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Chapter 653: Tackling Players' End-Around the Laws of Their Home States: Restricting Professional Athlete Access to California's Workers' Compensation System

Robert Binning

Code Section Affected
Labor Code § 3600.5 (amended).
AB 1309 (Perea); 2013 STAT. Ch. 653.

I. INTRODUCTION

Reggie Williams played linebacker in the National Football League (NFL) for fourteen years, was named Man of the Year by the league in 1986, and has had twenty-four knee operations.[1] Retired NFL players suffer chronic joint injuries, arthritis, and neurodegenerative diseases at a significantly higher rate than the general public and, consequently, have far greater long-term healthcare needs.[2] The NFL provides health insurance for retired players for just five years,[3] yet the disability board, which is comprised of members of the players' union and NFL management, denies almost sixty percent of claims.[4] As a result, many retired players choose to file workers' compensation claims against their former teams[5] to pay for their medical care.[6]

Prior to the enactment of Chapter 653, many professional athletes like Williams,[7] who never played for a California team, could potentially bring their workers' compensation claims against their former teams in California, provided they played a single game for that team in the state.[8] California was and continues

1. Sally Jenkins & Rick Maese, *Do No Harm: Who Should Bear the Costs of Retired NFL Players' Medical Bills?,* WASH. POST (May 9, 2013), http://www.washingtonpost.com/sports/redskins/do-no-harm-who-should-bear-the-costs-of-retired-nfl-players-medical-bills/2013/05/09/2dae88ba-b70e-11e2-b568-6917f6ac6d9d_story.html (on file with the *McGeorge Law Review*).

2. *Id*.

3. *Id*.

4. *Id*.

5. Players' claims are filed against their former teams, not the NFL. *Id.* Throughout this Article, "employee" refers to the player, and "employer" refers to the player's former team.

6. *Id*.

7. Although this Article primarily uses examples from the NFL, California's workers' compensation law generally applies to all professional athletes, and Chapter 653 applies to all professional baseball, basketball, football, ice hockey, and soccer athletes. CAL. LAB. CODE § 3600.5(g)(1) (amended by Chapter 653).

8. *See* Rockwell Thomas Gust IV, Comment, *The California Workers' Compensation Act: The Death Knell of NFL Players' "Concussion" Case?*, 44 U. TOL. L. REV. 245, 250 (2012) (explaining how a single professional game played in California may allow a California court to exercise jurisdiction over an athlete's

to be a particularly attractive jurisdiction for these claims because state law allows employees to file claims for slowly manifesting injuries long after an employee changes employment, which frequently occurs with retired professional athletes.[9]

Because of the worker-friendly laws discussed above, California was often used "as the state of last resort" for the workers' compensation claims of professional athletes whose home states had more restrictive laws.[10] Assemblymember Perea introduced AB 1309 to stop professional athletes with minimal connections to California from adjudicating their claims in the state.[11]

II. LEGAL BACKGROUND

Three factors make California a widely used forum for the workers' compensation claims of professional athletes who played in other states.[12] First, California falls within a small minority of states allowing parties suffering from cumulative trauma injuries to make workers' compensation claims—significantly expanding employer liability.[13] Second, the statute of limitations on workers' compensation claims does not begin to run until employers notify their employees of their California workers' compensation rights.[14] Third, functioning "as the state of last resort," under the state's liberal jurisdiction requirements prior to 2012, California often exercised jurisdiction over the claims other states would not recognize.[15]

A. *Allowance of Cumulative Trauma Claims*

California is one of just nine states to recognize workers' compensation claims for injuries resulting from "cumulative trauma."[16] Cumulative trauma injuries result from "repetitive mentally or physically traumatic activities

workers' compensation claim).

9. *See infra* Part II.A (explaining California law allowing cumulative trauma claims).

10. *See* Jim Trotter, *States, Ex-Players Trying to Level Playing Field on Workers' Comp*, SI.COM (May 17, 2013, 10:47 AM), http://sportsillustrated.cnn.com/nfl/news/20130507/workers-comp-california/?eref=sircrc (on file with the *McGeorge Law Review*) (discussing that the law in California has special significance because of the nature of its workers' compensation laws).

11. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1309, at 1–3 (Sept. 5, 2013).

12. Matthew A. Foote, *The Golden State for Retired Athletes: Potential Solutions to the Cumulative Trauma Workers' Compensation Claim Problem in California*, 28 ENT. & SPORTS L. 3, 4 (2011).

13. Michael Hiltzik, *Pro Sports Leagues Aim to Put Workers' Comp Out of Play*, L.A.TIMES (Mar. 1, 2013), http://articles.latimes.com/2013/mar/01/business/la-fi-hiltzik-20130303 (on file with the *McGeorge Law Review*); Dirk Stemerman, *Workers' Comp for Sports Stars*, MONTEREY CNTY. HERALD (Apr. 12, 2013, 10:53:10 AM), http://www.montereyherald.com/business/ci_23004290/dirk-stemerman-california-assembly-bill-1309-threat-workers?source=rss (on file with the *McGeorge Law Review*).

14. Foote, *supra* note 12, at 4.

15. *Id*. at 3–4.

16. Hiltzik, *supra* note 13; Stemerman, *supra* note 13.

extending over a period of time, the combined effect of which causes any disability or need for medical treatment."[17] For professional athletes who spend years running, tackling, and perfecting repetitive movements, cumulative trauma injuries are particularly likely.[18] In the past, many players filed their claims in California because it was the only state that recognized cumulative trauma claims and could exercise jurisdiction over their claims.[19]

B. Player-Friendly Statute of Limitations Rules

California imposes a one-year statute of limitations on workers' compensation claims from "the date of injury,"[20] defined as the date "the employee first suffered [the] disability . . . and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment."[21] Players must commence their action within one year of 1) their injuries manifesting and 2) learning their participation in the sport caused the injury. However, because cumulative injuries may take years to manifest, employers may not face claims until decades after a player retires.[22] Under a narrower definition of date of injury, players could not bring their workers' compensation claims for injuries that take years to manifest.[23]

The statute of limitations also does not begin until the employer provides the employee notice of his California workers' compensation rights.[24] Therefore, in cases of cumulative trauma, where significant future injuries may develop after retirement, former employers who have not already provided employees with notice of their California workers' compensation rights cannot provide the required notice to players until they receive notice that the injury exists.[25]

17. CAL. LAB. CODE § 3208.1 (West 2011).

18. Ken Bensinger & Marc Lifsher, *California Limits Workers' Comp Sports Injury Claims*, L.A. TIMES (Oct. 8, 2013), http://articles.latimes.com/2013/oct/08/business/la-fi-workers-comp-nfl-20131009 (on file with the *McGeorge Law Review*); Michael Hiltzik, *California Gives a Huge Payoff to the NFL*, L.A. TIMES (Oct. 8, 2013), http://articles.latimes.com/2013/oct/08/business/la-fi-mh-nfl-20131008 (on file with the *McGeorge Law Review*).

19. Melissa Mahler, *AB 1309 A Question of Fairness: Really?*, PRO PLAYERS INSIDERS (May 30, 2013, 8:47 AM), http://proplayerinsiders.com/ab-1309-a-question-of-fairness-really/ (on file with the *McGeorge Law Review*).

20. LAB. § 5405.

21. *Id.* § 5412.

22. Alan Schwarz, *Case Will Test N.F.L. Teams' Liability in Dementia*, N.Y. TIMES (Apr. 5, 2010), http://www.nytimes.com/2010/04/06/sports/football/06worker.html?pagewanted=all&_r=0 (on file with the *McGeorge Law Review*); Jenkins & Maese, *supra* note 1.

23. *See* Jenkins & Maese, *supra* note 1 (explaining that the most serious injuries take a long time to materialize).

24. Bobbi N. Roquemore, Comment, *Creating a Level Playing Field: The Case for Bringing Workers' Compensation for Professional Athletes into a Single Federal System by Extending the Longshore Act*, 57 LOY. L. REV. 793, 827 (2011); *see* LAB. § 3550 (West Supp. 2014) (requiring employers to notify employees of their workers' compensation rights).

25. Foote, *supra* note 12, at 4.

Employers unaware of developing cumulative trauma injuries cannot effectively provide players notice of their workers' compensation rights, preventing the statute of limitations from coming into effect.[26]

C. California's Jurisdiction Requirements for Workers' Compensation Claims

Despite California's player-friendly workers' compensation laws discussed above, state common law and statute bar some claims.[27] A recent Workers' Compensation Appeals Board (WCAB) decision suggests a trend towards requiring greater contacts between a professional athlete and the state before a California court can establish jurisdiction over the workers' compensation claim.[28] Further, when an athlete's home state enacts certain statutory language, "referred to as a 'reciprocity' provision," the athlete may not bring a claim against the employer in California.[29]

1. Common Law Jurisdiction Requirements

Previously, California courts frequently exercised jurisdiction over claims from out-of-state professional athletes.[30] In earlier decisions, courts recognized cumulative trauma workers' compensation claims from players who "participated in a single game within" California.[31] The "single-game rule" substantially favored players and forced franchises throughout the country to adjudicate claims in California.[32]

26. *See* Roquemore, *supra* note 24, at 833 (explaining the notice exception to the statute of limitations exposes teams to increased liability whether they intentionally or unintentionally fail to provide players notice of their workers' compensation claims).

27. McKinley v. Arizona Cardinals, 78 Cal. Comp. Cases 23, at 2 (Cal. W.C.A.B. Jan. 15, 2013) (en banc); LAB. § 3600.5 (West 2011) (enumerating a reciprocity exception, which precludes California courts from exercising jurisdiction over some workers' compensation claims).

28. *See McKinley*, 78 Cal. Comp. Cases, at 1–2 (holding that where a NFL player was not a California resident, did not sign his contract in California, played just seven of his eighty career games in the state, and whose contract contained a forum selection clause identifying Arizona as the location for the filing of potential workers' compensation claims, the player's contacts were insufficient for the WCAB to establish jurisdiction over the claim); Matthews v. Nat'l Football League Mgmt. Council, 688 F.3d 1107, 1113–14 (9th Cir. 2012) (barring a workers' compensation claim of a professional athlete who played thirteen games in California and was never employed by a team based in the state). Although *Matthews* is not binding, *McKinley* follows its holding. *McKinley*, 78 Cal. Comp. Cases, at 3, 14.

29. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1309, at 4 (Sept. 5, 2013).

30. *See* KENNETH E. CARLTON III ET AL., ANALYSIS OF GROSS ULTIMATE LOSS AND ALLOCATED LOSS ADJUSTMENT EXPENSE FROM CALIFORNIA BASED CUMULATIVE TRAUMA CLAIMS 4 (Milliman Inc., Aug. 17, 2012), *available at* http://publications.milliman.com/research/life-rr/pdfs/analysis-california-trauma-claims.pdf (on file with the *McGeorge Law Review*) (finding the workers' compensation losses due to claims of players who retire from out-of-state teams comprises seventy-eight percent of workers' compensation losses among the four largest professional sports leagues).

31. *See* Gust, *supra* note 8, at 250 ("California's scheme allows a player to pursue an injury claim, so long as the player participated in a single game within the state, regardless of whether the bulk of his career took place elsewhere." (citing CAL. LAB. CODE § 3600.5 (West 2012)).

32. Foote, *supra* note 12, at 3–4.

However, recent court decisions demonstrate a shift away from such employee-friendly jurisdiction rules.[33] In *Matthews v. National Football League Management Council*, Bruce Matthews asked the Ninth Circuit[34] to vacate an arbitration decision prohibiting him from adjudicating his cumulative trauma workers' compensation claim in California.[35] In a de novo opinion, the court found that although Matthews played thirteen games in California during his nineteen-year NFL career, "it is not clear that California would extend its workers' compensation regime to cover the cumulative injuries Matthews claims, given his limited contacts with the state."[36] This ruling, while not binding on California's courts, casts doubt on the validity of the "single-game rule" described by commentators.[37]

Within six months of *Matthews*, California's WCAB heard *McKinley v. Arizona Cardinals* in which Dennis McKinley, a four-year veteran of the NFL who played seven games in California, appealed a workers' compensation administrative law judge's (WCJ) decision not to extend jurisdiction over his cumulative injury claim.[38] In an en banc opinion, the WCAB, following the reasoning of *Matthews*,[39] found "when there is a reasonable mandatory forum selection "clause . . . , and there is limited connection to California with regard to the employment and the claimed cumulative injury," the WCAB was not obligated to exercise jurisdiction over the claim.[40] Additionally, the WCAB explained, "numerous claims have been filed in California by . . . professional athletes, and those claims impose a substantial burden on the WCAB's limited resources."[41] Given the congestion already facing the WCAB, the WCAB decided public policy required it to decline to hear cases where the connection between the claim and California was too attenuated.[42]

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33. *See Matthews*, 688 F.3d at 1113–14 (requiring more than thirteen games to establish jurisdiction in California); *McKinley*, 78 Cal. Comp. Cases, at 2 (finding seven games played in California during an eighty-game career was an insufficient connection for the WCAB to exercise jurisdiction over the workers' compensation claim).

34. Matthews brought this suit in federal district court against his former employer, the Tennessee Titans, under 29 U.S.C. § 185 and Carter v. Health Net of Cal., Inc., 374 F.3d 830, 835 (9th Cir. 2004). Matthews, 688 F.3d at 1110.

35. *Id*. at 1109.

36. *Id*. at 1114.

37. *See* Gust, *supra* note 8, at 250 (treating the single-game rule as an unquestioned interpretation of California law).

38. *McKinley*, 78 Cal. Comp. Cases, at 2–3.

39. *Id*. at 3, 14.

40. *Id*. at 1–2.

41. *Id*. at 19–20.

42. *Id*. The WCAB considered that McKinley resided outside of California, and signed his contract, practiced, and played the majority of his games in Arizona, in determining if McKinley's contacts were significant enough to derogate the forum selection clause in his employment contracts requiring he file any workers' compensation claims in Arizona. *Id.* at 6. Furthermore, the WCAB found the California income taxes McKinley paid for the games he played in California were immaterial to establishing sufficient contacts for his workers' compensation claim. *Id*.

2. *Statutory Jurisdiction Requirements*

Labor Code section 3600.5(b) imposes a reciprocity provision on claims made by employees temporarily working in the state, which extends to professional athletes playing for a non-California team in the state.[43] When another state enacts a reciprocity provision providing California employers the same protections California offers out-of-state employers, and an out-of-state employer provides out-of-state employees with workers' compensation coverage while temporarily working in California, under California law the employees may not adjudicate their claims in California.[44] Many states have enacted "reciprocity" laws potentially recognizable by California, enabling their local employers to avoid adjudicating claims under the workers' compensation laws of other states.[45] For example, reciprocity provisions bar all professional athletes, as well as all other employees, employed by an Ohio employer and temporarily working in California, from bringing a workers' compensation claim against their former Ohio employer in California.[46] However, as California law contains a statutory requirement, courts construe its workers' compensation laws "liberally."[47] Courts have held where an athlete signs a contract in California, the WCAB will have jurisdiction over the claim, even where there are conditions subsequent to the player signing the contract.[48]

43. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1309, at 4 (Sept. 5, 2013).

44. Dailey v. Dallas Carriers Corp., 43 Cal. App. 4th 720, 727, 51 Cal. Rptr. 2d 48 (2d Dist. 1996) ("California law does not apply to a foreign worker if the worker is covered by insurance from the other state, the extraterritorial provisions of California law are recognized by the other state, and California workers and employers are exempted from the other state's workers' compensation laws.").

45. *Extraterritorial Reciprocity Information for All 50 States*, OR. WORKERS' COMPENSATION DIVISION, http://www.cbs.state.or.us/wcd/compliance/ecu/etsummary.html (last visited June 18, 2013) (on file with the *McGeorge Law Review*) (concluding Alabama, Arkansas, California, Florida, Georgia (with exceptions), Idaho, Indiana, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Montana (except in the construction industry), Nevada, North Dakota ("if within North Dakota's wage restriction"), Ohio (conditional), Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Washington (except in the construction industry), West Virginia ("for 30 days under temporary assignments"), and Wyoming, "honors the extraterritorial provisions of other states as long as the other state honors this state's extraterritorial provisions," although these findings are not specific to reciprocal agreements with California).

46. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1309, at 4 (Sept. 5, 2013); *see* Carroll v. Cincinnati Bengals, 78 Cal. Comp. Cases 655, at 2–3 (Cal. W.C.A.B. June 18, 2013) (en banc) (rescinding a WCJ decision on the basis that the team met all of the requirements of the reciprocal provisions of California and Ohio law, and thus the WCAB could not exercise jurisdiction over the team in a former player's cumulative injury case). Additionally, professional athletes employed in the minor leagues of Ohio are subject to the reciprocity requirements.

47. CAL. LAB. CODE § 3202 (West 2011).

48. *See* Bowen v. Workers' Comp. Appeals Bd., 73 Cal. App. 4th 15, 27, 86 Cal. Rptr. 2d 95, 104 (2d Dist. 1999) ("[A]n employee who is a professional athlete residing in California . . . , [and] signs a player's contract in California furnished to the athlete here by an out-of-state team, is entitled to benefits under the [California Workers' Compensation A]ct for injuries received while playing out of state under the contract. This is so even though the team has not yet signed the contract, and, as a condition of the contract, a third party such as the commissioner of the sport must approve the contract.").

III. CHAPTER 653

Chapter 653 does not materially affect the reciprocity provisions discussed above, but does clarify under what circumstances professional baseball, basketball, football, ice hockey, and soccer athletes may adjudicate their claims in the California's workers' compensation system.[49] Any employee who works less than twenty percent of the previous calendar year in California, under Chapter 653, is denoted as working "temporarily" in the state.[50] When an employer's home state has a reciprocity provision in place, an employee injured while temporarily working in California may only adjudicate his workers' compensation claim in the employer's home state.[51]

After a professional athlete spends a year employed by an out-of-state employer subject to a reciprocity agreement or another California employer, the original California employer is exempted from liability for future cumulative injuries, and the WCAB will not exercise jurisdiction over the athlete's claim.[52] However, under Chapter 653, California employers of professional athletes remain liable for cumulative injuries to professional athletes employed for at least two years in the state or twenty percent of their professional career, and where the athlete spent less than seven years employed by an out-of-state team.[53] Furthermore, the one-year statute of limitations period for cumulative injury claims made under Chapter 653 does not begin to run until the athlete learns or should have learned his former employment caused the injury.[54]

Chapter 653 also contains language noting the legislature's intent not to affect the holdings of *Bowen*[55] and *McKinley*,[56] and limits the application of *Carroll*[57] to professional athletes.[58] Additionally, Chapter 653 only applies to claims made after September 15, 2013.[59]

49. CAL. LAB. CODE § 3600.5(b)–(c) (amended by Chapter 653); *id*, § 3600.5(g)(1) (amended by Chapter 653).

50. *Id*. § 3600.5(c)(3) (amended by Chapter 653).

51. *Id*. § 3600.5(c)(1)–(2) (amended by Chapter 653).

52. *Id. §* 3600.5(d) (amended by Chapter 653); *see* Robert Willyard & Teresa R. Edrington, *Work-Related Cumulative Trauma Injuries,* ORANGE COUNTY L., July 2013, at 22, 24 ("[L]iability is generally limited to the last year of employment in which the worker was exposed to the conditions that caused or contributed to the cumulative injury.").

53. LAB. § 3600.5(d)(1) (amended by Chapter 653).

54. *Id.* § 5412.

55. *Bowen*, 73 Cal. App. 4th at 27, 86 Cal. Rptr. 2d at 95.

56. *McKinley*, 78 Cal. Comp. Cases at 19–20.

57. *Carroll*, 78 Cal. Comp. Cases at 2–3 (holding that the WCAB could not exercise jurisdiction over a cumulative injury claim of an athlete, who played five of his thirty-two career games in California, because of Ohio's reciprocity provision).

58. 2013 Cal. Stat. ch. 653, §§ 3–5.

59. LAB. § 3600.5(h) (amended by Chapter 653).

IV. ANALYSIS OF CHAPTER 653

Chapter 653 prohibits athletes only temporarily employed in the state from adjudicating their cumulative workers' compensation claims in California.[60] In doing so, it attempts to address three important concerns: 1) California's workers' compensation courts cannot timely adjudicate all the claims they receive; 2) Professional athletes with limited connection to California receive tax dollars for their claims against insolvent insurance agencies related to their cumulative injuries suffered largely outside of the state; and 3) California employers face rapidly increasing workers' compensation costs.[61]

A. Will Chapter 653 Unclog California Workers' Compensation Courts?

The supporters of Chapter 653 noted workers' compensation claims by out-of-state players constituted "a significant drain on the overall system."[62] California's workers' compensation laws were so liberal, prior to Chapter 653 one law firm's website asked: "Did you ever practice or play in the State of California? If yes, there's a very good chance you are eligible to file a Workers' Compensation claim in California."[63]

Since 1980, athletes settled more than 4,500 cumulative trauma claims in California, and "another 4,500 are still open and pending."[64] Chapter 653 would affect a significant number of these claims because over seventy percent of the claims made in California since 2006 would not have qualified under the new law.[65] Additionally, players retiring from non-California teams were estimated to comprise seventy-eight percent of present and future California cumulative trauma losses.[66] By reducing the amount of eligible claims, Chapter 653 may help to unclog the workers' compensation system.[67]Although the "single-game rule"

60. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1309, at 3 (Sept. 5, 2013).

61. *See id.* (discussing the consequences of claims being filed in-state).

62. Ken Bensinger et al., *Brain Injuries a Big Problem for NFL in California*, L.A. TIMES (Aug. 31, 2013), http://www.latimes.com/business/la-fi-nfl-brain-injuries-20130831-dto,0,6308774.htmlstory (on file with the *McGeorge Law Review*) (quoting Anthony Avitabile, "who manages Major League Baseball's workers' comp insurance pool").

63. *California Workers' Compensation Claims*, PRO ATHLETE CONSULTING, http://www.proathlete consulting.net/practice-areas/california-workers-compensation-claims/ (last visited Sept. 18, 2013, 8:51 PM) [hereinafter CONSULTING] (on file with the *McGeorge Law Review*).

64. *Assemblymember Perea Introduces "Californians First" Bill to Close Out-of-State Pro Athlete Payout Loophole in State Workers' Compensation System,* ASSEMBLYMEMBER HENRY T. PEREA (Mar. 18, 2013), http://www.asmdc.org/members/a31/press/assemblymember-perea-introduces-californians-first-bill-to-close-out-of-state-pro-athlete-payout-loophole-in-state-workers-compensation-system [hereinafter PEREA] (on file with the *McGeorge Law Review*).

65. Bensinger, *supra* note 62.

66. CARLTON ET AL., *supra* note 30, at 4, 7–8.

67. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1309, at 3 (Apr. 24, 2013); *see Bill to Protect California's Workers Compensation, Stop Out-of-State Pro-Athlete Payouts Passes Assembly,* ASSEMBLYMEMBER

allowed any athletes who had played a professional game in the state to adjudicate their claims in California, prior to Chapter 653 it was not clear the "single-game rule" remained good law.[68] Following the *Matthews* and *McKinley* decisions it appeared more substantial contacts were needed for out-of-state athletes to successfully bring their workers' compensation claims in the state; however, the courts failed to establish a clear test to guide future WCJ decisions, leading to incompatible decisions.[69] As a result, Chapter 653 serves the important purpose of establishing a bright-line rule defining when an athlete is "temporarily" working in the state, and thus may not have sufficient contacts to successfully bring a workers' compensation claim.[70]

The early version of Chapter 653, which passed the Assembly, allowed only professional athletes who spent eighty percent of their career or eight years employed by a California team to adjudicate their claim in the state.[71] By reducing the threshold to twenty percent or two years, and incorporating language to assure the legislation did not preempt *McKinley*, the legislature forged a policy that will result in decisions in-line with precedent.[72] However, Chapter 653 offers a clear advantage to the common law in that it draws a bright-line distinction at twenty percent and two years of employment, which will likely allow WCJs to apply the law more consistently than they could under *McKinley's* unclear public policy balancing test.[73] Additionally, the formation of a bright-line

HENRY T. PEREA (May 2, 2013), http://www.asmdc.org/members/a31/bill-to-protect-californias-workers-compensation-stop-out-of-state-pro-athlete-payouts-passes-assembly (on file with the *McGeorge Law Review*) ("AB 1309 will close a loophole that is currently being exploited by a handful of applicant attorneys and will correct an inefficiency for California employers, California employees, and the workers' compensation system itself.") (quoting John [Jed] E. York).

68. *See Matthews*, 688 F.3d at 1113–14 (holding thirteen games played in California did not establish sufficient contacts); *McKinley*, 78 Cal. Comp. Cases, at 2 (following the *Matthews* decision and seven games played in California during an eighty game career, did not provide sufficient contacts with the state).

69. *Compare McKinley*, 78 Cal. Comp. Cases, at 2 (declining to exercise jurisdiction when the athlete played 8.8 percent of his games in California), *with* Toronto Raptors v. W.C.A.B. (Foster), G048528, 2013 WL 5607018, at 1–2 (Cal. Ct. App. 4th Dist. Sept. 19, 2013) (upholding a WCAB decision extending jurisdiction over an athlete who played just 8.2 percent of his thirteen year basketball career in California).

70. CAL. LAB. CODE § 3600.5(c) (amended by Chapter 653).

71. AB 1309 § 1(c)(4)(B), 2013 Leg., 2013–2014 Sess. (Cal. 2013) (as amended on Feb. 22, 2013, but not enacted).

72. *Compare* CAL. LAB. CODE § 3600.5(d)(1)(A) (amended by Chapter 653) (stating the twenty percent requirement), *with* Matthews v. Nat'l Football League Mgmt. Council, 688 F.3d 1107, 1113 (9th Cir. 2012) (finding thirteen games played in California during his nineteen year or 304 game career, which is 4.3 percent of his games, were too limited of contacts to establish jurisdiction over his claim), *and* McKinley v. Arizona Cardinals, 78 Cal. Comp. Cases 23, at 9–11 (Cal. W.C.A.B. Jan. 15, 2013) (en banc) (holding the seven games McKinley played in California over his eighty-game career, which is 8.8 percent of his career, were too minor to justify the exercise of jurisdiction over his claim); *see also supra* notes 50–52 (describing the cases amalgamated into Chapter 653).

73. *Compare* LAB. § 3600.5(d)(1)(A) (amended by Chapter 653) ("The professional athlete has . . . worked for two or more seasons . . . or . . . worked 20 percent or more . . . in California or for a California-based team."), *with* McKinley, 78 Cal. Comp. Cases at 19 ("[W]e conclude that California has a stronger public policy interest in following the parties' forum selection clause than it does in exercising jurisdiction over applicant's

rule is likely to dissuade the filing of many claims clearly under the threshold established by Chapter 653.[74]

Despite the claims of Chapter 653's supporters and the court in *McKinley*, "state data show[s] that cumulative [injury] claims by out-of-state athletes represent about one half of 1% of all workers' comp[ensation] filings in the state since 2006."[75] As a result, given the small percentage of claims by athletes, it is unlikely that any reduction in claims by professional athletes caused by Chapter 653 would significantly benefit the heavily backlogged workers' compensation courts.[76]

B. *What Impact Do the Cumulative Injury Claims of Professional Athletes Temporarily Working in the State Have on Taxpayers and Insurance Costs?*

Chapter 653 aims to reduce the number of claims paid by the California Insurance Guarantee Association (CIGA) and shrink workers' compensation insurance premiums.[77]

When the insurance company or business responsible for paying a successful workers' compensation claimant in California is no longer in business, CIGA satisfies the claim.[78] Surcharges on workers' compensation premiums paid by all California employers fund CIGA and pay for all claims brought in California against defunct insurance companies and businesses, regardless of where those insurance companies or businesses are located.[79] Between 2002 and 2012, CIGA received 1,873 claims from athletes, and continues to receive about thirty new claims per month.[80] During that time, CIGA paid about $42 million to sports related claims.[81] CIGA claims made by out-of-state athletes are increasing, especially as players from other sports follow the lead of football players and file their workers' compensation claims in California.[82] While teams in the largest leagues are rarely forced to cease operations, many minor league teams and

claim for workers' compensation.").

74. *See* Bensinger, *supra* note 62 ("More than 70% of cumulative injury claims by athletes since 2006 were filed by those who appear never to have played for California teams," a subgroup that would easily discern they were not eligible to file a claim in California).

75. *Id*.

76. *See id*. (finding just one-half of one-percent of workers' compensation filings since 2006 were made by professional athletes for cumulative injuries).

77. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1309, at 3–4 (Apr. 24, 2013).

78. *See generally About CAIGA,* CAIGA.ORG, http://www.caiga.org/aboutciga.html (last visited Dec. 5, 2013) (on file with the *McGeorge Law Review*).

79. *Id.*

80. *AB 1309 Workers Compensation* [sic]*: Professional Athletes—FLOOR ALERT*, ASS'N OF CAL. INS. COMPANIES (June 12, 2013), http://www.acicnet.org/bills/2013/04/22/ab-1309-workers-compensaiton-professional-athletes—floor-alert (on file with the *McGeorge Law Review*).

81. *Id*.

82. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1309, at 4 (Apr. 24, 2013).

teams from smaller leagues, which have been much more likely to shut down, are based in California.[83]

As of 2012, California employers paid $2.92 per $100 of payroll in workers' compensation insurance premiums, the third highest rate in the country.[84] California's costs were 155% of the median costs to employers by state.[85] However, Chapter 653 may not actually reduce the workers' compensation insurance costs of employers at all.[86] The claims of out-of-state professional athletes are largely against out-of-state employers and should not affect California insurance rates.[87] Even when out-of-state professional athletes adjudicate their workers' compensation claims in California, insurance companies assess the value of the out-of-state professional athletes' claims against the employers located in the state where the workers' compensation policies originated.[88] Furthermore, "insurance premiums are determined on an industry-specific basis," meaning the claims of out-of-state teams only affect the rates incurred by sports teams.[89] As a result, Chapter 653 will not reduce the insurance costs of all California employers, but will only benefit professional sports teams who will face fewer claims and receive lower insurance rates.[90]

C. *What Are the Likely Long-Term Effects of Chapter 653?*

Chapter 653 eliminates California's role as a "state of last resort" for workers' compensation claims by professional athletes.[91] As a result, it is now unclear where injured players who never played in California will receive compensation for their injuries.[92]

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83. *See* CONSULTING, *supra* note 63 (listing many small sports leagues with California teams); *see generally* Lorenzo Arguello, *9 Ill-Conceived Pro-Sports Leagues That Went Down in Flames*, BUS. INSIDER (Feb. 8, 2012, 5:31 PM), http://www.businessinsider.com/10-ill-conceived-pro-sports-leagues-that-went-down-in-flames-2012-2?op=1 (on file with the *McGeorge Law Review*) (detailing the collapse of some small sports leagues).

84. Jay Dotter & Mike Manley, *2012 Oregon Workers' Compensation Premium Rate Ranking Summary*, DEPARTMENT OF CONSUMER AND BUS. SERVICES, 2 (Oct. 2012), *available at* http://www.cbs.state.or.us/external/dir/wc_cost/files/report_summary.pdf (on file with the *McGeorge Law Review*).

85. *Id*.

86. *See Review of Milliman, Inc. Report,* CAL. APPLICANTS' ATT'YS ASS'N (May 17, 2013), https://www.caaa.org/index.cfm?pg=MILLIMAN (on file with the *McGeorge Law Review*) (challenging *Milliman's* assertion that premium rates would increase in the absence of Chapter 653).

87. *Id*.

88. *Id*. ("[T]he cost of a workers' compensation claim for a Cleveland Browns football player, even if adjudicated in California, is assigned to the owner's Ohio insurance policy, and California workers' compensation rates are not affected.").

89. Bensinger, *supra* note 62.

90. *Id*.

91. Trotter, *supra* note 10; Jenkins & Maese, *supra* note 1.

92. Trotter, *supra* note 10.

As the Supreme Court noted in an early workers' compensation case, "[w]ithout a remedy in California, [the applicants] would be remediless, and there was the danger that they might become public charges, both matters of grave public concern to the state."[93] Chapter 653 leaves many out-of-state athletes without a forum to adjudicate their workers' compensation claims against their former franchises, leading professional athletes to potentially rely on government assistance programs, like Medicare, Medicaid, and Social Security to pay their medical bills—a cost ultimately borne by taxpayers.[94] Thus, the greatest impact of Chapter 653 may be to pass the costs of the medical bills of professional athletes onto their fans and other taxpayers throughout the country, making retired athletes "public charges."[95]

V. CONCLUSION

According to Chapter 653's supporters, workers' compensation claims from players with little connection to California heavily burdened the workers' compensation system and increased workers' compensation costs.[96] In reality, because out-of-state professional athletes' claims constituted less than one percent of the state's workers' compensation claims since 2006, the elimination of similar future claims will not, alone, unburden the workers' compensation system.[97] Further, while taxpayers bear some costs in the form of CIGA payments, claims from professional athletes were unlikely to increase insurance costs for anyone except the owners of professional sports teams.[98] While Chapter 653 protects out-of-state teams from additional liability, Chapter 653 may force Reggie Williams and other injured professional athletes to rely on the government and taxpayers to pay for their medical costs—a significant unintended consequence.[99]

93. Alaska Packers Ass'n v. Indus. Accident Comm'n, 294 U.S. 532, 542 (1935).

94. Bensinger, *supra* note 62. While some leagues offer retired players medical coverage and other retirement benefits, the current amount of pending workers' compensation claims by professional athletes shows that current coverage is insufficient to cover players. *See New Collective Bargaining Agreement Ends NFL Lock-Out*, CONT. PROF BLOG (Aug. 15, 2011), http://lawprofessors.typepad.com/contractsprof_blog/2011/08/new-collective-bargaining-agreement-ends-nfl-lock-out.html# (noting that the NFL's most recent collective bargaining agreement offers increased medical care to retired players).

95. Bensinger, *supra* note 62.

96. *See* PEREA, *supra* note 64 (claiming California employers face significant cost increases as a result of the workers' compensation claims of out-of-state professional athletes, and noting over 500 cumulative trauma claims were made in the first quarter of 2013).

97. Bensinger, *supra* note 62.

98. *Supra* Part IV.D; *see also* Bensinger, *supra* note 62 (explaining claims only affect the rates of professional sports teams).

99. *Id*.