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IF YOU'RE HURT, WHERE IS HOME? RECENTLY DRAFTED MINOR LEAGUE BASEBALL PLAYERS ARE COMPELLED TO BRING WORKERS' COMPENSATION ACTION IN TEAM'S HOME STATE OR IN JURISDICTION MORE FAVORABLE TO EMPLOYERS

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I. INTRODUCTION

In June 2009, Major League Baseball (MLB) unilaterally added two new clauses to the first year player contract that newly drafted players are required to sign after they are drafted in the June First-Year Player Draft. The first, entitled Addendum F, requires players to submit to the jurisdiction of the home team for workers' compensation claims.¹ Addendum F may also be

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1. Major League Baseball First-Year Player Draft Contract, at add. F [hereinafter Addendum F]. The full text reads

As a material inducement for Club to employ Player's services, Player promises and agrees that any worker's compensation claim, dispute or cause of action arising out of Player's employment with Club shall be subject to the worker's compensation laws of the State of _____ exclusively and not the worker's compensation laws of any other state. Player further agrees that any claim, filing, petition or cause of action in any way relating to worker's compensation rights or benefits arising out of Player's employment with Club, including without limitation the applicability or enforceability of this Addendum F, shall be brought solely and exclusively with the courts or the Worker's Compensation Board (or such other tribunal or government entity with jurisdiction) of the State of _____.

This addendum shall be void upon the assignment of this Minor League Uniform Player

used to require a workers' compensation claim to be filed outside the club's home state and in a state with laws more favorable to employers.² The second, Addendum G, paragraph C, requires that, if a minor league player chooses to use his own physician to perform a medical procedure instead of the team physician, the minor league player must pay the difference between the team doctor's cost for treatment and the cost of his personal physician's care.³

These new terms were unilaterally imposed on newly drafted players and were not negotiated with any union. The Major League Baseball Players Association (MLBPA) does not represent minor league players, as it only represents "all Major League Players, and individuals who may become Major League Players during the term" of the Basic Agreement.⁴ At least one baseball agent believes that all MLB "clubs were insisting" that Addenda F and G be signed "in one form or another."⁵ Rob Manfred, MLB Executive Vice President of Labor Relations, has stated that that is an "exaggeration" but that "a number of clubs are using them."⁶

Addenda F and G were promulgated by MLB, in our opinion, in response

Contract to any other Major League Club or Minor League Club that is not a player development of Club.

By signing this Minor League Uniform Player Contract and/or this Addendum F, Player acknowledges that he has read this Addendum F and enters into this Addendum F of his own free will and choice.

2. Liz Mullen, *Clubs Seek Friendly Venues for Workers Comp Cases*, SPORTS BUS. J., Aug. 30-Sept. 5, 2010, at 9.

3. Major League Baseball First-Year Player Draft Contract, *supra* note 1, at add. G, ¶ C [hereinafter Addendum G]. The full text reads as follows:

C. With respect to expenses paid by worker's compensation insurance or other surgical, medical or hospitalization insurance policy, if Player uses a physician, dentist or other medical service provider not designated by Club and incurs expenses greater than that which would have been incurred by using a Club-designated provider, then player shall reimburse Club for the excess cost of such medical services. Club shall have the right to select any medical service provider other than a physician or dentist in the same manner in which Club has the right to select a physician or dentist pursuant to this Minor League Uniform Player Contract. Club's right to select the place of delivery of professional services pursuant to this Minor League Uniform Player Contract may include a Club facility or the facility of another club, if Club is on the road.

By signing this Minor League Uniform Player Contract and/or this Addendum G, Player acknowledges that he has read this Addendum G, has consulted with the advisors of his choice or had the opportunity to do so, understands the terms of this Addendum G and enters into this Addendum G of his own free will and choice.

4. *2007-2011 Basic Agreement*, art. II, p. 1 (2007), available at http://mlb.mlb.com/pa/pdf/cba_english.pdf [hereinafter *Basic Agreement*].

5. Mullen, *supra* note 2.

6. *See id.*

to *Cavers v. Houston McLane Co., Inc.*,⁷ a decision of the Maine Supreme Judicial Court in which Eric Cavers (Cavers), a minor league baseball player and Maine resident, successfully argued that Maine workers' compensation laws applied to his employer, the Houston McLane Co., Inc., doing business as the Houston Astros Baseball Club (Astros), a Texas corporation. Furthermore, Addenda F and G were likely promulgated in an effort to control the cost of workers' compensation for minor league players⁸ and also in response to a series of workers' compensation cases over the course of several years that were decided in favor of professional baseball players.

This Article will examine the application of workers' compensation law to minor league professional athletes. It will also argue that a minor league player should be able to bring a workers' compensation action in his home state and should not be compelled to bring the case in the home state of his employer/team or in another jurisdiction, for example Arizona, where the workers' compensation laws favor the employer.⁹ This Article will also argue that the imposition of Addenda F and G on minor league players is patently unfair and may limit the ability of an injured minor league player to obtain medical benefits. Finally, this Article will conclude by suggesting some options available to players to address the unjust working conditions imposed on minor league baseball players.

II. WORKERS' COMPENSATION AND PROFESSIONAL ATHLETES

Prior to the enactment of workers' compensation laws, if an employee suffered an injury on the job, he or she would have to bring a civil lawsuit for negligence in court.¹⁰ In order to prevail in these cases, the worker had to prove that the employer was negligent.¹¹ It was difficult for the average worker to win these lawsuits because the employers raised effective legal defenses, for example, claiming that the worker assumed the risk of the job, that the worker's conduct constituted contributory negligence, or that a fellow worker's negligence caused the injury.¹² Further, the cost of litigation was burdensome to an out-of-work employee.

In 1884, the German Compensation Act became the first significant piece

7. *Cavers v. Houston McLane Co. Inc.*, 958 A.2d 905 (Me. 2008).

8. Mullen, *supra* note 2.

9. *Id.*

10. Gerald Herz, *Professional Athletes and the Law of Workers' Compensation: Rights and Remedies in LAW OF PROFESSIONAL AND AMATEUR SPORTS* § 17:1 (Gary A. Uberstine & Jeffery K. Pressman Eds., 2002).

11. MARK A. ROTHSTEIN ET AL., *EMPLOYMENT LAW* § 7.2 (1994).

12. *Id.*

of legislation to eliminate the requirement that the worker prove that the employer was at fault in order to prevail, and this concept soon spread to the United States.¹³ In 1902, Maryland established an accident fund for disabled miners, and in 1909, Montana also passed legislation for miners' compensation.¹⁴ Both of these statutes, however, were declared unconstitutional.¹⁵ The states of New York, Iowa, and Washington passed workers' compensation statutes, and these statutes were declared constitutional by the United States Supreme Court in 1917.¹⁶

In general, workers' compensation laws provide workers protections and benefits if they are injured on the job, and the laws eliminate the requirement that the worker prove that the employer's negligence caused the injury.¹⁷ This no fault system grants benefits for lost wages and medical expenses to workers and gives most employers immunity against most tort actions.¹⁸ Workers' compensation statutes provide that an injured employee give up his right to sue his employer in civil court for an injury suffered on the job in return for a no fault administrative system to determine if the injury was work-related and grant quick payment of benefits and medical treatment.¹⁹

A typical workers' compensation statute provides an injured worker 66.66% of his average weekly wage if he suffers a work-related injury and is unable to work.²⁰ There are four categories of disability: temporary total disability, temporary partial disability, permanent partial disability, and permanent total disability.²¹ The injured worker also receives medical treatment, and some states allow this treatment to be for life.²²

In order to be eligible for workers' compensation, there has to be an employer-employee relationship between the parties, which is defined by statute. In Massachusetts, for example, an employee is defined for workers' compensation purposes as "every person in the service of another under any contract of hire, express or implied, oral or written . . ."²³ Massachusetts excludes some classes of workers from the definition of employee, such as

13. *Id.* at §7.3.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. Herz, *supra* note 10, § 17:1.

20. *Id.* § 17:5.

21. *Id.*

22. *Id.* at § 17:11

23. MASS. GEN. LAWS, ch. 152, § 1(4) (2011).

seamen engaged in interstate or foreign commerce, salesmen of real estate or consumer goods who work on a commission, and taxi drivers who lease their cabs.²⁴

In general, professional athletes are considered employees of their professional teams.²⁵ However, some states, including Florida, specifically exclude professional athletes from the definition of employee in their workers' compensation statutes.²⁶ In Massachusetts, professional athletes are partially excluded from the definition of employee. Athletes are included if they are "persons employed to participate in organized professional athletics, while so employed, if their contracts of hire provide for the payment of wages during the period of any disability resulting from such employment."²⁷ In other words, a professional athlete in Massachusetts is excluded from workers' compensation benefits only if his contract calls for him to be paid even though he is injured and unable to play. However, if the injury to the professional athlete prevents him from being paid the salary agreed to in his contract or earning money working at another job during the offseason, he would be eligible for workers' compensation benefits.²⁸

An injury must arise out of and be suffered in the course of the injured person's employment.²⁹ For a professional baseball player, an example of a work-related injury would be throwing a ball in a professional game and ripping or tearing a muscle or ligament in his throwing arm.³⁰ As discussed

24. *Id.*

25. Herz, *supra* note 10, at § 17:3.

26. *Id.* See also Stephen Cormac Carlin & Christopher M. Fairman, *Squeeze Play: Workers' Compensation and the Professional Athlete*, 12 U. MIAMI ENT. & SPORTS L. REV. 95, 127 (1995) for a detailed discussion of states that exclude professional athletes from workers' compensation statutes.

Recent efforts by some states endeavor to restrict pro athlete access to workers' compensation benefits are unwarranted. From its inception, the workers' compensation system has served many desirable goals. Few can object to the desirability of certain, prompt, and reasonable compensation for occupational injuries. As was clear at the beginning of the century, this can best be achieved through an administrative remedy, rather than the slow and costly judicial process. An equally important by-product of this system is the creation of incentives for employers to improve workplace safety. All of these objectives are jeopardized by squeezing the pro athlete from workers' compensation coverage. *Id.* at 126-27.

27. MASS. GEN. LAWS ch. 152, § 1(4)(B) (2011).

28. Many minor league baseball players work second jobs not related to baseball or play winter league baseball in the Dominican Republic, Venezuela, or Mexico to earn extra money.

29. Herz, *supra* note 10, at § 17:4.

30. An example of a baseball work-related injury occurred on July 28, 2010 when Stephen Strasburg of the Washington Nationals was throwing pitches and warming up in the bullpen before a game. He felt discomfort in his throwing shoulder, was scratched from the starting line-up, and was placed on the fifteen day disabled list. Strasburg returned to pitch on August 10, 2010 but soon was

below, this is the type of work-related injury that befell Cavers on June 27, 2004, while he was playing in the minor leagues for the Astros.³¹

III. CAVERS V. HOUSTON ASTROS AND THE APPLICATION OF MAINE'S LONG ARM STATUTE

Cavers was a resident of Otisfield, Maine and attended Franklin Pierce College in New Hampshire on a baseball scholarship.³² After his junior year, he was drafted in the tenth round (the 304th overall selection) of the June 2004 MLB amateur draft by the Astros.³³ Cavers, a catcher, was assigned to play for the Astros' rookie league team in Greenville, Tennessee. On June 27, 2004, he injured his shoulder during a game when throwing a ball to second base.³⁴ Cavers was placed on the disabled list and received treatment on his shoulder. He remained with the Greenville Club until the end of the season and was then sent to Houston to see the Astros' team physician, who recommended six more months of rest and rehabilitation.³⁵ During the period of time that he was injured and unable to play, Cavers received his full minor league salary, which, at the time, was \$900 per month.³⁶

As the 2005 season approached, Cavers continued to have pain in his shoulder.³⁷ He sought a second opinion from a doctor in Boston, who diagnosed him with a torn labrum and advised him to undergo arthroscopic surgery.³⁸ Against the Astros' doctor's advice, Cavers underwent the surgery

hurt again. On August 27, 2010 the Nationals announced that Strasburg had suffered a significant tear in his ulnar collateral ligament and that he would undergo "Tommy John" surgery to repair it. Bill Ladson, *Strasburg Likely Headed for Elbow Surgery*, MLB.COM, Aug. 27, 2010,

http://washington.nationals.mlb.com/news/article.jsp?ymd=20100827&content_id=13983748&vkey=news_was&fext=.jsp&c_id=was. Fortunately for Strasburg, he signed a four-year \$15.1 million major league guaranteed contract when he was drafted in June 2009 and did not lose out on any salary. ESPN News Services, *Nats, Strasburg Beat Deadline*, ESPN.COM, Aug. 18, 2009, <http://sports.espn.go.com/mlb/news/story?id=4403920>.

31. *Cavers v. Houston McLane Co.*, 958 A.2d 905, 908 (Me. 2008).

32. *Id.* at 907.

33. *Id.* at 908.

34. *Id.*

35. *Id.*

36. Cavers signed the Minor League Uniform Players Contract (MLUPC), which provides, among other things, that he would receive his full salary if he were injured during the season. MLUPC, ¶ VIII, B. The MLUPC also provides that, if the minor league player is injured and receiving his full salary, any workers' compensation payments he receives or payment for medical expenses be turned over to the club. MLUPC ¶ VIII, E.

37. *Cavers*, 958 A.2d at 908.

38. *Id.*

in March 2005.³⁹ The Astros did not pay for the surgery.⁴⁰ Cavers recuperated, was able to play baseball again, and was assigned to the Astros' Troy, New York minor league club for the end of the 2005 season.⁴¹ In 2006, Cavers played for the Lexington, Kentucky Legends, a Class A affiliate of the Astros.⁴² The Astros released Cavers after the 2006 season.⁴³ None of the minor league teams that Cavers played for traveled to Maine.⁴⁴

Cavers began working as a carpenter in Maine and received some medical care for his shoulder in Maine.⁴⁵ Cavers filed a petition for workers' compensation benefits from the Maine Workers' Compensation Board (Board) for payment of medical bills, principally for payment of his shoulder surgery, for which the Astros still had not paid.⁴⁶ The Astros attempted to dismiss the matter before the Board, claiming that Maine lacked personal and subject matter jurisdiction.⁴⁷ A Board hearing officer determined that the Board had personal jurisdiction over the Astros because Cavers was a resident of Maine when the injury occurred.⁴⁸ The Board awarded payment of medical bills, including payment for the shoulder operation, but did not order "wage replacement benefits."⁴⁹ The Astros appealed the Board's award of medical benefits to the Maine Supreme Judicial Court, claiming that the Board lacked personal jurisdiction in the case because the Astros were a Texas corporation and because it could not have anticipated litigating a workers' compensation case in Maine when it drafted and signed Cavers.⁵⁰

The Maine Supreme Judicial Court first held that the fact Cavers had maintained his residence in Maine was enough to confer subject matter jurisdiction on the Board over claims for work-related injuries received by the

39. *Id.*

40. It appears that the basis for the Astros refusal to pay for the operation was in ¶ VIII, C. of the MLUPC, which allowed the club to select the doctor and hospital that performs medical services on minor league players. However, the MLUPC does not address the issue of a disagreement between the minor league player and a team concerning what specific medical procedure, if any, need be performed. In this matter, Cavers believed that he needed an operation on his shoulder, and the Astros disagreed, believing that additional therapy and rest would cure his shoulder pain.

41. *Cavers*, 958 A.2d at 908.

42. *Id.* at 908-09.

43. *Id.* at 909.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.* Cavers had been paid his full salary pursuant to MLUPC ¶ VII. B.; see *Cavers*, 958 A.2d at 908.

50. *Cavers*, 958 A.2d at 909.

employee out of state.⁵¹ The court next applied the Maine long-arm statute⁵² to determine if the Board had authority over Cavers' injury, which occurred in Tennessee while working for an out-of-state employer, the Texas-based Astros.⁵³ The court held that, by negotiating with Cavers at his home in Maine and the fact that Cavers signed the contract in Maine, the Astros had transacted business in the state and was, thus, subject to the court's jurisdiction.⁵⁴ The court continued and stated that the issue of the Board's authority over the Astros must be analyzed according to the due process and minimum contacts standards set out by the United States Supreme Court.⁵⁵ The court stated that due process is satisfied when "(1) Maine has a legitimate interest in the subject matter of the litigation; (2) the defendant, by his or her conduct, reasonably could have anticipated litigation in Maine; and (3) the exercise of jurisdiction by Maine's courts comports with traditional notions of fair play and substantial justice."⁵⁶

The Astros did not contest the conclusion of the workers' compensation hearing officer that Maine has a legitimate and substantial interest in "ensuring that the burden of its residents' [work-related] injuries fall upon their employer rather than upon their communities,"⁵⁷ the first due process element. The Astros did take issue with the second element of analysis and argued that Cavers did not meet his burden of demonstrating that the Astros could have reasonably anticipated litigating a workers' compensation case in Maine. The court held that the Astros had sufficient contact in Maine to anticipate litigation because the Astros had drafted a Maine resident, the Astros scouting director traveled to Maine to negotiate with Cavers, and Cavers signed his Astros contract in the state.⁵⁸

The Maine Supreme Judicial Court cited the United States Supreme Court

51. *Id.* See also *Christiansen v. Elwin G. Smith, Inc.*, 598 A.2d 176, 177 (Me. 1991).

52. The Maine Long-arm statute states, in relevant part,

Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated in this section, thereby submits such person . . . to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of such acts:

A. The transaction of any business within this State 14 ME. REV. STAT. ANN. § 704-A(2) (2011).

53. *Cavers*, 958 A.2d at 909.

54. *Id.*

55. *Id.* at 909-10 (*citing* *Shaffer v. Heitner*, 433 U.S. 186, 212 (1977) and *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945)).

56. *Id.* at 910 (*quoting* *Christiansen v. Elwin G. Smith Inc.*, 598 A.2d 176, 177 (Me. 1991)).

57. *Id.* (*quoting* *Christiansen*, 598 A.2d at 177).

58. *Id.* at 913.

case of *Alaska Packers Association v. Industrial Accident Commission of California*⁵⁹ as a basis for its decision. In *Alaska Packers*, a person living in California executed an employment contract in California agreeing to work in Alaska during the salmon-canning season for specified wages and payment of transportation costs. The employee was injured while working in Alaska. When he returned to California, he filed a workers' compensation claim in California and received an award for compensation. The United States Supreme Court held for the worker and noted that

an employment contract that is signed in a state, by a person living in that state, even if it is to be performed elsewhere, puts the obligations of the contract within the reach of the power that the state of residence may constitutionally exercise without violating the due process clause.⁶⁰

In *Alaska Packers*, the employment contract contained a clause requiring that any claim for workers' compensation must be brought in Alaska.⁶¹ California's workers' compensation law had a provision allowing any California worker who signed an employment contract in the state to file a workers' compensation claim in California, regardless of whether the injury occurred "without the territorial limits of this state."⁶² The Supreme Court agreed with the application of California law regardless of the employment contract language.⁶³

The Maine Supreme Judicial Court then addressed the third element of the due process analysis, whether the exercise of personal jurisdiction in Maine comports with the traditional notions of "fair play and substantial justice."⁶⁴ The Maine Supreme Judicial Court analyzed the third element using "a variety of factors including the nature and purpose of defendant's contacts with the forum state, the connection between the contacts and the cause of action, the number of contacts, the interest of the forum state in the controversy, and the convenience and fairness to both parties."⁶⁵

The court held that a minor league player and the team that signs him may anticipate that he could play a baseball game in "most, if not all, of the fifty

59. *Alaska Packers Ass'n v. Indust. Accident Comm'n of Cal.*, 294 U.S. 532 (1935).

60. *Id.* at 540-42.

61. *Id.* at 538.

62. *Id.*

63. *Id.* at 543-50.

64. *Cavers v. Houston McLane Co.*, 958 A.2d 905, 910 (Me. 2008).

65. *Id.* at 914 (quoting *Labbe v. Nissen Corp.*, 404 A.2d 564, 570 (Me. 1979)).

states” in the United States.⁶⁶ The Astros and all other major league teams have the resources to appear in any state and defend workers’ compensation claims. The court acknowledged that former minor league players might have great difficulty securing benefits in forums far from their home state.⁶⁷ In reaching its decision in *Cavers*, the court quoted the United States Supreme Court in *Alaska Packers*:

The probability is slight that injured workmen, once returned to California, would be able to retrace their steps to Alaska, and there successfully prosecute their claims for compensation. Without a remedy in California, they would be *remediless*, and there was the danger that they might become public charges, both matters of grave public concern to the state.⁶⁸

On October 30, 2008, the Maine Supreme Judicial Court held for *Cavers*, a minor league player who had been released after getting injured and who was now located thousands of miles away from the team that signed him trying to start a new career. The court held that the fair play and substantial justice element of the analysis clearly favored *Cavers*, as he would find it difficult to pursue a workers’ compensation remedy in Texas, and affirmed the Board’s decision granting the payment of medical expenses.⁶⁹

IV. OTHER MINOR LEAGUE BASEBALL WORKERS’ COMPENSATION CASES

The Maine Supreme Judicial Court noted other baseball workers’ compensation cases that had similar facts and outcomes to the *Cavers* matter. In *Bowen v. Workers’ Compensation Appeals Board*,⁷⁰ a California resident was drafted by the Florida Marlins in 1992 and signed the Minor League Uniform Player Contract (MLUPC) at his residence in California.⁷¹ Bowen negotiated the contract over the telephone with a Marlins scout who also lived in California. The Marlins mailed the contract to Bowen after the terms had been agreed to via telephone. Bowen began playing minor league baseball for the Marlins in 1993 and was assigned to a club in Erie, Pennsylvania. He played minor league baseball for the Marlins from 1994 to 1996. Bowen

66. *Id.*

67. *Id.*

68. *Id.* (quoting *Alaska Packers*, 294 U.S. at 542 (emphasis added)).

69. *Id.*

70. *Bowen v. Workers’ Comp. Appeals Bd.*, 86 Cal. Rptr. 2d 95, 95 (Cal. Ct. App. 1999).

71. *Id.* at 97.

never played baseball in California for the Marlins.⁷²

In April 1996, Bowen was injured while pitching in a game in Clearwater, Florida. He was placed on the disabled list and pitched with discomfort for the rest of the 1996 season. He was released by the Marlins at the end of the 1996 season.⁷³ Bowen applied for workers' compensation benefits in California, and his claim was at first denied by the Workers' Compensation Appeals Board.⁷⁴ However, the California Appeals Court reversed, holding that "an employee who is a professional athlete residing in California, such as Bowen, who signs a player's contract in California furnished to the athlete here by an out-of-state team, is entitled to benefits under the act for injuries received while playing out of state under the contract."⁷⁵ As the Astros did in *Cavers*, the Marlins argued that they were denied due process because there were insufficient contacts with the State of California to support application of personal jurisdiction. The appeals court rejected the Marlins argument and held for Bowen.⁷⁶

In a case decided in 2001, the California Court of Appeals, in *New York Yankees v. Workers' Compensation Appeals Board*, reached the same result on a workers' compensation claim filed by a New York Yankees pitcher, who was a resident of California but was injured during spring training in Florida.⁷⁷

The respective court decisions in *Cavers* in 2008, *Bowen* in 1999, and *New York Yankees* in 2001 demonstrate that state courts have developed a strong trend that minor league professional baseball players will be awarded workers' compensation benefits of their home states if the players are not excluded by statute and they are injured in service to their clubs.⁷⁸ This is particularly

72. *Id.*

73. *Id.*

74. *Id.* at 96.

75. *Id.* at 104.

76. *Id.*

77. *N.Y. Yankees v. Workers' Comp. Appeals Bd.*, No. D036556, 2001 Cal. Wrk. Comp. LEXIS 4872 (Cal. Ct. App. Jan. 23, 2001).

78. Historically, there have been other cases that have held that workers' compensation statutes apply to professional baseball players. In 1928, in the case of *Metro. Cas. Ins. Co. of N.Y. v. Huhn*, 142 S.E. 121, 125-26 (Ga. 1928), a Georgia court held that a professional baseball player is covered under the state workers' compensation act. In *Bayless v. Philadelphia Nat'l League Club*, 472 F. Supp. 625, 631 (E.D. Pa. 1979), *aff'd*, 615 F.2d 1352 (3d Cir. 1980), the court held that the Pennsylvania's Workers' Compensation Act was the exclusive remedy for a minor league pitcher's injuries. In Texas, in *U.S. Fidelity & Guar. Co. v. Indem. Ins. Co. of N. Am.*, 271 F.2d 955, 956 (5th Cir. 1959), the court affirmed a district court finding that the Texas workers' compensation statute applies to professional baseball player. However, in 1991, the Texas legislature changed the law and required professional athletes to elect benefits under workers' compensation or their CBAs or their individual contracts. The goal of this legislation was to "reduce expenses of major league sports franchises." House Comm. on Business and Commerce, Bill Analysis, Tex. S.B. 428, 72nd Leg.,

important to minor league players, as they do not make much money. Typical minor league players like Cavers, who played Class A baseball, earn about \$1,100 per month from April to September, or \$5,500 per year.⁷⁹ In contrast, the minimum salary for a major league player for the 2010 season was \$400,000.⁸⁰ In addition, a major league player who sustains an injury in a major league game and is unable to play will receive his full salary less any payments from workers' compensation.⁸¹ The *Cavers*, *Bowen*, and *New York Yankees* cases are important because a minor league player simply may not have the financial resources to litigate a workers' compensation case in a foreign state.⁸²

V. THE DRAFT AND ADDENDUM F AND G: BASEBALL'S RESPONSE TO CAVERS

From June 9-11, 2009, six months after the *Cavers* decision forced the Houston Astros to pay for Cavers' shoulder operation and medical treatment, the 2009 MLB First-Year Player Draft was held. The young men eligible for the draft are amateur baseball players from the United States, Canada, and Puerto Rico who have completed high school and college players who have completed their junior or senior years.⁸³ Junior college players can be drafted regardless of how many years of college they have completed.⁸⁴ Each of the thirty MLB teams selects amateur players to restock its organization. The teams draft in "reverse order of their percentage games won at the close of the preceding championship season."⁸⁵ There are fifty rounds to the draft,⁸⁶ and there are additional draft picks awarded to teams that lose type A or type B major league free agents to other clubs.⁸⁷ In the 2010 First-Year Player Draft,

R.S. (1991). Carlin & Fairman, *supra* note 26, at 111 n.97.

79. See *Minor League Baseball Frequently Asked Questions*, MINORLEAGUEBASEBALL.COM, http://web.minorleaguebaseball.com/milb/info/faq.jsp?mc=milb_info (last visited Feb. 14, 2011).

80. *Basic Agreement*, *supra* note 4, § VI(B).

81. *Id.* § IX(E).

82. See also Rachel Schaffer, *Grabbing Them by the Balls: Legislatures, Courts, and Team Owners Bar Non-Elite Professional Athletes from Workers' Compensation*, 8 AM. U. J. GENDER SOC. POL'Y & LAW 623, 628 (2000). Schaffer argues that non-elite athletes, such as minor league baseball players and particularly women athletes, do not receive adequate workers' compensation benefits, and exclusion of non-elite athletes from workers' compensation is wrong. *Id.*

83. Major League Rules, Rule 4 entitled First Year Player Draft, ¶(a), Players Subject. See also *First Year Player Draft, Official Rules*, MLB.COM, <http://mlb.mlb.com/mlb/draftday/rules.jsp> (last visited Feb. 14, 2011).

84. *Major League Rules*, *supra* note 83.

85. *Id.* at r.4(c)(1), Order of Selection.

86. *Id.* at (b), Selection Meeting.

87. *Basic Agreement*, *supra* note 4, at art. XX ¶ 4(a)-(c). The relevant sections of paragraphs (b)

1525 amateur players were drafted.⁸⁸

After a MLB club drafts an amateur player, the player is placed on that club's exclusive negotiating list, and only the drafting club can attempt to sign him to a professional contract.⁸⁹ A drafted player may sign a major league or a minor league contract with the club that drafted him or a player may choose to return to college if he still has eligibility to play college baseball.⁹⁰

Soon after the draft, players who were drafted begin negotiating terms of employment with the major league club that drafted them. If they agree to terms, players are typically presented with the MLUPC to sign with several addenda. However, for the first time, in 2009, accompanying the MLUPC were Addendum F and Addendum G.⁹¹ Addendum F required the minor league player to submit to the jurisdiction and to file any workers' compensation action in the team's home state or in another state that is selected by the club and written in the blank space provided on the document.⁹² At least one team, the Los Angeles Angels of Anaheim, who plays its games in Anaheim, California, designated the state of Arizona on Addendum F, presumably because that state's workers' compensation laws are more employer friendly than California's workers' compensation laws.⁹³

Addendum G required, in part, that the player reimburse the club for medical expenses for services performed by a doctor chosen by the player if the treatment by that doctor was more expensive than services that would have been performed by the team doctor.⁹⁴ The authors submit that both of these

and (c) state

(b) A Type A Player shall be a Player who ranks in the upper twenty percent (20%) of his respective position group. A Type B Player shall be a Player who ranks in the upper forty percent (40%) but not in the upper twenty percent (20%) of his respective position group.

(c) A Type A or B Player shall be subject to compensation only if (i) he signs a contract with another Club prior to December 1; or (ii) he is offered salary arbitration by his former Club on or before December 1 pursuant to Section B(3) of this Article XX and signs a contract with another Club. For such Type A Players, compensation to the Player's former Club shall be an amateur draft choice ("Regular Draft Choice") of the signing Club and an added amateur draft choice ("Special Draft Choice") in the Major League Rule 4 Draft. For such Type B Players, compensation to the Player's former Club shall be a Special Draft Choice in the Major League Rule 4 Draft.

88. *Draft Tracker*, MLB.COM, http://mlb.mlb.com/mlb/events/draft/y2010/drafttracker.jsp?p=0&s=30&sc=pick_number&so=ascending&st=number&ft=RD&fv=52 (last visited Aug. 18, 2010).

89. Major League Rules, *supra* note 83 at Rule 4(d), Effect of Selection of a Player.

90. *Id.* at (c)(2)(B).

91. See Addenda F & G, *supra* notes 1 and 3, for the relevant text of Addenda F & G.

92. See Addendum F, *supra* note 1.

93. Mullen, *supra* note 2.

94. Addendum G, *supra* note 3.

provisions are, most likely, MLB's response to the Maine Supreme Judicial Court's decision in *Cavers*.

VI. PLAYER LEVERAGE IN NEGOTIATIONS

A. Most Minor League Baseball Players Have Limited Leverage

Most drafted players would not have the leverage or bargaining power to negotiate the removal of Addenda F and G from the MLUPC. The MLUPC was not negotiated with the MLBPA or any other union, and therefore, it is an individual contract between the club and the player. Thus, in theory, a minor league player could object to Addenda F and G and refuse to sign the contract. However, the likely result of this is that, unless the player has great leverage, the team would simply refuse to sign the player and turn its attention to its forty-nine other drafted players.

Of the approximately 1500 amateur players drafted, some are more skilled and, thus, have more bargaining power when negotiating with the major league club. A drafted player who signs a minor league contract may receive a significant bonus if he is drafted in the first round of the draft. In 2008, major league clubs spent a total of \$188.3 million in bonuses for the entire draft, an increase of \$34.7 million from 2007.⁹⁵ In 2008, thirty major league clubs paid out a total of \$68,966,000 to first round picks, an average of \$2,266,666 per player.⁹⁶ A highly skilled player may have the leverage to sign a major league contract and, thus, become a member of the MLBPA. In a typical draft, a very select few players have such leverage. For instance, in 2008, only two players in the first round signed major league contracts, and the remaining twenty-eight signed minor league contracts.⁹⁷ But, for those who do, it means they have access to the terms and protections of the Basic Agreement that apply to the player. For example, as noted previously, Stephen Strasburg of the Washington Nationals, the first pick in the 2009 First-Year Player Draft, signed a four-year, \$15.1 million major league guaranteed contract after being drafted.⁹⁸

A player signing his first major league contract for the 2010 season received a minimum salary in the minor leagues of \$32,500, paid over the

95. Jim Callis, *Ask BA*, BASEBALLAMERICA.COM, Feb. 17, 2009, <http://www.baseballamerica.com/today/prospects/ask-ba/2009/267624.html>.

96. Maury Brown, *First Round Draft Bonuses Totaled Nearly \$69M*, BIZOFBASEBALL.COM, Feb. 17, 2009, http://www.bizofbaseball.com/index.php?option=com_content&view=article&id=2963:08-first-round-mlb-draft-bonuses-totaled-nearly-69m&catid=30:mlb-news&Itemid=42.

97. *Id.*

98. ESPN News Services, *supra* note 31.

five-month minor league season, and had the ability to negotiate for a higher salary.⁹⁹ For example, Strasburg negotiated a salary of \$400,000 for 2009, \$2 million for 2010, \$2.5 million in 2011, and \$3 million in 2012, in addition to other terms totaling \$15.1 million.¹⁰⁰ In contrast, a first-year minor league player who signed a minor league contract for the 2010 season will be paid \$1,100 per month for the five-month minor league season regardless of whether that player received a signing bonus.¹⁰¹

The Basic Agreement, which applies to all players who sign a major league contract, provides far superior injury benefits than those provided in a minor league contract. If a major league player disagrees with the team doctor's diagnosis of his work-related injury, he may receive a second opinion. The MLBPA and MLB clubs have agreed on a list of doctors by geographic area to provide medical services to players, and the club shall pay for the service.¹⁰² If the player wishes to use a doctor not on the list for a second opinion, the player and the club must agree in advance for authorization to perform the service and for the club to pay the doctor.¹⁰³ If there is a disagreement between the player's doctor and the team doctor as to what procedure needs to be performed on the player, the MLBPA and the MLB clubs have agreed to encourage all parties to select a neutral third doctor to resolve the dispute.¹⁰⁴ The MLUPC does provide that the club shall pay all reasonable and necessary hospital expenses for a player suffering a work-related injury, but the club "shall always have the right to select the physician" to perform the service.¹⁰⁵ However, the MLUPC does not contain any provision for a second opinion or for a neutral third-party doctor to resolve any dispute between the minor league player and his club.

Comparing the terms of a major league contract and the MLUPC, it is clear that major league players and minor league players who have signed a major league contract have rights far superior to minor league players who have signed a MLUPC with Addenda F and G controlling work-related injuries. Given the fact that both major league and minor league players may be hurt playing the same game for the same employer/club, it is inconsistent and inequitable to treat the players differently.

99. *Basic Agreement*, *supra* note 4, at art. VI ¶ B(1).

100. Bill Shaikin & Dylan Hernandez, *The Fabulous Forum: Strasburg Contract Numbers*, LATIMES.COM, Aug. 17, 2009, http://latimesblogs.latimes.com/sports_blog/2009/08/strasburg-contract-numbers.html.

101. *See Minor League Baseball*, *supra* note 79.

102. *Basic Agreement*, *supra* note 4, at art. XIII (D).

103. *Id.*

104. *Id.* at attachment 35.

105. MLUPC, *supra* note 36, at art. VIII ¶ C.

Furthermore, baseball's antitrust exemption, codified in the Curt Flood Act of 1998,¹⁰⁶ has enabled the minor leagues to prosper, despite the fact that many minor leaguers do not earn a "living wage."¹⁰⁷ The protection afforded to employers by the antitrust exemption keeps minor league players from challenging a system where, once drafted, a player's rights are held for seven years and there is neither free movement nor leverage for players to negotiate a fairer system. Nearly one hundred years after *American League Baseball Club of Chicago v. Chase*, what the Supreme Court of New York described as an unlawful combination and a scheme that relegated players to a system of peonage, for which the court refused to grant an equitable remedy to the plaintiff team,¹⁰⁸ to a degree continues to exist. The antitrust exemption keeps

106. The Curt Flood Act of 1998 applied antitrust laws to MLB players. However, Section 3 of the Curt Flood Act amended Section 27 of the Clayton Act, 15 U.S.C. § 12 et seq. and reinforced that minor league baseball players were exempt from antitrust laws. The amended Section 27 reads in part as follows:

SEC. 27. (a) Subject to subsections (b) through (d), the conduct, acts, practices, or agreements of persons in the business of organized professional major league baseball directly relating to or affecting employment of *major league baseball players to play baseball at the major league level are subject to the antitrust laws* to the same extent such conduct, acts, practices, or agreements would be subject to the antitrust laws if engaged in by persons in any other professional sports business affecting interstate commerce.

(b) *No court shall rely on the enactment of this section as a basis for changing the application of the antitrust laws to any conduct, acts, practices, or agreements other than those set forth in subsection (a). This section does not create, permit or imply a cause of action by which to challenge under the antitrust laws, or otherwise apply the antitrust laws to, any conduct, acts, practices, or agreements that do not directly relate to or affect employment of major league baseball players to play baseball at the major league level, including but not limited to -*

(1) *any conduct, acts, practices, or agreements of persons engaging in, conducting or participating in the business of organized professional baseball relating to or affecting employment to play baseball at the minor league level, any organized professional baseball amateur or first-year player draft, or any reserve clause as applied to minor league players; (emphasis added).*

107. A living wage is defined by Merriam-Webster's dictionary as a wage sufficient to provide the necessities and comforts essential to an acceptable standard of living. *Living Wage*, MERRIAMWEBSTER.COM, <http://www.merriam-webster.com/dictionary/living+wage> (last visited Sept. 27, 2010). See also *Living Wage Overview*, BERKELEY.EDU, <http://laborcenter.berkeley.edu/livingwage/overview.shtml> (last visited Sept. 28, 2010). While the living wage level varies among regions, the stated goal is to insure that workers receive a livelihood that allows a full time worker to provide food, housing, health care, child care, and basic transportation for themselves and their families.

108. *Am. League Baseball Club of Chicago v. Chase*, 86 Misc. 441, 465-67 (N.Y. Supp. 1914).

The system created by 'organized baseball' in recent years presents the question of the establishment of a scheme by which the personal freedom, the right to contract for their labor wherever they will, of 10,000 skilled laborers, is placed under the dominion of a

minor league players from having the antitrust threat available in other professional leagues. Because leagues, like no other workplace, rely so heavily on restrictive employment practices (e.g., drafts, salary caps, wage scales, free agency restraints), the professional sports workplace is a hotbed for antitrust challenges by players.¹⁰⁹ Although there are pro-competitive reasons to justify the restrictive practices under a rule of reason argument, the threat of treble damages gets the league's attention in ways that contract or other legal claims do not. The antitrust threat also encourages unionization in professional sports. To achieve the labor exemption to antitrust, owners covet unionization in professional sports leagues in ways they might not in mainstream business. To settle an antitrust suit, owners in professional sports will resort to collective bargaining.¹¹⁰ However, unionization in minor league baseball is more challenging to achieve due to the extreme leverage and disincentive for unionization afforded to management by baseball's exemption, the high rate of turnover of players, the vast geographic area of the minor league teams, the disparity in levels of talent between low A ball and AAA, and the fact that, by their nature and in the working environment they are in, the players are competing with each other rather than cooperating with one another. Thus, the likelihood that antitrust or labor remedies available to other professional athletes will bridge the gap for minor league baseball players is unrealistic.

benevolent despotism through the operation of the monopoly established by the National Agreement. This case does not present the simple question of a laborer who has entered into a fair contract for his personal services." *Id.* at 466.

109. See *Flood v. Kuhn*, 407 U.S. 258 (1972) (challenging MLB's reserve system on antitrust grounds); *Radovich v. Nat'l Football League*, 352 U.S. 445 (1957) (challenging NFL's rule blacklisting player on antitrust grounds); *Toolson v. N.Y. Yankees*, 346 U.S. 356 (1953) (challenging MLB's reserve system on antitrust grounds); *Clarett v. Nat'l Football League*, 369 F.3d 124 (2nd Cir. 2004) (challenging NFL's draft eligibility restrictions on antitrust grounds); *Powell v. Nat'l Football League*, 930 F.2d 1293 (8th Cir. 1989) (challenging NFL's right of first refusal-free agent compensation system on antitrust grounds); *Wood v. Nat'l Basketball Ass'n*, 809 F.2d 954 (2nd Cir. 1987) (challenging NBA's draft, rookie salary cap, and player restraints on antitrust grounds); *McCourt v. Cal. Sports, Inc.*, 600 F.2d 1193 (6th Cir. 1979) (challenging NHL's free agent compensation system on antitrust grounds); *Smith v. Pro Football, Inc.*, 593 F.2d 1173 (D.C. Cir. 1978) (challenging NFL's draft on antitrust grounds); *Mackey v. Nat'l Football League*, 543 F.2d 606 (8th Cir. 1976) (challenging NFL's Rozelle Rule restraints on free agency on antitrust grounds); *Fraser v. Major League Soccer*, 97 F. Supp. 2d 130 (D. Mass. 2000) (challenging MLS' single entity structure on antitrust grounds); *McNeil v. Nat'l Football League*, 790 F. Supp. 871 (D. Minn. 1992) (challenging NFL's Plan B free agency restraints on antitrust grounds); *Bridgeman v. Nat'l Basketball Ass'n*, 675 F. Supp. 960 (D.N.J. 1987) (challenging NBA's college player draft, salary cap, and right of first refusal on antitrust grounds).

110. See *White v. Nat'l Football League*, 822 F. Supp. 1389, 1431-32 (D. Minn. 1993) *aff'd*, 41 F.3d 402, 408-09 (8th Cir. 1994) (threatened antitrust class action by NFL players brought parties back to collective bargaining resulting in settlement with 1993 CBA).

B. *Comparison to Minor League Hockey Players*

Minor league hockey players in the American Hockey League (AHL) and the ECHL are represented by the Professional Hockey Players Association (PHPA). The collective bargaining agreements (CBA) in both leagues provide better benefits to minor league hockey players than their counterparts in minor league baseball.

The AHL, which began operation in 1936, is comprised of thirty teams¹¹¹ and serves as the top developmental league for the National Hockey League (NHL).¹¹² The minimum salary in the AHL for 2009-10 was \$36,500 U.S. or \$39,000 Canadian (\$28,000 U.S. for players on loan to the AHL from lesser leagues) with \$63 per diem.¹¹³ The CBA also provides that “if a player’s injury is covered by Workers’ Compensation, then his sole remedy shall be to pursue a claim before the Workers’ Compensation Board in the appropriate jurisdiction.”¹¹⁴ Unlike the provisions of Addendum F, the CBA does not require the player to file a workers’ compensation claim in the team’s home state. In addition, the CBA between the AHL and the PHPA provides benefits to players if they are playing in a jurisdiction that has exempted professional athletes from workers’ compensation coverage.¹¹⁵ During the season, an injured player receives his full salary if he is injured during a game and unable to play.¹¹⁶ In the offseason, an injured player, not covered by workers’ compensation, who has yet to fully recover, receives a benefit of \$450.00 per week.¹¹⁷ If the team doctor and the player’s doctor disagree about a player’s injury and his ability to play, an independent doctor is selected to resolve the dispute.¹¹⁸

The ECHL, formerly known as the East Coast Hockey League, is a minor league hockey league with twenty teams from Alaska to South Carolina.¹¹⁹ Each team has twenty players on its active roster.¹²⁰ The professional players

111. *Member Club Information*, AHL.COM, <http://theahl.com/team-directory-s11579> (last visited Aug. 7, 2010).

112. *Frequently Asked Questions*, AHL.COM, <http://theahl.com/faq-p137653> (last visited Aug. 7, 2010).

113. AMERICAN HOCKEY LEAGUE, COLLECTIVE BARGAINING AGREEMENT: AHL/PHPA art. VI (2009) [hereinafter AHL/PHPA CBA].

114. *Id.* at art. XII, § 1 ¶ 1.

115. Carlin & Fairman, *supra* note 26.

116. AMERICAN HOCKEY LEAGUE STANDARD PLAYER CONTRACT ¶ 5(d).

117. AHL/PHPA CBA, *supra* note 113, at art. XII, §§ 1-2.

118. *Id.*

119. The East Coast Hockey League changed its name to the ECHL on May 19, 2003. *Frequently Asked Questions*, ECHL.COM, <http://www.echl.com/faq.shtml> (last visited Aug. 7, 2010).

120. *Id.*

of the ECHL are collectively represented by the PPHA and also have a CBA with the ECHL. The ECHL has a minimum weekly salary due to player movement. The 2010-11 weekly minimum falls between \$370 and \$410 U.S., depending on a player's experience level, and the daily per diem is \$36.¹²¹ The CBA requires players be covered by workers' compensation, and if the home territory of the team does not require it, the team must provide "similar insurance."¹²² An injured ECHL player continues to receive his full salary under the contract, and he receives medical care "as the [team's] physician may deem necessary."¹²³

It is evident that unionized minor league hockey players, due to their ability to collectively bargain for wages and other employment provisions, earn better wages and are better protected than their nonunionized minor league baseball counterparts. Further, when there is a dispute regarding the care, treatment, and financial coverage for the care and treatment of work-related injuries, the ECHL CBA provides protections and remedies not available to similarly situated minor league baseball players.

VII. MAJOR LEAGUE BASEBALL AND MINOR LEAGUE BASEBALL ARE PROFITABLE BUSINESSES AND IMPOSING ADDENDA F AND G ON MINOR LEAGUE PLAYERS IS FINANCIALLY UNNECESSARY AND UNFAIR

Professional baseball is a very profitable business. In 2009, MLB generated \$6.6 billion in gross revenue.¹²⁴ Today, minor league baseball clubs are also very valuable. In 2008, on average, the top twenty minor league teams were worth \$21.2 million and generated \$9.8 million in revenue per team.¹²⁵ Forty-nine percent of these revenues were generated from ticket sales.¹²⁶ The major league teams cover the cost of developing the minor league players, as the costs for player salaries, bonuses, scouting, and coaches' salaries are paid for by the major league affiliates.¹²⁷ As a result, the top twenty minor league clubs generated average operating income—defined as

121. AHL/PPHA CBA, *supra* note 113, at art. VII § 2.

122. *Id.* at art. XIV § 1.

123. ECHL Standard Player Contract ¶ 7.

124. Maury Brown, *MLB Sees Record \$6.6 Billion in Revenues in 2009*, BIZOFBASEBALL.COM, Feb. 25, 2010, http://www.bizofbaseball.com/index.php?option=com_content&view=article&id=4124:mlb-sees-a-record-66-billion-in-revenues-for-2009&catid=30:mlb-news&Itemid=42.

125. Michael Ozanian, *Minor Leagues, Major Profits*, FORBES.COM, Aug. 8, 2008, http://www.forbes.com/2008/08/06/baseball-minors-sacramento-biz-sports-cz_mo_0806minors.html.

126. *Id.*

127. *Id.*

earnings before interest, taxes, and depreciation—of \$3 million.¹²⁸

In comparison to the enormous revenues of major league clubs and the success of several minor league teams, the average minor league player is impoverished. The Federal Government's "Poverty Guidelines" for 2010 state that an individual is considered impoverished if he earns less than \$10,830 per year.¹²⁹ The average first-year minor league player makes \$1,100 for the five months of the playing season, from April to the beginning of September, or \$5,500 per year.¹³⁰ The majority of players do not receive large signing bonuses upon agreeing to their first professional contract.¹³¹ The player is obligated to keep himself in shape and prepare for the upcoming season, all while attempting to find work in the offseason plus paying for his housing, food, and transportation. It is easy to see that many minor league players will fall below the poverty line given the nature of their employment.

With this economic background, the requirement that minor league players sign Addenda F and G is simply unfair. With regard to Addendum F, the major league clubs and their minor league team affiliates are in a much better position financially to litigate workers' compensation claims in the home state of the player rather than submit to the jurisdiction of the club's home state. Further, it is incomprehensible that major league clubs, such as the Los Angeles Angels of Anaheim, are requiring players to consent to jurisdictions that are employer friendly and not their home state.

In addition, if a player's personal physician is of the opinion that an expensive, but necessary, medical procedure is required and the club's physician disagrees, Addendum G requires that the player pay for the difference in treatment if the required treatment is more expensive. Given the limited resources of minor league players, this could lead to an injured player foregoing treatment because he cannot afford it or acquiescing to the treatment suggested by the club's physician even if it does not address his ailment. Addenda F and G make it more difficult and more expensive for a minor league player to file a workers' compensation claim and receive medical treatment. This is unacceptable in an industry that is thriving. These addenda are unconscionable contracts of adhesion and seem to violate public policy due to the lack of bargaining power of the minor league players.

128. *Id.*

129. *Fed. Reg.*, vol. 75, n. 148, Aug. 3, 2010, pp. 45628-29, available at <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml> see also <http://aspe.hhs.gov/poverty/faq.shtml#differences>.

130. *Official Info*, MiLB.COM, http://web.minorleaguebaseball.com/milb/info/faq.jsp?mc=milb_info (last visited Aug. 31, 2010).

131. See *supra* Section V, A. of this Article.

VIII. CONCLUSIONS AND SUGGESTIONS

Under United States Supreme Court precedent in *Alaska Packers*, an agreement by any employee to waive his right to workers' compensation is invalid.¹³² Although Addenda F and G are not waivers of workers' compensation rights, they have the effect of making it more difficult and expensive for a minor league player to file a workers' compensation claim, and the agreements may even prevent him from receiving a necessary medical procedure because he does not have the financial wherewithal to afford it. As a result of the underlying unfairness to the players, this Article suggests that state workers' compensation boards and courts should ignore Addenda F and G and apply their typical jurisdictional criteria to the workers' compensation cases of minor league baseball players that come before them.¹³³

MLB should rescind Addenda F and G, as they are unfair to injured minor league players. Addenda F and G do not comport with the "fair play and substantial justice" standards for due process and minimum contacts set out by the United States Supreme Court.¹³⁴ Cavers, a Maine resident, was working for a Texas corporation, the Astros, and was injured while playing in a professional baseball game in Tennessee. Applying the Supreme Court's logic in the *Alaska Packers* case to this matter, the "probability is slight" that Cavers "would be able to retrace" his "steps" to Tennessee or to Texas "and there successfully prosecute [his] claims for compensation."¹³⁵ Addenda F and G may lead to injured minor league players becoming "remediless" as the Supreme Court in *Alaska Packers* feared, and there is a "danger that they might become public charges."¹³⁶ The imposition of Addenda F and G on workers, the majority of whom are paid below the poverty line, is simply an unconscionable policy decision borne out of the loss by the Astros in the *Cavers* case.

Another option, despite the hurdles raised previously, is for minor league baseball players to form a union to collectively bargain for better wages and working conditions, including injury protection. Furthermore, issues have recently arisen that suggest that minor league baseball players should form a

132. *Alaska Packers Ass'n v. Indus. Accident Comm'n of Cal.*, 294 U.S. 532, 543 (1935). See also Carlin & Fairman, *supra* note 26, at 100 n.27.

133. ROTHSTEIN, *supra* note 11, at § 7.40.

134. *Cavers v. Houston McLane Co.*, 958 A.2d 905, 909-10 (2008) (citing *Shaffer v. Heitner*, 433 U.S. 186, 212 (1977) and *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945)).

135. *Alaska Packers*, 294 U.S. at 542; see also *supra* Section III of this Article. Cavers never played baseball for the Astros in Texas. He only visited Texas to be examined by the Astros' team doctor.

136. *Cavers*, 958 A.2d at 914 (quoting *Alaska Packers*, 294 U.S. at 542).

union. In July 2010, MLB Commissioner Allan H. “Bud” Selig announced that minor league players would be tested for human growth hormone (HGH) by drawing blood from the players.¹³⁷ MLB was able to impose this new testing without approval of the minor league players because they are not part of a union and not subject to collective bargaining rules.¹³⁸ The details of the blood test, including the level of the substance within the body, the ability to increase testing, and the blood drawing procedures, are solely up to MLB, and the minor league players have no input into the process.¹³⁹ Unionization would ensure that the minor league players have the opportunity to negotiate for protections similar to those afforded their major league counterparts. Minor league players need to have a say in such terms and conditions of employment and, given these recent developments, should form a union to represent their interests. It is clear that minor league hockey players in the AHL and ECHL have working conditions that are far more favorable because players are unionized and have negotiated more equitable terms in their respective CBAs.¹⁴⁰

A second option is for Congress to re-examine the antitrust exemption first granted to baseball by the Supreme Court in *Federal Baseball Club v. National League*¹⁴¹ and codified in the Curt Flood Act of 1998.¹⁴² Professional baseball is able to maintain the rights of minor league players in one-sided contracts for seven years¹⁴³ by virtue of this antitrust exemption. Without the antitrust exemption that professional baseball enjoys, players would be granted more individual bargaining power by the threat of challenging restrictive practices, such as below market wages and the reserve system. For instance, with antitrust leverage, ostensibly, the owners would not be able to uniformly bind minor league players to their clubs for seven years, unless, of course, the players agreed collectively to such an imposition, and if that were the case, players would presumably receive something in exchange for agreeing to maintain the reserve system currently in existence. Further, the

137. Michael S. Schmidt, *Baseball Using Minor Leagues for a Drug Test*, NYTIMES.COM, July 22, 2010, <http://www.nytimes.com/2010/07/23/sports/baseball/23doping.html>.

138. *Id.*

139. Maury Brown, *Rob Manfred on Minor League Drug Testing Program*, FANGRAPHS.COM, Aug. 11, 2010, <http://www.fangraphs.com/blogs/index.php/rob-manfred-on-minor-league-drug-testing-program/>.

140. See *supra* Section VI B. of this Article.

141. *Fed. Baseball Club v. Nat'l League of Prof'l Baseball Clubs*, 259 U.S. 200 (1922) (holding business of staging local professional baseball games through service contracts was not interstate commerce and exempt from Sherman Antitrust Act).

142. See Curt Flood Act of 1998, 15 U.S.C. § 26(b) (2011).

143. MLUPC, *supra* note 36, ¶ VI., Duration and Conditions of Employment

owners would have difficulty unilaterally imposing unfair terms upon them as contained in Addenda F and G, as players would have access to the same antitrust threat that major league players were granted by virtue of the Curt Flood Act. Congress should explore why professional baseball is taking advantage of minor league players regarding an issue of their health when baseball is a very profitable business, in part because of the antitrust exemption. Minor league hockey players in the AHL and ECHL are subject to antitrust laws and have far better wages and working conditions. However, because the players in those leagues are unionized and negotiate CBAs, the leagues are afforded the labor exemption from antitrust liability for the provisions in their CBAs.

And yet a third option might be to strengthen state workers' compensation laws to specifically allow residents to file workers' compensation claims in their home state regardless of any contractual agreement that their employers requires them to sign consenting to the jurisdiction of another state, thus following the logic in *Alaska Packers*.¹⁴⁴ In conclusion, Addenda F and G do not comport with the traditional notions of fair play and substantial justice, and minor league baseball players should not be bound to the terms of Addenda F and G as they are unjust, they violate public policy, and they are in conflict with the letter and the spirit of the law proscribed by the United States Supreme Court in *Alaska Packers*.¹⁴⁵

144. *Cavers v. Houston McLane Co.*, 958 A.2d 905, 909-910 (Me. 2008) (citing *Shaffer v. Heitner*, 433 U.S. 186, 212 (1977) and *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945)).

145. *Id.*