

Sports Litigation Alert

Reprinted from *Sports Litigation Alert*, Volume 16 Issue 24, December 20, 2019. Copyright © 2019 Hackney Publications.

Tua Tagovailoa: A Case Study Involving the Importance Of Purchasing Loss-Of-Value Insurance Coverage

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The 2020 NFL Draft will take place in just over 4 months in Las Vegas, Nevada between Thursday, April 23 and Saturday, April 25, 2020. Several months before last year's NFL Draft, and months before Clemson beat Alabama in the College Football Playoff National Championship game on January 17, 2019, the *Miami New Times* published an article on its website that posted on January 2, 2019, at 9:00 a.m., that bore the following headline: "The Miami Dolphins Should #TankForTua Next Season."¹ The author argued that the Dolphins should try and lose as many games as possible during the current 2019 season – thus "tanking" the season – so that they could finish with the worst record in the NFL, thereby securing the first overall pick in the 2020 NFL Draft and, with that pick, take University of Alabama's star quarterback Tua Tagovailoa.

The "Tank for Tua" hashtag wouldn't actually appear on Twitter for another two months but it would soon become popular for fans of bottom dwelling NFL teams, generating both its own website² and merchandise like tee-shirts, hats, and buttons. Later in the morning on the same day the *Miami New Times* article appeared online, *Miami Herald* Dolphins beat writer Armando Salguero was interviewed on the Donno and Friedo radio show and, when he was asked about who the Dolphins should consider drafting at quarterback in the 2020 draft, Salguero said: "I want to 'Tank for Tua.'"³ He paused and then proclaimed, "Tank for Tua baby."⁴



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Before November 16, 2019, Tua Tagovailoa was almost universally recognized as a lock for being selected as the first overall pick in the 2020 NFL draft but that all changed with 3:01 remaining in the first half of Alabama's football game against Mississippi State in Starkville, Mississippi. With his team leading 35-10 and facing a third down on Alabama's own 33-yard line, Tua was under pressure, rolled to his left (his throwing side) and, after he released the ball, he was tackled by two Bulldogs defenders, who both landed on top of Tua with all of their body weight. Tua immediately took off his helmet, was obviously in severe pain, and carted off the field. He suffered a dislocated right hip as well as a fracture to the posterior wall of that hip. Two days later, Tagovailoa underwent successful hip surgery and the team's orthopedic surgeon announced that "Tua's prognosis is excellent, and we expect him to make a full recovery."⁵ Although his physical diagnosis is good, his draft stock plummeted precipitously.

For his sake, and those around him, the 21-year old Tagovailoa is left to concentrate on recovering from his injury and subsequent surgery while he decides on

1 <https://www.miaminewtimes.com/news/the-miami-dolphins-should-tankfortua-next-season-10968172>

2 <https://tankfortua.com/>

3 <https://wqam.radio.com/media/audio-channel/01-02-2019-armando-salguero> at 13:24 to 14:07.

4 *Id.*

5 <https://www.si.com/college/2019/11/18/tua-tagovailoa-hip-injury-set-monday>

whether to declare himself eligible for the 2020 NFL Draft and forfeit his senior season at Alabama. This decision takes on greater urgency partly because of Tua's reported insurance situation. In that regard, it has been widely reported that, while the University of Alabama purchased a permanent total disability (PTD) insurance policy for Tagovailoa, neither the school nor Tua paid the additional premium, which might have cost him between \$37,500 and \$75,000 to secure \$5 or \$10 million of additional loss-of-value (LOV) insurance coverage as a rider to the PTD policy.⁶ The LOV coverage cannot be greater than the amount of PTD insurance purchased. The fact that Alabama did not pay for LOV coverage for Tua is consistent with Alabama's standard operating procedure when it comes to buying insurance for student athletes; *i.e.*, the school will only pay for a PTD insurance policy and will not pay the premium associated with purchasing additional LOV coverage.

The school's bright line "we won't buy LOV insurance" rule makes sense on a superficial level. Because of the number of potential top professional draft picks in several sports, the school's rule allows Alabama to use Student Assistance Fund (SAF) money to purchase PTD insurance policies for more athletes rather than paying for a PTD policy with a LOV rider for fewer athletes. As it is, the school spends approximately 60% to 70% of the SAF money it receives from the NCAA to buy insurance coverage for its top athletes. If the same percentage of SAF money was used to purchase PTD insurance with LOV riders, far fewer athletes would have any type of disability insurance paid for by the school and most of those athletes would thus be left uninsured entirely. Alabama apparently informs the student-athletes for whom they have agreed to pay for PTD coverage that, if they want, they can obtain an LOV rider themselves by either having their family pay the premium or borrow against their future earnings to purchase LOV protection. However, Alabama's "we won't buy LOV insurance" rule imperils the financial future of its very best athletes while helping out second and third round draft picks.

Pundits have criticized the University of Alabama and, indirectly Tua himself, for not paying for/buying LOV coverage. However, as discussed more fully be-

⁶ The premium cost for LOV coverage depends on the time of the year purchased and the sport played but, in this instance, it would have most likely cost Tua between \$7,000 and \$8,000 per million, so this article uses \$7,500 per million as an average for these calculations.

low, even if LOV coverage had been purchased, a payout under such a policy would most likely only come into play if Tua drops past the eleventh overall pick of the 2020 Draft.

A PTD insurance policy provides a present value lump sum payment if it is medically determined that the insured athlete will never be able to participate in his or her sporting activity at the professional level because of an injury/illness sustained in college or, for professional athletes, if such an injury/illness ends the athlete's professional career. This does not appear to apply to Tua Tagovailoa since it has been reported that his prognosis is excellent and that he will return to play football. In contrast, LOV coverage insures the difference between the anticipated value of the athlete's first contract (for college players) or his/her next contract (for professional athletes), and the reduced value of the contract actually signed by the athlete because they suffered a material injury/illness during the policy period and that injury/illness was the sole cause of the drop in contract value. There is no such thing as a stand-alone LOV insurance policy but, instead, LOV coverage is only available as an add-on to a PTD insurance policy.

Based upon this author's significant experience dealing with PTD/LOV claims for professional athletes, it is highly unlikely that any insurance company would have established Tua's insurable interest at \$35 million; *i.e.*, the total contract amount the number one overall pick signed for in the 2019 NFL Draft. Instead, it is far more likely that an insurer would have determined that Tua was like to be drafted in the first five picks and agreed to insure a \$29.3 million contract; *i.e.*, the total amount paid to the fifth pick in last year's draft.

To minimize against the risk of having to pay off on a large LOV claim, insurance companies generally only agree to insure 50% or 60% of the value of an athlete's anticipated first contract. That insured value is referred to as the "threshold" amount in the PTD/LOV world. In Tua's case, it is likely that an insurer would have established his threshold at either \$11.6 or \$17.6 million:

2019 Pick	5 Year Total Contract	50%	60%
No. 1	\$35.1 Million	\$17.6 Million	\$21.1 Million
No. 5	\$29.3 Million	\$11.6 Million	\$17.6 Million

To collect on a 50% Loss of Value insurance policy,

Tua would have to drop to the number 27 pick (\$11.5 Million). Under a 60% LOV policy, Tua would have to drop to below the number 11 pick (\$17.6 Million) to collect any money under such a policy.

While mock drafts are, at best, an inexact “science,” most pundits predict that Tua, in spite of his significant injury, won’t drop below the 13th overall pick and, therefore would not have any claim under a 50% LOV policy but he would have a \$2.1 million claim under a 60% policy. There are several writers who believe that Tua could drop to the late first round (the 21st or 27th pick) and one outlier has him dropping to the top of the second round (\$8 Million) and, if any of these predictions come to fruition, a LOV policy could have covered the difference.

2019 Pick	5 Year Total Contract	50% LOV Claim	60% LOV Claim
No. 11	\$17.6 Million	\$0	\$0
No. 13	\$15.5 Million	\$0	\$2.1 Million
No. 21	\$12.5 Million	\$0	\$5.1 Million
No. 27	\$11.5 Million	\$100,000	\$6.1 Million
No. 33	\$8 Million	\$3.6 Million	\$9.6 Million

Insurance is purchased to protect against unexpected contingencies and Tua Tagovailoa’s significant hip injury is exactly the type of contingency that insurance is meant to cover. For about one-quarter of one percent of the value of Tua’s likely first NFL contract, he could have secured up to \$10 million of LOV coverage (assuming, of course, he also had \$10 million of PTD coverage) which would have fully protected him if he drops out of the first round altogether and into the top

of the second round of the 2020 NFL Draft.

As it stands now, if Tua fully recovers from his significant hip injury as expected and he declares himself eligible for the 2020 NFL Draft because he is able to return to play football, the PTD insurance policy the school purchased for him would not be triggered. If Alabama or Tua had purchased LOV coverage as a rider to the PTD policy and if Tua is drafted in the top eleven picks of the first round of April’s draft, he would not have recovered under a LOV policy so the fact that he has no LOV protection would be irrelevant. However, if Tua’s injury causes him to suffer a precipitous drop below the number eleven overall pick, the loss could have been insured by a LOV rider but won’t be because his school does not pay for LOV insurance and Tua did not purchase it separately. For Tua’s sake, this author hopes that he is selected in the first ten picks of the 2020 NFL Draft so the entire issues of his lack of LOV protection will be moot.

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