

UNCONSCIONABLE: FIGHTERS, CONTRACTS, AND A HARDCORE CASH-MONEY SPORT

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INTRODUCTION

Average people are rarely involved in fistfights.¹ Even more rarely do they fistfight their coworkers.² Almost unthinkable is it for a person to be contracted to receive a \$100,000 bonus to knockout their coworker while wearing underwear, locked in a cage, in front of thousands of screaming fans. The sport of Mixed Martial Arts (MMA) is littered with agreements like the example illustrated above.³ Another example of these outlandish agreements would be the “we do not test for steroids” language found in the contracts of the nostalgia ridden, supplement fueled, fever dream that was the spectacle of Pride Fighting Championship.⁴ It was an open secret that this promotion all but encouraged their athletes to indulge in any and all performance enhancing drugs, which was likely a significant factor contributing to the many iconic matches held in the promotion’s heyday.⁵ These are but a few tales that illustrate the fast paced and testosterone laced sport that is MMA, and some of the contractual agreements that make the meat grinding promotions that facilitate these events possible.

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1. Emmanuel Rudatsikira et al., *Variables Associated with Physical Fighting Among US High-School Students*, NCBI (May 29, 2008), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2423367/pdf/1745-0179-4-16.pdf> (a study examining the likelihood of juveniles to engage in physical confrontation is only roughly 30%).

2. Anurag Mitra, *How Many Fighters Are There in the UFC?*, SPORTSKEEDA, <https://www.sportskeeda.com/mma/news-how-many-fighters-ufc> (July 23, 2022).

3. Tim Bissell, *Un-redacted Documents Show the UFC Gave Lyoto Machida a \$100,000 Stoppage Bonus*, BLOODY ELBOW (Aug. 5, 2019, 5:00 PM), <https://www.bloodyelbow.com/2019/8/5/20754612/ufc-gave-lyoto-machida-100000-stoppage-bonus-unredacted-documents-lawsuit-mma-news> (hereinafter *Un-redacted Docs*).

4. Ryan Miller, *PRIDE Contract Stated Fighters Could Use Steroids*, BJPENN.COM (July 21, 2014), <https://www.bjpenn.com/mmanews/pride-contract-stated-fighters-could-use-steroids/>.

5. Kyle McLachlan, *Enson Inoue’s PRIDE FC Contract Highlights Lack of Steroid Testing*, BLOODY ELBOW (July 20, 2014, 4:00 PM) <https://www.bloodyelbow.com/2014/7/20/5920195/enson-inoue-pride-contract-shows-no-steroid-testing-mma-news>.

MMA is a sport that embodies everything American, a bloody spectacle of skill and fury.⁶ The rugged individual nature of fighters is much akin to the nostalgic myths of cowboys or frontiersmen of the West, an industry plagued more than most with the “bootstrap mentality” of “self-made men.”⁷ Moreover, what is more American than the visceral violence of a fistfight?

Modern MMA is not just a cultural spectacle. It has become a major business spearheaded by massive organizations such as the Ultimate Fighting Championship (UFC).⁸ Like any business, promoters must facilitate their existence through the use of contracts between themselves and the fighters they promote.⁹ Due to its hegemonic presence in the sport,¹⁰ the UFC’s contracts should be given special attention as they affect fighters industry-wide.

The general consensus among MMA media is “[t]here has never been a better time to be a fight fan.”¹¹ This sentiment is no doubt shared by the promoters themselves thanks to the recent explosion in profitability among MMA organizations; however, is this golden age of fighting shared by those doing the actual fighting?¹² The hazards fighters face are growing with MMA’s rise in popularity.¹³ Promotions could improve the lives of fighters by overhauling their contracts. Many of these contracts are unconscionable—blatantly unreasonable and oppressive to fighters. This is leading to growing resentment among fighters and will likely lead to increased litigation in the future. Given how one-sided these contracts currently are, fighters could potentially invalidate them using the doctrine of unconscionability.

The following is an examination of applying unconscionability in contracts between MMA fighters and the UFC. Part I examines the history of MMA and the rise of the UFC, along with the stories of fighters who sacrifice their bodies and minds on the altar of physical competition to make the sport what it is today. Part II examines common practices and terms in UFC contracts. Part III defines

6. See generally, Jon Bois & Felix Biederman, *Fighting in the Age of Loneliness*, SB Nation, <https://www.sbnation.com/a/mma-history> (last visited July 30, 2022) (an excellent documentary on not only the history of MMA, but an examination of the sport as a socioeconomic reflection of culture and politics throughout history and into the modern era).

7. Omar Baddar, *Editorial: Why This Progressive Loves MMA*, BLOODY ELBOW (Dec. 8, 2020, 12:00 PM), <https://www.bloodyelbow.com/2020/12/8/22158969/why-this-progressive-loves-mma-oped-omar-baddar-politics-sports>.

8. Tim Bissell, *UFC Anti-Trust Docs Reveal the Tactics ZUFFA Used to Choke Out Their Competition*, BLOODY ELBOW (Aug. 22, 2019, 8:00 PM), <https://www.bloodyelbow.com/2019/8/22/20813817/ufc-anti-trust-lawsuit-tactics-zuffa-used-choke-out-competition-bellator-strikeforce-ifl-mma-news> [hereinafter *Anti-Trust Docs*].

9. Jonathan Snowden, *The Business of Fighting: A Look Inside the UFC’s Top-Secret Fighter Contract*, BLEACHER REPORT (May 14, 2013), <https://bleacherreport.com/articles/1516575-the-business-of-fighting-a-look-inside-the-ufcs-top-secret-fighter-contract>.

10. *Anti-Trust Docs*, *supra* note 8.

11. See Luke Thomas, *Here’s why MMA Is Better than EVER | Extra Credit EP. 5 | Morning Kombat*, YOUTUBE (Oct. 25, 2021), <https://youtube.be/xNLidqNFRH8>.

12. Anton Tabuena & John S. Nash, *Dana White Claims 2019 Is “Biggest Year” in UFC History*, BLOODY ELBOW (Dec. 24, 2019, 7:30 AM), <https://www.bloodyelbow.com/2019/12/24/21036248/dana-white-claims-2019-is-biggest-year-in-ufc-history>.

13. *Id.*

unconscionable, or “adhesion,” contracts. Part IV applies unconscionability to UFC contracts, demonstrating that they are unconscionable, and therefore unenforceable. Lastly, Part V offers individual lawsuits as a possibility to free fighters from the more oppressive aspects of their contracts while other more systemic pathways, such as congressional action and unionization, currently fail to gain traction. Lawsuits claiming unconscionability could provide fighters with a reasonable and novel pathway to negotiating better agreements in the future and put pressure on the UFC to reform their contract negotiations with fighters going forward.

I. WHAT IS MMA, AND WHY DOES IT MATTER?

Put simply, MMA is the sport of the future. Throughout the last decade MMA has exploded in popularity and is held by many as the fastest growing sport in the world.¹⁴ This is a far cry from the spectacle that at one time had to shop state by state and even venture into tribal lands to legally operate.¹⁵ The industry of MMA is almost unrecognizable from its humble beginnings on the streets of Brazil or its origins in feudal Japan and earlier.¹⁶ The UFC is at the forefront of the MMA’s growth and it influences the entire industry. Potential legislation, fighter labor movements, media deals, and revenue generation for states hosting MMA events are becoming increasingly relevant legal issues. Given that MMA is an emerging cultural and economic phenomenon in America, the controversies surrounding the sport merit consideration. Just as professional football, basketball, soccer, boxing, and baseball have influenced culture and society as a whole; so too will MMA follow in the footsteps of more established sports.¹⁷

MMA is a full contact sport usually involving two athletes engaged in hand-to-hand combat.¹⁸ Fighters are permitted to use all manner of striking techniques, barring some restrictions on grounded opponents.¹⁹ Similar to boxing, the standard match can be fought in a ring, but many promotions opt for cages. The UFC fights in their patented octagon.²⁰ Fighters can also engage in grappling exchanges involving wrestling and all manner of joint locks and strangulation.²¹ Matches are

14. Tim Adams, *Ultimate Fighting Championship: The Fight of Our Lives?*, THE GUARDIAN (Mar. 26, 2017, 4:00 PM), <https://www.theguardian.com/sport/2017/mar/26/ultimate-fighting-championship-fight-of-our-lives-mma-donald-trump-vladimir-putin-conor-mcgregor>.

15. Jeffrey B. Same, Comment, *Breaking the Chokehold: an Analysis of Potential Defenses Against Coercive Contracts in Mixed Martial Arts*, 2012 MICH. ST. L. REV. 1057, 1063 (2012).

16. T.P. Grant, *MMA Origins: Vale Tudo and the Original MMA Rivalry*, BLOODY ELBOW (Jan. 1, 2012, 1:00 PM), <https://www.bloodyelbow.com/2012/1/1/2663021/mma-origins-vale-tudo-and-the-original-mma-rivalry>.

17. See *Holt v. Cox Enter.*, 590 F. Supp. 408, 410 (N.D. Ga. 1984) (noting public interest in rivalry between football teams); *Bell v. Associated Press*, 584 F. Supp. 128, 129 (D.D.C. 1984) (noting public interest in conduct of professional athletes); *Curtis Publ’g Co. v. Butts*, 388 U.S. 130, 136 (1967) (noting a football coach is a public figure because of popularity of the sport).

18. *What is MMA?*, UFC, <https://www.ufc.com/about/sport> (last visited Aug. 12, 2022).

19. *Unified Rules of Mixed Martial Arts*, ASS’N OF BOXING COMMISSIONS, <https://www.abcbxi ng.com/wp-content/uploads/2020/02/unified-rules-mma-2019.pdf> (last visited Aug. 12, 2022).

20. *The Octagon*, UFC, <https://www.ufc.com/octagon> (last visited Aug. 12, 2022).

21. *Unified Rules of Mixed Martial Arts*, *supra* note 19.

won through knockout, referee stoppage, or the submission of one's opponent often signaled through a physical or verbal "tap."²² Finally, most matches have a set number of rounds. If a bout persists through the entirety of rounds, most promotions then defer to judges who pick a winner based off effective use of techniques, aggression, and affliction of damage.²³

The history of MMA traces back to as long as people have fought; however, the real story starts in Japan. In feudal times, the Japanese art of Jiu-jitsu was used by samurai when disarmed in battle. This fighting technique of throws, holds, and chokes was a closely guarded secret of the aristocracy and noble class.²⁴ The art eventually spread throughout all of Japan, but was still contained within the borders of the island nation.²⁵

Kano Jigoro adapted Jiu-jitsu into what we now know today as the Olympic sport of Judo, an art of mainly high-impact throws and limited ground submissions tailored for smaller combatants to thwart their larger aggressors.²⁶ Kano Jigoro was succeeded by his pupil Mitsuyo Maeda, or "Count Koma" as he became known. Count Koma traveled the world showcasing the effectiveness of Judo outside of Japan throughout the early twentieth century.²⁷ Maeda ventured to South America, where he taught his art to the Brazilian Gracie clan, a name enshrined in history for bringing martial arts to the world stage.²⁸

The Gracies developed what is now called Brazilian Jiu Jitsu (BJJ) through their experiences in many Vale Tudo (anything goes) fights throughout the streets and stadiums of Rio de Janeiro.²⁹ The Gracies were naturally talented promoters who came from a family of businessmen and entertainers.³⁰ After nearly a century of growing their art through academies and provocative advertisements "taking all comers," the Gracies stepped onto the global stage and demonstrated the supremacy of their art at UFC 1 on November 12, 1993.³¹ Fighters from a variety of martial arts competed for a cash prize. Part novelty and part bloodbath, the event showcased everyone from a sumo wrestler, a comically dirty French kickboxer, and a professional boxer wearing one glove among more notable contestants. Ultimately the slender and unassuming Royce Gracie stood undefeated, proving the effectiveness of BJJ.³²

22. *Id.*

23. *Id.*

24. T.P. Grant, *History of Jiu Jitsu: Judo Travels the World and Maeda Meets Gracie*, BLEACHER REPORT (Apr. 6, 2011), <https://bleacherreport.com/articles/653972-history-of-jiu-jitsu-judo-travels-the-world-and-maeda-meets-gracie>.

25. *Id.*

26. *Id.*

27. *Id.*

28. Grant, *supra* note 16.

29. *Id.*

30. T.P. Grant, *MMA Origins: UFC 1*, BLOODY ELBOW (Mar. 26, 2012, 3:00 PM), <https://www.bloodyelbow.com/2012/3/26/2890710/mma-origins-ufc-1-MMA-History>.

31. *Id.*

32. *Id.*

A. *The UFC and its Rise to Supremacy*

There was a myriad of competing organizations in the early days of MMA. From the thigh high boots and pro-wrestling stylings of Pancrase;³³ to the soccer kicking, head stomping orgy of violence that was Pride FC;³⁴ to the more contemporary Strikeforce and World Extreme Cagefighting (WEC). Over the years, the UFC put the industry in a chokehold, absorbing Pride, Strikeforce, and WEC, leaving few options for most high-level fighters.³⁵ Today the UFC lacks any real competition and holds nearly all top talent in the sport.³⁶ Smaller promotions such as Bellator and ONE FC exist, but are dwarfed by the behemoth UFC.³⁷

The UFC is focused on presenting MMA as a polished and streamline sport comparable to other mainstream professional sports leagues. This was mainly done through a process of professionalization, sanitizing the sport, but also imposing negative effects on the rank-and-file fighters which the promotion signs.³⁸

More stringent drug testing was one way the UFC attempted to clean up what was perceived as a “dirty” sport. Drug testing came with a litany of issues for many fighters, including location reporting requirements, random test invasions, and mandatory suspensions with little to no recourse even if found innocent.³⁹ Additional window dressing came in the form of required uniforms for fighters through apparel and sponsorship deals.⁴⁰ While this standardized fighters’ appearance, it also deprived them of revenue opportunities for advertisement on their own fight kits (the apparel fighters wear while competing). Lastly, the UFC secured television deals to market to a mainstream audience on major channels like Spike T.V. Now, a lucrative ESPN deal guarantees the UFC a steady stream of income for years to come.⁴¹

33. Matthew McKeeman, *Pancrase: An Odd Piece of MMA History*, BLEACHER REPORT (Mar. 8, 2010), <https://bleacherreport.com/articles/358856-pancrase-an-odd-peice-of-mma-history>.

34. Jonathan Snowden, *Sex, Drugs, Gangsters and MMA: Remembering Pride, UFC’s Wild Predecessor*, BLEACHER REPORT (July 6, 2017), <https://bleacherreport.com/articles/2718986-sex-drugs-gangsters-and-mma-remembering-pride-ufcs-wild-predecessor>.

35. Leon Horne, *UFC Buys Strikeforce: The Winners and Losers of the Purchase*, BLEACHER REPORT (Mar. 12, 2011), <https://bleacherreport.com/articles/633843-ufc-buys-strikeforce-the-winners-and-losers-of-the-purchase>.

36. Expert Report of Hal J. Singer, PH.D. at 70, *Cung Le v. Zuffa, LLC*, 321 F.R.D. 636 (2017) (No. 727-1).

37. *Id.* at 75.

38. Same, *supra* note 15, at 1064.

39. Jeremy Botter, *UFC Reveals Details of USADA-Controlled Anti-Doping Program*, BLEACHER REPORT (June 3, 2015), <https://bleacherreport.com/articles/2485221-ufc-reveals-details-of-usad-a-controlled-anti-doping-program>.

40. Damon Martin, *UFC Reveals New Pay Tiers for Fighters Under Venum Partnership After Reebok Era Comes to an End*, MMAFIGHTING (Apr. 2, 2021, 9:01 AM), <https://www.mmafighting.com/2021/4/1/22361946/ufc-reveals-new-pay-tiers-for-fighters-under-venum-partnership-after-reebok-era-comes-to-an-end>.

41. Mike Bohn, *Official: UFC, ESPN Announce Five-Year Deal for Exclusive TV Rights Beginning in 2019*, MMAJUNKIE (May 23, 2018, 3:50 PM), <https://mmajunkie.usatoday.com/2018/05/official-ufc-espn-five-year-deal-tv-rights-beginning-2019>.

The UFC has become synonymous with MMA.⁴² This consolidation of the industry along with the general power which the UFC wields in the sport has even led to claims of monopsony and monopoly in ongoing antitrust litigation.⁴³ *Cung Le v. Zuffa*⁴⁴ has shed new light on the practices of the UFC, exposing many common contracting practices between the organization and its fighters.⁴⁵ *Cung Le* demonstrates how crucial it is to address the UFC's contractual relationships with fighters. Because of its juggernaut status in the industry, the UFC can impose virtually whatever terms it wants on fighters.⁴⁶ While *Cung Le* is largely an antitrust case, it highlights many top fighters' struggles dealing with their unconscionable UFC contracts.⁴⁷

B. The Fighters, their Struggles, and Better Opportunities

UFC contracts appear reasonable on their face. Most fighters only compete a handful of times per year and are paid thousands of dollars for fights lasting no more than twenty-five minutes. However, upon closer inspection, these top tier athletes in an organization that makes record profits each year⁴⁸ receive a pittance compared to most professional athletes.⁴⁹ Moreover, fighters' "one night's work" on fight nights are the product of months of training for each bout. Each fighter requires nutritionists, gym fees, trainers, transportation, and a host of other out-of-pocket expenses to ensure they are prepared for their fights. When all is said and done, many fighters on the roster are lucky to break even on years when fight offers are scant considering their compiled expenses and low pay.⁵⁰

Recently, even the current Heavyweight Champion of the world Francis Ngannou, a power puncher the likes of which the UFC loves to market, has needed to take out loans just to pay for his training camps.⁵¹ This is no up-and-comer paying his dues and working his way up the organization. He is the Heavyweight Champion of the world, the "baddest man on the planet," employed with the premiant organization of his sport, attesting that even he is just scraping by.⁵² Jarrod Cannonier, currently ranked the number six middleweight contender in the

42. Same, *supra* note 15.

43. *UFC Fighter Class Action Lawsuit*, UFC ANTITRUST LAWSUIT, <https://www.ufcclassaction.com> (last visited Aug. 12, 2022).

44. *Cung Le v. Zuffa, LLC*, 216 F. Supp. 3d 1154 (D. Nev. 2016).

45. *UFC Fighter Class Action Lawsuit*, *supra* note 43.

46. *Cung Le*, 216 F. Supp. 3d at 1159.

47. *Id.*

48. Tabuena, *supra* note 12.

49. David Manuel, *A Look at Revenue Splits in the NFL, MLB, NHL and NBA*, SPORTS KING (Feb. 27, 2020, 12:05 AM), <https://www.sports-king.com/revenue-split-sports-leagues-2771/>.

50. Paul Gift, *The Expenses of Being a Professional Cage Fighter*, FORBES (Apr. 17, 2019, 9:30 AM), <https://www.forbes.com/sites/paulgift/2019/04/17/expenses-of-being-professional-cage-fighter-ufc-bellator-mma-news/?sh=53e3f5f61eff>.

51. John S. Nash, *Why Francis Ngannou's Toughest Opponent is a UFC Contract*, BLOODY EL-BOW (Oct. 21, 2021, 10:00 AM), <https://www.bloodyelbow.com/2021/10/21/22727706/francis-ngannou-toughest-opponent-ufc-contract-mma-editorial> [hereinafter *Francis Ngannou's Toughest Opponent*].

52. *Id.*

world, recently caused waves when he stated he was “broke” during a post-fight press conference, making him another example the financial woes of even top fighters.⁵³ It has even become common for fighters to essentially beg Dana White, the longtime president of the UFC, in their post-fight interviews for “Fifty G’s, baby;” referring to the discretionary bonuses which are given to some fighters who perform well in their bouts.⁵⁴

Low pay is not a fighter’s only financial issue. Uniform deals with Reebok and now Venum crushed a once thriving “middle class” of fighters in the UFC. Fighters could previously enter into sponsorship agreements to sell advertisements on their fight shorts. This was especially beneficial to journeyman fighters who would likely never contend for a title and therefore never see the bump in pay which accompanies such a feat. Despite not winning titles, many fighters had cult followings they leveraged into lucrative marketing deals. This opportunity has been largely quashed by the UFC’s exclusive deals with apparel companies which offers only comparatively meager payouts to most athletes.⁵⁵

Recent imposition of United States Anti-Doping Agency (USADA) testing requirements also burdens fighters. Stringent USADA policies require fighters to report their location and be willing to test at nearly any time day or night. USADA also establish a form of strict liability for any illegal substances found during these tests.⁵⁶ Fighters have relatively short careers,⁵⁷ so lengthy suspensions can be professional death sentences.⁵⁸ This was illustrated in the case of *Zuffa v. Wanderlei*;⁵⁹ and in *Romero v. Gold Star*.⁶⁰ In *Romero*, a fighter brought suit when a tainted supplement led to a positive drug test, costing him a chance at a title fight.⁶¹

53. Damon Martin, *Jared Cannonier Clears Up “Broke” Remark After Latest UFC Win: “I Would Like to Get Paid Like an Elite-Level Athlete”*, MMA FIGHTING (Aug. 23, 2021, 4:30 PM), <https://www.mmafighting.com/2021/8/23/22638322/jared-cannonier-clears-up-broke-remark-after-latest-ufc-win-i-would-like-to-get-paid-like-an-athlete>.

54. Steven Rondina, *How the UFC Turned Its Bonus System Into a Weapon*, BLEACHER REPORT (Sept. 20, 2016), <https://bleacherreport.com/articles/2664615-how-the-ufc-turned-its-bonus-system-into-a-weapon>.

55. Martin, *supra* note 40.

56. Jeremy Botter, *UFC Reveals Details of USADA-Controlled Anti-Doping Program*, BLEACHER REPORT (June 3, 2015), <https://bleacherreport.com/articles/2485221-ufc-reveals-details-of-usad-a-controlled-anti-doping-program>; Botter, *supra* note 39.

57. Singer, *supra* note 36, at 61-62.

58. *Id.* at 61.

59. *Zuffa v. Wanderlei*, No. A-15-722258, 2015 Nev. Dist. LEXIS 2074, at *2 (D. Nev. Dec. 14, 2015) (Wanderlei Silva after testing positive for performance enhancing drugs was given a life-time ban from the UFC; moreover, the organization sued Silva for defamation further handicapping him financially for crossing the UFC).

60. *Romero v. Gold Star Distrib., LLC*, 257 A.3d 1192, 1197 (N.J. Super. Ct. App. Div. 2021).

61. *Id.* See also *In re Lyman Good Dietary Supplements Litig.*, No. 17-CV-8047 (VEC), 2020 U.S. Dist. LEXIS 109318, at *2 (S.D.N.Y. June 22, 2020) (another instance of a fighter pursuing re-tribution due to tainted supplements).

Fighters lack long-term job security because of their limited fighting window and have few opportunities outside of the octagon after retirement.⁶² It is sad and unbecoming of an organization like the UFC when its former fighters are forced to participate in obscure and dangerous promotions just to support themselves financially in the twilight of their careers. This harsh reality extends even to former champions and legends of the sport. B.J. Penn and Chuck Liddell are perfect examples of this phenomenon, suffering strings of repeated brutal knockouts after decades of fighting.⁶³

This begs the question, why claim these contracts are unconscionable? Contracts bind fighters to the UFC and impose financial burdens and barriers. Fighters must forgo opportunities with other promotions throughout the duration of their UFC contract.⁶⁴ This is especially cumbersome to top level fighters who have opportunities outside of the UFC. The growing trend of celebrity boxing matches, or “money fights” illustrates the opportunity to make millions in one night.⁶⁵ This was the case in the bouts of Conor McGregor v. Floyd Mayweather,⁶⁶ Anderson Silva v. Tito Ortiz,⁶⁷ or more recently through the boxing match of Tyron Woodley and Jake Paul.⁶⁸ Fighters currently bound exclusively to the UFC could capitalize on this lucrative trend by invalidating their unconscionable contracts. Some obvious examples of fighters who could benefit from ending their exclusivity agreements are former champion Georges St. Pierre, Jon Jones, and the above-mentioned Francis Ngannou.⁶⁹

II. CONTRACTING PRACTICES OF THE UFC

The UFC does not publicly disclose its contracts with fighters.⁷⁰ However, some fighters have disclosed details of their agreements. One notable example is former Lightweight Champion Eddie Alvarez who disclosed his entire UFC offer

62. *5 Fighters Who Went Broke After Making it Big in UFC*, SPORTSKEEDA, <https://www.sportskeeda.com/mma/5-fighters-went-bankrupt-making-big-ufc> (last visited Aug. 12, 2022).

63. Farah Hannoun, *Chuck Liddell: B.J. Penn's Fight Should be Canceled After Getting Knocked Out in Brawl*, MMAJUNKIE (Aug. 30, 2019, 1:00 PM), <https://mmajunkie.usatoday.com/2019/08/chuck-liddell-says-bj-penn-fight-should-be-canceled-nik-lentz-bar-brawl-knockout>.

64. Singer, *supra* note 36, at 27-28.

65. Brent Brookhouse, *Jake Paul vs. Tyron Woodley Fight Purse, Salaries: How Much Money Each Fighter Earned After Sunday Boxing Match*, CBSSPORTS (Sept. 1, 2021, 9:34 AM), <https://www.cbssports.com/boxing/news/jake-paul-vs-tyron-woodley-fight-purse-salaries-how-much-money-each-fighter-earned-in-sunday-boxing-match/>.

66. Scott Polacek, *Mayweather vs. McGregor Purse: Known Prize Money Payout Distribution*, BLEACHERREPORT (Aug. 27, 2017), <https://bleacherreport.com/articles/2728958-mayweather-vs-mcgregor-purse-known-prize-money-payout-distribution>.

67. Brian Campell, *Anderson Silva vs. Tito Ortiz: 'The Spider' Scores a One Punch Knockout in Round 1 of Their Triller Bout*, CBSSPORTS (Sept. 11, 2021, 10:16 PM), <https://www.cbssports.com/boxing/news/anderson-silva-vs-tito-ortiz-the-spider-scores-a-one-punch-knockout-in-round-1-of-their-triller-bout/>.

68. *Id.*

69. *Francis Ngannou's Toughest Opponent*, *supra* note 51.

70. Snowden, *supra* note 9.

during negotiations with another promotion.⁷¹ A more recent and comprehensive examination of these contracts came from the documents released in *Cung Le v. Zuffa*. Hundreds of pages of expert testimony have shed light on many of the common strategies and specific clauses the UFC utilizes to control fighters.⁷²

Contract formation for most fighters is straight forward. Barring a few top athletes, the negotiations are one sided due to the leverage the UFC has over the market. The UFC signs fighters for a limited term, usually a set amount of time or fights.⁷³ The average fighter is only bound to the UFC for a few fights, creating a large lower class of athletes needed to fill the mandatory number of cards the UFC must provide through their deal with ESPN.⁷⁴ Conversely, some fighters spend their entire careers with the UFC, and not always by choice.⁷⁵

A. Common Terms

1. Exclusive Promoter Agreement

One of the most common and constraining provisions in UFC contracts are exclusive promotional agreements.⁷⁶ These clauses prevent fighters from working with any other promotor of MMA. The UFC uses these clauses as a “one way ratchet” to bind fighters to advantageous terms once a fighter has signed their initial contract since the fighter will have no other promotion to effectively bargain with.⁷⁷ These clauses are also utilized to prevent fighters from competing in other combat sports, such as boxing, further nurturing fighters’ dependency on the UFC for income.⁷⁸

The UFC also requires fighters to engage in a “reasonable” level of promotion for their fights.⁷⁹ To comply, fighters must take time out of their training camps to engage in regular press junkets, media appearances, and other events to advertise for the organization.

2. UFC Right to Accelerate

Termination or acceleration clauses are nearly universal in UFC contracts. These give the UFC unilateral rights to accelerate the number of fights or the

71. *Id.*

72. Tim Bissell, *UFC Lawsuit Docs Reveal Joe Silva's Negotiation Tactics with Nick Diaz, Roy Nelson, and Hector Lombard*, BLOODY ELBOW (Aug. 13, 2019, 5:00 PM), <https://www.bloodyelbow.com/2019/8/13/20758629/ufc-lawsuit-docs-reveal-joe-silva-negotiation-tactics-nick-diaz-roy-nelson-hector-lombard-mma-news> [hereinafter *UFC Lawsuit Docs*].

73. Singer, *supra* note 36, at 13-21.

74. *Id.* at 43-44.

75. *UFC Lawsuit Docs*, *supra* note 72.

76. Snowden, *supra* note 9.

77. Singer, *supra* note 36, at 42.

78. Dan Hiergesell, *Report: UFC Shoots Down Oscar De La Hoya vs. Georges St-Pierre Boxing Match*, MMA MANIA (May 15, 2021, 4:17 PM), <https://www.mmamania.com/2021/5/15/22437752/report-ufc-shoots-down-oscar-de-la-hoya-vs-georges-st-pierre-boxing-match-mma>.

79. Snowden, *supra* note 9.

timeframe of contracts—effectively giving them the power to terminate contracts at any time.⁸⁰ Technically, the UFC may only do this conditionally. Examples of the conditions used include a fighter failing to engage in a bout, a misdemeanor criminal charge, any violation of contractual clauses, and even losing a fight.⁸¹ The list of triggering conditions is so broad it allows the UFC to terminate contracts at will with their “cut clause;” conversely, fighters have no equal recourse to accelerate their contracts.⁸²

3. *Tolling and Other Contract Extensions*

Perhaps the most outrageous provisions in UFC contracts are those that allow agreements to be extended in perpetuity.⁸³ Injuries are extremely common in MMA. If a fighter is under contract with the UFC when injured, the promotion can then extend the contract for the amount of time between fights, not just the time a fighter was injured.⁸⁴ Another common reason for extension is a fighter missing or turning down a fight. If a fighter is unable to fight for any reason, whether that be by their own choice or an act of God, the UFC may extend the duration of that fighter’s contract.⁸⁵ The number of ways the promotion can extend contracts, paired with the limited time a fighter can perform at a competitive level, means UFC contracts rarely ever meet their end.⁸⁶ There are even cases of the UFC utilizing this tolling provision to extend fighter contracts arbitrarily and without cause, which adds another layer of filth to the already underhanded agreements.⁸⁷

4. *Championship and Retirement Clauses*

Even retired fighters are not free from their obligations with the UFC without its consent. Retirement clauses allow the UFC to suspend fighters’ contracts upon their retirement.⁸⁸ This pauses the agreement with however many fights remain on the contract, preventing fighters from competing with other promotions if they chose to come out of retirement.⁸⁹

Former Light Heavyweight and Heavyweight Champion Randy Couture is well aware of this provision. In *Zuffa v. HDNet MMA*, Couture attempted to come out of retirement to fight arguably the best Heavyweight of all time, Fedor Emielieneko, in a non-UFC bout.⁹⁰ Unfortunately for Couture, the retirement

80. *Id.*

81. *Id.*

82. Singer, *supra* note 36, at 42.

83. *Id.* at 59.

84. *Id.* at 54.

85. Snowden, *supra* note 9.

86. Singer, *supra* note 36, at 48.

87. *Id.* at 55 (Zuffa employee deposition indicating matchmaker Joe Silva would extend contracts for any amount of time he felt necessary for negotiating, as was the case in UFC fighter Fabiano).

88. Snowden, *supra* note 9.

89. Singer, *supra* note 36, at 45.

90. *Zuffa, LLC v. HDNet MMA 2008 LLC*, 262 S.W.3d 446, 448 (Tex. App. 2008).

clause quashed the possibility of this fight.⁹¹ Many other former fighters face this issue when coming out of retirement, particularly if they have clashed with the organization in the past. A current example is Georges St. Pierre (GSP). GSP vacated his title against the wishes of UFC President Dana White, who was intent on having GSP defend the belt to capitalize on Pay-Per-View sales. Despite retiring from MMA, GSP remains bound by his contract, preventing him from engaging in a “money fight” with boxer Canelo Alvarez without the permission of the UFC.⁹²

The “championship clause” is becoming the UFC’s most powerful tool to suppress fighters during negotiations.⁹³ This clause has become nearly universal in UFC contracts.⁹⁴ If a fighter becomes a champion, their contract automatically extends one year from its original termination date, or until the fighter has competed in three more fights for the organization.⁹⁵ The real purpose of this clause is to first ensure that a fighter cannot leave as a title holder of the UFC and fight in another promotion, but also to prevent champions from leveraging their success in negotiations with the UFC immediately following the capture of a title.⁹⁶

The current situation of Heavyweight Champion, Francis Ngannou, is a perfect example of the coercive nature of these clauses. Ngannou refused a short notice fight after becoming champion; he subsequently refused to sign a new contract and is holding out for a more reasonable offer.⁹⁷ The championship clause still binds him to the organization and leaves him in limbo until his next fight.

Potential recourses for Ngannou are uncertain. It is unclear if he could wait out his contract because of the interaction between the championship clause and tolling provisions upon refusing a fight. He will likely need to successfully defend his title against fellow Frenchman Ceryl Gane to retain his fleeting leverage gained from his heavyweight title. The championship clause could be interpreted to potentially hold Ngannou in perpetuity. It is unclear what would happen if he would complete his contract but remained a champion—would the clause trigger again and continue to bind him in an infinite loop? Litigating the scope of the clause may provide the only definitive answer. A broad interpretation of the clause may even rise to the level of a 13th Amendment violation by forcing Ngannou into *de facto* involuntary servitude to the UFC.⁹⁸

5. Option and Exclusive Negotiating Period

Many contracts contain an “option period.” This clause allows the UFC to extend a duplicate of a contract, potentially multiple times. Exercising these

91. Steve Marrocco, *Randy Couture Spent \$500,00 Fighting UFC in Court, Expects Tough Road for Georges St-Pierre*, MMA JUNKIE (Oct. 21, 2016, 1:30 PM), <https://mmajunkie.usatoday.com/2016/10/randy-couture-spent-500k-fighting-ufc-in-court-expects-tough-road-for-georges-st-pierre>.

92. Hiergesell, *supra* note 78.

93. Singer, *supra* note 36, at 44.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Francis Ngannou's Toughest Opponent*, *supra* note 51.

98. *Id.*

options could potentially double or triple the contract's length. The UFC again retains the sole ability to exercise this right.⁹⁹

Many contracts also impose a period of exclusive negotiation following their expiration. Once a fighter reaches the end of a contract, instead of being able to test the open market, the UFC imposes an exclusive negotiation period which generally lasts three months.¹⁰⁰ Even if a fighter completes the mandatory period of negotiation, they are still subject to a "right of first refusal" in most contracts. These provisions give the UFC the right to match any offer from rival promotions.¹⁰¹ Fighters must disclose any offers to the UFC for a period of up to a year, and if the UFC matches the offer, they are forced to accept it.¹⁰² The right of first refusal gives the UFC extreme latitude and discretion to keep the fighters they want from leaving the organization, while simultaneously suppressing competition and wages by preventing other promotions from procuring top talent.¹⁰³

6. Pay Structure

Documents made public in *Cung Le v. Zuffa* revealed that, despite the UFC's record profitability, the revenue split between fighters and the promotion is woefully one sided. Revenue has consistently been split at roughly twenty percent to fighters, and eighty percent to the UFC.¹⁰⁴ This distribution is pitifully scant compared to other professional sports.¹⁰⁵

Regardless of the revenue split, fighters are compensated through several different channels. Common payments include: bout show compensation, bout win compensation, Pay-Per-View payments (only to a handful of fighters), letter of agreement payments (side agreements for signing with the promotion), and other payments such as sponsorships for wearing mandated apparel, and merchandise sales.¹⁰⁶ Another notable revenue stream for fighters are "performance bonuses," one-time payments awarded post-fight to athletes who have particularly impressive stoppages or entertaining bouts.¹⁰⁷ These awards can sometimes appear arbitrary and serve as one more tool the organization can use to control fighters who cooperate with the UFC without ruffling any feathers with management.¹⁰⁸

99. *UFC Lawsuit Docs*, *supra* note 72.

100. Singer, *supra* note 36, at 56.

101. *Id.*

102. *Id.*

103. *Id.* at 57.

104. John S. Nash, *UFC Fighter Pay Has Increased but the Promotion's Profits Have Increased Even More*, BLOODY ELBOW (July 9, 2021, 7:00 PM), <https://www.bloodyelbow.com/2021/7/9/22570828/ufc-fighter-pay-salary-numbers-ari-emanuel-comments-revenue-earnings-mma-news>.

105. Manuel, *supra* note 49.

106. John S. Nash, *Lawsuit Documents Reveal Even More Details on UFC Business Structure and Fighter Pay*, BLOODY ELBOW (Feb. 23, 2020, 12:00 PM), <https://www.bloodyelbow.com/2020/2/3/20922496/ufc-lawsuit-docs-reveal-more-details-ufc-business-structure-fighter-pay-class-action-business-news> [hereinafter *UFC Business Structure*].

107. Rondina, *supra* note 54.

108. *Id.*

The UFC also requires fighters to sign away their name, image, and likeness (NIL).¹⁰⁹ This includes name, signature, voice, and even tattoos. This agreement extends for life and beyond, as not even a fighter's death terminates this provision.¹¹⁰ Compensation from this arrangement comes in predetermined tiers depending on the fighter. Some fighters make next to nothing for their appearance and merchandise, while others who are in a higher tier can receive nearly thirty percent of sales revenue.¹¹¹

B. Common Practices and Bargaining Power

Disparate bargaining power between fighters and the UFC is another factor contributing to these lopsided contracts. Fighters must individually negotiate with the UFC, an organization with over 500 fighters on the roster.¹¹² No matter how popular or valuable one fighter may be, there are always more eager fighters ready to step into the octagon and take their place.¹¹³ In contrast, the UFC is essentially the only game in town. To reach the top in the fight game is to fight for the UFC, giving the company significant advantages in negotiating with individual replaceable fighters. To advance their careers in any meaningful way, a fighter can either submit to the UFC's terms, or go pound sand.¹¹⁴

The UFC's coercive bargaining practices contribute to its lopsided contracts. One common practice of the UFC is to strategically time offering new contracts to veteran fighters.¹¹⁵ It is typical for UFC matchmakers to renegotiate a fighter's contract just before their last fight, particularly after a fighter has suffered a loss in previous bouts.¹¹⁶ Losing is damaging to a fighter's career. Fighters need to win and climb the ranks of their division to grow in popularity and compete for championships. Having recently lost with an expiring contract is a precarious position to be in as a fighter. The UFC capitalizes on this precarity and attempts to buy-low on their fighters' futures by negotiating in this window. The fighters in response could accept the offer and fight for less money for the sake of job security, or deny it and potentially be cut or risk the ire of the entire organization.¹¹⁷ This is particularly risky considering the promotor has complete control over when and who a fighter may compete against, in addition to control over the optional extension clauses of the contracts.

The UFC's exclusive control over matchmaking and fight offers is another powerful tool for controlling fighters.¹¹⁸ If a fighter clashes with the promotion or

109. Singer, *supra* note 36, at 24-25.

110. Snowden, *supra* note 9.

111. *UFC Business Structure*, *supra* note 106.

112. Anurag Mitra, *How Many Fighters Are There in the UFC?*, SPORTSKEEDA, <https://www.sportskeeda.com/mma/news-how-many-fighters-ufc> (July 23, 2022).

113. Jeffrey B. Same, Comment, *Breaking the Chokehold: An Analysis of Potential Defenses Against Coercive Contracts in Mixed Martial Arts*, 2012 MICH. ST. L. REV. 1057, 1065.

114. *Id.*

115. *UFC Lawsuit Docs*, *supra* note 72.

116. *Id.*

117. *Id.*

118. *Id.*

does not submit to its terms, they face several possible repercussions.¹¹⁹ One option would be for the promotion to extend the time as much as possible between bouts for the problematic fighter. This strategy is akin to sieging a castle, hoping to starve out your opposition. By refusing to offer fights in a reasonable timeline, the UFC cuts off what is essentially the only stream of income a fighter has access to.¹²⁰ Former UFC fighter, Jon Fitch, illustrated this principle well in a recent deposition where he stated, “[m]ost guys know if you don’t sign the re-up, you don’t get your bout agreement. If you don’t get your bout agreement, you don’t get paid, you don’t get money, you can’t feed your children.”¹²¹

Another option the UFC has in terms of matchmaking would be to pair a problematic fighter with an unfavorable matchup or give them undesirable placement on a fight card.¹²² This would include pairing a relatively known and popular fighter against a dangerous undefeated up and coming fighter who is new to the promotion. This is essentially a lose-lose situation for the fighter causing problems. A heavily favored fighter gains no reputational increase or additional clout for defeating an unknown opponent. However, if the fighter loses, they risk being cut due to the above “cut clause” or must now renegotiate after suffering a loss to what would be considered a lesser fighter, thereby further diminishing the leverage of the fighter renegotiating.¹²³ Dana White explicitly illustrated the spirit behind these matchmaking strategies in a post-fight scrum as far back as 2013, stating:

I can tell you this, man, if you call Joe Silva and turn down a fight, you might as well say, ‘fucking rip up my contract.’ He will... yeah. He’s a mean little fucker. You don’t call Joe Silva and tell him you don’t want to fucking fight anybody, man. You might as well just take the fight, ‘cuz, ‘cuz, it’s gonna be worse, if you do [refuse the fight]. You might as well just do it, [just say] fuck it, alright? I’ll fight him.¹²⁴

Dana White, saying the quiet part loud, admits the UFC will go to drastic measures to enforce the agreements it seeks to make. Going as far to sabotage the careers of fighters through the control of matchmaking.¹²⁵

In summation, the collective practices of the UFC, empowered by the potentially unconscionable terms found in their agreement, has led to a pattern of oppressive practices. Through the threat of matchmaking, tolling provisions, and all manner of exertions of power the organization has been able to suppress the wishes of its athletes and profit off their suffering whenever possible. A perfect example of the unreasonable agreements at work would be the case of Hector Lombard, a former UFC Middleweight contender, and Judo Olympian for the

119. Singer, *supra* note 36, at 52.

120. *Id.* at 49.

121. Bissell, *supra* note 72.

122. Singer, *supra* note 36, at 52.

123. *Id.* at 52-53.

124. *Id.* (alteration in original).

125. Bissell, *supra* note 72.

Cuban national team.¹²⁶ Halfway through Lombard's eight-fight deal, and just after he suffered a loss, the UFC approached Lombard to renegotiate. Knowing fully well he could be cut after a loss, Lombard accepted a new contract to fight for less than half of the amount stipulated in his original contract.¹²⁷ The dictionary definition of unconscionable contains the language "unjust," and if anything, that is exactly what cutting someone's compensation in half mid-agreement should be considered, completely unjust.¹²⁸

III. UNCONSCIONABILITY

In general, unconscionability is somewhat of an ethereal doctrine which is rarely applied due to the restraint many states choose to exercise when interfering with parties' freedom to contract with one another.¹²⁹ When it is applied, the basic idea of unconscionability is to be a defense against the enforceability of a contract or provisions within.¹³⁰ While many states and jurisdictions have their own interpretations of this doctrine, a common theme is that unconscionability applies to an agreement that is not covered by another defense such as duress or outright fraud, but is still nonetheless unfair or oppressive to a lesser party.¹³¹ A more classical explanation describes an unconscionable agreement as one which, "no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other."¹³² The Restatement (Second) of Contracts Section 208¹³³ contains a fairly concise and influential outline of unconscionability adapted from the language of Section 2-302 of the Uniformed Commercial Code (UCC).¹³⁴ Section 208 has influenced the practices many jurisdictions take when applying unconscionability to all contracts, not just commercial ones.¹³⁵

A case which is often used to demonstrate the basic principles of unconscionability is *Williams v. Walker-Thomas Furniture Co.* In *Williams*,¹³⁶ a buyer entered into an agreement with the defendant for the purchase of furniture; however, the payment scheme devised by the defendant was shown to have the potential for unconscionability.¹³⁷ Essentially the buyer would have a balance left

126. *Hector Lombard*, TAPOLOGY, <https://www.tapology.com/fightcenter/fighters/hector-lombard-shango> (last visited Aug. 12, 2022).

127. Bissell, *supra* note 72.

128. *Unconscionable*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/unconscionable> (last visited Aug. 12, 2022).

129. Catherine Riley, *Signing in Glitter or Blood?: Unconscionability and Reality Television Contracts*, 3 NYU J. INTELL. PROP. & ENT. L. 106, 116 (2013).

130. *Id.*

131. *Id.* at 117.

132. *Earl of Chesterfield v. Janssen*, 28 Eng. Rep. 82, 100 (Ch. 1750).

133. *See generally* RESTATEMENT (SECOND) OF CONTS. § 208 (1981) (defining an unconscionable contract or term).

134. *Id.*

135. Riley, *supra* note 129, at 117.

136. *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445, 450 (D.C. Cir. 1965).

137. *Id.*

on every item they purchased from the seller and in the event of default on any installment for one item, the seller maintained the ability to reposes every item sold.¹³⁸ Ultimately the buyer had the burden of showing “an absence of meaningful choice ... together with contract terms which [were] unreasonably favorable to the other party.”¹³⁹ This conclusion illustrates what has become a common two prong test to evaluate unconscionability. One prong examines the procedural issues surrounding the contract, while the other addresses more substantive concerns within the contract itself.¹⁴⁰

A. *Procedural Unconscionability*

Procedural unconscionability involves the external situation of the formation of the contract, including the weighing of several factors.¹⁴¹ Some traits which are traditionally weighed between the parties include bargaining power, education or intelligence, and ability to understand the terms of an agreement.¹⁴² Other “[f]actors to be considered include the use of sharp practices or high pressure tactics and the relative ... sophistication or wealth of the parties.”¹⁴³ A disparity in these factors can lead to what is considered “oppression” or “surprise” surrounding the formation of the contract.¹⁴⁴ When a contract is formed under these conditions it can generally show an overall absence of meaningful choice or no real presence of negotiating power.¹⁴⁵

One form of procedural unconscionability is a contract of adhesion.¹⁴⁶ An adhesion contract is one which is made by a party with superior bargaining power and is essentially a “take it or leave it” deal where the lesser party only has the opportunity to accept or decline the offer.¹⁴⁷ Contracts of adhesion are not per se unconscionable; however, they can be convincing evidence of proving such a situation.¹⁴⁸

The case of *Higgins v. Superior Court*,¹⁴⁹ demonstrates a basic example of applying procedural unconscionability to an adhesion contract. In *Higgins*, a group of brothers aged 14 to 21 entered into an agreement with a home renovation reality television show.¹⁵⁰ The brothers in question lived in the home of an adoptive family after the death of their parents; the show wanted to renovate this house and air it

138. *Id.* at 447.

139. *Id.* at 449.

140. 17A AM. JUR. 2D *Contracts* § 272 (2022).

141. *Id.*

142. *Colony Beach & Tennis Club, Inc. v. Colony Beach & Tennis Club Ass’n*, 454 B.R. 209, 217 (M.D. Fla. 2011) (applying Florida law).

143. *THI of N.M. at Vida Encantada, LLC v. Lovato*, 848 F. Supp. 2d 1309, 1325 (D.N.M. 2012) (quoting *Guthmann v. La Vida Llana*, 709 P.2d 675, 679 (N.M. 1985) (applying New Mexico law)).

144. 17A AM. JUR. 2D *Contracts* § 272 (2022).

145. *Zullo v. Super. Ct.*, 127 Cal. Rptr. 3d 461, 465 (Cal. Ct. App. 2011).

146. *Riley*, *supra* note 129, at 118.

147. *Armendariz v. Found. Health Psychcare Servs., Inc.*, 6 P.3d 669, 689 (Cal. 2000).

148. *Id.*

149. *Higgins v. Superior Ct.*, 45 Cal. Rptr. 3d 293, 296 (Cal. Ct. App. 2006).

150. *Id.*

as an episode.¹⁵¹ The situation went south when, after the renovation, the family hosting the brothers kicked them out of the newly renovated house. The brothers then filed suit against the show for failing to provide them with a home, all while profiting off the episode which claimed to do just that.¹⁵² The procedural unconscionability here came when the eldest brother signed the agreement with the host family and television network. The eldest brother was handed the contract by the host family, which was written by the network, and given only minutes to “flip through” it, then signed without understanding the document or terms within.¹⁵³

The court ultimately found the possibility of unconscionability in an arbitration provision due to many of the factors discussed above. Firstly, the contract was one of adhesion since it was a standardized contract presented “on a take-it-or-leave-it basis by the party with the superior bargaining position who was not willing to engage in negotiations.”¹⁵⁴ Additionally, the brothers in question were young, unsophisticated, and vulnerable due to the recent death of their parents; in fact, the network targeted the brothers specifically because of these traits.¹⁵⁵ Finally, an arbitration clause was buried under twelve paragraphs within a miscellaneous section of the contract, drawing no special attention and requiring no initial or individual acknowledgment.¹⁵⁶ Collectively these factors come together to demonstrate what rises to the level of procedural unconscionability during the formation of a contract.¹⁵⁷

B. Substantive Unconscionability

Substantive unconscionability relates to the terms within a contract.¹⁵⁸ Generally, if a condition at the time of formation is overly harsh or surprises an innocent party, or if the term in question is particularly out of balance in the assignment of risk, these are all factors which may lead to an inquiry of substantive unconscionability within a contract or clause.¹⁵⁹ *Croce v. Kurnit*,¹⁶⁰ applying New York law, provides more colorful language, describing substantive unconscionable terms as those “which shock the conscience or differed so grossly from industry norms.”¹⁶¹

The California case of *Ali v. Daylight Transportation*¹⁶² demonstrates exactly what a substantively unconscionable contract can look like. In *Ali*, a group of truckers filed suit against their employer for misclassifying them as independent

151. *Id.*

152. *Id.* at 298.

153. *Id.* at 298-99.

154. *Id.* at 303-304.

155. *Id.* at 304.

156. *Id.*

157. *Id.* at 305.

158. 17A AM. JUR. 2D *Contracts* § 272 (2022).

159. *Id.*

160. *Croce v. Kurnit*, 565 F. Supp. 884, 893 (S.D.N.Y. 1982), *aff'd*, 737 F.2d 229 (2d Cir. 1984).

161. *Id.*

162. *Ali v. Daylight Transp., LLC*, 273 Cal. Rptr. 3d 544, 551 (Cal. Ct. App. 2020).

contractors.¹⁶³ The company moved to compel arbitration through a clause within the contract; however, the court ultimately denied this motion due to the clause being substantively unconscionable in three distinct ways.¹⁶⁴ First, the clause violated statutory language within state labor codes concerning the amount of time the truckers had to dispute their employment issues with the company, shortening the window for claims significantly.¹⁶⁵ Second, there was a clause which mandated the truckers bear half the cost of arbitration.¹⁶⁶ This clause was found to be unconscionable because the costs and risks could effectively bar any resolution of disputes for the truckers, giving them no recourse for grievances.¹⁶⁷ Last, the contract guaranteed the trucking company the right to pursue provisional remedies in court if it chose to do so.¹⁶⁸ This clause was also found to be substantively unconscionable because it was a unilateral carve out which benefitted the more powerful party, while subjecting the lesser party to a term they themselves were not limited to.¹⁶⁹ The conclusion was that collectively these terms were so unfair for the lesser party that the arbitration clause was unconscionable and therefore unenforceable.¹⁷⁰

C. *Balancing Determination and Remedy*

After courts have identified both the substantive and procedurally unconscionable factors surrounding a contract or clause, many jurisdictions then engage in a balancing test.¹⁷¹ Generally, both factors must be present to make a finding of unconscionability; however, not in equal parts.¹⁷² Some jurisdictions treat the analysis much like a sliding scale adding the factors together,¹⁷³ while others have been able to find contracts unconscionable due to an overwhelming amount of substantive unconscionability alone.¹⁷⁴

Since the doctrine of unconscionability is merely a defense to the enforcement of a contract, the remedy is not necessarily damages.¹⁷⁵ As demonstrated by California law, a state with a fairly developed doctrine of unconscionability,¹⁷⁶ the potential remedies are almost always in the form of making a contract or term unenforceable. In part, California Civil Code §1670.5

163. *Id.*

164. *Id.*

165. *Id.* at 557.

166. *Id.*

167. *Id.*

168. *Id.* at 558.

169. *Id.*

170. *Id.* at 560.

171. See *Henry v. Pizza Hut of Am., Inc.*, No. 6:07-cv-01128-Orl-DAB, 2007 U.S. Dist. LEXIS 72193, at *19-20 (M.D. Fla. Sept. 27, 2007) (involving a Pizza Hut employee and an arbitration agreement, concisely demonstrating balancing substantive and procedural unconscionability).

172. 17A AM. JUR. 2D *Contracts* § 272 (2022).

173. Riley, *supra* note 129, at 120.

174. 17A AM. JUR. 2D *Contracts* § 272 (2022).

175. RESTATEMENT (SECOND) OF CONTS. § 208 (1981).

176. Riley, *supra* note 129, at 120.

states, “the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.”¹⁷⁷ Perhaps more relevant for the purposes of this examination is a look at a similar Nevada statute,¹⁷⁸ as the UFC is headquartered in Las Vegas.¹⁷⁹ Nevada also practices the general balancing test examining both procedural and substantive elements of a contract to reach the remedy of voiding a term or entire agreement.¹⁸⁰

IV. UNCONSCIONABILITY IN UFC CONTRACTS

While the standard UFC contract no doubt has aspects of potential substantive unconscionability, the real focus should be on the procedural aspects surrounding the two parties. To reiterate, the UFC is an extremely wealthy and well-versed entity, whereas the common fighter is one man. No doubt there is a hierarchy among fighters. Some belong to more reputable gyms, and have more reliable and renown representation and management, but the fact remains that at the end of the day an individual is signing with an organization which dominates the entire field in question.

A. *Procedural Issues*

The most glaring issue in considering the external situation of these contracts is the deficit in bargaining power between the UFC and the fighters signing these contracts. As established, the UFC is a potential monopoly in the industry which signs nearly all top fighters in the sport.¹⁸¹ This has essentially created a situation in which no one fighter can make a demand of the organization because the bargaining power is so diffuse between individual athletes. This type of disparity between a strong party and a weak party with little to no ability to negotiate is the exact type of situation that can show oppression, and therefore the potential for unconscionability.¹⁸²

The high pressure and borderline coercive tactics demonstrated by the UFC in their negotiation is another relevant factor to consider. Sharp practices and high-pressure tactics, which are used to retract from the voluntary nature of an agreement have been used to argue unconscionability, as it retracts from the mutuality of a contract.¹⁸³ Here, the UFC has demonstrated time and again through emails with matchmakers that they explicitly time their deals with fighters when they are at their most precarious. Essentially the company asks fighters to gamble

177. CAL. CIV. CODE § 1670.5 (West 1975).

178. See NEV. REV. STAT. ANN. § 104.2302 (West 2020).

179. *Ultimate Fighting Championship*, LINKEDIN, <https://www.linkedin.com/company/ufc> (last visited June 28, 2022).

180. *D.R. Horton, Inc. v. Green*, 96 P.3d 1159, 1162 (Nev. 2004).

181. Singer, *supra* note 36, at 33.

182. *Ferguson v. Countrywide Credit Indus.*, 298 F.3d 778, 784 (9th Cir. 2002).

183. *THI of New Mexico at Vida Encantada, LLC v. Lovato*, 848 F. Supp. 2d 1309, 1325-26 (D.N.M. 2012).

their future and their family's well-being when bargaining; or even worse, threatening athletes with being cut from the promotion and other drastic measures, coercing fighters into competing for less money than they would have been guaranteed by their former contract.¹⁸⁴

Surprise is another possible factor in determining the procedural unconscionability at work in these agreements. Traditionally, surprise refers to terms being hidden in the drafting of a contract in a way which makes it obscure or difficult to comprehend.¹⁸⁵ Here, while there is no evidence of provisions being explicitly hidden in UFC contracts, there could be a potential question over the reality of the contracting period not being explicit due to the interworking of the various tolling provisions present. A fighter could claim the potential length of the contract period disclosed in the agreement is not the reality of what these contracts are. An agreement could appear to be a three-fight or one-year deal but in reality could last the fighter's entire career due to a combination of the above provisions.¹⁸⁶

Finally, the disparity in education and business acumen is another concerning feature of UFC contracts. When a large disparity exists in the acumen, education, or other factors that contribute to a party's competency, there can be concerns over an honest meeting of the minds, which contributes to possible procedural unconscionability.¹⁸⁷ This is by no means a jab at the education levels of fighters. These athletes come from all backgrounds, ranging from former college athletes, to civil engineers, to even lawyers as well.¹⁸⁸ However, the life of an athlete is purposely geared to maximize athletic performance and ability, not to prepare the individual to read line by line through arbitration and sponsorship agreements. The UFC has an entire apparatus to design and negotiate these contracts to secure the deals they want to have. The business acumen of a twenty-something-year-old who spends the majority of their day in the gym can in no way be compared to an industry leader that drafts these agreements on a monthly basis.¹⁸⁹ "Bargaining naughtiness" is a phrase used to describe unconscionability in the formation of a contract, but the practices the UFC utilizes to enter these agreements seems to rise above mere naughtiness.¹⁹⁰

1. *Adhesion Contract?*

The above issue of bargaining power is magnified in influence due to the possibility of UFC contracts being considered contracts of adhesion. As demonstrated above, many of the clauses across all fighter contracts in the UFC

184. Bissell, *supra* note 72.

185. Armendariz v. Found. Health Psychcare Servs., Inc., 6 P.3d 669, 690 (Cal. 2000).

186. Singer, *supra* note 36, at 62.

187. Johnson v. Mobil Oil Corp., 415 F. Supp. 264, 268 (E.D. Mich. 1976).

188. Sunderam Saxena, *5 Highly Educated Fighters in the UFC*, SPORTSKEEDA, <https://www.sportskeeda.com/mma/5-highly-educated-fighters-ufc> (last visited Aug. 12, 2022).

189. Tommy Cassell, *'The Soulless King': UFC's Kris Moutinho Views Fighting as an Escape From Real Life*, MMAJUNKIE (Dec. 23, 2021, 9:05 AM), <https://mmajunkie.usatoday.com/2021/12/ufc-news-what-makes-kris-moutinho-soulless-king>.

190. 17A AM. JUR. 2D *Contracts* § 272 (2022).

are essentially boilerplate in their effect, particularly the championship clauses, the exclusive promoter agreements, and the various provisions capable of extending fighters contracts.¹⁹¹ When a stronger party, here the UFC, presents a weaker party with what is essentially a form contract with dictated terms, the agreement can be considered one of adhesion; particularly when there is no opportunity for the lesser party to influence the terms.¹⁹² A common phrase used to describe adhesion contracts is “take it or leave it,” which is essentially how the UFC deals with its contracted fighters on a regular basis.¹⁹³

B. Substantive Issues

Unconscionability does not seek to overturn an agreement simply because it was a bad bargain for one party;¹⁹⁴ however, that does not mean that the analysis cannot examine the one sidedness of an agreement or its overall fairness.¹⁹⁵ Substantively unconscionable agreements may include “contract terms so one sided as to oppress” or “an overall imbalance in the obligations and rights imposed by the bargain.”¹⁹⁶ A common theme throughout UFC contracts is the unilateral nature of many terms. These would include the above-described extension, option, and acceleration provisions common in these agreements. Essentially, these clauses grant an imbalance of power to the already superior party that is the UFC. The company has all the cards, it alone has the right to decide when a fighter is unemployed or free of the agreement, or if they wish to extend it, whereas the fighter may be perpetually trapped by the company, unable to make income through other means.¹⁹⁷ Moreover, UFC ownership can effectively use the power of matchmaking to strategically benefit themselves, controlling when, if ever, a fighter will be paid through its offer or withholding of bouts.¹⁹⁸ Essentially the UFC has retained the right to throw a fighter to the side, while the fighter is completely dependent on the whim of the company for survival, much akin to the feudal relation between a vassal and lord.

Beyond the simple one-sidedness of these contracts, is the possibility that when you sign with the UFC it can be extremely difficult to ever fight anywhere

191. Singer, *supra* note 36, at 44.

192. Broemmer v. Abortion Servs. of Phoenix, LTD., 840 P.2d 1013, 1015-16 (Ariz. 1992).

193. Adam D. Martin, *Jorge Masvidal Details How UFC Conducts Contracts Negotiations: “(It’s) Take It or Leave It”*, BJPENN.COM (June 7, 2020), <https://www.bjpenn.com/mma-news/ufc/jorge-masvidal-details-how-ufc-conducts-contracts-negotiations-its-take-it-or-leave-it/>.

194. RESTATEMENT (SECOND) OF CONTS. § 208 (1981).

195. Maxwell v. Fid. Fin. Servs., Inc., 907 P.2d 51, 58 (Ariz. 1995).

196. Coup v. Scottsdale Plaza Resort, LLC, 823 F. Supp. 2d 931, 954 (D. Ariz. 2011) (quoting *Maxwell*, 907 P.2d at 89).

197. Singer, *supra* note 36, at 62.

198. Andrew Saunders, *Pros and Cons of the UFC Ignoring Their Own Rankings When Matchmaking*, BLEACHERREPORT, <https://bleacherreport.com/articles/1608869-pros-and-cons-of-the-ufc-ignoring-their-own-rankings-when-matchmaking> (last visited Aug. 12, 2022).

else in your lifetime, should the company desire.¹⁹⁹ This has been proven over the years from Randy Couture to GSP; once the UFC has you, good luck fighting your way out.²⁰⁰ States such as New York have found that perpetual service contracts are not on their face unconscionable or against public policy.²⁰¹ Additionally, New York law holds that only “exceptional cases” are sufficient to warrant a clause unenforceable solely based on substantive unconscionability.²⁰² Other jurisdictions have been more explicit in allowing perpetual service contracts, such as Illinois,²⁰³ while California has legislation limiting such arrangements to only seven years.²⁰⁴ This variance in practices surrounding a perpetual service contract shows there is still room for development in this area across jurisdictions.

These agreements are exactly the type of deals that should be considered unconscionable. A phrase associated with the common law defense of unconscionability is an agreement that “shock[s] the conscience.”²⁰⁵ In the case of the UFC, there are fighters who essentially do one thing for a living, fight. An agreement which has no end and ties a professional to an entity that may manipulate their career negatively or that may refuse to offer regular work is, on its face, one which would shock the conscious of any working person. This is not simply a restrictive covenant, but a contract which can stretch across the span of a fighter’s entire ability to compete and generate income in totality. Therefore, these contracts can bar fighters from making a living, from supporting themselves, and from supporting their families. That is on its face outrageous.

Further undercutting the ability of the fighters to support themselves during these contracts are the other various restrictive provisions which eliminate the ability to generate revenue outside of the UFC’s grasp. Through the Reebok and Venum deals, fighters are now even more dependent on the UFC to receive their mandated sponsorship money.²⁰⁶ This, in conjunction with the discretionary nature of most other bonuses, is one more way the company can now control, coerce, and exploit fighters into laboring for a fraction of what they could be making.²⁰⁷

199. Ryan Harkness, *Chael Sonnen: UFC is Already Punishing Jon Jones Just by Keeping Him Under Contract*, BLOODY ELBOW (Oct. 3, 2021, 9:57 PM), <https://www.mmamania.com/2021/10/3/2708181/chael-sonnen-ufc-is-punishing-jon-jones-just-by-keeping-him-under-contract>.

200. Dan Hiergesell, *Report: UFC Shoots Down Oscar De La Hoya vs. Georges St-Pierre Boxing Match*, BLOODY ELBOW (May 15, 2021, 4:17 PM), <https://www.mmamania.com/2021/5/15/22437752/report-ufc-shoots-down-oscar-de-la-hoya-vs-georges-st-pierre-boxing-match-mma>.

201. *Don King Prods., Inc. v. Douglas*, 742 F. Supp. 778, 780 (S.D.N.Y. 1990).

202. *Gillman v. Chase Manhattan Bank, N.A.*, 534 N.E.2d 824, 829 (N.Y. 1988).

203. *Lake Forest Acad. v. Am. Language Acad.*, 777 F. Supp. 610, 617 (N.D. Ill. 1991).

204. CAL. LAB. CODE § 2855 (West 2007). *See also* *De La Hoya v. Top Rank, Inc.*, 2001 U.S. Dist. LEXIS 25816, *34-37 (C.D. Cal. Feb. 6, 2001) (holding a contract between boxer and promoter void due to violation of length for personal service agreement in California).

205. *Christian v. Christian*, 42 N.Y.2d 63, 71 (1977).

206. Singer, *supra* note 36, at 25-26.

207. Steven Rondina, *How the UFC Turned Its Bonus System into a Weapon*, BLEACHER REPORT (Sept. 20, 2016), <https://bleacherreport.com/articles/2664615-how-the-ufc-turned-its-bonus-system-into-a-weapon>.

C. *Balancing Determination*

While many claims of unconscionability fail due to a lack of one of the two prongs required in most jurisdictions, the average UFC contract should be found to contain an appropriate amount of procedural unconscionability along with enough substantive issues to require at least some intervention. Procedurally these contracts, particularly when renegotiated mid-term, are made under extremely questionable and threatening circumstances for the lesser party. Moreover, the boilerplate nature of many common clauses, along with the negligible bargaining and negotiation power of the lesser party raises the question of these agreements being contracts of adhesion. Substantively the case may not be as strong. However, when considered together with the more procedural issues presented, these factors come together to lock fighters into perpetual servitude with little hope of escape, and for some spending their career walking on eggshells to avoid being kicked out of the promotion. Most unconscionability claims fall under three categories: arbitration agreements, forum selection, and price terms.²⁰⁸ While fighters' contracts do not fit under recent trends for this doctrine, this does not preclude courts to attempt to apply it regardless. Just as the UCC concepts of unconscionability were adapted from commercial contracts to influence more broad categories throughout the states, nothing is stopping the continued expansion of this doctrine to the novel situation that athletes involved in MMA find themselves.

D. *Unconscionability in Other Industries*

While no industry provides perfect parody for such a new sport, other industries do provide at least some roadmap for individual contract defenses. Indeed, some give helpful directions to look for future solutions, while others provide red flags and warnings of missteps to avoid.

1. *Boxing*

Boxing is a natural place to look for a legal analogue for the current path of the UFC. Besides being another combat sport with similar aesthetics, boxing has a long history of promoters, managers, and organizations utilizing unreasonable and coercive contracts to control the careers of prominent athletes.²⁰⁹ The case of *Don King Productions, Inc. v. Douglas*²¹⁰ demonstrates the challenges boxers faced in regard to unreasonable arrangements similar to where UFC fighters find themselves today. In *Douglas*, the court in part considered an unconscionability claim against a contract between a promoter and boxer. The stipulations in the

208. Brian M. McCall, *Demystifying Unconscionability: A Historical and Empirical Analysis*, 65 VILL. L. REV. 773, 809 (2020).

209. Daniel L. Maschi, *Million Dollar Babies Do Not Want to Share: An Analysis of Antitrust Issues Surrounding Boxing and Mixed Martial Arts and Ways to Improve Combat Sports*, 25 JEFFREY S. MOORAD SPORTS L. J. 409, 416 (2018).

210. *Don King Prods., Inc. v. Douglas*, 742 F. Supp. 778, 780-81 (S.D.N.Y. 1990).

contract strikingly resemble what many UFC fighters are held to in both “championship clauses” and “exclusive promoter agreements.”²¹¹ While the court here did not find the agreement unconscionable as to void it, the case can be distinguished from the situation of many UFC fighters. In *Douglas*, the petitioner was claiming the contracts became unconscionable due to later actions and circumstances, this is contrary to the policy of requiring the agreement be unconscionable when formed.²¹² In the UFC, fighters’ agreements should be considered unconscionable at the time of formation. UFC fighters often negotiate their future contracts while under the influence of their current contracts, leading to more reasonable claims of procedural unconscionability than were present in *Douglas*. In addition, the ruthless and coercive tactics the UFC uses when contracting are another procedural factor not alleged in the *Douglas* case. Moreover, in *Douglas* the potential for a boxer’s contract to tie them to one entity for their entire career failed due to a lack of procedural unconscionability paired with what would potentially make such a term substantively unconscionable.²¹³ UFC fighters may have a better chance to examine these substantive terms because there are far more procedural issues in their contracts to support the claims of substantive issues, unlike the purely substantive claims found in *Douglas*.

2. *Adult Entertainment*

A relevant Nevada case addressing unconscionable contracts among adult entertainers is *FQ Men’s Club v. Doe*.²¹⁴ This case is particularly relevant because many UFC events take place in Las Vegas, and because the contract in the case in question concerns personal service much like the athletes who provide the UFC with their services. In *FQ Men’s Club*, a contract signed between exotic dancers and a club was held to be an unconscionable “adhesion contract.”²¹⁵ Factors that contributed to this finding included that the dancers were “surprised... with the memorandum... as they arrived for their routine work shift,” and that they signed the agreements in an environment “unconducive to concentration” and under an imposed “time constraint.”²¹⁶ Also relevant was the fact “the Men’s Club prohibited the Dancers... from working pursuant to their existing contractual agreement until they signed the document.”²¹⁷ This situation is similar, albeit on a smaller scale, to the standard renegotiations the UFC engages in. Similar to *FQ Men’s Club*, the UFC often “surprises” fighters with a new contract offer just after losses. Also similar is the fact that the UFC maintains the right to drop fighters after such losses, essentially creating a situation where if a fighter doesn’t renegotiate, they may not be able to continue their current contract just as the

211. *See id.* at 748.

212. *State v. Avco Fin. Serv. of N.Y., Inc.* 50 N.Y.2d 383, 390 (1980).

213. *Douglas*, 742 F. Supp. at 780-81.

214. *FQ Men’s Club v. Doe*, No. 79265, 2020 Nev. Unpub. Lexis 864, at *1-3 (Sept. 17, 2020).

215. *Id.* at *6, 9-10.

216. *Id.* at *5.

217. *Id.*

dancers in the case at hand were unable to continue with their shift.²¹⁸ This example could reinforce a claim of UFC contracts in fact being contracts of adhesion.²¹⁹

V. FIGHTING FOR FIGHTERS IN THE AGE OF MONEY FIGHTS

Were a fighter able to present a showing of unconscionability in their agreement the benefits could be numerous. The most ideal situation would be for a court to hold the terms which make these agreements last a fighter's entire career unenforceable and void. While this would be a difficult task due to a lack of clear precedent, it seems like the most reasonable way to make these agreements less unreasonable. This solution would in part break the cycle of resigning due to fear of reprisal through mandatory negotiating periods or being held between fights perpetually. Additionally, giving fighters who wish to exit the organization a set date at which they are no longer constrained by the UFC would enable more popular fighters a chance to pursue money fights, or simply have access to negotiations between promotions in search of more even-handed dealing.

A. *Alternative Solutions*

1. *Fighters Union Formation*

Many professional sports have taken to fighting unreasonable and exploitative contracting practices through collective action.²²⁰ This would no doubt be the ideal path for fighters to combat predatory practices of promoters like the UFC. The issue here is that the creation of a fighter's union would be an extremely difficult task, even more so than most unions. The turnover rate among athletes in the UFC is extremely high, with many fighters only competing in less than a handful of bouts before being forced out of the promotion.²²¹ The fighters who are locked into long-term agreements with the promotion face other issues. First, any attempt at unionization could paint a target on the back of the fighters responsible. This is especially risky considering the UFC controls sponsorship payments, bonuses, and of course who fights whom, or if fighters get a fight at all! The iron fist of the UFC can be dropped on anyone who steps out of line to make change, not to mention many of the few fighters who do reach the top of the sport end up becoming "company men" ready to defend the organization against all criticism, including criticism from fellow fighters.²²² Additionally, UFC fighters are

218. Singer, *supra* note 36, at 52-53.

219. See generally *Garrett v. Hooters-Toledo*, 295 F. Supp. 2d 774 (N.D. Ohio 2003) (involving Hooters' wait staff and an arbitration agreement being held as unconscionable due to a myriad of procedural issues surrounding an employment contract).

220. Jeffrey B. Same, *Breaking the Chokehold: An Analysis of Potential Defenses Against Coercive Contracts in Mixed Martial Arts*, 2012 MICH. ST. L. REV. 1057, 1091-92 (2012).

221. *Id.* See also Singer, *supra* note 36, at 61-62.

222. Jacob Debets, *Opinion: On Daniel Cormier, the Company Man*, SHERDOG (June 19, 2020), <https://www.sherdog.com/news/articles/Opinion-On-Daniel-Cormier-the-Company-Man-173512>.

considered “independent contractors,” and would need to break through an initial roadblock of being classified as employees to unionize as well.²²³

A second issue is the overall culture and adversarial nature between fighters. The truth is fighters are fiercely independent. They work in an industry where they literally fistfight one another. This isn’t the most advantageous environment to foster solidarity among workers. Unfortunately, the UFC has created a market where fighters are willing to reverse bid and undercut one another to fight on a card.²²⁴ After retiring early from an eventful run in the UFC, Jimmy Flick lambasted the UFC for not looking out for fighter interests, and stated his fellow fighters were simply “too stupid” to unionize.²²⁵

2. Congressional Action

The Muhammad Ali Boxing Reform Act (Ali Act) addressed many of the issues which plagued boxing regarding exploitation by promoters and unreasonable contracting practices.²²⁶ Some in the field of MMA media have raised the idea that, if expanded, the Ali Act could help athletes in MMA as it did those in boxing.²²⁷ While the Ali Act would no doubt help to address some issues within MMA, there would still be vulnerabilities. The Ali Act mainly protects boxers from entering coercive contracts; however, it is a defensive tool and only makes these contracts unenforceable. In other words, fighters would still have to seek court action to address their grievances under this act.²²⁸ One obstacle is the massive lobbying effort by the UFC to prevent such acts from becoming law.²²⁹ Also relevant is the fact that congressional action in current partisan times is increasingly unlikely. In a world where a simple infrastructure bill becomes the fight of the century, what hopes do MMA fighters have at persuading congress to address this niche and novel issue concerning the men in cages hitting each other in the face?²³⁰

223. Same, *supra* note 220, at 1092-93.

224. Anton Tabuena, *Jimmy Flick on Retiring Early: UFC Fighters are ‘Too Stupid to Unionize,’* BLOODY ELBOW (Apr. 13, 2021, 9:00 AM), <https://www.bloodyelbow.com/2021/4/13/22381358/jimmy-flick-on-retiring-early-ufc-fighters-are-too-stupid-to-unionize>.

225. *Id.*

226. See generally Muhammad Ali Boxing Reform Act, 15 U.S.C. § 6301 (2006) (defining terms used in the chapter).

227. EMagraken, *US Athletic Commissioner Calls for Ali Act to be Brought to MMA*, COMBAT SPORTS L. (Sept. 1, 2021), <https://combatsportslaw.com/2021/09/01/us-athletic-commissioner-calls-for-ali-act-to-be-brought-to-mma/>.

228. Same, *supra* note 220, at 1076-77.

229. Tim Bissell, *UFC Spent an Estimated \$420,000 Lobbying the Ali Act in 2016*, BLOODY ELBOW (Mar. 13, 2017), <https://www.bloodyelbow.com/2017/3/13/14894754/ufc-ali-expansion-act-spent-an-estimated-420000-lobbying-2016-mma-boxing-politics-mullins-us-news>.

230. Susan Milligan, *How Partisan Politics Threatened Even Must-Pass Legislation in Congress*, U.S. NEWS (Oct. 1, 2021), <https://www.usnews.com/news/the-report/articles/2021-10-01/how-partisan-politics-threatened-even-must-pass-legislation-in-congress>.

B. Individualist Action for an Individualist Sport

While individual fighters making contract claims may seem like a long shot, especially when considering attempts throughout the last decade,²³¹ there are still glimpses of hope. Recently Mark Hunt, former UFC Heavyweight title contender and king of “walk off KO’s,” has had renewed hope on an appeal for fraud in his agreement with the UFC.²³² Mark Hunt suffered a brutal beating at the hands of the hotdog-skinned professional wrestling standout and freak athlete Brock Lesnar at UFC 200. It was later revealed Brock was fueled not only by his freakish athleticism, but also by the finest “Mexican supplements” (performance enhancing drugs) he could squeeze through a hypodermic needle.²³³ This proves to be an issue because while many other claims Mr. Hunt made against the UFC ultimately fizzled out, the fraud claim has received new life on appeal due to the explicit promises that Brock would be “the most tested athlete on this card,” being clearly not true.²³⁴ How *Hunt v. Zuffa* will shake out is up to the court. However, it does show even the UFC is not completely invulnerable from individual fighters seeking recourse. Just as with many fights in the octagon, there can always be an underdog that makes a comeback that nobody saw coming.

While fraud and unconscionability are obviously separate actions, the latter doctrine should still be seen as a possibility due to its malleable definition across many jurisdictions in addition to the overly zealous and tenacious clauses common throughout the industry. Shocking, unreasonable, oppressive, one sided, unfair, are all words to describe unconscionability, but also words an objective observer could use to describe the situation in which many fighters find themselves.²³⁵ Whether the solution be the changes from a lumbering monopoly class action suit, a fighters union, unlikely congressional expansion of the Ali Act, or individual fighters deciding to duke it out with the promotion over contract terms, fighters must take action to address their increasingly precarious position before what little leverage available is stripped away. Until something actively changes the industry’s practices, the only thing to do is defer to former Featherweight Champion Max Holloway’s classic tagline, “it is what it is.”²³⁶

231. Steven Marrocco, *Randy Couture Spent \$500,000 Fighting UFC in Court, Expects Tough Road for Georges St-Pierre*, MMAJUNKIE (Oct. 21, 2016, 1:30 PM), <https://mmajunkie.usatoday.com/2016/10/andy-couture-spent-500k-fighting-ufc-in-court-expects-tough-road-for-georges-st-pierre>.

232. *Hunt v. Zuffa*, No. 19-17529, 2021 U.S. App. LEXIS 29019, at *7 (9th Cir. Sept. 24, 2021).

233. Adam Wells, *Brock Lesnar Suspended 1 Year by USADA for Doping: Latest Details and Reaction*, BLEACHER REPORT (Jan. 4, 2017), <https://bleacherreport.com/articles/2685208-brock-lesnar-suspended-1-year-by-usada-for-doping-latest-details-and-reaction>.

234. *Hunt*, 2021 U.S. App. LEXIS 29019, at *4-5.

235. *Unconscionable*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/unconscionable> (last visited Aug. 12, 2022).

236. Zac Pacleb, *Max Holloway Isn’t Afraid of the Hard Path*, UFC (Jan. 14, 2021), <https://www.ufc.com/news/max-holloway-hard-path-kattar-main-event-fight-island-7>.

CONCLUSION

MMA was once an obscure sport, an oddity and relic which emerged from a more violent past. Today, thanks largely to the UFC, MMA is one of the fastest growing spectacles in society and is becoming more influential by the day. Athletes who compete in MMA are often subject to extremely one-sided agreements which yield few benefits. Predatory contracting methods, exemplified by the UFC's agreements with its athletes, strip fighters from the fruits of their labor and keep them caged in a position with few options. In the absence of collective and systemic solutions, individual lawsuits could provide a path for fighters to seek relief from their one-sided agreements. Due to the overwhelmingly unfair nature of the agreements in question, along with other factors at play, many common provisions of UFC contracts no doubt rise to the level of unconscionability. At a time when champions and other high-profile fighters are becoming increasingly disgruntled with the UFC, and in a market where opportunities outside the UFC are becoming more attractive, it is likely that some fighters will attack their contracts just as they do their opponents inside the cage. Unconscionability is one weapon which these fighters may soon utilize against their UFC contracts in order to escape or motivate the organization to change its contracting practices.