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## Ninth Circuit Issues Key Decision Concerning Professional Athletes and the California Workers' Compensation System

Last week, the United States Court of Appeals for the Ninth Circuit issued a significant and potentially game-changing decision in the ongoing fight over whether current and former professional athletes, who have little historical contact with California, may nevertheless file for and receive workers' compensation benefits in California. For years, California's liberal workers' compensation system has attracted claims by current and retired professional athletes from around the country – many of whom never played on a California-based team and, as a visitor, may have played only a handful of games in California over the course of their careers.

Even as the California benefit claims and associated costs increased over the years, the professional sports leagues and their respective players' unions have been unable to find common ground on the subject through collective bargaining. Such was the case for the NFL and the NFL Players Association in their landmark 2011 Collective Bargaining Agreement, where the two sides expressly reserved their rights in all pending litigation relating to workers' compensation. On August 6, 2012, the Ninth Circuit issued a decision in one of those pending cases and made it harder – but not necessarily impossible – for players to access the California workers' compensation system when their player contracts include provisions choosing a state other than California to provide the governing law and forum for the resolution of disputes arising out of the agreement. More significantly, the Ninth Circuit's decision suggests that, to claim California workers' compensation benefits, it may no longer be enough simply for the player to allege that he played a game in California. A greater nexus between the employment and the State is required, such as a discrete injury in California or a particular burden on the State's medical system or other resources.

In *Matthews v. Nat'l. Football League Mgt. Council*, No. 3:10-cv-01671-JLS-WMC, 2012 U.S. App. LEXIS 16295 (9th Cir. Aug. 6, 2012), Bruce Matthews, a former Tennessee Titans offensive lineman, sought to vacate an arbitration award prohibiting him from pursuing workers' compensation benefits under California law. His player contract with the Titans provided that “[j]urisdiction of all workers compensation claims and all other matters related to workers compensation ... including all issues of law, issues of fact, and matters related to workers compensation benefits, shall be exclusively determined by and exclusively decided in accordance with the internal laws of the State of Tennessee without resort to choice of law rules.” *Id.* at \*3 n.1. However, Matthews argued that the award violated California public policy barring waiver of workers' compensation benefits, federal labor policy against contractual preemption of state minimum labor standards, and the Constitution's Full Faith and Credit Clause. The Ninth Circuit held that Matthews failed to allege sufficient contacts with California to trigger the application of California's workers' compensation scheme and affirmed the arbitration award.

Matthews played in the NFL from 1983 to 2002, first for the Houston Oilers and then the team's successor, the Tennessee Titans. In 2008, he filed for workers' compensation benefits in California, despite the Tennessee choice of law clause in his player contract. He alleged that he sustained injuries at "various" locations over his 19-year career, without alleging that he suffered any injury in California. *Id.* at \*3. The National Football League Management Council ("NFLMC") filed a grievance, arguing that Matthews' application for California benefits breached the choice of law clause in his contract. The parties arbitrated the case pursuant to an arbitration clause in the NFL's Collective Bargaining Agreement, and the arbitrator found in favor of the NFLMC. The District Court denied Matthews' motion to vacate the award, and Matthews appealed.

In affirming the award, the Ninth Circuit focused more on the limited judicial review of arbitration awards and whether Matthews had established that his claim might actually be covered by the California worker's compensation law, even absent the choice of law clause requiring the application of Tennessee law in Matthews' contract. In other words, while the parties' focused on whether Matthews could waive any right to California workers' compensation via arbitration and choice of law provisions, the Ninth Circuit focused mainly on whether Matthews had any right to California workers' compensation in the first place. In this regard, the Court focused on the nexus between the employment and California.

First, the Court of Appeals recognized that judicial scrutiny of an arbitration award is "extremely limited," based on the federal policy favoring arbitration of labor disputes. *Id.* at \*5 (emphasis in original). A narrow exception to this rule is when an arbitration award violates a well-defined, "dominant" and specifically applicable public policy based not on general considerations, but legal precedent. *Id.* at \*6.

Matthews argued that the arbitration award violated California's policy against contractual waiver of the right to seek California workers' compensation benefits, "no matter how tenuous the connection between California and the employee or the employment." *Id.* at \*6. He based his argument on California's workers' compensation statutes, including Labor Code § 2804, providing that "[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void ...." *Id.* at \*7.

The Ninth Circuit did "not read California's policy so broadly." *Id.* Instead, the Court held that such a policy only applies if the employee is protected by California law in the first instance, which in turn requires *some nexus between the employment and California*. As the Court explained, "[r]ather than guarantee a universal right to seek California workers' compensation benefits, the workers' compensation statute establishes a rule that an employee *who is otherwise eligible for California benefits* cannot be deemed to have contractually waived those benefits, and an employer who is otherwise liable for California benefits cannot evade liability through contract." *Id.* at \*7-8, citing Cal. Lab. Code § 3600(a)(1) (limiting employer liability to circumstances in which "both the employer and employee are subject to the compensation provisions of this division"). Thus, unlike the case of *Alaska Packers Ass'n. v. Industrial Accident Commission*, 1 Cal. 2d 250 (1934), on which Matthews relied, the Ninth Circuit did not find "that the employment relationship in question had sufficient contacts with California to apply California's workers' compensation law." *Id.* at 9.

In addition, because of the "highly limited and deferential standard of review of arbitration awards, it must be clear that Matthews is within the category of injured employees to which California workers' compensation law extends." *Id.* at \*10 (emphasis in original). Citing *Pacific Employers Ins. Co. v. Indus. Accident Comm'n.*, 10 Cal. 2d 567 (1938), in which the California Supreme Court applied the State's workers' compensation law to a Massachusetts resident's claim after he was injured and received medical treatment in California, the Ninth

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Circuit held that “California workers’ compensation law covers an employee who suffers a discrete injury in California, at least where the cost associated with the employee’s injury may impact California’s medical system and other resources.” *Id.* at \*11.<sup>1</sup>

The Ninth Circuit found that Matthews failed to make this showing. His allegations of “cumulative injuries” suffered at “various” locations were insufficient, despite his having played 13 games in California during his 19-year career. *Id.* at \*13. Even though every game he played may have contributed to his collective ailments, “it is not clear that, as a matter of California law, this means he falls within the category of employees to whom California extends workers’ compensation coverage.” *Id.* at \*15. In sum, “[a]n employee who makes a prima facie showing that his claim falls within the scope of California’s workers’ compensation regime may indeed be able to establish that an arbitration award prohibiting him from seeking such benefits violates California policy.” *Id.* at 16. However, “Matthews did not do so here because he did not allege facts showing an injury in California or any burden on the state’s medical system, and 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.” *Id.*

The Ninth Circuit also rejected Matthews’ federal labor policy and Full Faith and Credit Clause arguments.

The Court held that, because it is not clear that Matthews’ claim falls within the scope of the California workers’ compensation regime, he has not shown that the arbitration award deprived him of something to which he was entitled under state law, in violation of the federal policy against bargaining away state minimum labor standards.

Moreover, the arbitrator did not act in “manifest disregard” of the Full Faith and Credit Clause, which provides that “Full Faith and credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.” *Id.* at \*18-19. To act in “manifest disregard,” the arbitrator would have had to both recognize and ignore applicable law. *Id.* at \*19. As discussed above, “California’s interest is highly attenuated in this case.” *Id.* at \*22. And “[b]ecause Matthews has not shown that the Full Faith and Credit Clause guarantees California’s right to apply its law *on the facts of this case*, he has not established that the arbitrator recognized yet chose to ignore ‘well defined, explicit, and clearly applicable’ law.” *Id.* at \*22-23 (emphasis in original, citation omitted).

The reach and impact of the Ninth Circuit’s decision in *Matthews* could be significant, even in cases that do not involve arbitration or choice of law and forum provisions. There are hundreds of cases pending in the California system where former players, like Matthews, claim cumulative injury, but had irregular and limited contact with California during their careers. In *Matthews*, the Ninth Circuit has confirmed that some threshold nexus between a player’s employment and California is required to trigger the application of the State’s workers’ compensation law, and in doing so, may have raised the bar for those players hoping to establish a California connection sufficient to qualify them for benefits.

<sup>1</sup> The Court noted that more recent case law suggests California’s workers’ compensation law may even cover employees who suffer discrete injuries in California that do not necessarily burden the State’s medical system. *Id.*, n.2.

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