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College football coaches' employment contracts and compensation garner public attention and scrutiny in much the same way as those of corporate CEOs. In both cases, the public perception is that they must be overpaid and pampered. Economic theory claims that for coaches and CEOs to be overpaid, they must be receiving compensation in excess of the value they create for their organizations. However, both receive pay-for-performance compensation, which structurally aligns their compensation with value creation. This means we need to examine the underlying structure of the contract that gives rise to the observed compensation to determine whether they are appropriately compensated.

We compare the employment contracts of Division I Football Bowl Subdivision (FBS) college football coaches with those of corporate CEOs during the period 2005 to 2013. We find that coaches are not overpaid, and their contracts are fairly drawn. We also show that CEO and coach contracts exhibit many common features. These contract features are consistent with what economic theory would predict.

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INTRODUCTION

Nick Saban, head football coach for the University of Alabama, and John Hammergren, CEO of McKesson Corporation, share the distinction of being the highest paid individuals in their fields. The similarities do not end there. CEOs and Division I Football Bowl Subdivision (FBS) college football coaches share many common characteristics, including that they receive intense criticism over the level of their compensation. For many years, the mainstream media have reported on the sensational returns to CEOs.[1] More recently, college football coach compensation has come under public scrutiny as it has risen.[2]

Yet economic theory tells us that lucrative compensation is not necessarily a problem if the structure of the employment contract is aligned with value creation.[3] For example, a significant amount of corporate governance literature has studied the structure of CEO employment contracts and determinants of compensation, asking if they are aligned with the maximization of shareholder value.[4] Theory suggests that while the dollar value of executive compensation may be great, as long as it is structurally aligned with value creation for shareholders, the amounts may be warranted.[5] It is necessary to study the underlying determinants of CEO compensation embedded in the contract to truly evaluate CEOs effectiveness in creating shareholder wealth.

Can the same be said about college football coaches? In an effort to shed more light on this debate, this paper provides a comprehensive evaluation of college football coach employment contracts to uncover the underlying determinants of their observed compensation and the compensation's corresponding alignment with football program value creation. We do so in the same way that others have evaluated CEO employment contracts in the corporate sector and draw parallels to that literature where appropriate. We conclude that observed compensation for college football coaches is the result of their success, based on contracts with performance incentives and significant levels of employment risk, much the same as with CEOs. In other words, football coach contracts are very much like CEO

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1. *See, e.g.*, Gretchen Morgenson, *An Unstoppable Climb in C.E.O. Pay*, N.Y. TIMES, June 29, 2013, http://www.nytimes.com/2013/06/30/business/an-unstoppable-climb-in-ceo-pay.html?pagewanted=all&module=Search&mabReward=relbias%3Ar%2C%7B%221%22%3A%22RI%3A11%22%7D&pagewanted=print [http://perma.cc/6AFC-4GEW]. For an academic version of this critique, see LUCIAN BEBCHUK & JESSE FRIED, PAY WITHOUT PERFORMANCE: THE UNFULFILLED PROMISE OF EXECUTIVE COMPENSATION (2004).

2. Tamar Lewin, *Colleges Increasing Spending on Sports Faster Than on Academics, Report Finds*, N.Y. TIMES, Apr. 7, 2014, http://www.nytimes.com/2014/04/07/education/colleges-increasing-spending-on-sports-faster-than-on-academics-report-finds.html?module=Search&mabReward=relbias%3Ar%2C%7B%221%22%3A%22RI%3A7%22%7D&_r=0 [http://perma.cc/9S5E-DNNU].

3. John E. Core, Wayne R. Guay & Randall S. Thomas, *Is U.S. CEO Compensation Inefficient Pay Without Performance?*, 103 MICH. L. REV. 1142, 1174–75 (2005).

4. For a nice summary of much of this literature, see Kevin J. Murphy, *Executive Compensation*, *in* 3B HANDBOOK OF LABOR ECONOMICS 2485–63 (Orley C. Ashenfelter & David Card eds., 1999).

5. *See* Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305, 353 (1976).

contracts in that, while they pay coaches a lot of money, they are structurally aligned with value creation for football programs so that the compensation levels may be warranted.

Our Article is structured as follows: We start with a brief primer on the economic theory of employment contracts.[6] Economic theory leads us to make several predictions about the differences and similarities between college football coaches and CEOs with respect to their compensation arrangements and contract provisions. First, we predict that college football coaches will have their pay tied more closely to performance, have shorter employment contracts, have shorter job tenure, have contracts that focus more on termination events, and have contracts that contain bigger severance payments for departing coaches.[7] Each of these predictions arises from the fact that college football coach performance is more easily observed than CEO performance, and thus we would anticipate that successful coaches would be rewarded more generously for their successes, while unsuccessful coaches would be more quickly discovered and terminated.

Next, theory predicts that football coaches will see their compensation rise more rapidly than CEOs, and we would further expect to see total compensation of the coaches to increase at a rate that exceeds those of CEOs holding all else constant. The explanations for these predictions are more complex. College football coaches have less firm-specific capital and will therefore be (generally) more mobile than CEOs. If they are successful, universities will need to offer them increased pay or risk losing them to other schools. Since coach success is readily observable, their contribution to success is clear, and the payoffs to the university for success are quite high, we would anticipate that coaches would have substantial bargaining power. Further, there are clear hierarchies among universities in the quality of football programs and some top-tier schools are always looking to replace unsuccessful coaches. These factors should in theory lead to college coaches getting rapid pay increases and a greater percentage of program revenues over time.[8]

Next, we show that college football is a business run by coaches in much the same way as CEOs run for-profit businesses.[9] We address several objections to this characterization of football programs, including that they are not-for-profit entities, run as subsidiaries by middle-level employees.[10] We also address claims that football coach compensation diverts needed resources from other parts of the university and from unpaid players.[11]

In Part II, we compare the recruiting processes for football coaches and CEOs. Based on interviews with many participants in the hiring process, we make a number of observations. First, CEOs are frequently internal hires, whereas college football coaches are almost never internal candidates. Internal candidates have less leverage

6. *See infra* Part I.A.
7. *See infra* Part I.A.
8. *See infra* Part I.A.
9. *See infra* Part I.B.
10. *See infra* Part I.B.1–2.
11. *See infra* Part I.B.3.

in contract negotiations than outsiders,[12] which should dampen the level of CEO pay increases relative to that of football coaches. A second important difference is that the most contentious contracting issue for football coaches relates to the amount of their severance payments if they are terminated without cause, or the amount of their contract buyout clause if they leave the university without good reason.[13] While severance provisions are also important to CEOs, CEOs do not have buyout provisions in their contracts.

Part III contains detailed comparisons of the different aspects of the two sets of employment contracts.[14] We compile 947 written employment contracts for head football coaches at major public universities that play Division I FBS football for the period 1995 to 2013.[15] We then compare the football coach compensation arrangements with a size- and revenue-matched sample of public corporations to determine their similarities and differences.[16]

When we compare the two groups' compensation arrangements and the language of their contracts, we make several important findings. First, while college football coaches virtually always have written employment contracts, only 50% of CEOs have such agreements.[17] This difference derives from the fact that CEOs hired from another firm are more likely to have employment contracts than those that are hired internally because "[t]hese CEOs tend to face greater uncertainty about the sustainability of their relationships with their firms than CEOs who have been promoted from within."[18] Football coaches are almost always brought in from outside the university, while CEOs are frequently recruited internally, which explains why coaches are more likely to have written employment contracts. Second, college football coaches have much shorter job tenure than CEOs do, although their employment contracts have longer terms on average. Third, football coaches change their contracts frequently: every two to three years on average, which is far shorter than their contracts' average stated length.[19]

We further observe that college football coach compensation is rising faster than CEO pay: from 2007 to 2011, CEO pay increased 23%, while over that same time

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12. Stewart J. Schwab & Randall S. Thomas, *An Empirical Analysis of CEO Employment Contracts: What Do Top Executives Bargain For?*, 63 WASH. & LEE L. REV. 231, 237–38 (2006).

13. *See infra* Part III.D.

14. *See infra* Part III.B–E.

15. Generally speaking, public universities must disclose their football coaches' contracts if asked to provide them under state freedom of information act statutes. For more discussion of our data collection process, see *infra* Part III.A.

16. *See infra* Parts III.B.1–5.

17. Public corporations have disclosure obligations under the federal securities laws that mandate they publish their CEOs' employment contracts in their electronic filings in the EDGAR system. See *infra* Part III.A for further discussion of how we obtained these agreements.

18. Stuart L. Gillan, Jay C. Hartzell & Robert Parrino, *Explicit Versus Implicit Contracts: Evidence from CEO Employment Agreements*, 64 J. FIN. 1629, 1631 (2009). An insider may be better informed about the likelihood that the firm's board of directors would honor an implicit, nonwritten, employment contract. *Id.* at 1634.

19. *See infra* Part III.A.

period college football coach pay increased 44%.[20] In our sample, average fixed pay for our football coaches more than doubled during our sample period, likely as a result of large increases in television revenues for many conferences.[21] Part of the reason for the observed differences in compensation may stem from the fact that football coaches' success is easily observed, and their contribution to a school's win-loss record has a big impact on program value, therefore successful coaches will be well rewarded, especially when the overall pie is growing. Conversely, poorly performing coaches will be quickly terminated, which is the flip side of the tight connection between pay and performance.

Economic theory suggests that pay for performance would be more prevalent in college football coach compensation than in CEO pay.[22] We find that, while both sets of contracts typically contain performance pay, in football coach contracts these incentives are relatively small in comparison to those in CEO contracts.[23] We argue that these features are the result of coaches having much shorter job tenure than CEOs and therefore engaging in more frequent contract renegotiations.[24] Good or poor performance will be promptly reflected in either a new, improved contract or a prompt termination, making performance-based pay less important as an incentive.

Another important set of differences arises out of how coaches and CEOs are treated when their performance is poor.[25] Coaches are promptly terminated in this situation and therefore the conditions surrounding termination are heavily negotiated. With such readily observable and clean measures of success, this is not surprising. We find that coaches' employment contracts contain higher severance payments than CEOs, although coaches are also more likely to have to make significant buyout payments to their schools if they depart prematurely to take another head coaching position.[26] We also find that coaches generally have much more detailed sets of job responsibilities than CEOs, which may reflect their

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20. Erik Brady, Steve Berkowitz & Jodi Upton, *Coaches' Pay Surges*, TENNESSEAN, Nov. 20, 2012, at C1.

21. *See infra* Part III.B.1.

22. This is an implication from the standard principal-agent model as summarized in JAMES A. BRICKLEY, CLIFFORD W. SMITH & JEROLD L. ZIMMERMAN, MANAGERIAL ECONOMICS AND ORGANIZATIONAL ARCHITECTURE 242 (1997). There are four factors that favor higher incentive pay, one of them being whether the employee's output is sensitive to his effort and another being whether the level of risk that is beyond the employee's control is low. *Id.* A football coach's output, wins and losses, can be considered a result of his efforts and within his control. A CEO's impact on firm value is less observable than win-loss record. Therefore, a CEO would have lower incentive compensation than would a college football coach. *See id.*; *see also* Jerold B. Warner, Ross L. Watts & Karen H. Wruck, *Stock Prices and Top Management Changes*, 20 J. FIN. ECON. 461, 462 (1988) ("Share performance relative to market performance is a better predictor of management changes than is the firm's stock return.").

23. *See infra* Part III.B.2–4.

24. *See infra* Part III.B.5.

25. *See* Warner, *supra* note 22, at 464–66, 473.

26. *See infra* Part III.D.2.

accountability to a greater set of stakeholder interests than their corporate counterparts.[27]

Finally, we find some differences surrounding two common and important CEO employment contract provisions—noncompetition provisions and arbitration clauses. Noncompetition clauses are almost entirely absent from football coach contracts, while arbitration provisions are much less common. Noncompetition clauses are designed to protect a company from the loss of firm-specific capital investments in its employees by ensuring that the employee does not unfairly take that investment when they leave the company. Football coaches have little firm-specific human capital investment and little confidential business information, so universities have little to fear from their departure. Moreover, a broadly written noncompetition clause would effectively preclude a coach from participating in the football coaching market, so coaches resist them strongly. As a result, universities have generally not included noncompetition clauses in coach employment contracts, except in some cases where clauses barring the solicitation of current recruits have been included. For arbitration, we argue that path dependence has led to it being adopted very slowly in the coaching area.[28] We finish with some brief conclusions about the implications of our results.

I. COMPETITIVE MARKETS FOR COACHES AND CEOS

A. Economic Theory and College Football Coaches' Contracts

While both CEOs and college football coaches are responsible for the performance of their organizations, economic theory would suggest that based on differences in their contribution to output, the observability of their success, and the strength of the outside market for their talents, football coach contracts should differ from those of CEOs.[29] In particular, we anticipate that it will be easier to structure an efficient compensation contract for football coaches than for CEOs.

We begin with the most basic challenges for designing top-level executive compensation contracts. First, an optimal compensation contract should tie executive pay to increases in firm value.[30] There are a variety of metrics that can be used to assess firm performance, including revenues, sales, profits, and market share, but it is unclear which is the "best" one, that is, the one most aligned with shareholder returns and investors' time preference for returns. Moreover, to the extent that there is a tradeoff between profits today and long-term value, the appropriate metric is ambiguous. These issues create uncertainty in CEO contracting.

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27. *See infra* Part III.C.

28. *See infra* Part III.E.2.

29. *See generally* Bengt Holmstrom & Paul Milgrom, *Multitask Principal-Agent Analyses: Incentive Contracts, Asset Ownership, and Job Design*, 7 J.L. ECON. & ORG. (SPECIAL ISSUE) 24 (1991) (describing the difficulties with incentive compensation when there are multiple instruments and activities performed by employees).

30. *See* RANDY R. GRANT, JOHN LEADLEY & ZENON ZYGMONT, THE ECONOMICS OF INTERCOLLEGIATE SPORTS 224 (1st ed. 2008); Hamid Mehran, *Executive Compensation Structure, Ownership, and Firm Performance*, 38 J. FIN. ECON. 163, 175 (1995).

There is much less confusion around metrics to assess value creation by coaches. A coach creates value for his program when the team wins. This is easily observable and measureable. Similarly, if we examine the tradeoff between long-term value creation and short-term value creation, a football coach who maximizes short-term, on-field performance normally does so with little downside risk to the future value of the program. A CEO, on the other hand, may choose to focus on boosting short-term firm performance in ways that drag down the company's long-run value, such as sacrificing research and development expenditures in order to make larger immediate dividend payments.

In a related vein, the CEO's contribution to firm performance is less clear. In a complex organization like a large public corporation, a multitude of inputs contribute to firm performance, making it very difficult to untangle the CEO's marginal contribution to success.[31] By comparison, tying coach compensation to performance is far simpler because coaches' decision making and efforts are unambiguously tied to football program performance. Program performance can be measured without error. The coach's decisions directly determine whether the football team either wins or loses, and the coach is measured by his win-loss record.[32] As such, theory would suggest that an efficient football coach contract will be more tightly coupled with performance (greater pay-for-performance compensation sensitivity) than what is observed for CEOs.

Theory predicts that football coach contracts would be shorter in duration than for CEOs.[33] Losing records lead to termination, and not all coaches can win, so we would expect short job tenure. Similarly, the average coach's short job tenure means that there will be a stronger upfront focus on what happens to the parties when the coach leaves either voluntarily or involuntarily. If the coach is highly successful, the hiring university will want to prevent him from leaving too easily by increasing switching costs to the university that lures him away. This means that the hiring university will negotiate to include contractual language that requires the voluntarily departing coach (and indirectly the school luring him away) to make substantial contract buyout payments if the coach leaves.

Conversely, an incoming coach is well aware that not all coaches can have winning records and that the consequence of a losing record is likely to be

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31. While theory suggests that the impact of CEOs on firm performance should be evident, the evidence is mixed. *Compare* Alan Berkeley Thomas, *Does Leadership Make a Difference to Organizational Performance?*, 33 ADMIN. SCI. Q. 388 (1988) (impact is modest but apparent), *with* Yuk Ying Chang, Sudipto Dasgupta & Gilles Hilary, *CEO Ability, Pay, and Firm Performance*, 56 MGMT. SCI. 1633 (2010) (CEOs do not make a difference).

32. GRANT ET AL., *supra* note 30, at 228–29 ("[C]ollege coaches are paid, first and foremost, to win.").

33. The primary value of longer term contracts is to encourage each party to make firm- or relationship-specific investments. Given that college football coaches' effort and performance are not significantly improved by making specific investments that are unique to the given school, there is little value to having a long-term contract for a coach. CEOs, on the other hand, frequently must develop deep knowledge of firm-specific information that is not readily valuable outside of their firm. A longer term contract encourages them to make the investment in developing firm-specific expertise. BRICKLEY ET AL., *supra* note 22, at 342–43.

termination.[34] As a result, the incoming coach will bargain hard to obtain substantial severance payments if he is terminated without cause.[35] Shorter job tenure should also lead to shorter employment contracts with more frequent contract amendments granted to successful coaches.

Another noteworthy difference relates to the different levels of firm-specific human capital for CEOs and coaches. The game of football has a standard set of rules, and recruiting players requires a fairly standard set of skills, such that winning in one school is likely to be transferable to another school. In the parlance of labor economics, the coach has general human capital that is readily moved to another football program.[36] By contrast, given the heterogeneity around how firms are organized, their production functions, and their products and services, a CEO will likely require substantial firm-specific knowledge to be a success.[37] As a result, a CEO from one firm has a lower value to another firm because their skills and experience are not fully transferable. Thus, we would expect to see greater mobility amongst football coaches across schools than we would see amongst CEOs across corporations. In fact, it is common for a college football coach to hold many head coach positions at different universities over his career.[38]

A further point of difference between the two markets relates to the timing of success. Football has a four-month season, and the product of the coach's effort is easily observed. Not so for the CEO because she is concerned with continuous value creation throughout the year. This difference affects the timing of the relative performance evaluation in the football coach market. As we noted above, given the transferability of the coach skill base, recruiting successful coaches from other schools is common. Each December, at the conclusion of the football season, football programs review performance and make coach changes prior to National Signing Day in February.[39] The market for college football coaches clears in this narrow

34. *E.g.*, Zac Ellis, *Michigan Fires Brady Hoke After Four Seasons as Wolverines Head Coach*, SPORTS ILLUSTRATED (Dec. 2, 2014), http://www.si.com/college-football/2014/12/02/brady-hoke-michigan-wolverines-fired [http://perma.cc/H2KM-G6NB] (reporting that Michigan fired Brady Hoke after losing season).

35. Employees can be terminated for cause when they commit an act or omission that is specifically listed as grounds for termination in their employment contract. See *infra* Part III.D for further discussion.

36. *See* EDWARD P. LAZEAR, PERSONNEL ECONOMICS 77 (1995).

37. Dawn Harris & Constance Helfat, *Specificity of CEO Human Capital and Compensation*, 18 STRATEGIC MGMT. J. 895, 897 (1997).

38. *See, e.g., Sources: Urban Meyer Joins Ohio State*, ESPN (Nov. 28, 2011), http://espn.go.com/college-football/story/_/id/7289592/urban-meyer-joins-ohio-state-buckeyes-coach-1-year-hiatus-sources-say [http://perma.cc/34RH-SCQG] (stating that the Buckeyes are Meyer's fourth team).

39. *See Black Sunday: Tracking Coach Hirings and Firings Around the Nation*, FOX SPORTS (Nov. 30, 2014, 10:09 PM), http://www.foxsports.com/college-football/story/coaches-hired-fired-black-sunday-nebraska-bo-pelini-smu-chad-morris-auburn-ellis-johnson-113014?vid=365372995853 [http://perma.cc/XE4P-SHPQ] (tracking firings of college head coaches as the season ends); *NLI Signing Dates for Prospective Student-Athletes*, NATIONAL LETTER OF INTENT, http://www.nationalletter.org/signingDates/ [http://perma.cc/9CNF-LPPB] (stating that initial signing day for football is in February).

window.[40] As a result, each program must be prepared to make such switches in short order, having in hand a set of coaching prospects. Taken jointly, these factors lead to a much more fluid market in which coaches are likely to have shorter job tenure at any given school than a CEO would have at a corporation, and coaches are likely to work for more programs over their careers than the number of companies for which the average CEO would work during his or her career.

Finally, we expect to see an efficient labor market with a clear hierarchy. Larger football programs generally have bigger fan bases, greater visibility, and more valuable television contracts.[41] All of these features increase the value of the program and the potential payoff for a successful coach. From a coach's perspective, this means that running the football program at the University of Alabama is inherently more valuable than being in charge at the University at Buffalo. As a result, we observe a natural hierarchy in the labor market where coaches demonstrate success in lower-valued programs and move successively to their highest value use at the larger programs.[42] This illustrates how human capital readily migrates toward its highest valued use.[43]

At any given point in time, about half of the top-tier BCS schools will have losing records and will be considering replacing their coaches. The job prospects for coaches with losing records are not good.[44] Given the observability of performance, they have effectively demonstrated their capability—or lack thereof. The result is that poor performers are not circulated amongst the ranks of top programs but rather drop out of that coaching pool. This attrition naturally gives rise to an annual inflow of new talent from lower-ranked schools. This means that successful coaches at lower-tier schools are in high demand and have significant bargaining power with their current employers given the annual need for successful coaches at top-tier BCS programs. This concentrates the labor market for talent, imbues successful coaches with market power, and enables them to capture a

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40. *See NLI Signing Dates for Prospective Student-Athletes*, *supra* note 39 (stating that final signing day for football is in April).

41. *See* Alan Siegel, *The 10 Best Fan Bases in College Football of 2014*, USA TODAY (Dec. 8, 2014, 7:53 AM), http://fanindex.usatoday.com/2014/12/08/the-10-best-fan-bases-in-college-football/ [http://perma.cc/KNX5-7PPV] (listing Alabama, Notre Dame, and Texas first, sixth, and seventh respectively); Jerry Hinnen, *Alabama Inks Lucrative New Multimedia Rights Deal*, CBS SPORTS (Apr. 21, 2014, 1:53 PM), http://www.cbssports.com/collegefootball/eye-on-college-football/24534902/alabama-inks-lucrative-new-multimedia-rights-deal [http://perma.cc/KC66-6WPJ] (reporting that Alabama's new multimedia rights contract ranks third behind Texas and Notre Dame).

42. *See, e.g.*, LZ Granderson, *Pay Coaches Less and Lower Tuition*, ESPN (Nov. 18, 2011), http://espn.go.com/espn/commentary/story/_/id/7252031/cut-college-coaches-salaries-tuition [http://perma.cc/5ZXF-S48T] (suggesting Brian Kelly's success at smaller schools led to his position at Notre Dame).

43. *See* Kevin J. Murphy & Ján Zábojník, *CEO Pay and Appointments: A Market-Based Explanation for Recent Trends*, 94 AM. ECON. REV. 192, 195–96 (2004).

44. *See* Andy Staples, *#DearAndy: Which Coaches Will Be in Line for Top-Tier Jobs Next Season?*, SPORTS ILLUSTRATED (Feb. 18, 2015), http://www.si.com/college-football/2015/02/18/coaching-carousel-dear-andy [http://perma.cc/8W5C-M8DV] (listing coaches who have the best prospect for moving to a "top position," which includes no coaches with losing records).

greater share of the value they create in their existing programs. If we couple this observation with the value of the coach's threat to leave for his next best alternative job, and the Division I FBS football programs' growth in popularity and financial value over the past decade, we would further expect to see total compensation of the coaches to increase at a rate that exceeds the increasing compensation rate of CEOs holding all else constant.[45]

B. College Football Is a Business Run by a CEO

Football programs today are being run as businesses. As one prominent commentator put it: "College football and men's basketball have become such huge commercial enterprises that together they generate more than $6 billion in annual revenue, more than the National Basketball Association."[46]

Some of the best-known conferences have signed lucrative television contracts, while others have their own sports networks.[47] Many prominent American companies have sponsorship deals with college sports programs, while the National Collegiate Athletic Association (NCAA) basketball tournament sold the rights to broadcast this annual event for over $10 billion.[48] As we discuss further in Part III.B, some of football programs have been valued at hundreds of millions of dollars.

These businesses' ability to make money depends in large part on their success. Fans are more likely to support winning programs. Winning programs are more likely to be ranked in the various top twenty-five polls that provide one of the key inputs into being selected for lucrative postseason championship and bowl games.[49] Donors like to be associated with winning programs and may give contributions more freely when a program is doing well.

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45. *See* Eric Chemi, *The Amazing Growth in College Football Revenues*, BLOOMBERG BUS. (Sept. 26, 2013), http://www.bloomberg.com/bw/articles/2013-09-26/the-amazing-growth-in-college-football-revenues [http://perma.cc/N6KJ-H5L5] (reporting that revenues for the top ten football programs have grown from academic years 2000–01 to 2011–12 at nine percent annualized).

46. Joe Nocera, *Let's Start Paying College Athletes*, N.Y. TIMES, Dec. 30, 2011, http://www.nytimes.com/2012/01/01/magazine/lets-start-paying-college-athletes.html?pagewanted=all&module=Search&mabReward=relbias%3As%2C%7B%221%22%3A%22RI%3A7%22%7D&_r=0 [http://perma.cc/7SXK-WFV8].

47. *See, e.g.*, Clay Travis, *Every SEC School Will Make More TV Money than Texas, Notre Dame*, FOX SPORTS (July 23, 2014, 10:57 AM), http://www.foxsports.com/college-football/outkick-the-coverage/every-sec-school-will-make-more-tv-money-than-texas-notre-dame-072314 [http://perma.cc/PZ53-B6GL] (stating that the SEC, Notre Dame, and Texas have their own television deals).

48. Nocera, *supra* note 46; *see, e.g.*, *Official SEC Corporate Sponsors*, SEC SPORTS, http://www.secsports.com/article/11055657/official-sec-corporate-sponsors [http://perma.cc/Z88X-PQ38] (listing corporate sponsors).

49. Chris Smith, *The Money Behind the BCS National Championship*, FORBES (Jan. 7, 2013, 4:09 PM), http://www.forbes.com/sites/chrissmith/2013/01/07/the-money-behind-the-bcs-national-championship/ [http://perma.cc/K2BS-8CNW] (reporting nearly $30 million in payout to the participating football programs in the BCS championship).

Coaches play an important role in determining a program's win-loss record. For example, Vanderbilt University competes in the very tough Southeastern Conference (SEC) football conference and had a losing record for many years. In 2011, James Franklin became the head football coach at Vanderbilt.[50] In the next three years, the school had three consecutive years of on-field success and was invited to compete in postseason bowl games in each of those years.[51] However, when Franklin left for Penn State in 2014, the Vanderbilt football team once again suffered a losing record.[52]

There are a number of indirect benefits to universities that stem from having successful football teams. At many universities, football revenue supports all, or a substantial part of all, of the athletic programs.[53] This cross-subsidization enables these universities to offer the broader student body many more opportunities to participate in sports at the collegiate level than would otherwise be possible. Another important benefit is reputational; many universities have achieved national prominence because of the presence of a big-name football program. For example, Alabama, Florida, and Notre Dame, to name a few, are schools that have instant name recognition at least in part because of their football traditions.

These football businesses are run by CEOs, the head football coach, in much the same way that public companies are run by CEOs. While university presidents are nominally the CEO of the university, there are many commentators,[54] including some university presidents,[55] who believe that the football coach occupies a role as the most influential decision maker in the university. Football coaches have many of the

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50. *James Franklin Takes Over at Vandy*, ESPN (Dec. 17, 2010), http://sports.espn.go.com/ncf/news/story?id=5929959 [http://perma.cc/UHE2-J3MS].

51. Adam Rittenberg, *Franklin Hire Brings Rewards, Risks for PSU*, ESPN BIG TEN BLOG (Jan. 11, 2014), http://espn.go.com/blog/bigten/post/_/id/93455/franklin-hire-brings-rewards-risks-for-psu [http://perma.cc/4JSB-QJTE].

52. *Vanderbilt Football Stats*, VANDERBILT, http://www.vucommodores.com/sports/m-footbl/vanderbilt-football-stats.html [http://perma.cc/2SAF-C23D] (listing Vanderbilt's record as 3-9 in 2014, the year after Franklin left).

53. GRANT ET AL., *supra* note 30, at 84–85.

54. *See* Martin J. Greenberg & Thom Park, *CEOs in Headphones*, SPORT J. (Feb. 12, 2014), http://thesportjournal.org/article/ceos-in-headphones [http://perma.cc/KQV4-9XVS] ("Today's major college coaches are CEOs in [h]eadphones."); Andrew McKagan, *Why Ed Orgeron Is the Perfect Fit at USC*, NEON TOMMY (Nov. 21, 2013, 5:46 PM), http://www.neontommy.com/news/2013/11/usc-orgeron-perfect-fit?page=2 [http://perma.cc/Y2E5-B6P6] (quoting former USC head coach Ed Orgeron as saying, "I'm the CEO of the program"); Joe Posnanski, *The Perfectionist in Motion*, NBC SPORTS (Nov. 9, 2013), http://sportsworld.nbcsports.com/227/ [http://perma.cc/S7GL-8JQJ] (demonstrating that football coaches have "a CEO's job with ultimate responsibility in marketing and public relations and media relations and community outreach and education and recruiting and game planning and fundraising and budgeting and countless other details").

55. *See* Doug Lesmerises, *Gordon Gee: 'I Think Everyone Won' – Closing the Book on the Ohio State Tattoo Scandal*, CLEVELAND.COM (June 3, 2014, 9:19 AM), http://www.cleveland.com/osu/index.ssf/2014/06/gordon_gee_i_think_everyone_wo.html [http://perma.cc/HBR3-VC5J] ("Gee's [Ohio State University President] involvement with Ohio State's NCAA issues always will be remembered with eight words: 'I'm just hopeful the coach doesn't dismiss me.'").

same job characteristics as CEOs of public companies—they run large organizations with many employees that generate hundreds of millions of dollars in revenues and they are paid millions of dollars a year,[56] frequently far more than their ostensible bosses, college presidents.[57] In our eyes, this evidence all suggests that viewing college football coaches as CEOs is appropriate.

We are aware that some commentators consider this to be a controversial proposition. Earlier drafts of this paper generated substantial public and media attention on this question, and commentators raised a number of objections to it.[58] Here we want to address the three categories of their objections.

1. College Football Is a Nonprofit Business

All major college football programs are contained in nonprofit universities and colleges and are themselves run as nonprofit businesses. Some commentators assert that control in a nonprofit is inherently different than a for-profit firm.[59] It is important to remember, though, that nonprofit businesses are generally run similarly to for-profit businesses.[60] The difference in tax status merely constrains the distribution of the surplus. In for-profit firms it is distributed to shareholders, while in a nonprofit business the surplus is used to further organizational objectives.[61] Thus while the profits go different places, the firms are run with the same goal of maximizing the surplus. A relevant example is the National Football League (NFL). Many would find it surprising that the NFL is a not-for-profit entity with the commissioner, Roger Goodell, earning compensation in excess of $44 million in 2012.[62]

A related claim is that football programs are only a division of the athletic department of a university, and therefore more like a subsidiary of a parent company than a stand-alone company.[63] While this might reflect how the football program

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56. *See* Todd Brown, Kathleen A. Farrell & Thomas Zorn, *Performance Measurement & Matching: The Market for Football Coaches*, Q.J. BUS. & ECON., Winter 2007, at 21, 24 ("Although a head coach in college football serves under a university president and the athletic director, the responsibility for the conduct, success, or failure [of the team] rests with the head football coach.").

57. Greenberg & Park, *supra* note 54.

58. *E.g.*, Steve Eder, *On Sidelines, Researchers See C.E.O.s*, N.Y. TIMES, Sept. 2, 2014, http://www.nytimes.com/2014/09/02/sports/ncaafootball/researchers-see-football-coaches-as-ceos.html?_r=0 [http://perma.cc/4N32-8AUS]; Joe Nocera, Op-Ed, *The Price of Glory*, N.Y. TIMES, Sept. 6, 2014, http://www.nytimes.com/2014/09/06/opinion/joe-nocera-the-price-of-glory.html [http://perma.cc/PPY7-KLJA].

59. Evelyn Brody, *Agents Without Principals: The Economic Convergence of the Nonprofit and For-Profit Organizational Forms*, 40 N.Y.L. SCH. L. REV. 457, 466 (1996).

60. *See* James A. Brickley & R. Lawrence Van Horn, *Managerial Incentives in Nonprofit Organizations: Evidence From Hospitals*, 45 J.L. & ECON. 227, 229 (2002).

61. Brody, *supra* note 59, at 458–60.

62. *See* National Football League, IRS Form 990, Part VII, § A (2012), *available at* http://www.guidestar.org/FinDocuments/2013/131/922/2013-131922622-0a132910-9O.pdf [http://perma.cc/NR6F-9UZZ] (reporting total compensation for Roger Goodell, including nontaxable benefits, to be $44,183,000).

63. *See* Thane M. Rosenbaum, *The Antitrust Implications of Professional Sports Leagues*

appears on an organizational chart, in practice it is operated like a separate entity from the rest of the university.[64] Alumni commonly create organizations with the expressed purpose of supporting the football team.[65] A successful football coach has a remarkable degree of autonomy from the rest of the university, so much so that the way he runs his program is largely independent of the rest of the school.[66]

2. Football Coaches Are Subordinates, Not Leaders

A second objection is that a college football coach reports to an athletic director (AD), who in turn reports to a college president, who in turn reports to a board of trustees.[67] Given this fact, football coaches are subordinate employees and are not really like CEOs. It is important to distinguish between positional authority and the influence of the office. While it is true that an AD can fire a coach, so too can a board fire the CEO. What is arguably more germane is the ability of both the CEO and the coach to control their own destiny in light of good performance. While a successful, popular, winning coach could be terminated by an AD, given the political capital of the coach, this is impractical.[68] An unsuccessful football coach, however, has only

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Revisited: Emerging Trends in the Modern Era, 41 U. MIAMI L. REV. 729, 781–82 (1987) (demonstrating that professional sports leagues arguably cannot be considered single entities, like a corporation).

64. JAY WEINER, KNIGHT COMM'N ON INTERCOLLEGIATE ATHLETICS, COLLEGE SPORTS 101, at 9 (2009), *available at* http://www.knightcommission.org/images/pdfs/cs101.pdf [http://perma.cc/PY63-9HHV] ("Some athletic 'associations' are separately-incorporated 501(c)(3) not-for-profit corporations."); *see Frequently Asked Questions*, U. FLA. ATHLETICS, http://www.gatorzone.com/misc.php?p=faq [http://perma.cc/Y5LF-SYGT] (stating that the University of Florida's athletic association is operated as a separate not-for-profit entity and is self-supporting, receiving funding from booster contributions, ticket sales, and SEC revenues and not from the state of Florida); UNIV. OF GA. ATHLETIC ASS'N, INC., FINANCIAL STATEMENTS YEARS ENDED JUNE 30, 2012 AND 2011, at 2, *available at* http://www.dacbond.com/dacContent/doc.jsp?id=0900bbc78010dc28 [http://perma.cc/2SCN-B4FM] ("The [University of Georgia Athletic] Association is a not-for-profit corporation organized . . . for the purpose of promoting intercollegiate athletic sports representing the University of Georgia . . . ."); *see also FAQs*, CRIMSON TIDE FOUND., https://web.archive.org/web/20130617013608/http://www.rolltide.com/sports/crimson-tide-foundation/spec-rel/faq.html [http://perma.cc/EZ5B-67HV] ("[T]he Athletic Department at the University of Alabama is 100% self-supporting . . . .").

65. Kristi Dosh, *Which SEC Alumni Have the Deepest Pockets?*, BUS. C. SPORTS (Apr. 19, 2011), http://businessofcollegesports.com/2011/04/19/which-sec-alumni-have-the-deepest-pockets/ [http://perma.cc/K7X5-LFJY] (tracking donations from alumni to football programs).

66. *See supra* note 64 and accompanying text.

67. *Presidential Oversight of Athletics*, SPORTS MGMT. RESOURCES, http://www.sportsmanagementresources.com/library/presidential-oversight-of-athletics [http://perma.cc/WKS9-QPFT] (describing the hierarchy of an athletic department).

68. See, for example, Ohio State University President E. Gordon Gee's response to a scandal involving head football coach Jim Tressel. Phillip Morris, *Ohio State President E. Gordon Gee's Joke Reveals that Bad Sportsmanship Isn't Confined to the Athletic Department*, CLEVELAND.COM (Mar. 11, 2011, 5:05 AM), http://www.cleveland.com/morris/index.ssf/2011/03/osu_president_gees_joke_reveal.html [http://perma.cc/6SFB-B8WH]

two or three years to turn around his team's performance, or he will be terminated for poor performance by the AD.[69] CEOs are also likely to be terminated by the board of directors for poor performance,[70] although they are likely to be better able to hide that fact from their board because of the difficulty of observing their contribution to performance. The apparent differences between the reporting lines for CEOs and college football coaches are of little practical significance.

3. Coaches' Pay Diverts Resources from Higher-Valued Uses

A common complaint about football coach compensation is that it misallocates university resources.[71] For example, college football coaches are frequently paid more than university or college presidents.[72] Since presidents are (nominally) the highest-ranked employees at the university, the argument goes, the other university employees, including coaches, should be paid less than them.[73] But coaches are not the only university workers that are paid more than the president. Doctors, for instance, are frequently paid more than college presidents and football coaches.[74] The common characteristic of doctors and coaches is that it is easy to observe and quantify the value they create for their employer. A coach's value creation can be measured by his win-loss record and resulting flow of revenue to the university just as a doctor's value creation can be measured by case volume and resulting flow of revenue to the university. A university president's value creation is more difficult to

("'I'm just hoping that the coach doesn't dismiss me.'" (quoting E. Gordon Gee)).

69. *See, e.g.*, Ellis, *supra* note 34 (reporting that Brady Hoke was fired after performing worse for three straight seasons after his successful first season).

70. Brickley & Van Horn, *supra* note 60, at 233 ("[T]he probability that a CEO is fired increases with poor financial performance."); Dirk Jenter & Fadi Kanaan, *CEO Turnover and Relative Performance Evaluation*, 70 J. FIN. 2155, 2155 (2015) ("CEOs are significantly more likely to be dismissed from their jobs after bad industry and . . . bad market performance.").

71. Granderson, *supra* note 42 (arguing that money should be spent to reduce tuition, not pay coaches exuberant amounts).

72. Greenberg & Park, *supra* note 54.

73. Jessica Lyons, *College Coaches Can Earn Over 10X More Than College Presidents*, STUDY.COM (Sept. 13, 2011), http://study.com/articles/Who_Should_Earn_More_Money_College_Coaches_or_Administrators.html [http://perma.cc/P4GV-8SB5] (arguing that schools should pay presidents more than coaches).

74. *See Executive Compensation at Public and Private Colleges*, CHRON. HIGHER EDUC. (June 8, 2015), http://chronicle.com/article/Executive-Compensation-at/146519?cid=megamenu#id=table [http://perma.cc/2Y2U-UXPT] (schools where a doctor is paid more than university president and football coach in fiscal year 2013: University of Toledo, UCLA, Central Michigan University, Florida Atlantic University; schools where a doctor is paid more than football coach in fiscal year 2013: University of South Alabama, University at Buffalo, Kent State University, Florida International University; schools where doctor is paid more than university president in fiscal year 2013: Temple University, East Carolina University, University of Missouri at Columbia, University of Cincinnati, University of New Mexico, University of North Carolina at Chapel Hill, University of Arizona, University of Connecticut, Pennsylvania State University at University Park, University of Kentucky, University of Utah, University of Florida, University of Michigan at Ann Arbor).

measure because his or her success is very dependent on the efforts of others at the institution.

A related criticism is that college football is diverting resources away from the educational mission of the university.[75] Critics perceive that college tuition is too high,[76] and given fiscal pressures, many state legislatures are reducing college subsidies.[77] Thus, critics argue, if state support is falling, and tuition increases cannot fill the gap, then coaches should be paid less for what they do in order to reduce demands on the budget.[78]

Our view is that successful football coaches create value for their university far in excess of the value they capture. In finance lingo, they are a positive net present value project for the university, and all positive net present value projects should be undertaken because they bring in value to the firm.[79] If we fired all football coaches, the universities would lose money and tuition would need to be higher.

Put slightly differently, for coaches to be overpaid, there must be a market failure. Economic theory suggests that a profit-maximizing firm can compensate labor up to the incremental value that labor produces.[80] A logical corollary is that labor should sort and seek out the firm or organization in which its labor is worth the most. The market for managerial talent determines the price paid. For coaches to be overpaid, it must be the case that their compensation is greater than the value that they create.

The last argument made in criticism of college football coach pay is probably the most important one. College football players are not paid under the current legal regime, and some critics have argued that the resulting system is unfair and generates excess rents for universities and coaches to divide amongst themselves.[81] In a recent case titled *O'Bannon v. NCAA*, a federal district court judge ruled that the NCAA conspired with universities and conferences to block athletes from receiving a share of the revenues generated by use of their images in broadcasts and video games.[82] Although the amount that the judge ordered paid to the individual players is quite low, and the case did not address the claim that football players ought to be paid for

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75. Granderson, *supra* note 42 ("Education . . . is supposed to be the purpose of college, not entertainment.").

76. *Id.*

77. PHIL OLIFF, VINCENT PALACIOS, INGRID JOHNSON & MICHAEL LEACHMAN, CTR. ON BUDGET AND POLICY PRIORITIES, RECENT DEEP STATE HIGHER EDUCATION CUTS MAY HARM STUDENTS AND THE ECONOMY FOR YEARS TO COME 1 (2013), *available at* http://www.cbpp.org /sites/default/files/atoms/files/3-19-13sfp.pdf [http://perma.cc/ZE4H-WKXQ] (reporting that states are spending less per student on higher education).

78. Granderson, *supra* note 42 (comparing the amount that college coaches are making to a runaway train).

79. RICHARD A. BREALEY & STEWART C. MYERS, PRINCIPLES OF CORPORATE FINANCE 89–90 (4th ed. 1991).

80. PAUL MILGROM & JOHN ROBERTS, ECONOMICS, ORGANIZATION AND MANAGEMENT 60–61 (1992).

81. Dennis Dodd, *Players About To Get Paid as Money Changes Game in College Athletics*, CBS SPORTS (Feb. 27, 2015, 12:08 PM), http://www.cbssports.com/collegefootball/writer /dennis-dodd/25083726/players-about-to-get-paid-as-money-changes-game-in-college-athletics [http://perma.cc/SR85-WFUT] ("An unpaid labor force is helping make athletic departments billions in a tax-exempt economy that is anything but nonprofit.").

82. *See* 7 F. Supp. 3d 955, 1007–08 (N.D. Cal. 2014).

their services, many commentators are calling for replacing the current system with one in which college players are paid for playing football.[83] If such a system were to be put in place, and it were to involve diverting a significant slice of football program revenues to players, then this would have a material impact on college football coach compensation.[84]

We agree that this is probably correct. However, it does not mean that under the current legal regime college coaches are overpaid. Football coaches' compensation today is determined in the world as it is, and not in an ideal world where players get paid. Moreover, if college players are paid in the future, we agree with our critics: "[I]f the players were paid, the market would probably readjust coaches' salaries all by itself."[85] In other words, a competitive market would determine coaches' pay, just as it does now.

We turn next to an examination of the competitive market for college football coaches and CEOs.

II. Recruiting, Hiring, and Negotiating a Contract

To compare college football coaches and CEOs, we start by examining the process used in recruiting and hiring them, as well as how their contract terms are negotiated. This analysis both provides a backdrop for understanding the relative bargaining power of the parties involved and informs our comparison of the terms in their employment contracts.

A. College Football Coaches[86]

Historically, on average, every three years a Division I FBS university will change its head football coach.[87] This event is costly, as Tennessee's recent divorce from its head football coach Derek Dooley illustrates: after three years and a 15-21 win-loss record, the university terminated his contract, but it is obligated to pay Dooley $5 million in severance pay, as well as potentially paying several of his assistant coaches another $3.71 million.[88] Universities therefore have powerful incentives to identify

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83. Nocera, *supra* note 46 (offering a plan to pay college football and basketball players).

84. *See* Maxwell Strachan, *NCAA Schools Can Absolutely Afford to Pay College Athletes, Economists Say*, Huffington Post (Mar. 27, 2015, 8:59 AM), http://www.huffingtonpost.com/2015/03/27/ncaa-pay-student-athletes_n_6940836.html [http://perma.cc/A52K-JR2Q] (suggesting that schools can pay college athletes by reallocating resources).

85. Nocera, *supra* note 46.

86. This section is based on confidential discussions with search firm representatives, agents, coaches, reporters, and athletic directors. We cannot divulge the names of these sources, but we have tried to supplement this information with citations to publicly available documents. We use the pronoun "he" throughout because almost all of the participants in this process were male.

87. Martin J. Greenberg, *College Coaching Contracts Revisited: A Practical Perspective*, 12 Marq. Sports L. Rev. 127, 129 (2001).

88. David Climer, *Tennessee Racks Up Buyouts, Not Wins*, WBIR-TV 10 (Nov. 21, 2012, 11:23 AM), http://archive.wbir.com/news/local/story.aspx?storyid=242356 [http://perma.cc/JPE8-QJM9].

successful coaches when they have to find a new one. One of the best predictors of success in a new job is prior success in a similar position, so there is strong competition to attract winning coaches.

1. Search Firms and Generating a List of Names

The starting point for the football coach hiring process is an announcement that the current head coach at Major State University (MSU) has been fired, announced his resignation to take another head coaching job, or decided to retire. An experienced AD has either anticipated this announcement for some time (in the case of retirement or termination by the school), or is aware that the head coach has compiled a winning record for MSU over the past one or two seasons and therefore suspects that the coach will be contacted about job offerings at more prestigious (or richer) programs.[89] As a result, the AD has at all times in his pocket a list of three to six names of potential replacement coaches that have, for one reason or another, caught his eye. This list will contain candidates who have expressed an interest (usually through an agent), who are doing well at a less-highly regarded football school, or who are coveted, well-known coaches at established programs. It is rare for this list to include any internal candidates.[90] The AD knows that the process will move quickly once it is apparent that the current head football coach is leaving. However, the ADs have agreed informally that they will not contact coaches at other schools until their season is finished or their bowl game is completed, and they must name a new coach before potential recruits announce their enrollment decisions in February.[91] If it delays, the school may lose an entire year's recruiting class. This means that there is intense pressure to fill the vacancy quickly.[92]

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89. *See* John Taylor, *Alvarez: Contact Disclosure Will Be Part of Next UW Coach's Contract*, NBC SPORTS (Dec. 10, 2012, 8:28 AM), http://collegefootballtalk.nbcsports.com /2012/12/10/alvarez-contact-disclosure-will-be-part-of-next-uw-coachs-contract/ [http://perma.cc /DK94-2L2E] (describing that head coaches typically ask permission from the AD to speak with other schools before interviewing with them for other positions, but some coach employment contracts go further and obligate the coach to ask permission from his employer before talking to other schools).

90. One reason why internal candidates are rare is that assistant coaches' success is very visible to other schools, and the hiring interval is very short for head coaches, so top quality "heir apparents" often get snapped up by other schools. For example, James Franklin was an assistant coach at the University of Maryland, where he had been anointed the likely successor for the head coaching position. However, when Vanderbilt University needed to hire a new head football coach, they succeeded in hiring him away. Jeff Barker, *Friedgen's Firing Was Weeks in the Making*, BALTIMORE SUN (Dec. 21, 2010), http://articles.baltimoresun.com/2010 -12-21/sports/bs-sp-terps-fridge-1221-20101220_1_lame-duck-atlantic-coast-conference-coach -football-coach [http://perma.cc/YET7-TE5F].

91. Confidential source, *supra* note 86.

92. *See* Bud Withers, *Art of Hiring a College Football Coach: Secrets, Money and Pressure*, SEATTLE TIMES (Apr. 24, 2012, 11:38 AM), http://www.seattletimes.com/sports /wsu-cougar-football/art-of-hiring-a-college-football-coach-secrets-money-and-pressure/ [http://perma.cc/ZP7B-AYX9] (describing how Washington State University AD Bill Moos met with a coaching candidate when his team still had two games to play because "Moos felt he might be hopelessly behind if he waited until the season was done to begin

At this very early stage in the process, MSU is likely to engage a search firm to assist with the hiring process. There is a small set of search firms that handle coaching searches.[93] These firms act as intermediaries between the schools and the potential candidates or their agents. The search firms are continually updating their information about what coaches are available, which coaches might be interested in which jobs, and which schools might in turn be interested in them. In addition to gaining access to the search firm's valuable insights and contacts, MSU employs the search firm to ensure secrecy and to honor the informal agreement among fellow ADs that they will not solicit one another's coaches without prior permission.[94] It is important that MSU does not directly contact the candidates, so that it can preserve its ability to truthfully deny that it has contacted any of these prospective coaches.[95]

Once the search firm is contacted, it will ask the AD to fill out a detailed questionnaire about the prospective coach's anticipated financial package and job responsibilities. This document is compiled over time by the search firm based on the questions that it has received from coaches in prior searches. Using this detailed information, the search firm will take the AD's short list of prospects and add to that list other candidates they have identified, until they have a complete list of possible candidates.[96]

The search firm will then begin its conversations with prospective coaching candidates.[97] These talks are of a preliminary nature until the potential candidate's team has finished its regular season or its bowl game. The discussions provide potential candidates with information about the range of their likely compensation as well as the names of the players that the school has recruited, the size of the pool of assistant coach compensation, the likely length of assistant coach contracts, and several other key preliminary issues. The search collects information about the potential candidates' existing employment contracts, especially the size of any buyout payment that MSU (or the coach) is likely to have to pay to the coach's home school if he should leave.[98] Some candidates may be dropped at this point if the school cannot meet their requirements.

2. The Coach's Agent's Role

At this stage, a candidate's agent enters the process.[99] While not all coaches have agents, for those that do, the agent will provide a variety of services. Oftentimes an

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reconnaissance").

93. *See* Dana O'Neil, *Need a Coach? There's a Firm for That*, ESPN (Aug. 2, 2013), http://espn.go.com/mens-college-basketball/story/_/id/9524814/search-firms-take-lead-filling-head-coaching-vacancies-college-athletics [http://perma.cc/9W6D-2W8K].

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. Agents are compensated by the coach, not by the school. They have become more commonly used over time. Jeremy Fowler, *Inside Conflicted World of Agents Repping College Coaches, NFL Players*, CBS SPORTS (Jan. 17, 2014, 10:42 AM), http://www.cbssports.com/collegefootball/writer/jeremy-fowler/24411789/inside-conflicted-world-of-agents-repping

agent will have ongoing communications with the search firms to give them the names of potential coaching candidates and to get a sense of the overall market, even when there is not a particular search underway.[100] Once a job becomes open, the agent will often become more aggressive in promoting his clients as potential applicants, sometimes directly contacting the AD to suggest that MSU consider a particular client represented by the agent.[101] The agent may also act as the intermediary in early discussions with the search firm.[102] The agent will negotiate, on the coach's behalf, issues such as compensation, staff levels and pay, and football program resources.

Once the search firm moves beyond its initial assessment of the potential candidate's interest, and before it engages in any substantive recruiting discussions, the potential candidate will normally request permission from his AD to talk with MSU.[103] Generally speaking, universities will permit their current coaches to talk to other schools at the appropriate time after their season is over.

The search firm will, in consultation with MSU, now have prepared a memorandum of understanding (MOU) for the candidates. The MOU lists their salary, the length of their contract, their perquisites, incentive pay, guaranteed payments from television, radio, and shoe contracts, their termination benefits, and their buyout clause. These terms are frequently "benchmarked," that is, compared with those offered to coaches at comparable schools (such as those in the same conference).

By the end of the initial search process, the potential candidate will have clarity around what compensation package the school is offering, what staff he can hire, the school's resource commitment to the football program, its current recruits, and whether there is an ideological fit between the coach and the school.[104] MSU, on the other hand, will have a reasonable idea about the candidate's level of interest in the job and the potential fit between the school and the candidate.

-college-coaches-nfl-players [http://perma.cc/DF4R-9X9B] (describing the college coach agent business as "mushrooming").

100. Tom Dienhart, *The Dynamics of a Coaching Search*, RIVALS.COM (Dec. 20, 2009), https://collegefootball.rivals.com/content.asp?CID=1030525 [http://perma.cc/PX49-WHHJ] ("[T]he agent wants to educate athletic directors, chancellors, search firms and even influential alumni about their candidate and present why he may be a good fit.").

101. *Id.*

102. Agents will counsel their clients about the potential desirability of participating in MSU's search, and, if the pool of potential candidates is too large, may tell them to avoid it so as not to hurt their future marketability. Confidential source, *supra* note 86.

103. *See* Taylor, *supra* note 89.

104. Chris Smith, *Hired Guns: How Search Firms Are Changing the Business of College Coaching*, FORBES (Mar. 30, 2012, 12:44 PM), http://www.forbes.com/sites/chrissmith/2012/03/30/hired-guns-how-search-firms-are-changing-the-business-of-college-coaching/ [http://perma.cc/CWA2-29Z8] ("Bill Carr of Carr Sports Consulting refers to understanding a school's 'values, priorities, [and] social dimensions' as the key to finding the right coach.") (alteration in original).

3. Initial Interviews

If the initial discussions between the search firm, the agent, and/or the potential candidate indicate that there is a likely fit for both sides, then the school will schedule an initial interview with the candidate. Typically, the school will hold this first round of interviews off campus with six to ten candidates with an eye toward inviting a few of them back to campus for a second round of interviews.[105] Agents do not participate in these interviews.

At the initial interview, a small group of the school's representatives will ask the candidate about his coaching philosophy and his abilities as a recruiter, as well as try to further assess how interested the candidate is in the position. The candidate will sell himself to MSU in hopes of getting invited back to campus for a second interview.[106] While many candidates are genuinely interested in the position at this point, some coaches may use these discussions as a negotiation ploy with their home school for a raise and a new or amended employment contract.[107]

Once this first round of discussions is completed, the MSU representatives, including the AD, his staff, and often a few prominent alumni, will engage in internal discussions regarding the candidates. They will also contact outside sources to collect as much information as possible about the candidates, and they will conduct background searches to uncover any potential problems with the candidate. Generally about 50% of the candidates will drop out of the process at this stage.[108]

4. On-Campus Interviews[109]

Based on the information available to MSU by the end of this process, the school will invite three or four candidates to on-campus interviews. Generally speaking, the school would be happy to hire any of these candidates as its new head coach. Furthermore, unlike the first round of interviews where the candidates were selling themselves, in the second round of interviews, the school is selling itself to the candidates. No agents are present at these meetings.

On campus interviews are much more involved than the initial interviews. The candidates will meet with MSU's president, some trustees, and important administrators, in addition to the AD and his team. If married, they likely will be asked to bring their wife along to see the university's locale. Based on these meetings, and the input from key alumni, administrators, and the president, the AD will decide on MSU's order of preference for the candidates. Once the order

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105. Dienhart, *supra* note 100 ("If everything lines up correctly, a candidate is interviewed by the school. Often, the interview will take place in an out-of-the-way location to keep the process as far from the public eye as possible.").

106. Confidential source, *supra* note 86.

107. *See, e.g.*, Dennis Dodd, *Man Behind the Money*, CBS SPORTS (Jan. 15, 2015), http://www.cbssports.com/collegefootball/feature/24963891/man-behind-the-money [http://perma.cc/JKQ9-D2HB] (describing how Ole Miss coach Hugh Freeze's contract was significantly bumped to an average of $4.5 million per year after he was connected to the possibility of moving to the University of Florida).

108. Confidential source, *supra* note 86.

109. Part II.A.4 is derived from an interview with a confidential source, *supra* note 86.

has been established, the school will continue to negotiate in secret with several candidates simultaneously until they are confident that their preferred candidate will accept the job. As we predicted in Part I, the most contentious issue to negotiate is what the coach will receive in compensation if he is terminated by the school and what he will pay the school if he chooses to leave the job for another position.

By the end of these negotiations, each serious candidate will know what to expect from MSU if he is offered the position and, if he is the frontrunner, he is likely to have been given a letter of intent. Ultimately, MSU will not offer the job to any candidate without assurance the candidate will accept the position, so as to avoid the embarrassment of having a candidate turn down the job and thereby revealing to the remaining candidates that they were not MSU's first choice.

5. Accepting the Job and Afterwards[110]

Once the candidate accepts the job, the agent will complete the negotiations with the school. The agent's job is to translate the MOU into a final long-form contract that ensures that his client is protected against unfair termination, or from being asked to engage in overly-demanding sets of activities. The main focus of these contract negotiations will be on the definition of termination for cause and the head coach's enumerated duties in the contract, but other details such as the form of incentive pay will also be determined. Some of these issues can be resolved based on the school's contracts with prior coaches, or by reference to clauses from the contracts of coaches at other schools within the conference. This final set of negotiations typically takes anywhere from two to six months depending on the urgency of the issues and the parties' positions, but, in most cases, the coach has substantial negotiating leverage because the school wants to ensure that the coach has a successful start to his tenure.

If the coach is successful at MSU, it is likely that he, or his agent, will ask the university to renegotiate his contract after a couple of years. These contract renegotiations lead to contract amendments, which are usually simple one-page documents that enumerate any changes to the contract's length, the coach's base salary or other guaranteed income, any additional bonuses, and any changes to the buyout amount. These changes are again benchmarked against the amounts paid to other coaches in the conference. Given the coach's success, it is likely that he will have substantial negotiating leverage in this negotiation and will be able to extract significant concessions from the university.

B. Negotiating CEO Employment Contracts[111]

The CEO recruitment process has both similarities and differences from the college football coach recruitment process. When an existing corporate CEO retires,

110. Part II.A.5 is derived from an interview with a confidential source, *supra* note 86.

111. This section is derived from earlier work by one of the authors. *See* Schwab & Thomas, *supra* note 12, at 236–40. It is based on discussions with legal practitioners that were actively involved in negotiating executive employment agreements, sometimes on behalf of companies, and sometimes on the side of the executive. As in the earlier piece, we have

dies, or is fired, the firm must find a replacement.[112] Unlike the coach hiring process, the day-to-day management of the CEO search will generally be run by an ad hoc committee of the board of directors, subject to overall review by the full board.[113] Most firms will look first internally to see if they can find a replacement.[114] For an internal search, the directors will keep the process in-house and will not engage an executive search firm, although they may use a compensation consultant to advise them on pay structure and levels.[115]

If outside candidates are being considered, the search committee will usually retain an executive search firm. Together the directors and the search firm will generate a group of potential candidates for the position.[116] After reviewing more information, the search committee will narrow the list down to three to five finalists.[117] These candidates will be interviewed, often secretly so that their current employers will not be aware of their potential interest.[118]

The search committee will generally offer the position to the top choice.[119] They will provide the candidate with a term sheet setting forth the proposed salary, target bonus, equity participation in the company, severance package, change-in-control protections, benefits, and standard perquisites.[120] Compensation levels will frequently be benchmarked against comparable firms.[121] The term sheet will also cover such items as relocation expense payments, the term of years for the contract, the renewal provisions for the contract, the duties associated with the position, and the physical location for the executive.[122] As of the year 2000, less than half of the hired CEOs enter a written employment contract, so many times the term sheet is the only written documentation of the employment arrangements.[123]

After completing negotiations between the principals over the term sheet, the two parties' attorneys will focus on the final terms of the employment contract.[124] The company normally will provide an initial draft of the contract, often based on its prior CEO's contract.[125] This gives the company an advantage in negotiations. The company provides the initial draft because the final contracts will become public information and, therefore, the company wants to avoid establishing unfavorable

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continued to conceal their identities to preclude any possible adverse use of this information.

112. *Id.* at 236.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* (citing RAKESH KHURANA, SEARCHING FOR A CORPORATE SAVIOR: THE IRRATIONAL QUEST FOR CHARISMATIC CEOS 28 (2002)).

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *See id.* at 236–37.

122. *Id.* at 236.

123. *See* Gillan et al., *supra* note 18, at 1629.

124. Schwab & Thomas, *supra* note 12, at 237.

125. Randall Thomas, Erin O'Hara & Kenneth Martin, *Arbitration Clauses in CEO Employment Contracts: An Empirical and Theoretical Analysis*, 63 VAND. L. REV. 959, 982 (2010).

future precedent for later negotiations.[126] Only in rare situations where a candidate has extraordinary negotiating power would the firm allow the candidate to offer an initial draft.[127] The company may use inside counsel, or, in some cases, outside lawyers, but the executive will always have his or her own lawyer to handle this part of the transaction.[128] Some lawyers specialize in representing top executives in their job negotiations and have well-established reputations for getting their clients the best deals.[129]

C. Principal Differences in the Hiring Processes and Their Effects

One very important difference between the recruiting processes for coaches and CEOs is that head football coaches for large universities are rarely recruited internally. By comparison, it is commonly the case that a public company will first look internally to find its new CEO, and only when the talent pipeline is empty will the board turn to outsiders.[130] Compared with inside officers that have been promoted, executives that have been brought in from outside of the company are typically paid a premium.[131] This occurs because the firm has no viable alternative internal candidates, which gives the outsider significant negotiating leverage in the job negotiations.[132]

However, once the candidate has established himself or herself on the job, these differences in negotiating power likely diminish. Incumbent CEOs generally have stronger negotiating positions than incoming CEOs for many reasons, including, most obviously, that they have already experienced some degree of success in running the company and they have an ongoing relationship with the incumbent board of directors. Within a few years, they may be able to use their new leverage to persuade the board to amend their initial employment contract, or even offer them a new contract.[133]

In contrast, there are few internal candidates in the football coach market. Coaches have little firm-specific capital, as their football skills are readily transferable, so they can easily move to another school. Moreover, successful head football coaches have substantial negotiating power. If their teams win on the field, other schools are likely to invite them to apply for their openings.[134] If their home school is committed to

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126. Schwab & Thomas, *supra* note 12, at 237.

127. *Id.*

128. *Id.*

129. GRAEF S. CRYSTAL, IN SEARCH OF EXCESS: THE OVERCOMPENSATION OF AMERICAN EXECUTIVES 215 (1991) (stating that CEOs hire compensation directors and compensation consultants).

130. *See* CONFERENCE BD., CEO INSIDE PROMOTIONS VERSUS OUTSIDE HIRES (2014), *available at* https://www.conference-board.org/retrievefile.cfm?filename=TCB_CW-0531.pdf&type=subsite [http://perma.cc/384V-RZYN] (finding that, in 2013, firms hired outsiders to fill their CEO position only 23.8% of the time).

131. *See* Schwab & Thomas, *supra* note 12, at 238.

132. *Id.*

133. *See* Thomas et al., *supra* note 125, at 978 (describing amended CEO contracts).

134. GRANT ET AL., *supra* note 30, at 234 ("Universities, especially those attempting to upgrade their athletics program, often compete against one another to hire the 'messiah coach,'

retaining them, it will be obligated to offer them better terms in an amended or new contract.[135] We would therefore expect that the compensation levels of successful coaches would increase rapidly, as would those of a successful CEO.

A second important difference is the role played by agents in the process. Many coaches or potential coaches have agents, and these agents are often specialized in the football coach market.[136] A successful agent may significantly enhance his or her clients' bargaining power if he or she is truly knowledgeable about the level and type of compensation available to candidates in the market. While some ADs are experienced repeat players in the game, an inexperienced AD may be at a disadvantage in negotiating with a big-name agent.

Outside CEOs will also sometimes engage lawyers that specialize in representing top executives.[137] If search committees are not careful, they may find themselves at a disadvantage in the contract negotiations if they choose to use inside counsel, or nonspecialist outside counsel, to represent the company.[138] However, this is much less likely to occur when the board selects an inside candidate. As noted above, inside candidates are frequently selected at public companies, so that candidates' agents or lawyers are less likely, on average, to impact the overall compensation packages for firms than for football coaches.

There are a number of other differences in the recruiting processes. For example, coaches generally seek permission from their schools before they begin officially talking with other universities about job openings, while CEOs do so in secret. However, these differences do not appear to have as significant an effect on the outcome of the negotiation process as the ones described above.

III. FOOTBALL COACH CONTRACTS IN COMPARISON WITH CEO CONTRACTS

Are college football coaches overpaid? To answer this question, we turn next to a close comparative analysis of CEO and football coaches' compensation arrangements and contract terms. If the contract terms exhibit similar characteristics, then we can draw on prior work concerning CEO pay to conclude that football coach compensation and contractual arrangements have comparable virtues.

A. Description of the Sample

Our initial step in obtaining the employment contracts for the college football coaches represented in our sample was to compile a list of the coaches at each school during the relevant time period. Once we had created this list, we began looking for these coaches' contracts in the online contract databases put together

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the person who will transform a losing program, or a relatively unknown program, into a high profile program where winning is the rule, not the exception.").

135. *See, e.g.*, Granderson, *supra* note 42 (reporting that successful head coaches at small schools leave for more compensation at bigger schools).

136. *See, e.g.*, Dodd, *supra* note 107 (exploring Jimmy Sexton's influence in the college football market as an agent for multiple head coaches).

137. CRYSTAL, *supra* note 129, at 215.

138. *Id.* at 242–43.

by *USA Today*.[139] Additional contracts were obtained from various websites through Internet searches using variations of the coach's name and the words "employment contract" or "employment agreement." We then turned to news stories and Internet articles about contract extensions, amendments, and renegotiations with the various coaches to ensure that our sample was as complete as possible. If gaps were discovered in the data, we contacted the university employing the coach and requested the missing contracts. This was done through a written request pursuant to the freedom of information statutes in the relevant states.

We were able to obtain most of the employment contracts from 1995 to 2013 for the coaches at 106 of the 127 Division I college football programs. We have complete data on these coaches for the period 2005 to 2013, and largely complete data for 1995 to 2005.[140] The majority of the schools for which we were unable to obtain employment contracts are private universities and, thus, are not subject to any freedom of information statutes. The remaining public universities failed to respond for various reasons.[141]

There are four different types of contracts included in our sample. The first group is labeled employment contracts. These are the initial contracts that the coach and the university entered into when the coach first took the position. There are 495 of these in our sample, and almost every coach in our sample entered into one of these

139. *Compensation for Div. I-A College Football Coaches*, USA TODAY (Dec. 4, 2007), http://usatoday30.usatoday.com/sports/graphics/coaches_contracts07/flash.htm [http://perma.cc/N25N-3U8Y] (2006 and 2007 contracts); *2009 NCAA Football Coaches Contracts*, USA TODAY (Nov. 10, 2009), http://usatoday30.usatoday.com/sports/college/football/2009-coaches-contracts-database.htm [http://perma.cc/5TT9-LZ7X] (2009 contracts); *USA Today – NLSI Coaches' Salary Database*, USA TODAY (Dec. 26, 2010), http://usatoday30.usatoday.com/sports/college/football/2010-coaches-contracts-database.htm [http://perma.cc/7FDL-U8RQ] (2010 contracts).

140. We are missing some of the earlier contracts because some schools have document retention policies that lead them to discard older contracts after a period of years. Thus, when these schools received our Freedom of Information Act (FOIA) requests for contracts that were not otherwise publicly available, they were unable to provide us with the missing contracts.

141. Schools with Division I college football programs located in Pennsylvania—Penn State, Temple, and the University of Pittsburgh—are "state-related" institutions and fall outside the purview of Pennsylvania's freedom of information law. Rob Arcamona, *What Documents Can a Reporter Obtain from Penn State Officials?*, STUDENT PRESS L. CENTER (Nov. 15, 2011, 2:59 PM), http://www.splc.org/wordpress/?p=2864 [http://perma.cc/ZG5B-XT57]. Some schools, such as the University of Mississippi and Mississippi State, have a very basic contractual arrangement with the coach. The real contract, containing the bulk of compensation and incentive pay, is entered with a private foundation that is not subject to the state freedom of information law. *See e.g.*, Employment Contract Between the Bd. of Trs. of State Insts. of Higher Learning of the State of Miss. and Daniel Mullen (Dec. 11, 2008), *available at* http://www.coacheshotseat.com/CHSMississippiState.pdf [http://perma.cc/HL7K-UH4R]; NCAA 2008–09 OUTSIDE INCOME REPORT FOR MISS. STATE UNIV. (2009) (on file with the Indiana Law Journal). A few schools, such as the Air Force Academy, simply failed to send the requested employment contracts despite our repeated requests.

contracts.[142] The second largest category of contracts is amendments to employment contracts. These are subsequent agreements that the coach and the university execute after the coach has already been working for the university for a period of time. Typically, these amendments will update the coach's compensation arrangements with the university in the later years of their initial contract. There can be multiple contract amendments over time to a coach's initial contract. The third type of agreement is an amended and restated agreement. These will normally occur once a coach has entered into several contract amendments to his initial contract and the parties decide that it would be appropriate to incorporate all of those changes, plus potentially additional changes, into a completely new contract. Finally, in a small set of cases, the coach and the school will enter into some other form of agreement that contains some employment terms.[143] In total, we have 947 contracts of these four types in our sample.

Table 1 below provides some summary information about these contracts. Table A in the Appendix provides a year-by-year breakout of the number of contracts that we have in the sample. We have complete data on all 106 schools in our sample for 2005 to 2013.

Table 1. Description of the football coaches' contracts sample

Contract Type	Number	Percent (%)
Employment contract	495	52.0
Amendment to employment contract	397	42.0
Amended and restated employment contract	42	4.5
Other agreement including employment terms	13	1.5
Totals	*947*	*100*

Compared with football coaches, the most striking difference is that many CEOs do not have written employment agreements. One recent study found that "less than half of the firms in the S&P 500 had a comprehensive written (or explicit) employment agreement . . . with their CEOs."[144] However, other research has shown that "the vast majority of the other CEOs [without employment contracts] had at least some other contractual agreement relating directly to their employment with their company."[145] Examples of these other agreements are severance agreements (including change-in-control agreements, consulting agreements, and noncompetition

142. A handful of coaches entered into some other form of contractual agreement. *See infra* note 143.

143. Some examples of this type of agreement are a memorandum of understanding, an offer letter, or a letter of appointment. Memorandums of understanding and offer letters are frequently signed before the formal employment contract. They govern the employment relationship while the formal contract is being negotiated. For this reason, we consider them as equivalent to temporary employment contracts. Letters of appointment are rare but appear to be abbreviated versions of employment contracts.

144. Gillan et al., *supra* note 18, at 1629.

145. Schwab & Thomas, *supra* note 12, at 241.

agreements) and compensation-related agreements (including deferred compensation agreements, stock-option plans, and long term incentive plans). But these agreements generally provide much less protection for these CEOs than full employment contracts.

Why is there a difference? An earlier empirical study of why CEOs have written employment contracts found that CEOs hired from another firm were more likely to have employment contracts than those that were hired internally.[146] The authors hypothesized that "[t]hese CEOs tend to face greater uncertainty about the sustainability of their relationships with their firms than CEOs who have been promoted from within."[147] This would also seem to be true for football coaches who are hired from outside the firm and whose success (and failure) is more readily observed than with CEOs. Moreover, CEOs change jobs very infrequently relative to college football coaches. Both universities and coaches have strong interests in careful planning for the coaches' more frequent job changes. This may be coupled with the universities' need to have well-specified rights to terminate coaches for NCAA rule violations, as discussed below in Part III.D. Both of these factors would lead to college football coaches being more likely to have written contracts.[148]

During the nineteen-year time period, we find the median number of contracts by school is three, while the mean number of contracts by school is four. This suggests that football coach contracts change approximately every two to three years. Based on our data, college football coaches have an average job tenure of 4.6 years, with the median length equal to three years. Undoubtedly, the main reason for this short tenure is the strong pressure that college football coaches face to have winning records and, at some schools, to be invited to postseason bowl games. This pressure can lead to a successful coach leaving for a better job, or alternatively, to an unsuccessful coach being fired quickly.

In terms of job tenure, CEO tenure overall[149] has declined in recent years: in 2000, CEOs had an average job tenure of 9.9 years, but by 2012 this number had declined to 8.1 years.[150] A variety of reasons have been suggested for this decline, including the increasingly competitive global marketplace, the presence of

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146. Gillan et al., *supra* note 18, at 1631.

147. *Id.* An insider may be better informed about the likelihood that the firm's board of directors would honor an implicit, nonwritten employment contract. *Id.* at 1634.

148. Another factor may be that coaches have relatively low levels of firm-specific investment in their employers and so it is less expensive for the university to replace their skills with another hire. *Id.* An employee that is in a position that requires more general skills will prefer a written employment contract. *Id.*

149. CONFERENCE BD., COMPANY PERFORMANCE AND AGE AS DETERMINANTS OF CEO SUCCESSION (2014), *available at* https://www.conference-board.org/intelligence/index.cfm?id=15300 [http://perma.cc/2KK7-QTSD] (stating that the average CEO is more likely to be terminated after poor job performance or because they have reached retirement age, but the likelihood of a CEO losing his or her job because of poor performance has not increased over the past forty years).

150. CONFERENCE BD., DEPARTING CEO TENURE (2000–2013) (2014), *available at* https://www.conference-board.org/retrievefile.cfm?filename=TCB_CW-0561.pdf&type=subsite [http://perma.cc/Y5U6-EBFF].

alternative employment options at private equity firms, and increased director independence/shareholder scrutiny leading to greater executive accountability.[151] But the striking fact is that, even with this decline, CEOs have far greater average job tenure than college football coaches, most likely because it is much easier to observe the win-loss record of a coach than the marginal effect of a CEO on the value of a public company.

B. CEO and Football Coach Compensation

It is not easy to draw direct comparisons between coach and CEO compensation due to the differences in organization size and value. To create a useful comparison, we matched football teams with comparable firms using firm size and revenue. This enabled us to create a matched cohort of football coaches and CEOs.

For football programs, we drew on the work of others. Professor Brewer computed valuations of college football programs using a variety of factors related to each program.[152] Brewer's valuations consider "long-term on-field performance, stadium size, state-by-state growth rates, cash flow, revenues and other factors."[153] We also examined valuations done by Forbes magazine based on Department of Education data on team revenues and expenses.[154] Using these two methods, we determined that we should limit the sample of comparable firms to those firms with a market capitalization of less than $1 billion in the Russell 2000.

However, we found that there was significant heterogeneity amongst this subset of the Russell 2000. Some companies' market value was tied to revenues, while in others valuations reflected the market's expectations of future growth. In the case of football programs, value is tied most closely to revenues, and those streams are fairly predictable over time. Therefore, as a second screen for what constitutes a comparable firm, we limited our sample to those firms with a level of revenues such that their market capitalization was between 1.5 and 10 times firm revenue. We derived this criteria from our comparison of the relationship between football program revenue (reported to the Department of Education) and implied market value of each program by Professor Brewer.

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151. *Id.*

152. Anthony Schoettle, *Notre Dame No. 2 in Ranking of Football Riches, IU Tops Purdue*, INDIANAPOLIS BUS. J. SCORE BLOG (Jan. 9, 2014), http://www.ibj.com/the-score-2014-01-09-notre-dame-no-2-in-ranking-of-football-riches-iu-tops-purdue/PARAMS/post/45498 [http://perma.cc/4PJ5-7NCG] (reporting the results of research by Professor Ryan Brewer of Indiana University).

153. *Id.* For example, he found that the highest-valued program was the University of Texas at $875 million in 2013. *Id.*

154. Chris Smith, *College Football's Most Valuable Teams 2013: Texas Longhorns Can't Be Stopped*, FORBES (Dec. 18, 2013, 10:28 AM), http://www.forbes.com/sites/chrissmith/2013/12/18/college-footballs-most-valuable-teams-2013-texas-longhorns-cant-be-stopped/ [http://perma.cc/YU7Q-EM9R].

1. Football Coach Fixed Compensation Data

We begin with our data on college football coach contracts and extract the compensation elements. We define these variables as follows. Salary is the amount of base salary specified in the employment agreement. If the base salary changes over time, we use the initial base salary. Given the relatively high frequency with which contracts are revised, this seems a reasonable decision.

Service compensation is fixed pay that a coach receives from radio, television, Internet, speeches, alumni club appearances, and similar engagements. We report the amount of service compensation that is listed in the employment agreement and use the initial amount if it changes over time. In some cases, we are unable to disaggregate service compensation and base salary, and, in these situations, we report the total as base salary. This may lead us to underreport service compensation in some cases, but we note that it does not affect the total compensation values.

Camp compensation is fixed pay that a coach receives for participating in a summer football camp. This usually occurs in one of two ways: either the coach will be paid by the university for his involvement in a camp conducted by the university, or the coach will conduct the camp, receive the revenue, and pay the expenses (and sometimes pay the university for the use of university facilities).

The last major category of fixed compensation is endorsement. It is common for the university to pay the coach for his duties pursuant to equipment, shoe, apparel, and other endorsement contracts entered by the university. As with the other fixed compensation variables, we use the initial dollar value stated in the employment agreement even if it changes over time.

Table 2A reports Division I FBS football coach fixed compensation, that is, compensation that would be paid to the coach irrespective of his performance. Given the rapid rate of increase in football coach compensation over time, we calculated these values for three different years during which we have complete data on all contracts: 2005, 2009, and 2013. During this time period, average fixed football coach compensation more than doubled.

Table 2A. Division I FBS coach compensation: average fixed pay in dollars ($)

	Contract Year 2005	Contract Year 2009	Contract Year 2013
Salary	252,974	405,631	547,167
Service	396,486	646,741	900,277
Camp	1,964	9,865	4,311
Endorsement	73,750	76,047	119,067
Total Fixed Compensation	*725,174*	*1,138,285*	*1,570,823*
Percentage (%) Salary	34.88	35.63	34.83
Percentage (%) Service	54.67	56.81	57.31

A brief examination of the data in Table 2A shows the importance of service income as a component of coach pay. Over the 2005 to 2013 time period, service income rose from slightly less than $400 thousand per year to more than $900 thousand per year. This is by far the largest component of college football coach compensation. It also constitutes an increasing percentage of total compensation over time, rising from 54.67% of total compensation in 2005 to 57.31% of total compensation in 2013.

Television revenue is one of the key drivers in the recent escalation of service income and, therefore, more generally of college football coach compensation. A good example of this is the compensation paid to Mike Leach by Washington State University.[155] Washington State is a member of the Pac-12 Conference, which signed a new television deal in 2011.[156] This new deal equated to a near quadrupling of television revenue for Washington State.[157]

Prior to 2011, Washington State had paid its previous football coach, Paul Wulff, roughly $600 thousand per year.[158] Leach was hired before the 2012 season (but after the television contract was signed) and was paid roughly $2.25 million per year.[159] The AD of Washington State, Bill Moos, attributed the University's ability to pay this drastic increase in compensation directly to the new television deal, as demonstrated by a reporter who paraphrased Moos: "Without the TV revenues, Washington State simply wouldn't have been able to hire a coach of Leach's caliber."[160]

UCLA provides another example of the importance of television revenue as a contributor to the rise of college football coach compensation. UCLA is a member of the Pac-12 Conference and is a beneficiary of the new television deal signed by the Pac-12 Conference in 2011. UCLA AD Dan Guerrero commented on the importance of this increased television revenue to coach compensation:

> "You go back to 2003, when I made my first [football] hire, the economic situation was completely different," Guerrero said. "That was a constraint, a barrier, to being competitive. We couldn't snap our fingers and come up with dollars."
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> . . . .
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> "It's a big game-changer across the conference," Guerrero said about the television revenue. "The coaches who have been hired, the practice facilities, for basketball and football, are due in a large part to that windfall."[161]

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155. Greg Bishop, *Television Revenue Fuels a Construction Boom in the Pac-12*, N.Y. TIMES, Nov. 23, 2013, http://www.nytimes.com/2013/11/30/sports/ncaafootball/television-revenue-fuels-a-construction-boom-in-the-pac-12.html [http://perma.cc/LD6R-T4QQ].

156. *Id.*

157. *Id.*

158. Lewis Kamb, *Big-Time Coaches Score Big-Time Perks*, SEATTLE TIMES (Nov. 23, 2013, 10:16 PM), http://seattletimes.com/html/localnews/2022321329_coachespayxml.html [http://perma.cc/H345-Q9PY].

159. *Id.*

160. *Id.*

161. Chris Foster, *Money Is No Longer an Object for UCLA Football*, L.A. TIMES (Dec. 7, 2013), http://articles.latimes.com/2013/dec/07/sports/la-sp-1208-ucla-football-20131208 [http://perma.cc/CZX4-G8UH].

These television contracts disproportionately favor the larger, better-known conferences. In particular, the conference that wins the BCS championship will gain more public attention and therefore receive a big increase in its revenues when it renegotiates the conference's omnibus television contract in the future. Such an increase will benefit all of the conference schools because of revenue-sharing arrangements.

We also present 2013 data on football coach compensation by program size to illustrate some of the differences in coaches' compensation at different size schools. Table 2B provides this data broken out by quartiles from smallest schools to largest ones.

Table 2B. 2013 head football coach fixed compensation in dollars ($)

	Smallest Quartile	Second Quartile	Third Quartile	Largest Quartile
Salary	281,303	517,722	481,714	903,409
Service	125,321	481,704	1,015,983	1,498,872
Endorsement	6,206	61,252	48,500	252,704
Total Fixed Compensation	*412,832*	*1,074,679*	*1,552,447*	*2,664,955*

Schools in the largest quartile of the distribution pay their coaches more than six times as much as those in the lowest quartile. The difference is particularly stark for service income, whose main component at the bigger schools is television revenue. It is no wonder that coaches who are successful at smaller schools move to the larger universities when they get the opportunity.

2. Football Coach On-Field, Performance-Based Pay

We next examine the performance components of coach pay, beginning with those payments that are triggered by on-field performance by the team. There are a series of on-field performance measures that can be included in these contracts depending on appearances and games won. Here we report the main categories: play in the conference championship, win the conference championship, appear in a bowl game, appear in a BCS bowl game, win a BCS bowl game, appear in the national championship, and win the national championship.

Table 2C reports the percentage of annual salary amounts (as stated in the year of contract initiation) of these bonuses in those contracts that contain them. It also contains, in parentheses, the percentage of contracts that have these particular provisions. Obviously some of these events are more likely to occur than others—for example, only one team can win the national championship game. Furthermore, not all of these provisions appear in all of the football coaches' contracts. So for most coaches the expected value of these provisions is far less than the face amount listed in Table 2C. Further, to win the national championship, a coach would normally have to win the conference championship and appear in a BCS bowl game. In this situation, the effective payout becomes much greater.

Table 2C. Average college coaches' on-field incentive contract provisions as a percentage (%) of total compensation (percentage (%) of contracts including on-field incentive term)

	Contract Year 2005	Contract Year 2009	Contract Year 2013
Play in the conference championship	3.8 (36)	4.3 (37)	3.3 (67)
Win the conference championship	5.8 (52)	7.8 (75)	7.0 (83)
Appear in a bowl game	5.0 (82)	5.2 (88)	4.4 (90)
Appear in a BCS bowl game	11.2 (59)	11.8 (71)	12.8 (83)
Win a BCS bowl game	14.0 (4)	23.0 (10)	20.8 (27)
Appear in the national championship	14.4 (55)	13.1 (74)	14.7 (80)
Win the national championship	24.4 (45)	22.7 (48)	25.3 (63)

There is a clear trend toward greater use of these provisions over time: every category of on-field, performance-based pay clauses appeared more frequently in 2013 than it did in 2005. However, as the data in Table 2C show, coaches' bonuses have remained a fairly constant percentage of their total compensation over the same time period.

Finally, it is worth noting the interdependence of these provisions. In any one conference, there can only be two finalists in the conference championship, and only one of them can win the game. While it is true that there are a large number of bowl games, it is also true that there are a very limited number of BCS bowls and most of the participants in them are likely to be conference champions or runners up. This suggests that a limited number of coaches is likely to get any value out of these contract clauses, but for those that do, they may be qualifying for two or three of these payoffs. In other words, excellent on-field performance may result in substantially increased compensation payments for a small set of coaches.

3. Football Coach Academic Performance Incentive Pay

Football coaches also are rewarded for their team's academic performance off the field. The academic performance incentives may be present to balance on-field incentives. It is hard to assess how difficult it is for coaches to achieve these goals and whether the coaches' efforts really have any effect at all on players' scholastic outputs. While a cynic might claim that these provisions are included solely to make it appear that universities care about whether their football players are getting a good education, including the provisions in football coach employment contracts does create some financial incentives for the coaches to ensure that team members perform well in school.

Table 2D provides information on three different types of academic performance measures that frequently appear in football coach contracts: academic progress rate (APR), graduation rate, and grade point average (GPA). The APR is a multi-year measurement of academic progress and an institution's retention of student-athletes.[162] Graduation rate measures the percentage of entering football players that graduate within six years of entering the institution.[163] GPA includes any threshold measure of a team's players' grade point average. Institutions often create varying incentive payments that increase as performance targets are met.

Table 2D summarizes information on these pay-for-academic-performance clauses for the year 2013. It shows the maximum amount[164] of academic-performance pay as a percentage of each coach's base salary and, in parentheses, the percentage of employment contracts that contain this particular clause. It is clear from the data that there is substantial variation across conferences in how commonly such provisions appear in coaches' contracts. While the Pac-12 conference has the highest use of academic pay for performance clauses for APR and graduation rate, the Big East has the highest usage of GPA provisions.

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162. *Division I Academic Progress Rate (APR)*, NAT'L COLLEGIATE ATHLETIC ASS'N, http://www.ncaa.org/about/resources/research/division-i-academic-progress-rate-apr [http://perma.cc/7MU7-C2SQ].

163. NAT'L COLLEGIATE ATHLETIC ASS'N, HOW ARE NCAA GRADUATION RATES CALCULATED? 2 (2015), *available at* http://www.ncaa.org/sites/default/files/How%20is%20grad%20rate%20calculated_nov_2015.pdf [http://perma.cc/44D4-7HWH].

164. We calculated the maximum payoff that could result from the satisfaction of any of these clauses, as there is enormous variation in the contracts over the amounts and exact thresholds for payment.

Table 2D. Academic performance maximum incentive pay by conference as a percentage (%) of total compensation (percentage (%) of contracts with clause)

	APR	Graduation Rate	GPA
Pac-12	2.8 (39.3)	4.1 (57.4)	3.1 (34.4)
ACC	3.3 (13.4)	3.6 (44.8)	— —
Conference USA	4.9 (32.4)	7.3 (36.8)	1.9 (19.1)
Big 12	4.4 (6.6)	3.2 (29.7)	1.4 (2.2)
Big East	1.9 (35)	3.5 (27.5)	1.9 (47.5)
Mid-American	3.0 (26.6)	2.7 (21.8)	2.0 (17.7)
Sun Belt	1.8 (37.3)	3.0 (18.6)	1.6 (20.3)
Big Ten	6.0 (9.6)	4.5 (18.1)	7.5 (7.5)
Mountain West	2.4 (21.5)	2.8 (13.9)	2.9 (4.6)
SEC	3.4 (23.1)	2.1 (11.5)	2.5 (7.7)
Not Yet FBS	2.3 (10.3)	2.1 (6.9)	0.5 (3.5)
WAC	4.0 (15.2)	7.1 (6.3)	3.1 (8.9)
Independent	2.5 (3.5)	— —	— —

Looking first at the value of these clauses' payoffs, we see that a substantial majority of them pays a *maximum* amount equal to less than 4% of total compensation, which is almost the *minimum* possible payment for on-field coach performance shown in Table 2C for any category of performance in 2013. Similarly, if we compare academic clauses with on-field performance clauses, we see that on-field performance clauses are much more common.[165] We conclude that academic performance clauses are far less economically significant than on-field performance pay for coaches that are highly successful on the field.[166] However, we must be mindful that many coaches will not qualify for any of the on-field performance payments listed in Table 2C, so academic performance payments may in practice be more significant than they appear at first blush, especially to coaches with poor on-field performance records.

165. Some contracts have multiple academic-performance hurdles in them so that coaches could receive more than one payment for their players' academic performance.

166. GRANT ET AL., *supra* note 30, at 231 ("[A]cademic-based payments [to coaches] are trivial compared to bonuses based on winning.").

4. CEOs' Compensation Data

We next calculate the executive compensation levels for CEOs at our matched set of public firms. The basic components of public company executive pay in the United States are salary, bonus, stock awards (usually restricted stock), stock options, nonequity incentive pay, and a residual category of other compensation.[167] We obtain these values from the Compustat electronic database.[168] Table 3 reports the 2013 averages for the matching set of CEOs at the comparable firms, where we have divided the sample up into four quartiles from smallest firms to largest firms.

Table 3. CEO compensation 2013 (dollar ($) mean values)

	First Quartile	Second Quartile	Third Quartile	Fourth Quartile
Salary	402,002	446,875	449,851	511,876
Bonus	88,322	86,660	89,599	128,862
Restricted stock awards	176,953	405,627	393,610	823,703
Option awards	189,078	230,272	274,918	444,623
Nonequity incentive pay	147,550	146,508	270,712	261,714
Other compensation	80,723	64,850	79,611	97,004
Total Compensation	*1,084,630*	*1,380,796*	*1,608,303*	*2,267,785*

The values reported in Table 3 show that average total compensation increases as firm size increases. Fourth quartile average total CEO pay is $2,267,785, whereas first quartile total average compensation comes out at $1,084,630, or slightly less than half of that of the largest firms. In addition, each category of compensation generally increases incrementally as we move from the smaller firms to the larger firms, although the firms in the third quartile show some variation (particularly with respect to restricted stock awards) in this respect. Incentive-based pay becomes more important at the larger firms, particularly stock options and restricted stock awards. There is relatively little change in salary levels as firm size increases.

5. Comparing the Growth of CEO and Football Coach Compensation

How do the growth rates of CEO and college football coach compensation compare over the 1995 to 2013 time period? The values that we have presented thus far in Tables 2A and 3 are snapshots of pay in particular years. To compare compensation over the entire sample period, we need to construct a comparable group of companies that existed from 1995 to 2013 and then match their CEOs' compensation against the pay levels of the coaches in our sample. To do this, as we noted earlier at the beginning of Part III.B, we select a group of comparable companies in 2012 to 2013 that all have a market capitalization of less than $1 billion and whose market capitalization is less than one to ten times its revenues. We then trace these firms back in time to 1995 and collect information for each firm in existence for each year that they have been in existence.

Table 3A below shows the comparison over our sample period.

167. Randall S. Thomas, *Explaining the International CEO Pay Gap: Board Capture or Market Driven?*, 57 VAND. L. REV. 1171, 1182–86 (2004).

168. *See generally* S&P CAPITAL IQ'S COMPUSTAT EXECUCOMP, MCGRAW HILL FINANCIAL (2013), *available at* http://www.spcapitaliq.com/documents/products/Compustat_ExecuComp_v2.pdf [http://perma.cc/XZQ6-TGAW] (describing the Compustat database).

Table 3A. Comparison of mean compensation by year

	Football Coaches				Corporate CEOs			
	Contracts	Salary ($)	Total ($)	Salary Percentage (%)	Firms	Salary ($)	Total	Salary Percentage (%)
1995	16	124,607	193,545	64	29	327,716	1,108,770	30
1996	22	121,252	223,466	54	31	341,049	1,482,900	23
1997	26	129,867	197,559	66	36	376,305	1,911,400	20
1998	24	135,893	291,101	47	41	397,428	1,716,100	23
1999	33	155,834	441,165	35	61	365,032	1,933,370	19
2000	39	174,495	379,220	46	71	382,302	3,737,770	10
2001	33	189,421	553,086	34	71	403,743	2,602,860	16
2002	41	212,100	671,884	32	75	420,417	1,843,370	23
2003	48	214,349	698,586	31	81	438,142	1,620,690	27
2004	56	228,282	654,227	35	84	455,212	1,929,060	24
2005	56	252,974	864,728	29	96	474,586	2,048,540	23
2006	64	339,030	882,545	38	126	458,979	2,002,880	23
2007	63	336,954	1,205,277	28	142	478,800	2,291,120	21
2008	72	343,801	1,184,308	29	143	481,407	2,097,370	23
2009	72	410,118	1,350,084	30	196	472,228	1,492,440	32
2010	55	553,063	1,245,913	44	199	491,519	1,932,380	25
2011	74	489,889	1,379,606	36	202	505,632	2,212,080	23
2012	68	571,575	1,569,422	36	201	532,287	2,149,270	25
2013	30	547,167	1,721,823	32	58	575,799	2,057,220	28
Annual Rate of Growth		*8.6%*	*12.9%*			*3.2%*	*3.5%*	

The first significant difference is the relatively large fixed-pay component to college football coaches' compensation compared to CEO pay. For example, in contract year 2013, Table 3A shows that football coaches are paid over $1.72 million with base salary constituting roughly 32% of that total. By comparison, a CEO of a similarly sized firm earned $2.05 million of which salary constituted 28% of total pay.

If we compare these values over the course of the entire time period, we see coaches' salaries, although they increase overall, have been dropping as a percentage of total compensation over the period from around 60% to around 35%. This is due to the rapid increases in other forms of pay that coaches receive, especially service income largely derived from television revenue. By comparison, CEO salaries remain at a fairly consistent level of 20 to 25% of total compensation for most of these years.

Why are coaches paid so much more in fixed compensation than CEOs? One potential explanation is that coaches have much shorter job tenure and more frequent contract renegotiations. A successful coach will promptly receive an increase in pay and a new contract. This makes it much less important to include performance-based pay in the original contract. Conversely, poor performance is likely to lead to prompt termination. Compensation for termination will be included in the severance provisions of the initial contract, making it less important to worry about the downside of performance-based pay as well.

A second important point is that when we compare Table 2B with Table 3, we see that the compensation quartile differentials are very close to the same for both football coaches and CEOs, except for the smallest schools. In other words, the firm size effects in executive compensation are very close to the program size effects for college football coaches in the top three quartiles of the compensation range for a matched set of firms and universities. This suggests that the two types of positions have some close similarities.

Another important comparison is the pay growth rate for the two groups. Total pay for both CEOs and football coaches[169] are relatively close together in the later years of the sample, although at the beginning of the sample period, CEO pay was roughly five times greater. Coaches' pay, however, has grown much more rapidly than CEO pay: coaches' salaries are increasing at an annual rate of 8.6% versus CEO salaries at an annual rate of 3.2%. Coaches' total compensation has shot up by 12.9% per annum versus CEO total compensation's annual increase of only 3.5%. If these trends continue, coaches will soon be paid much better than CEOs.

Our data in Table 2A show that from contract year 2005 to contract year 2013, fixed pay more than doubled. Earlier data confirm this trend: in 1999, five coaches

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169. These calculations exclude coach performance pay. While we cannot calculate total performance-based pay using solely the information in the coach employment contracts, we can see from Table 2C that the most a coach could earn in any one category would be by winning the national championship and that would result in the coach getting 25% of his total compensation. This, however, would be a rare event. The maximum that a coach could earn for satisfying any one of the academic performance off-field bonuses would be another approximately 7% of his total compensation. If we total those bonuses together, we see that performance-based pay for football coaches is significantly less than total compensation, with a maximum of perhaps 32% of total pay.

earned more than $1 million, while in 2008 the average salary for NCAA Division I FBS coaches was $950 thousand per year, with over 40 coaches earning more than $1 million.[170] Given the relatively constant percentage of base salary represented by the performance pay shown in Tables 2C and 2D, it seems reasonable to conclude that total football coach pay has doubled over our sample period.

Our data are consistent with prior research on CEO pay showing that from 1992 to 2001, CEO median pay increased by 213%.[171] This doubling of CEO pay is close to what we are observing with college football coaches from 1995 to 2001. However, others have found that in more recent years, college football coach compensation is rising much faster than CEO pay: from 2007 to 2011, CEO pay increased 23%, while over that same time period college football coach pay increased 44%.[172]

There are several factors that explain these differences. First, college football television revenues are growing rapidly in recent years, and our theory predicts that coaches capture a larger percentage of value created than CEOs.[173] Second, college football coaches have shorter job tenure than CEOs, and this is likely to put pressure on them to get paid as much as possible early in their contracts.[174] Third, successful football coaches have very frequent contract amendments as their home schools try to persuade them to remain in place, while other schools try to lure them away. A final reason for the observed differences in compensation may stem from the fact that coaches' success (and failure) is more readily observed than with CEOs, making it more apparent who should be paid more. All of these drivers for coach compensation increases put upward pressure on compensation levels.

6. Perquisites

We also have data about the presence of many different types of perquisites that are listed in the football coach contracts. Table 3B below summarizes the frequency of such perquisites over the sample time period.

170. Christian Dennie, *There Are No Handshake Deals in College Coaching Contracts*, 20 ANDREWS ENT. INDUSTRY LITIG. REP. 2, at *1 (2008) ("[T]he average head football coach in the six major conferences . . . earns approximately $1.4 million per year.").

171. Carola Frydman & Dirk Jenter, *CEO Compensation*, 2 ANN. REV. FIN. ECON. 75, 78 (2010).

172. Brady et al., *supra* note 20, at C1.

173. *See* Tom Fornelli, *Big Ten Schools Projected To Make $45 Million with New TV Deal*, CBS SPORTS (Apr. 26, 2014, 10:52 AM), http://www.cbssports.com/collegefootball/eye-on-college-football/24540002/big-ten-schools-projected-to-get-45-million-with-new-tv-deal [http://perma.cc/D7QP-558L] (stating that Big Ten schools have been bringing in more money annually than other schools through the use of the conference's Big Ten Network, which is projected to continue to have increasing revenue annually).

174. *See infra* Table 4.

Table 3B. Frequency of selected perquisites for college football coaches (percentage (%) of sampled contracts)[175]

	1995–2001	2002–2007	2008–2013
Car	65.8	79.0	87.1
Skybox	8.8	25.9	33.2
Tickets	35.2	47.6	60.4
Club	43.5	52.4	62.8
Plane	—	1.5	4.9

The apparent trend in the data is that, over the sample period, coaches are more likely to receive these perquisites. For example, an overwhelming majority of football coaches receive a car for their personal use, oftentimes of a specified model. We can compare these statistics to those for CEOs taken from an earlier study by one of the authors. That study found that 38.40% of CEOs received a company car or allowance for a car; 24.53% of CEOs had their companies pay for country or social club memberships; 7.20% of CEOs had personal use of aircraft; and another 2.13% of CEOs were provided with paid apartments.[176]

To the extent that these perquisites represent tradeoffs for other forms of compensation, CEOs and football coaches receiving them are taking home smaller paychecks.[177] However, some scholars have argued that the consumption of perquisites diverts resources from the firm and reduces its value.[178] At present, this theoretical dispute remains unresolved.

C. Contract Length and Duties

Contract length is another common element in the employment agreement in both coach and CEO contracts. Table 4 compares the distribution of contract lengths from our sample of coaches with that of CEOs.[179] Earlier work found that while the bulk of CEO employment contracts are for a definite term, many CEO contracts do not specify a fixed term of years.[180] The third column of Table 4 presents data showing the percentage of CEO contracts (totaling 87%) that did contain a definite term. The

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175. Car means to provide the coach with his own personal vehicle. Skybox means to give the coach a skybox or executive suite at the football stadium for his own personal use. Tickets means to provide the coach with football tickets. Club means to pay for the coach's membership at one or more country or social clubs. Plane means to provide the coach with a plane for his personal use.

176. Schwab & Thomas, *supra* note 12, at 265. There are a variety of other perquisites provided to CEOs. *See id.*

177. *See* Eugene F. Fama, *Agency Problems and the Theory of the Firm*, 88 J. POL. ECON. 288, 295–96 (1980).

178. Jensen & Meckling, *supra* note 5, at 325–28.

179. For purposes of comparing these data with the contract lengths for CEO contracts, we use the results of prior research by one of the authors. Schwab & Thomas, *supra* note 12, at 247.

180. *Id.*

remaining contracts (13%) did not contain a definite term.[181] By comparison, virtually all football coach contracts have a fixed term of years.

Table 4. Contract length comparisons (percentages (%))

Contract length in years	Coaches	CEOs
Indefinite term or term not mentioned	0.8	13.0
One	3.8	5.1
Two	2.5	9.6
Three	8.7	36.0
Four	18.4	6.4
Five	41.7	24.0
Greater than five	24.4	5.9
Percentage of contracts with a fixed term	99.3	87.0

Football coach contracts are typically longer than CEO contracts. More than 65% of football coaches have contracts that are five years or greater, while approximately 30% of CEOs have contracts that long. The most frequent CEO contract length is three years. The principal explanation for this difference appears to be that football coaches must be able to credibly commit to potential recruits that they will be coaching at the school for the entire period of time that the recruit will attend.[182] Thus, a high school junior or senior wants to believe that the coach who recruits him is contractually committed to remain there for at least the next four years.

CEO contracts, on the other hand, reflect market forces at work in that labor market. In particular, the internal labor market for managers is often compared to a tournament, where the prize for winning is to be promoted to the next level of management.[183] In order for the tournament to be effective, there must be openings created at the higher levels of management within a reasonable period of time to incentivize lower-level managers to remain with the corporation and continue to compete. Perhaps as a result, CEO employment contracts appear to be shorter than football coach contracts.

Another explanation offered in the literature focuses on the difference between inside and outside hires. This research finds that CEOs hired from outside of the firm have, on average, one year longer contracts than CEOs hired from internal positions.[184] This is true because outside CEOs face greater uncertainty about their long-term future with the company and therefore negotiate for greater contractual

181. This category includes contracts where length was not mentioned (2.9%), contracts lasting until the CEO was terminated (8.8%), and contracts lasting until the CEO is 60–65 years old (1.3%).

182. *See* Barker, *supra* note 90 (arguing that lame duck coaches cannot recruit effectively); Sammi Bjelland, *Pay Day for College Coaches*, KELOLAND.COM (May 11, 2014, 10:18 PM), http://www.keloland.com/newsdetail.cfm/pay-day-for-college-coaches/?id=164254 [http://perma.cc/MB9M-KHB3] (stating that other schools will use a coaches' short-term contract as a scare tactic to convince recruits that the coach won't be there for long).

183. LAZEAR, *supra* note 36, at 26.

184. Gillan et al., *supra* note 18, at 1631.

protection.[185] If this is correct, then we would anticipate that, on average, football coaches, who are almost always hired from outside, would have longer contracts than CEOs who are frequently internal hires.

When it comes to the articulation of duties, the difference between the two types of contracts is quite stark. Coaches' contracts typically contain a much more detailed set of job duties than that in CEOs' contracts. For example, a typical CEO contract will have a short, one paragraph (or less) general description of the CEO's responsibilities that is vague and unspecified.[186] By comparison, the employment contracts of college football coaches typically give a very detailed and extensive definition of the duties expected of the coach.[187] For instance, Alabama Coach Nick Saban's recent employment contract contains a four-page list of his job duties and responsibilities.[188] In part, this reflects the expanding role that coaches are expected to play in recent years: instructor, "fund-raiser, recruiter, academic coordinator, public figure, budget director, television, radio and internet personality, and alumni glad hander."[189]

D. Termination Clauses: With Cause and Without Cause

Having a long-term contract, however, does not mean that a CEO or a football coach has any guarantee of being employed for the full length of the contract. In fact, any employee can be terminated by his or her employer at any time.[190] The question becomes what does the employee receive from the employer if he or she is fired? Employees that are fired with cause, that is, for committing an act or omission that is specified in their agreement as grounds for cause termination, are typically given little or no compensation after their termination. By comparison, employees that are fired without cause—for any reason not specified as grounds for termination for cause in their employment contract—are generally provided with some type of severance package. In this subpart, we explore the definitions of "for cause" in CEO

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185. *Id.*

186. For example, in CEO Raymond Gilmartin's employment contract with Merck & Co., Inc. (the drug company), there is a single sentence that describes his job duties: "Employee shall have the powers, responsibilities and authorities of President, Chief Executive Officer and Chairman of the Board of Directors of the Company as established by custom and practice." Merck & Co., Quarterly Report (Form 10-Q) (Aug. 10, 1994), *available at* http://www.sec.gov/Archives/edgar/data/64978/0000950123-94-001298.txt [http://perma.cc/M2U9-YDDU].

187. Greenberg, *supra* note 87, at 147, 192 (describing the list of duties to include things such as coaching responsibilities, recruiting responsibilities, television/radio requirements, shoe/apparel sponsorship requirements, public appearance requirements, compliance with NCAA rules and regulations, compliance with university rules and regulations, and the oversight of coaching staff/student-athletes).

188. Head Coach Employment Contract Between the Bd. of Trs. of the Univ. of Ala. and Nick L. Saban § 2.02 (Apr. 16, 2012), *available at* http://media.ledger-enquirer.com/static/SEC-Coaching-Contracts/Alabama/Alabama-Sabans-signed-contract-Amend.pdf [http://perma.cc/W3YM-BAM2].

189. Greenberg, *supra* note 87, at 130.

190. *Id.* at 245 ("The university, therefore, may remove the coach from his position at any time, with or without a valid reason.").

and football coach contracts and the amount of severance payments that each one is entitled to when terminated without cause.

1. For-Cause Terminations

From the firm or university's perspective, a for-cause termination clause is necessary to protect its image and reputation from damage caused by an employee's misconduct.[191] However, for-cause terminations normally create immediate financial hardship and damages for employees. As a result, coaches and executives are concerned that they not be unjustifiably or subjectively fired for cause. In theory, this should make negotiations over the items that are included in the employment contract's definition of "cause" contentious. However, for CEOs, this is not the case.[192] In fact, the items enumerated as constituting cause are relatively limited in CEO contracts and are often taken directly from the prior CEO's contract.[193] In practice, CEOs are almost never fired for cause, with exceptions for flagrant abuses, such as blatant sexual harassment cases.[194]

Things are more complicated for football coaches. "Coaching is a job where you are hired to be fired. The back end of the deal is as important as the front end of the deal. The first day of the job must be spent planning for the last day of the job . . . ."[195] Other researchers have found that approximately one in ten teams annually change head football coaches for performance reasons.[196] With the high stakes of college football, coaches are often "fired or pressured to resign as a way of 'fixing' [their] program[s]."[197] With termination likely from the start of the relationship, it becomes crucial to the coach to distinguish what constitutes cause from what does not.

Furthermore, as the media coverage of college football has expanded, so too has media coverage of coaches. Coaches face a growing risk of termination for purely personal conduct, not involving on-field performance issues.[198] As a result, it is

191. Adam Epstein, *An Exploration of Interesting Clauses in Sports*, 21 J. LEGAL ASPECTS SPORT 5, 17 (2011).

192. Schwab & Thomas, *supra* note 12, at 238.

193. *See id.* at 248–49.

194. *Id.* at 238.

195. Martin J. Greenberg, *Representation of College Coaches in Contract Negotiations*, 3 MARQ. SPORTS L.J. 101, 103 (1992).

196. E. Scott Adler, Michael J. Berry & David Doherty, *Pushing "Reset": The Conditional Effects of Coaching Replacements on College Football Performance*, 94 SOC. SCI. Q. 1, 1–2 (2013).

197. *Id.* Whether poor performance constitutes grounds for termination with cause depends crucially on the language of the coach's employment contract. For further discussion, see *infra* Table 5A.

198. Dennie, *supra* note 170, at *3. For example, the University of Arkansas recently publicly dismissed its head football coach, Bobby Petrino, for purely personal reasons. Petrino was very successful on the field and was dismissed on the heels of a 2012 Cotton Bowl win (11-2 season record) and at the time of his dismissal, the team was considered a national title contender. Joe Schad, *Bobby Petrino Emotional, Regretful*, ESPN (Aug. 10, 2012), http://espn.go.com/college-football/story/_/id/8251166/bobby-petrino-fired-arkansas-razorbacks-coach-apologizes-interview-espn [http://perma.cc/NV3K-TH6U]; *Arkansas Fires Bobby Petrino*, ESPN (Apr. 11, 2012), http://espn.go.com/college-football/story/_/id/7798429

common for coaching contracts to contain termination provisions pertaining to moral turpitude, perpetuation of willful fraud, conduct seriously prejudicial to the best interests of the university, immoral acts, habitual intoxication, dishonesty, and gross negligence in performance.[199] Coaching contracts also frequently contain for-cause termination provisions related to program violations of NCAA rules and regulations.

To be terminated for cause requires complementary "due process clauses" providing the specific requirements of notice of any hearings afforded to the coach at termination or suspension.[200] Generally, due process clauses are drafted to provide coaches with a spectrum of rights along a continuum. Coaches receive the same due process rights as other university employees, or they may have the opportunity to appeal to the athletic director or an independent arbitrator.[201]

Table 5A provides a breakdown of the items listed as independent grounds for cause termination in college football coach contracts. There is substantial variation among the contracts as to the grounds for termination with cause. But all of these contracts contained detailed provisions governing for-cause terminations.[202]

/arkansas-razorbacks-fire-bobby-petrino-coach [http://perma.cc/JFD6-LQVY].

199. Dennie, *supra* note 170, at *3; Greenberg, *supra* note 87, at 211–13.

200. Dennie, *supra* note 170, at *5 ("A well-drafted due-process clause includes written notice to the coach of contemplated suspension or termination; the opportunity for the coach to defend himself before an impartial arbitrator; clear procedures for notice, rules of evidence, the right to cross-examine witnesses, and the right to an attorney during the hearing and discovery phase; the effect of a finding of just cause; and appellate rights.").

201. *See id.*; *see also* Brent C. Moberg, *Navigating the Public Relations Minefield: Mutual Protection Through Mandatory Arbitration Clauses in College Coaching Contracts*, 16 J. LEGAL ASPECTS SPORT 85 (2006) (discussing mandatory arbitration clauses).

202. For the college football coach employment contracts, we used the following definitions: *Gross misconduct* was coded if the contract listed it as grounds for termination with cause. *Unprofessional conduct* was coded if the contract listed unprofessional behavior or other conduct that reflects negatively upon the university as grounds for termination with cause. *Neglect* was coded if the contract had provisions that stated that neglect of duties, failure to perform duties, inability to perform duties, or absence from duties constituted grounds for termination with cause. *Breach of contract* was coded if the contract stated that a breach of the employment contract was grounds for termination with cause. *Felony* was coded if the contract stated that the conviction of a crime constituting a felony was grounds for termination with cause. *Moral turpitude* was coded if the contract stated that the conviction of a crime involving moral turpitude, or any other provision relating to moral turpitude—including things such as violation of antidiscrimination policies or sexual harassment—was grounds for termination with cause. *Fraud or dishonesty* was coded if the contract listed either as grounds for termination with cause. *Violation of NCAA rules* was coded if the contract listed a violation of NCAA, conference, or university rules; the failure to report a violation of NCAA, conference, or university rules; counseling those under the coach's supervision to fail to respond promptly and accurately to any NCAA, conference, university, or other official inquiry; or the coach's failure to respond promptly and accurately to any NCAA, conference, university, or other official inquiry as grounds for termination with cause. *Gambling* was coded if the contract listed gambling or betting of any kind as grounds for termination with cause. *Substance abuse* was coded if the contract listed substance abuse of any kind as grounds for termination with cause. *Conflict of interest* was coded if the contract listed a conflict of interest as grounds for termination with cause. *Drug test program failure* was coded if the contract listed failure to cooperate in the enforcement and implementation of any drug testing

Table 5A. College football coach contract for-cause termination provisions

Provision	Percentage (%) of contracts with provision
Gross misconduct	85.0
Unprofessional conduct	65.4
Neglect of duties	82.3
Breach of contract	60.8
Felony	31.1
Moral turpitude	50.5
Fraud or dishonesty	30.5
Violation of NCAA rules	93.1
Gambling	11.7
Substance abuse	15.1
Conflict of interest	4.6
Drug test program failure	7.7

The CEO contracts also generally contained provisions on termination for cause, but they tended to be less numerous and less detailed. Table 5B contains a list of the terms used in the CEO contracts and the percentages of contracts in which they appeared.

Table 5B. CEO contract for-cause termination provisions

Provision	Percentage (%) of contracts with provision
Not mentioned	2.4
Mentioned but not specified	4.5
Fiduciary breach	50.7
Willful misconduct	69.1
Gross misconduct	39.2
Incompetence	3.5
Moral turpitude	72.2
Failure to perform duties	57.8
Substance abuse	4.8
Sexual harassment	0.5

A close comparison of Tables 5A and 5B reveals many similarities, but also some important differences. In terms of similarities, both types of contracts typically define gross and/or willful misconduct[203] or commission of an act of moral turpitude (including sexual harassment) as grounds for termination for cause, although coaches' contracts seem more lenient on moral turpitude violations. There seems to be little doubt that these actions should constitute sufficient grounds for penalizing the employees by terminating them for cause.

Less frequent, but still common, is language defining cause as a breach of the employment contract (coaches) or a breach of fiduciary duty (CEOs). These are not the

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program as grounds for termination with cause.

203. These would presumably include the commission of fraud or a felony by the coach or CEO.

same thing, and it is interesting to think about why they differ. Since coaches are not fiduciaries to their employers, but CEOs are, it would make little sense to include breach of fiduciary duties as grounds for cause termination in coaches' contracts. However, CEOs are contracting parties with their firms, just as coaches are, which raises the question, why do CEOs' contracts not include breach of contract as grounds for cause termination? One possible explanation is path dependence: prior CEO contracts did not contain such language, and the parties just include the provisions from prior contracts in new agreements.[204] Another reason could be the differences in the two types of contracts in their definitions of employee duties: coaches have very specific, detailed lists of duties whereas CEOs do not, making it easier for coaches to violate their contracts by failing to perform specified duties.[205] Nevertheless, the difference is puzzling.

A second intriguing difference is the relative frequency of contract provisions defining neglect of duties as grounds for termination for cause. Football coaches' contracts almost universally contain such provisions (82.3%), whereas CEO contracts include them less often (61.3% if we combine the categories of incompetence and failure to perform duties). This suggests that, in a significant number of instances, it will be easier to terminate a college football coach for poor job performance, although such clauses have not generally been interpreted as permitting for-cause termination for a poor win-loss record.[206]

The remaining differences arise from particular characteristics of college football coaches' jobs. For example, all football coach contracts include violations of NCAA rules as grounds for termination with cause.[207] Obviously, CEOs do not have to worry about such compliance. However, gambling and substance abuse provisions seem to be much more prevalent in football coach contracts than in CEO contracts. In part, this may be because of the importance that universities place on football coaches being models of good behavior for student athletes.[208] A second aspect of these provisions may relate to concerns that NCAA rules prohibit gambling, and schools want to remove any ambiguity about that point in these contracts.[209]

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204. Path dependence has been found to be a powerful explanatory variable for the use of arbitration provisions in CEO employment contracts in an earlier work by one of the authors. Thomas et al., *supra* note 125, at 997–98.

205. *E.g.*, Head Coach Employment Contract Between the Bd. of Trs. of the Univ. of Ala. and Nick L. Saban, *supra* note 188, at § 2.02.

206. Greenberg, *supra* note 87, at 226 ("[T]ermination without cause is usually based upon the coach's win-loss record . . . .").

207. This category includes a violation of NCAA, conference, or university rules; the failure to report a violation of NCAA, conference, or university rules; the counseling of those under the coach's supervision to fail to respond promptly and accurately to any NCAA, conference, university, or other official inquiry; or the failure by the coach to respond promptly and accurately to any NCAA, conference, university, or other official inquiry.

208. Kai Sato, *In Defense of College Football Coaches*, HUFFPOST SPORTS (Mar. 12, 2014, 5:59 AM), http://www.huffingtonpost.com/kai-sato/in-defense-college-football-coaches_b_4570443.html [http://perma.cc/Z2TH-K99A] ("Good college football coaches are often role models, mentors and father figures for their players.").

209. *See* Martin J. Greenberg, *Termination of College Coaching Contracts: When Does Adequate Cause To Terminate Exist and Who Determines Its Existence?*, 17 MARQ. SPORTS L. REV. 197, 231–33 (2006) (describing the University of Washington's firing of football coach Rick Neuheisel for betting when there was no explicit clause in his contract covering gambling).

Finally, we also track the evolution of the definition of cause termination in college football coach contracts. Table 5C provides this data.

Table 5C. Football coach cause termination provisions over time (percentage (%) of sampled contracts)

	1995–2001	2002–2007	2008–2013
Neglect of duties	72.5	84.8	87.6
Breach of contract	47.2	65.2	67.1
Felony	22.8	30.2	38.8
Moral turpitude	48.7	47.3	56.1
Fraud or dishonesty	14.0	29.6	42.6
Unprofessional conduct	54.9	64.3	72.5
Violation of NCAA rules	87.0	94.2	96.5
Gambling	2.6	11.0	17.8
Substance abuse	5.2	13.1	23.2
Conflict of interest	2.6	4.3	5.4
Drug test program failure	0.5	6.7	12.7
Gross misconduct	0.0	0.6	1.6

What we see from the data is that every single category of the for-cause termination provisions increased over the sample period. This suggests that universities are expanding the definition of what constitutes grounds for cause termination from the earliest interval (1995–2001) to the most recent one (2008–2013).

To confirm this, for each contract, we counted the number of terms in the definition of for-cause termination. In Table 5D, we show the evolution of the number of terms in football coaches' employment contracts by the number of enumerated provisions in the definition of cause termination.

Table 5D. Evolution of for-cause termination clauses over time

Possible contract provisions	1995–2001	2002–2007	2008–2013
Zero	12.95	5.79	3.23
One	6.74	5.49	3.50
Two	6.74	1.22	1.35
Three	6.22	10.98	10.78
Four	32.64	26.83	19.95
Five	26.94	25.30	21.02
Six	3.63	6.71	12.67
Seven	1.55	7.93	11.32
Eight	2.07	7.32	7.55
Nine	0.52	2.13	5.66
Ten	—	0.30	1.89
Greater than ten	—	—	1.08

There is a clear shift in the distribution toward a greater number of cause provisions. We do a chi-squared test for the significance of this shift and find it has a value of 116.14, which is significant at the .01 level.[210] We therefore reject the null hypothesis that the number of provisions in the definition of cause has not changed during our sample period.

2. Without Cause Terminations

In contrast to cause terminations where the departing employee receives little or nothing from the employer, terminations without cause for CEOs and football coaches result in substantial payouts to the departing personnel.[211] In the case of football coaches, they typically receive an amount equal to the net present value of the compensation that they would have received if they had remained as a coach until the end of their contract.[212] For example, if a coach had a five-year contract and was terminated after his first year as a head coach, then he would be entitled to receive four years of compensation payments.[213]

Employment contract provisions related to without-cause severance payments for CEOs are significantly less generous and typically only pay them a multiple of base salary. Table 6 provides some detail on the actual distribution of the amounts of these payments listed in the employment contracts for both football coaches and CEOs.[214]

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210. *See generally* PRISCILLA E. GREENWOOD & MICHAIL S. NIKULIN, A GUIDE TO CHI-SQUARED TESTING (1996).

211. A very high percentage of coaches have such clauses in their employment contracts in our sample. This percentage has increased from 85% in the 1995–2001 time period to 96% in 2008–2013.

212. Dennie, *supra* note 170, at *6.

213. In some cases, however, these payments are made on the same time schedule as provided in the contract with the departed head coach subject to a duty to mitigate his damages. Roughly one-third of the contracts in our sample require a departing coach to mitigate his damages. For instance, Darrell Hazell's contract with Purdue contained such a clause. Employment Agreement Between Darrell Hazel and Purdue Univ. § 5.2.1.1 (Sept. 27, 2013), *available at* https://www.documentcloud.org/documents/1344013-darrell-hazell-contract.html [http://perma.cc/9QXE-GN6T] ("In the event Purdue terminates Coach's employment without Cause, Coach shall use reasonable efforts to mitigate Purdue's obligations hereunder by obtaining football coaching employment . . . .").

214. Ex post agreements to pay additional amounts of compensation after termination are also sometimes entered into for a variety of reasons. David Yermack, *Golden Handshakes: Separation Pay for Retired and Dismissed CEOs*, 41 J. ACCT. & ECON. 237, 255 (2006).

Table 6. Payments when terminated without cause (percentages (%) of base salary)

Severance Payment Amount	Coaches (total compensation)	CEOs (base salary)
No payment	12.5	1.9
Payment less than one year of compensation	1.6	2.1
Payment equals one year of compensation	2.0	8.0
Payment is greater than one year but less than two years of compensation	5.2	2.4
Payment equals two years of compensation	2.3	29.1
Payment is greater than two years but less than three years of compensation	5.9	2.9
Payment equals three years of compensation	3.3	20.5
Payment is greater than three years but less than four years of compensation	8.8	2.7
Payment equals four years of compensation	5.9	—
Payment is greater than four years but less than five years of compensation	11.9	—
Payment equals five years of compensation	11.5	—
Payment is greater than five years of compensation	29.0	—
Not Mentioned or other form	—	30.4

One likely explanation for the larger payments that are made to football coaches is the greater likelihood that coaches will be terminated by their universities and the need to compensate them for any reputational and financial harm that may result from it. As noted earlier, college football coaches are more likely to be dismissed than CEOs.[215]

Executives can also choose to leave their jobs for another employer. Voluntary separation can either be for good reason or without good reason. CEO voluntary terminations without good reason usually result in the loss of severance benefits for the executive, so they want to have as broad a definition of good reason as possible.[216] Companies have the opposite perspective and want to limit good reason to a narrow set of circumstances to avoid having their CEOs leave easily for alternative

215. *See supra* Part I.B.2.

216. Good reason for quitting is commonly defined to include the CEO getting paid less, being transferred to a distant location, or being forced to take on less job responsibility. Schwab & Thomas, *supra* note 12, at 253.

employment. This can lead to hard bargaining over, for example, what constitutes a diminution of duties or responsibilities that could trigger a good-reason departure. The employment contracts of CEOs do not normally contain a buyout provision if the CEO chooses to resign without good reason.

In sharp contrast, the employment contracts of college football coaches may contain a buyout provision if the coach chooses to resign without good reason.[217] The payment of this buyout is frequently conditioned upon the coach resigning to accept another coaching position. For example, Richard Rodriguez's August 21, 2007, amended employment contract with West Virginia University contained a buyout clause that required him to pay the university $4 million if he left the university prematurely to go to another team.[218] After Rodriguez left to go to the University of Michigan, he paid $1.5 million, and Michigan paid the remaining $2.5 million of the buyout to West Virginia University.[219] These provisions grant the university some compensation for the harm that it suffers when a coach prematurely departs for another school.

E. Noncompetition Clauses and Arbitration Provisions

Two other important types of clauses that appear frequently in CEO employment contracts are noncompetition clauses and arbitration provisions. Prior research on CEO employment contracts has found that arbitration provisions appear more than 50% of the time,[220] whereas noncompetition clauses are present in around 80% of these agreements.[221] Such contract provisions are uncommon in college football coach contracts.

1. Noncompetition Clauses

Noncompetition provisions and other postemployment restrictions are very common in the employment contracts of CEOs.[222] At public companies, noncompetition clauses are hotly negotiated.[223] Companies are very sensitive to the potential for CEOs to walk away from the firm with proprietary knowledge and go

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217. In untabulated results, we find that approximately 37% of coaches owe payments to their former employer if they leave their current coaching position upon any without-good-cause resignation, while an additional 47% of coaches owe a payment for any without-good-cause resignation only if they are accepting a position at another university. Where no buyout clause is included in the contract, universities typically allow the coach to depart without seeking damages for the harm caused by his departure. Greenberg, *supra* note 87, at 248.

218. *Michigan To Pay $2.5M, Rodriguez $1.5M To Satisfy WVU Buyout*, ESPN (July 9, 2008), http://sports.espn.go.com/ncf/news/story?id=3479493 [http://perma.cc/57PB-U7N5].

219. *Id.*

220. Erin O'Hara O'Connor, Kenneth J. Martin & Randall S. Thomas, *Customizing Employment Arbitration*, 98 IOWA L. REV. 133, 161 (2012).

221. Norman D. Bishara, Kenneth J. Martin & Randall S. Thomas, *An Empirical Analysis of Noncompetition Clauses and Other Restrictive Postemployment Covenants*, 68 VAND. L. REV. 1, 28 (2015).

222. Schwab & Thomas, *supra* note 12, at 241.

223. *Id.* at 239.

to work for competitors.[224] Noncompetition clauses are costly to the executives where they may be forced into long periods of unemployment in a field where they have been most successful.[225] These competing interests must be reconciled with the end result often reflecting the company's willingness to offer extended periods of severance payments and judicial decisions limiting the enforceability of strong noncompetition agreements.[226]

By comparison, noncompetition provisions are exceedingly rare in the employment contracts of college football coaches. In fact, we found such clauses in just 23 of the contracts of the 429 coaches in our sample. Coaches are strongly opposed to having such clauses in their contracts because if the clauses are written broadly, the coaches might not be able to work for another school. A second reason for their scarcity is that college football coaches' skills are less firm-specific and involve less confidential information than those of CEOs. In other words, the university has less concern that a coach will be able to leverage information after moving to another university and be able to compete with the school on an unfair basis. The one exception is where the coach has been actively recruiting a particular set of players to come to the school, leaves, and tries to take the players with him to his new school.[227] Here a variation on noncompetition clauses, the so-called "nonrecruit" clause, stops a departing coach from recruiting any players that he had recruited for his prior employer.[228]

A third reason for the relative scarcity of these clauses in football coaches' contracts may be that the bargaining power of successful coaches is keeping them from being widely adopted.[229] For example, when such a clause appears in a coach's

224. *Id.*

225. *Id.*

226. *Id.*

227. For example, when Vanderbilt head football coach James Franklin left Vanderbilt to go to Penn State, he took a large number of players that he had recruited for Vanderbilt with him to Penn State. Jeff Lockridge, *Analyst Says James Franklin Could Destroy Vanderbilt Recruiting Class*, USA TODAY (Jan. 13, 2014, 1:52 PM), http://www.usatoday.com/story/sports/ncaaf/2014/01/13/analyst-says-james-franklin-could-destroy-vanderbilt-recruiting-class/4457185/ [http://perma.cc/DB5U-NPAZ].

228. Gina A. Pauline & John T. Wolohan, *An Examination of the Non-Recruit Clause in Intercollegiate Coaching Contracts*, 21 J. LEGAL ASPECTS SPORT 219, 228–35 (2012) (providing review of the enforceability of nonrecruit clauses in the context of Marist College v. Brady, 924 N.Y.S.2d 529 (2011)). For example, Ohio State University inserted this type of clause in the contracts of its head coaches Jim Tressel, Luke Fickell, and Urban Meyer. Employment Agreement Between Ohio State Univ. and James P. Tressel § 5.3(e) (June 16, 2003) (on file with the Indiana Law Journal); Head Football Coach Employment Agreement Between Ohio State Univ. and Luke Fickell § 5.2(b) (Oct. 19, 2011) (on file with the Indiana Law Journal); Employment Agreement Between Ohio State Univ. and Urban F. Meyer § 5.3(c) (unsigned and undated copy on file with the Indiana Law Journal).

229. Michael P. Elkon, *Enjoining Nick Saban: Non-Compete Agreements and College Football Coaches*, NON-COMPETE AND TRADE SECRETS (Jan. 9, 2012, 11:09 AM), http://www.noncompetenews.com/post/2012/01/09/Enjoining-Nick-Saban-Non-Compete-Agreements-and-College-Football-Coaches.aspx [http://perma.cc/72LQ-LGHJ].

initial contract with his university, the coach will bargain hard to get it removed as quickly as possible.[230]

2. Arbitration

"[A]rbitration is a creature of contract"[231] and may be contained in an employment contract to avoid the difficulties of publicly resolving scandal, or conflict, or both. CEO employment contracts frequently contain an arbitration provision.[232] Arbitration clauses can be viewed as desirable by both parties to a CEO employment contract. Companies universally want to arbitrate disputes to keep things private, and thereby avoid adverse publicity over a messy termination and possible public litigation. Normally, employees would want to preserve their right to a jury trial, calculating that a jury of their peers would be more sympathetic to their situation than to the company firing them. However, CEOs may have good reason to believe that juries will not identify with their compensation demands, as the amounts involved may seem excessive to most members of the public. This may lead executives to favor arbitration generally, although they may still carefully negotiate the selection process for the arbitrators and their right to appeal from an adverse decision.

The employment contracts of college football coaches infrequently contain an arbitration provision.[233] For our sample, we find arbitration provisions in roughly 11.4% of all of these contracts.[234] They are sometimes included because coaches and universities are forced to balance the divergent interests of different stakeholders in an athletic program, so "it is important to consider methods of dispute resolution that can provide some level of control over a situation before it becomes a scandal."[235] Placing mandatory arbitration provisions in coaching contracts has been proffered as a way to keep disputes outside the "spotlight of a courtroom," as quarrels between coach and university often draw a significant amount of negative attention to parties.[236] However, it appears that they are substantially less popular in coaches'

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230. For example, Pat Hill's employment contract dated January 1, 2011, with California State University at Fresno eliminated a noncompetition clause that had been present in his initial contract dated September 1, 1999. *Compare* Supplemental Letter of Appointment Between the President of Cal. State Univ., Fresno and Lawrence Patrick Hill § 7 (Jan. 1, 2011) (on file with the Indiana Law Journal) (No noncompetition clause is stated), *with* Employment Agreement Between Cal. State Univ., Fresno and Pat Hill § 24 (Sept. 1, 1999) (on file with the Indiana Law Journal) (stating that Pat Hill may not seek other employment as a head coach if terminated before the end of his term).

231. Moberg, *supra* note 201, at 106 (quoting STEVEN C. BENNETT, ARBITRATION: ESSENTIAL CONCEPTS 59 (2002)). Moberg's article identifies issues in drafting mandatory alternate dispute resolution clauses in coaching contracts and provides a mock draft of one such clause and confidentiality agreement. *Id.* at 106–12.

232. Thomas et al., *supra* note 125, at 979.

233. *See* Moberg, *supra* note 201, at 86–87.

234. In untabulated results, we find no significant change over time in the frequency of these clauses in our contracts over the sample period.

235. Moberg, *supra* note 201, at 86.

236. *Id.* at 86, 97–98. The authors also suggest pairing a mandatory ADR clause with a confidentiality provision. *Id.* at 88.

contracts than in CEOs' contracts. We speculate that path dependence may be a factor in slowing the adoption of these provisions for football coaches.

CONCLUSION

We conclude that college football coaches' employment contracts are quite similar to CEOs' contracts in that while the dollar value of their compensation is high, as long as it is structurally aligned with value creation for shareholders, the level may be warranted. Moreover, we find, as theory would predict, that college football coaches have shorter job tenure,[237] contracts that focus more on termination events and payoffs, and contracts that contain bigger severance payments for departing coaches.[238]

We also predicted that coaches would receive more performance-based pay and have shorter employment contracts than CEOs. We find that successful coaches are commonly rewarded with an amended contract and as a result their contracts are effectively in place for a shorter time period.[239] While coaches are less likely to have large pay-for-performance payments in their initial contracts, successful coaches promptly receive pay increases and a new contract, while unsuccessful coaches are terminated.[240] Economic theory also led us to predict that football coaches will see their compensation rise more rapidly and that coaches will capture a greater percentage of increases in program value, especially for external hires. We found that compensation of coaches has been rising faster than for CEOs recently but can offer only circumstantial evidence that they are capturing more of the increase in program value than CEOs are capturing in firm value.[241]

At the same time, there are several differences between CEO and football coach contracts that require further analysis to explain. First, only 50% of CEOs have employment contracts while virtually all football coaches have them. While many CEOs have some other form of contractual arrangements with their firm, these agreements are not as protective as a written employment contract. One possible explanation is that a coach's success (and failure) is more readily observed than a CEO's. Both universities and coaches have strong interests in careful planning for the coaches' more frequent job changes. This may be coupled with universities' need to have well-specified rights to terminate coaches for NCAA rule violations, as discussed above in Part III.D.1. Another possible explanation is that internal candidates are less likely to request written contracts because of their greater knowledge of the company's board of directors, and CEOs are more likely than football coaches to be drawn from the internal ranks.

Next, the vast majority of CEO contracts have noncompetition clauses in them, whereas almost no football coach contracts have them. This difference may reflect the fact that coaches' skills are generally transferable to any football program and there is little loss of firm-specific capital for the university when a coach leaves. However, a noncompetition clause effectively forecloses coaches' labor market

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237. *See supra* Part III.A.
238. *See supra* Part III.D.
239. *See supra* Part III.B.5.
240. *See supra* Part III.B.5.
241. *See supra* Part III.B.5.

opportunities, so they will resist it strenuously. The one exception where the departing coaches may be able to unfairly compete with their former employers is with respect to incoming recruits. Based on their pre-existing personal relationships, coaches may have an advantage in convincing new recruits to abandon their former commitments to come join them at their new school. To stop this form of competition, some universities have insisted on "nonrecruit" clauses, a form of noncompetition provision.[242]

Finally, while arbitration provisions are quite common in CEO employment contracts, they are included in little more than 10% of football coach contracts.[243] This is puzzling as many of the same considerations that lead firms to adopt arbitration provisions for CEO agreements would appear to be present for football coaches. We expect that over time this type of provision will become more common in football coach contracts, but we theorize that path dependence has slowed down its adoption.

In sum, we find that a close comparison of CEO employment contracts and college football coach contracts shows that both sets of agreements conform to the predictions of economic theory. Thus, if one believes that CEO compensation is set by the market at an appropriate level, and that employment contracts reflect this equilibrium, then one should reach the same conclusion about football coaches.

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242. *See supra* note 228 and accompanying text.
243. *See supra* Part III.D.2.

APPENDIX

Table A. Yearly breakdown of sample contracts

	Contracts	Percent of Total
1995	25	2.64
1996	32	3.38
1997	34	3.59
1998	31	3.27
1999	38	4.01
2000	43	4.54
2001	36	3.80
2002	41	4.33
2003	49	5.17
2004	57	6.02
2005	56	5.91
2006	64	6.76
2007	65	6.86
2008	72	7.60
2009	73	7.71
2010	57	6.02
2011	74	7.81
2012	69	7.29
2013	31	3.27
Total	*947*	*100*