ivory Soap executives . . . [who] were horrified when the media discovered that the woman whose portrait graced their boxes of '99 44/100% pure' detergent was Marilyn Chambers, an adult film star").

[210] *See id*

[211] See Samantha Chang, *Acts Seek Shield From Risque Risk,* BILLBOARD, Feb. 21,2004.

212 *Id.*

213 Id.

214 See *generally* Voigt, *supra* note 189; Fennell. *supra* note 75.

professional athletes also require an enforceable legal remedy in order to protect against these risks. The appropriate remedy for these individuals, like that for corporations, is the morals clause.

Another reason courts and arbiters should uphold most modem morals clauses as valid is because they encourage socially responsible behavior, likely have a deterrent effect on criminal and unethical behavior, and ward against "demoralization" in the sports and entertainment industries, all of which can bolster the financial growth of the sports and entertainment industries as a whole, thereby stimulating the national and global economy.[215] Including morals clauses in sports and entertainment contracts can benefit these industries as a whole by establishing and encouraging a standard for the type of behavior that will be expected in the industry.[216] These standards may deter athletes or celebrities from engaging in criminal or inappropriate behavior for fear of losing endorsements, sponsorships, and in some cases, their livelihood or particular sport.[217]

An effect of deterring athletes and entertainers from engaging in criminal or inappropriate behavior may be fewer scandals and less corruption in the sports and entertainment industries.[218] Consequently, another implication of including morals clauses in sports and entertainment contracts is that it may strengthen business in a particular sport or media genre and may clean up that sport's image with fans, players, sponsors, and owners.[219] In this regard, morals clauses can be likened to the NBA's dress code, which became effective on November 1, 2005.[220] The NBA's dress code was implemented to bolster its business and to clean up the league's image with fans, players, sponsors, and owners.[221] Like the NBA dress code, most morals clauses in sports and entertainment contracts are put in place to secure the "bottom line" of the company involved in the particular contract.

Finally, the majority of morals clauses should be upheld in sports and entertainment contracts, because the allowance of a process of "demoralization" by the judicial exclusion of these clauses can ultimately lead to loss of corporate profitability. This justification becomes clear when viewed through the following analogy to traditional employment contracts and morals clauses:

[215] *See generally* Auerbach, *supra* note 4; Semeuls, *supra* note 135.

[216] *See* Dearen, *supra* note 134 (quoting Wheaties spokeswoman as stating, the "morals clause written into Wheaties' contracts 'provides us with additional protection and at the same time may establish our expectations of the athlete"').

[217] *See generally* Auerbach, *supra* note 4; Semeuls, *supra* note 135.

218 See id.

[219] *See, e.g.,* Daniel B. Wood, *NBA Players Cry Foul over New Dress Code,* CHRISTIAN SCIENCE MONITOR, Oct. 26, 2005 (discussing NBA Dress Code).

[220] Specifically, the dress code banned "bling"—meaning that chains, medallions, do-rags, sleeveless shirts and indoor sunglasses are no longer allowed when players are engaged in team or league business. Business casual attire is now the required attire for NBA players. Violators of the dress code can be fined and repeat offenders risk being kicked out of the league. The dress code implemented by the NBA was not without criticism. In fact, it sparked a heated debate about image, race, individuality, and diversity. *See id. See also* Mike Wise, *Opinions on the NBA s Dress Code Are Far From Uniform,* WASH. POST, Oct. 23, 2005, at Al.

221 See id.

> If traditional workplace wisdom and employment contract "morals clauses" regarding employee honesty, work ethic, and fair dealing are to be taken at face value, then, by extension of that same reasoning, "de-moralizing" the employees would potentially have a deleterious effect on long-term profitability and would be inconsistent with shareholder-corporate agreements. No business would thrive if, for example, its employees felt free to cheat and defraud vendors, customers and each other.[222]

As in the general employment context, parties to sports and entertainment contracts should be held to the morals clauses contained within those contracts as a matter of guarding against the demoralization that can lead to economic sluggishness in the sports and entertainment industries. This is especially the case "in the prevailing glare of the paparazzi environment, [where] high media profiles fueled by stratospheric salaries make athletes [and celebrities] targets of intense public scrutiny for both their on-field performance and off-field peccadilloes."[221]

V. CONCLUSION

Morals clauses have intrinsic value for both corporate entities and individuals. Most modem morals clauses are not conduits for religious or political oppression; rather, they are simply safeguards for financial and reputational health. The modem morals clause provides a straightforward and necessary legal remedy for the aggrieved party to a celebrity or athlete employment or endorsement contract. Although morals clauses should not be used as a sword to pierce constitutional protections or to violate public policy, courts and arbiters should validate the use of these clauses as a shield against the harm that flows from ethical improprieties and criminal conduct. Such findings will stimulate the economic interests and will encourage socially responsible behavior in the sports and entertainment industries.

[222] Clarke *et at, supra* note 193, at 163.

223 Tedeseo, *supra* note 52, at 22.