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## Start of NBA free agent period will put caps to test

July 1 will mark a new fiscal year for the National Basketball Association and the official beginning of free agency for the 2018-19 NBA season. After four years in a row of the Golden State Warriors facing the Cleveland Cavaliers in the NBA finals, the pressure is rising for other teams to seize opportunities to acquire top available talent and create greater competition within the league.

As exhilarating as it is to watch Stephen Curry and Kevin Durant sink threes, and to watch LeBron James play basketball in general, NBA fans are longing for the formation of another "dream team," or at least for another team to compete in the finals.

Absent the unanticipated rise of an underdog team or player, this is likely going to require roster changes involving the NBA's top athletes.

Although some of the league's best players are technically free agents this year, including both James and Durant, Paul George, Chris Paul and DeMarcus Cousins, few teams will be able to realistically acquire these players. Doing so would require teams to free up significant salary cap space by either selling off or trading off players from their current rosters. Most teams are already over the NBA's salary cap.

Simply defined, a salary cap is a limit on the total dollars each team is permitted to spend on player contracts each year.

A primary reason for a salary cap is to prevent the wealthiest teams from trying to obtain all of the best players by outspending the other teams. But, the actual impact of a salary cap will vary depending upon a league's specific regulations and whether there are provisions in place which allow for the cap to be exceeded.

Pursuant to the NBA's collec-

tive bargaining agreement, the salary cap is adjusted each year. Back in 2016, there was a record high increase in the salary cap of more than \$24 million. This led to NBA teams having more financial flexibility to enter into higher paying contracts with players. The league's salary cap has not had a comparable increase since 2016.

Generally speaking, teams are permitted to use up to 30 percent of their cap space on an individual player. Thus, a player under a maximum salary contract monopolizes between 25 to 30 percent of his respective team's salary cap space. This makes it difficult for any one team to maintain multiple star players.

But, the NBA's salary cap is "soft," meaning that teams are permitted to exceed the cap in certain circumstances. Under past labor agreements, and even more so under the current agreement (effective since last July), teams may legally exceed the league salary cap if a player or players qualify for one of many exceptions.

The newest exceptions to the cap were created under the 2017 agreement for Designated Veteran Players. Designated veteran player extensions and designated veteran player contracts allow a player to be offered what is referred to as a "supermax contract." Under a supermax contract, a player can earn up to 35 percent of a team's salary cap.

Although supermax contracts now exist, they are difficult to come by. This is because only the team that drafted the player or traded for the player under his rookie contract may offer him a supermax deal. There are also time and performance thresholds that must be met for supermax contract eligibility.

For the designated veteran player extension, a player must



*Amy N. Schiller is an attorney at Schiller, DuCanto & Fleck LLP where she practices family law with a strong focus on property issues and the complex financial and custody matters facing professional athletes and entertainers. She can be reached at [aschiller@sdflaw.com](mailto:aschiller@sdflaw.com).*

have already played seven or eight years with the same team continuously when their contract extension is signed and have only one or two years remaining on their current contract. For the designated veteran player contract, a player must have already played eight or nine years with the same team continuously.

The designated veteran player criteria also includes the following requirement, which prevents many athletes from ever becoming eligible: i) the player was named to the All-NBA first, second or third team or was named defensive player of the year, in the immediately preceding season or in two seasons during the immediately preceding three seasons; or (ii) the player was named NBA MVP during one of the immediately preceding three seasons.

The intention behind the designated veteran player exceptions was to help smaller market teams keep their star players by having the ability to offer them more than other teams. We will eventually see whether these exceptions serve the intended purpose.

Last year, the league's champion team, the Golden State Warriors, offered Curry the first

supermax contract extension, securing Curry for the foreseeable future, but causing concerns over the effects of exercising the designated veteran player exception.

For example: it will be unlikely that the Warriors can keep their dream team together indefinitely, because they won't be able to also offer Golden State's other well-deserving veterans, Klay Thompson and Draymond Green, supermax contracts if/when they are eligible in the future.

Another issue is that teams who offer a supermax contract using a designated veteran player exception will likely trigger a mandatory luxury tax.

As a deterrent to keep teams from far exceeding the soft salary cap using exceptions, the NBA imposes a tax upon teams that exceed a predetermined tax level each year. The predetermined tax level is an amount higher than the soft cap. For example in 2017-18, the NBA salary cap was set at approximately \$99 million and the tax level was set at approximately \$119 million.

The further the tax level is exceeded, the higher the tax rate. For teams that exceed the tax level multiple years in a row, the tax rate is even higher.

If the NBA puts so much energy into penalizing teams that exceed the soft cap, why not just keep it simple and implement a hard cap, like the NFL has? NBA Commissioner Adam Silver fears that making cap changes to achieve parity could lead to parity of mediocrity.

Silver's position definitely makes the idea of a hard cap sound unexciting. At least under the current soft cap structure, as long as teams are creative, able and willing to exceed the league's cap, this offseason stands to be more eventful than the 2018 NBA finals.