

## Winston & Strawn Wins Arbitration Proceeding Filed on Behalf of NFLPA and Drew Brees

JULY 3, 2012

On July 3, 2012, Winston & Strawn won an arbitration proceeding filed on behalf of New Orleans Saints quarterback Drew Brees and the National Football League Players Association (NFLPA) concerning the effect of the Saints designating Brees as its “Franchise Player” under the free agency system in the NFL.

Under the free agency rules in the NFL-NFLPA collective bargaining agreement, each NFL team can designate one player as a Franchise Player each free agency season, limiting the player’s ability to sign with another team. In exchange for this designation, the player receives a guaranteed one year contract tender at a high level, which is set by comparison to his prior contract or the top paid players at his position. The CBA rules provide that a player who is designated as a Franchise Player “for the third time” receives an even higher tender. Brees had been designated as a Franchise Player several years before by the San Diego Chargers and once again by the Saints this year. The Saints and the NFL claimed that, if Brees signed the one year contract tender this season, the Saints could designate him as a Franchise Player again next year and not have to make the higher tender, arguing that the rule applied only when the same team designates the player all three times.

In the decision, system arbitrator and University of Pennsylvania law professor Stephen Burbank agreed with the NFLPA and Brees, determining that a player receives the benefit of the higher tender regardless of how many different teams have designated him as a Franchise Player. The Franchise Player designation is an exception to a player’s free agency rights, and the arbitrator agreed that the language should be construed with that in mind, and more reasonably was intended to apply even if multiple teams have designated the player as a Franchise Player.

Mr. Brees and the Saints are engaged in contract negotiations concerning a possible long-term extension; this arbitration win for Brees will help to clarify the parties’ respective positions in the negotiations.

New York-based partners Jeffrey Kessler and David Feher handled the case.

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David Feher



Jeffrey Kessler