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CASENOTES

NICKEL AND DIMED: NORTH CAROLINA COURT BLOCKS CAROLINA PANTHERS' ATTEMPT TO AVOID PAYMENT OF WORKERS' COMPENSATION BENEFITS TO INJURED ATHLETES

CASEY N. HARDING*

I. INTRODUCTION

You know the familiar Sunday routine: you turn on the television to watch the NFL¹ pre-game shows and to hear what the commentators have to say about your favorite team, only to learn that one of the team's best linemen is out with a knee injury or the quarterback is out with bruised ribs. You question how the player's injury will affect the outcome of the game, but chances are slim that your thoughts about the injury extend far beyond that. Before 1999, chances are good that professional² teams in North Carolina were right there with you. Thanks to workers' compensation, however, these teams now have more to think about.

In the United States, professional sports teams make their home in twenty four states³ and the District of Columbia. All of these states have enacted workers' compensation laws, but only a few of the states' statutes specifically address professional athletes;⁴ the other

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1. NFL is an acronym for the National Football League, the professional football league in the United States.

2. The terms "professional," "professional sports," or "professional athletes," as used in this comment, refer solely to major league professional sports teams; it does not include semi-professional or minor league teams.

3. Professional baseball, basketball, hockey, and football teams can be found in Arizona, California, Colorado, D.C., Florida, Georgia, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah, Washington, and Wisconsin, *available at* <http://geography.about.com/library/weekly/aa042700a.htm> (providing a map of the location all professional sports teams in the United States).

4. These states are Florida and Pennsylvania: West's F.S.A. § 440.02(17)(C)(3) ("‘Employment’ does not include service performed by or as . . . [p]rofessional athletes, such as professional boxers, wrestlers, baseball, football, basketball, hockey, polo, tennis, jai alai, and similar players, and motorsports teams competing in a motor racing event as defined in s. 549.08."); 77 P.S. § 565 (a) ("The eligibility of professional athletes for compensation under this act shall be limited as provided in this section.").

states leave it up to the courts to interpret the effect of the statutes on the athletes. The statutes that address professional athletes either limit the benefits they can recover or expressly exclude professional sports from the definition of employment.

North Carolina is one of the states lucky enough to be the home of several professional teams.⁵ North Carolina's Workers' Compensation Act, which can be found in Article One of Chapter 97 of the North Carolina General Statutes,⁶ does not specifically address professional athletes, thus leaving the burden on the courts to determine the application of the Act to the athletes. It was not clear how North Carolina would treat professional athletes with workers' compensation claims until 1999 when the courts were first confronted with the issue in *Larramore v. Richardson Sports Limited Partnership d/b/a Carolina Panthers*.⁷ Since the *Larramore* decision, three other professional football players have been awarded workers' compensation benefits.⁸

This comment examines the reasonableness of the court's decisions in three of the four⁹ Carolina Panthers workers' compensation cases by first taking the reader through a summary of each case. The comment next focuses on the NFL's Collective Bargaining Agreement, the Standard Players' Contract, and injuries in the NFL. Next, the comment examines workers' compensation laws in relation to professional athletes. This section includes an in-depth look at North Carolina's laws and a brief overview of the laws of other states. Finally, the comment discusses the problems with awarding workers' compensation benefits to professional athletes and offers solutions for these problems.

5. These professional sports teams include: one NFL team (Carolina Panthers); one NBA team (Charlotte Bobcats); one WNBA team (Charlotte Sting); one NHL team (Carolina Hurricanes) and several NASCAR Nextel Cup and Busch series teams (including Richard Childress Racing, Chip Ganassi Racing with Felix Sabates, and Dale Earnhardt Inc., to name a few).

6. The North Carolina Workers' Compensation Act, N.C. GEN. STAT. §§ 97-1 to -101.1 (2005).

7. *Larramore v. Richardson Sports Ltd. Partners*, 540 S.E.2d 768 (N.C. Ct. App. 2000), *aff'd* 546 S.E.2d 87 (N.C. 2001).

8. The three players are Michael Swift (*Swift v. Richardson Sports, Ltd.*, 620 S.E.2d 533 (N.C. Ct. App. 2005)) Dusty Renfro (*Renfro v. Richardson Sports Ltd.*, 616 S.E.2d 317 (N.C. Ct. App. 2005)) and Charles H. Smith III (*Smith v. Richardson Sports Ltd.*, 616 S.E.2d 245 (N.C. Ct. App. 2005)).

9. Only three of the cases are reviewed in this comment because the fourth case, *Smith*, focuses on the ability of the team to get a deduction for certain payments; a topic outside the scope of this paper.

II. THE CASES

1. *Larramore v. Richardson Sports Limited Partnership d/b/a Carolina Panthers*¹⁰

In 1995, Leonard Larramore signed a contract to play football with the Carolina Panthers ("Panthers") during the 1995-96 season.¹¹ Under the terms of the contract, Larramore would be entitled to a salary of \$85,000 and a signing bonus of \$1,000 once he was officially added to the Panthers' active roster.¹² The Panthers retained the discretion to terminate Larramore if his performance proved unsatisfactory.¹³

On June 8, 1995, Larramore injured his back when he slipped and fell during a preseason camp.¹⁴ He was excused from the camp on June 9, but was approved for practice by the team doctor on July 14.¹⁵ On June 15, the Panthers released Larramore, prior to adding him to the active roster.¹⁶ Thereafter, Larramore was unable to obtain other football employment, but he found work as a teacher's assistant and temporary service employee.¹⁷

In 1999, Larramore was awarded disability compensation by the Industrial Commission for his injury.¹⁸ The Panthers appealed, alleging that the Commission erred by (1) using an alternate method for calculating Larramore's average weekly wage under section 97-2(5) of North Carolina's Workers' Compensation Act and (2) deciding that but for plaintiff's injury, he would have played for the Panthers during the contract year.¹⁹ The court of appeals found no error in the calculation of Larramore's weekly wage because the calculation was fair to both parties.²⁰ Similarly, the court also found no error in finding that the plaintiff would have played for the Panthers but for his injury.²¹ The court affirmed the lower court's decision, pointing out that whether Larramore would have played but for his injury was a "question of fact most appropriately resolved by the Commission."²²

10. *Larramore*, 540 S.E.2d at 768.

11. *Id.* at 769.

12. *Id.*

13. *Id.*

14. *Id.* Every NFL team holds several pre-season camps each year before the season begins. Players are paid for attending the camp. It is not unusual for cuts to be made after the completion of a pre-season camp.

15. *Id.*

16. *Id.*

17. *Id.* at 770.

18. *Id.*

19. *Id.*

20. *Id.* at 771.

21. *Id.* at 772.

22. *Id.*

2. *Renfro v. Richardson Sports Limited Partnership d/b/a Carolina Panthers*²³

After a series of unsuccessful endeavors with an NFL team, an NFL Europe team, and an XFL²⁴ team, Dusty Renfro signed a contract to play for the Panthers for the 2001-02 season. During a practice in early August, Renfro was attempting to block an offensive lineman when his wrist was forced into a downward position, causing it to fracture. The Panthers' team doctor diagnosed the injury as a sprain, so Renfro continued to practice and play in pre-season games until the Panthers released him from the team in early September. When an independent doctor determined that his wrist was fractured, Renfro filed an injury grievance against the Panthers. The grievance was settled for \$35,294.

In October, Renfro gave notice to the Panthers of his workers' compensation claim. The Panthers denied the claim, and Renfro requested a hearing. After a Deputy Commissioner denied Renfro's claim, he appealed to the Full Commission, which awarded him partial disability compensation at the maximum rate for 300 weeks. The Panthers appealed, claiming the Commission erroneously determined (1) that plaintiff suffered a compensable injury; (2) plaintiff's weekly wage; and (3) that plaintiff was entitled to 300 weeks of temporary partial disability.

The North Carolina court of appeals affirmed the decision of the Commission on all three issues. The court held that (1) Renfro had suffered a compensable injury because it was uncommon for a player's wrist to be pushed in a downward position while blocking a lineman; (2) the Commission did not err in calculating plaintiff's weekly wage because the standard NFL players' contract creates exceptional reasons for the use of an alternative calculation; and (3) Renfro was entitled to disability because he was not able to find other employment with comparable pay.

3. *Swift v. Richardson Sports, Limited d/b/a Carolina Panthers*²⁵

In 1998, after a two year stint with the San Diego Chargers, Michael Swift joined the Panthers to play on special teams and to play cornerback. In 1999, Swift signed a contract providing him with \$325,000, to be paid over the seventeen weeks in the 1999-2000 football season.²⁶ In the fifteenth week, Swift was injured during a special

23. 616 S.E.2d 317 (N.C. Ct. App. 2005).

24. XFL is an acronym for the Extreme Football League. The league was created by Vince McMahon, who also created World Wrestling Entertainment. The XFL only lasted for one season before it was cancelled due to bad ratings. See <http://www.xflboard.com>.

25. 620 S.E.2d 533 (N.C. Ct. App. 2005).

26. *Id.*

team play when two players fell on the back of his leg. Swift underwent surgery and physical therapy during the off-season to repair his broken leg and ankle.²⁷ Although Swift was injured and did not play in the last game of the season, the Panthers paid him the amount he would have earned that week had he played.

The Panthers decided not to renew Swift's contract for the 2000-01 season because he was still on crutches and was still going to physical therapy for his ankle. Swift was able to find employment with the Jacksonville Jaguars for the 2000-01 season.²⁸ However, the Jaguars released Swift after one game due to unsatisfactory performance. He was paid \$22,647 for that week. After his release, Swift was not able to make another team because of his decreased speed and mobility. Since his release, Swift has worked a number of jobs, with pay ranging from \$35,000-\$40,000.²⁹

In 2003, the Commission awarded Swift partial disability compensation at the maximum rate of \$560 a week for 300 weeks because the Commission found that Swift had suffered a compensable injury as a result of a compensable event.³⁰ The Panthers appealed, contending that the Commission erred in (1) determining that Swift suffered a compensable injury; and (2) allowing Swift to recover the maximum amount although he had obtained employment with another NFL team. The court of appeals affirmed the Commission's decision that Swift suffered a compensable injury because the injury happened in the scope and course of Swift's employment and because it was unusual and unexpected since Swift had attempted to block numerous extra points without being injured.³¹ Likewise, the court of appeals upheld the Commission's decision that the Panthers had to pay the maximum amount because, based on Swift's testimony, he was released from the Jaguars because of his injury.

III. BACKGROUND

1. *The National Football League*

The National Football League (NFL) began as the American Professional Football League (APFLL) in 1920, changing its name to the NFL just two years later. Almost forty years later, in 1959, the American Football League (AFL) was organized as a competitor of the NFL. After only seven years of competition, the NFL and AFL began a merger which was completed in 1970, when the two organizations

27. *Id.*

28. The Jacksonville Jaguars is an NFL team located in Jacksonville, Florida.

29. *Swift*, 620 S.E.2d at 535

30. *Id.* at 537

31. *Id.*

merged their schedules and developed a two conference, six division format. The NFL teams were placed in the National Football Conference (NFC) and the AFL teams were placed in the American Football Conference (AFC).³²

The NFL has changed drastically since its early days. It began as merely a football league, but now is more of a business, where the players are the employees and the teams are the employers. As employees, the players are entitled to certain rights. The National Football League Players' Association (NFLPA) was organized in 1956³³ as a labor union to protect the rights of the players.³⁴ In an effort to protect the players' rights and to maintain league continuity, the NFLPA and the National Football League Management Council (NFLMC)³⁵ drafted a Collective Bargaining Agreement (CBA) in 1977.³⁶ The CBA is now incorporated into each player's contract.

The CBA governs players' injury grievances,³⁷ injury protection benefits,³⁸ and workers' compensation.³⁹ The workers' compensation provisions require the teams to provide coverage under the compensation laws of the state or "otherwise guarantee equivalent benefits to its players," if participation in the state's plan is not compulsory.⁴⁰ However, this provision is effectively meaningless in North Carolina, which requires all employers in the state to provide workers' compensation for each employee.⁴¹

32. See NFL Franchise Year-by-Year Genealogy available at <http://www.football.com/history/index.shtml>.

33. NFLPA, *Early Organizational Efforts*, available at <http://www.nflpa.org/AboutUs/main.asp?section=ALL&subpage=History&x=17&y=7>.

34. Pursuant to the preamble of the CBA, the NFLPA is the "sole and exclusive bargaining representative of present and future employees in the NFL . . ." available at <http://www.nflpa.org/Members/main.asp?subPage=CBA+Complete#Pream>.

35. The NFLMC is the "sole and exclusive bargaining representative of present and future employer [teams] in the NFL . . ." See <http://www.nflpa.org/Members/main.asp?subPage=CBA+Complete#Pream>.

36. See <http://www.answers.com/topic/national-football-league-players-association>. Since 1977, there have been various amendments to the CBA. The CBA currently in effect (and the one to which the author refers) was amended by the NFLMC and NFLPA in February 1998.

37. Pursuant to Article X, § 1 of the CBA, "an injury grievance is a claim that at the time a player's contract was terminated by a club, the player was physically unable to perform the services required of him by that contract because of an injury incurred in the performance of his services under that contract," available at <http://www.nflpa.org/Members/main.asp?subPage=CBA+Complete#art10>.

38. An injury protection benefit is a one-time payment made to an injured athlete who meets certain criteria. For the criteria, see Article XII, § 1 of the CBA, available at <http://www.nflpa.org/Members/main.asp?subPage=CBA+Complete#art12>.

39. Workers' compensation is addressed in Article LIV of the CBA, available at <http://www.nflpa.org/Members/main.asp?subPage=CBA+Complete#art54>.

40. Article LIV, § 1 of the CBA, available at <http://www.nflpa.org/Members/main.asp?subPage=CBA+Complete#art54>.

41. N.C. GEN. STAT. § 97-3 (2005).

The CBA also includes a copy of the standard NFL players' contract.⁴² Under section 9 of this contract, when a player is injured in the performance of his services under the contract, he will continue to receive his yearly salary for so long as he remains injured, but only during the season of injury.⁴³ Pursuant to section 10 of the contract, any compensation paid to the player under his contract during the period in which the player is entitled to workers' compensation benefits "is deemed an advance payment of workers' compensation benefits due Player, and Club will be entitled to be reimbursed the amount of such payment out of any award of workers' compensation."⁴⁴ And finally, as provided in section 11, the team may, at any time and in their sole judgment, terminate a player's contract if the player's skill or performance is unsatisfactory when compared with other players competing for positions on the team's roster.⁴⁵

2. *Injuries in the NFL*

Performing a search on "injuries in the NFL" on any search engine will bring up countless pages dedicated to NFL injury reports or medical pages listing "common" football injuries. It is no wonder, since injuries during football are common occurrences. According to the U.S. Department of Labor, the 2003 NFL injury rate was almost eight times higher than any other commercial sports league.⁴⁶ To understand why, just ask former running back Merrill Hoge how hard a player is hit in the NFL: "if . . . you're hit full speed, he can literally knock the feces out of your bowels. You lose all feeling in your limbs."⁴⁷

In a recent study on injuries in the NFL, the *Pittsburgh Tribune-Review* analyzed four years of NFL injury data,⁴⁸ interviewed current and former players, and reviewed medical research.⁴⁹ The results were alarming. NFL players reported 6,558 injuries through the 2000-03 seasons, with more than half of the athletes injured in each year. This reached an all-time high in the 2003-04 season, when 68% of NFL

42. See <http://www.nflpa.org/Members/main.asp?subPage=CBA+Complete#appc>.

43. See Standard NFL Players' Contract, Section 9, at <http://www.nflpa.org/Members/main.asp?subPage=CBA+Complete#appc>.

44. *Id.*

45. *Id.*

46. Carl Prine, *Bloody Sundays*, PITTSBURGH TRIBUNE-REVIEW, January 9, 2005, available at http://www.pittsburghlive.com/x/tribune-review/specialreports/specialnfl/s_291033.html.

47. *Id.*

48. This injury data is based on the official NFL weekly injury reports. Accordingly, it does not take training camps and preseason games in to consideration, which would likely bump the number up, considering 168 athletes started the 2003 season on the injured list. See Prine, *supra* note 46.

49. Prine, *supra* note 46.

players were injured.⁵⁰ The study found that defensive players are more likely to be injured. For example, two out of three NFL cornerbacks and safeties suffer injuries each year.⁵¹ Furthermore, safeties and cornerbacks, as well as offensive players like quarterbacks and wide receivers, are more likely to suffer concussions and spine injuries than other players.⁵² Players not typically thought of as being in the line of danger also get hurt. Twenty-five percent of kickers and fourteen percent of punters get injured each year in the NFL.⁵³ And many of these athletes play every week with injuries that would bench a non-professional athlete for several days. For example, the study reported that even players marked as “probable”⁵⁴ for the next game are likely suffering from a serious injury.⁵⁵

3. *Workers' Compensation: In General*

Workers' compensation is basically “an administrative remedy designed to speed an employee's compensation while insulating both employer and employee from the costs and delays inherent in purely judicial adversarial positions.”⁵⁶ All fifty states (and the District of Columbia) have enacted workers' compensation laws for the protection of injured employees.⁵⁷ Although each state's statute may differ, the basic concept behind all of the statutes is the same: compensate employees who are injured on the job.⁵⁸ This is true even when the employee is injured through no fault of the employer; essentially making workers' compensation a no-fault source of liability.

Most states follow the same basic framework when it comes to handling workers' compensation claims. The claim begins when a “covered” employee is injured.⁵⁹ If the employer or a court determines

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.* The bylaws of the NFL require each coach to tell the opposing coach of the injury status of his players so that each coach can plan strategies for the game. Therefore, teams use a “scale” of terms to describe the injury as accurately as possible: (1) “probable” (meaning the player will most likely play); (2) “questionable;” (3) “doubtful;” (4) “out” (meaning the player definitely will not play in this week's game); (5) “on injured reserve” (meaning that the player is out for the rest of the season); and (6) physically unable to perform.

55. *Id.*

56. 82 AM. JUR. 2d *Workers' Compensation* § 5 (2005).

57. Lloyd Harger, *Workers' Compensation, A Brief History*, available at <http://www.fldfs.com/WC/history.html>.

58. *Supra* note 56.

59. A “covered” employee is an employee to whom the workers' compensation statutes apply. There are several reasons why an employee may not be covered by workers' compensation statutes. For example, certain workers are not considered “employees” within the meaning of the workers' compensation statutes and therefore cannot recover under the statutes. Furthermore, some states allow employees to elect whether they want coverage under the statutes. Em-

that the injury is within the scope of the state's workers' compensation laws and that all other statutory requirements are met, the employer must pay out workers' compensation benefits. The benefits are meant to reimburse the employee for lost wages as well as to cover medical expenses resulting from the injury.⁶⁰

4. *Workers' Compensation in North Carolina*

The purpose of the North Carolina Workers' Compensation Act is to provide certainty to both an employer and employee when an employee is injured on the job. It is meant "not only to provide a swift and certain remedy to an injured worker, but also to ensure a limited and determinate liability for employers."⁶¹ The Workers' Compensation Act applies to all employers and employees in the State of North Carolina, except as otherwise stated in the Act.⁶² For purposes of workers' compensation, an employer is defined as "every person carrying on any employment . . ."⁶³ and an employee is defined as "every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written . . ."⁶⁴ Employers and employees engaged in private employment fall within the scope of the Act only if the employment is one in which three or more employees are regularly employed in the same business.⁶⁵ Employers subject to the Act are required to secure the payment of compensation for their employees in the event of an injury⁶⁶ and no agreement or contract can alter or relieve this or any other obligation created by the Act.⁶⁷ When an employee and employer are subject to the Act and have complied with its provisions, workers' compensation is the sole and exclusive remedy of the employee.⁶⁸

In North Carolina, the procedure for handling workers' compensation cases is defined by statute, and it is much like the basic framework set forth above. In order to receive compensation under the Act, an employee must first suffer an injury. Under the Act, injury is restricted to mean those injuries occurring "by accident arising out of

employees who elect not to be covered are thereafter barred from recovering under the statutes. However, these employees are not left without recovery; many will be able to recover under common-law negligence claims.

60. See AllBusiness, *What you need to know about Workers' Compensation Insurance*, available at <http://www.allbusiness.com/articles/Insurance/819-30-1862.html> (last visited Feb. 27, 2006).

61. *Radzisz v. Harley Davidson*, 484 S.E.2d 566, 569 (N.C. 1997).

62. N.C. GEN. STAT. § 97-3 (2005).

63. *Id.* § 97-2(3).

64. *Id.* § 97-2(2).

65. *Id.* § 97-2(1).

66. *Id.* § 97-9.

67. *Id.* § 97-6.

68. *Id.* § 97-10.1.

and in the course of the employment.”⁶⁹ Although the word “accident” can be found numerous times throughout the Act, it is never defined. However, the Act does give some guidance in section 97-52, which provides what an accident is not: “the word ‘accident’ shall not be construed to mean a series of events in employment, of a similar or like nature, occurring regularly, continuously or at frequent intervals in the course of such employment, over extended periods of time . . .”⁷⁰ The word “accident” has also been the subject of judicial interpretation. In *Renfro*, the court examined prior North Carolina caselaw and found that an accident is “an unlooked for and untoward event not expected or designed by the employee;”⁷¹ further stating, “unusualness and unexpectedness are its essence.”⁷² If the injury is caused by an event in the employee’s normal work routine and under normal working conditions, there can be no accident.⁷³ Even injuries that stem from out-of-state accidents entitle the employee to compensation in this state if certain requirements are met.⁷⁴

Furthermore, before an employee can receive compensation under the Act, an employee must establish that he suffers a disability because of his injury.⁷⁵ Disability is defined as the incapacity of the employee to earn the wages he was earning at the time of the injury in the same or any other employment.⁷⁶ Next, an employee must report the accident, in writing, to the employer. In order for the employee to receive compensation, the notice to the employer needs to be given immediately or as soon after the accident as practical, not to exceed thirty days.⁷⁷ The notice should contain the nature and cause of the accident and the injury.⁷⁸ The employee may thereafter be required by his employer or the Industrial Commission⁷⁹ to submit himself to

69. *Id.* § 97-2(6).

70. *Id.* § 97-52.

71. *Renfro v. Richardson Sports Ltd. P’ship*, 616 S.E.2d 317, 322 (N.C. Ct. App. 2005) (quoting *Seasey v. Perry M. Alexander Constr. Co.*, 239 S.E.2d 847, 849 (N.C. Ct. App. 1978)).

72. *Id.* (quoting *Smith v. Cabarrus Creamery Col.*, 8 S.E.2d 231, 233 (N.C. 1940)).

73. *Id.* (quoting *Seasey v. Perry M. Alexander Constr. Co.*, 239 S.E.2d 847, 849 (N.C. Ct. App. 1978)).

74. N.C. GEN. STAT. § 97-36 (2005).

75. *Renfro*, 616 S.E.2d at 327.

76. N.C. GEN. STAT. § 97-2(9) (2005).

77. *Id.* § 97-22 (2005).

78. *Id.* § 97-23 (2005).

79. *See id.* § 97-80. The Industrial Commission was created pursuant to section 97-77 of the North Carolina General Statutes to administer the Workers’ Compensation Act and to serve as a panel of judges in disputed workers’ compensation cases. It is made up of seven commissioners; one of those is designated as the chairman. The members of the Commission are vested with many of the same powers of state court officials; for example, they are allowed to make rules for carrying out the Workers’ Compensation Act and subpoena witnesses.

an examination; refusal to do so by the employee will result in suspension of compensation.⁸⁰

After the employee gives notice to the employer, the employer can either admit or deny the employee's right to compensation. If the employer admits the employee's right to compensation, the employer must begin payment of benefits.⁸¹ If the employer denies the employee's right to compensation, the employer has a duty to notify the Industrial Commission and the employee of its refusal to pay compensation.⁸² Upon this refusal, the employee may apply to the Commission for a hearing.⁸³ At the hearing, a member of the Commission or a Deputy Commissioner⁸⁴ will act as judge; make determinations of fact and law; and award or deny benefits to the employee. If a party is unhappy with the award, that party can apply for a review with the full Commission, who can reconsider the evidence, rehear the parties, and amend the award if necessary.⁸⁵ If a party is still unhappy with the award, that party may appeal to the North Carolina Court of Appeals for errors of law, in accordance with the same terms that govern appeals from the superior court in ordinary civil actions.⁸⁶ Because the Commission is the fact-finding body, the court of appeals is "limited to a determination of '(1) whether the Commission's findings of fact are supported by any competent evidence in the record; and (2) whether the Commission's findings justify its conclusions of law.'"⁸⁷ If the Commission's findings are supported by competent evidence, its decision is conclusive on appeal.⁸⁸ Thereafter, a party may appeal to the Supreme Court of North Carolina in accordance with the same terms that govern appeals from the superior court in ordinary civil actions.⁸⁹

Once all appeals are exhausted or the employer accepts liability for the compensation, the employer must start making weekly payments promptly.⁹⁰ The amount of weekly payments depends on the em-

80. *Id.* § 97-27(a).

81. *Id.* § 97-18(b).

82. *Id.* § 97-18(c).

83. *Id.* § 97-83.

84. *See id.* § 97-80. Pursuant to sections 97-79 and 97-84 of the general statutes, the Commission appointed several deputy commissioners to also serve as judges in disputed cases. The deputy commissioners are vested with many of the same powers of state court officials; they are allowed to make rules for carrying out the Workers' Compensation Act and subpoena witnesses.

85. *Id.* § 97-85.

86. *Id.* § 97-86.

87. *Larramore*, 540 S.E.2d at 770, *quoting* *Goff v. Foster Forbes Glass Div.*, 535 S.E.2d 602, 604 (N.C. Ct. App. 2000).

88. *Larramore*, 540 S.E.2d at 770 (citations omitted).

89. N.C. GEN. STAT. § 97-86 (2005).

90. *See id.* § 97-18(b) (2005). If the employer admits the employee's right to compensation, the first payment is due within fourteen days of the employer receiving actual notice of the injury. *See also* N.C. GEN. STAT. § 97-18(e) (2005). If the compensation is payable under the

ployee's average weekly wages. Average weekly wages are the weekly earnings of the employee in the job he was working at the time of injury during the period of 52 weeks immediately prior to the injury.⁹¹ If the employee was employed for a time shorter than 52 weeks before the injury, the average weekly wages are calculated by determining the entire pay for the time the employee worked, then dividing that number by the number of weeks worked. This calculation can only be used if the results are fair to both parties.⁹² If the foregoing results are not fair due to "exceptional reasons," then any "method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury."⁹³

The next factor that affects the amount of the weekly payments is the type of incapacity. For total incapacity, the employee is paid 66 2/3% of his average weekly wages;⁹⁴ for partial incapacity, the employee is paid 66 2/3% of the difference between his average weekly wages before the accident and the average weekly wages he is able to earn thereafter.⁹⁵ However, the payments can never be more than the maximum weekly amount, established each year pursuant to section 97-29 of the North Carolina General Statutes. The last step in determining the average weekly payments is to determine the number of weeks that the injured player can receive compensation, based on a schedule of injuries.⁹⁶

5. *Workers' Compensation and Professional Athletes in Other States*

As noted previously, each state treats workers' compensation differently, and this includes the treatment of professional athletes with workers' compensation claims. Yet there is one major similarity: a majority of the states do not statutorily exclude professional athletes from coverage under their workers' compensation statutes. In fact, there is only one state with a professional team that statutorily excludes these athletes.⁹⁷

terms of an award by the Commission or a court, payment is due within 10 days following expiration of the time for appeal or the day after the parties waive their right to appeal, whichever is sooner.

91. N.C. GEN. STAT. § 97-2(5) (2005).

92. *Id.*

93. *Id.*

94. *Id.* § 97-29.

95. *Id.* § 97-30.

96. The schedule of injuries can be found in section 97-31 of the North Carolina General Statutes.

97. Florida excludes professional athletes from coverage under workers' compensation by excluding "professional sports," including football, from the definition of employment. FLA. STAT. ANN. § 440.02 (17)(c)3 (West 2005). This exclusion includes athletes that have not yet made the active roster and are still competing for employment on the team during training

While most states with professional sports teams do not statutorily exclude professional athletes from coverage under the workers' compensation statutes, the similarity often ends there. For example, the states differ on how they categorize a professional athlete as an employee. Some states consider athletes to be employees within the meaning of the workers' compensation acts so long as they are injured while playing the game that they are employed to perform.⁹⁸ One state, Illinois, considers the athletes to be "skilled workers" so as to fall within the coverage of workers' compensation,⁹⁹ yet another state considers these athletes seasonal employees.¹⁰⁰ Still other states consider professional athletes employees under the acts without further explanation.¹⁰¹ States also differ in the amount of benefits an athlete can receive. For example, at least one state statutorily limits the benefits a professional athlete can receive for partial disability.¹⁰² Furthermore, states differ in the circumstances under which they allow the athletes to be compensated. For example, some states allow professional football players to be compensated for injuries occurring during games and pre-season camps, considering those injuries as arising by accident,¹⁰³ but at least one state does not consider the "deliberate collision between human bodies during a professional football game" an accident, and thus denies compensation.¹⁰⁴

IV. ANALYSIS

Workers' compensation is both a valuable and necessary mechanism created by statute to ensure that injured workers are given money to live on until they can begin working again. It allows injured employees to maintain a sense of self-efficacy while they are side-lined with an injury and it presumably lessens the burden on government-

camps. *Rudolph v. Miami Dolphins, Ltd.*, 447 So. 2d 284 (Fla. Dist. Ct. App. 1983), *petition for review denied*, 453 So. 2d 45 (Fla. 1984). Furthermore, this exclusion is not unconstitutional as violating players' due process rights because the athletes are well paid for engaging in such a hazardous job. *Id.* at 291.

98. See, e.g., *Pro-Football, Inc. v. Uhlenhake*, 574 S.E.2d 288 (Va. Ct. App. 2002) (*per curiam*) (holding that professional football players are not exempt from coverage of the Virginia Workers' Compensation Act when they are injured while playing football, whether it be during a game or a pre-season camp).

99. See *Albrecht v. Industrial Com'n*, 648 N.E.2d 923 (Ill. App. Ct. 1995).

100. Because Pennsylvania treats the professional athletes as seasonal employees, their average weekly wages are computed as those of a seasonal employee. *Ross v. W.C.A.B.*, 702 A.2d 1099 (Pa. Commw. Ct. 1997).

101. For example, New York, Louisiana, Michigan, Georgia, and Maryland.

102. PA. STAT. ANN. tit. 77, § 565 (West 2005). See also *Lyons v. W.C.A.B.*, 803 A.2d 857 (Pa. Commw. Ct. 2002) (holding that PA. STAT. ANN. tit. 77, § 565 was held not to violate equal protection because the professional athletes willfully hold themselves out to the risk of frequent and serious injury in exchange for lucrative compensation.).

103. *Rudolph v. Miami Dolphins, Ltd.*, 447 So. 2d 284 (Fla. Dist. Ct. App. 1983).

104. See *Palmer v. Kansas City Chiefs Football Club*, 621 S.W.2d 350 (Mo. Ct. App. 1981).

sponsored programs, such as unemployment and public assistance. There are countless positive aspects to workers' compensation, which is why it is no surprise that every employee feels that they are entitled to its benefits when they are injured on the job. Yet, not every employee is, nor should every employee be, entitled to workers' compensation benefits. Professional athletes, especially NFL football players, are a prime example of a group that should be denied workers' compensation benefits. In deciding the Panthers cases,¹⁰⁵ the North Carolina Court of Appeals had the opportunity to address this issue. For policy reasons, the court of appeals erred in upholding workers' compensation benefits for NFL athletes. Furthermore, there were reasons to reverse the decisions of the Industrial Commission in each of the cases considered.

Larramore was granted the maximum amount of workers' compensation benefits because the Industrial Commission decided that but for his injury, he would have played for the Panthers during the contract year. The Commission came to this conclusion because (1) Larramore played semi-professional football after college; (2) Larramore played for the Buffalo Bills before coming to the Panthers, but was placed on the inactive roster when he suffered an ankle injury; and (3) Larramore was asked to lose weight at the end of one Panthers' training camp on June 8, 1995, but was unable to because of his injury. The court of appeals affirmed because it deemed those facts to be competent evidence that supported the decision. It is incredible that the Commission reached their decision based on these facts.

Contrary to the court's opinion, the facts upon which the Commission's decision was based did not amount to sufficiently competent evidence. None of the three facts cited by the court are definitive evidence that Larramore would have made the team. Facts (1) and (2) indicate that Larramore had played on semi-professional and professional teams prior to coming to the Panthers. Just because a player plays on one team does not mean he will definitely be added to the roster of another. Fact (3) indicated that the Panthers were unhappy with Larramore's weight. Even if he had been successfully able to lose the weight, Larramore would not have had a guaranteed position on the Panthers' team. The court should have denied compensation based on the indefinite nature of the evidence. In fact, there are other reasons why the court would have been justified in denying workers' compensation benefits. Larramore had not yet been added to the active roster, so he was not yet earning the contract amount. Because he was not yet making the contract amount, Larramore could not prove

105. Hereinafter, all three cases involving Richardson Sports Limited Partnership will collectively be referred to as "the Panthers cases."

disability within the meaning of workers' compensation. In North Carolina, in order for a player to prove disability, he has to establish his inability to earn the wages he was earning at the time of his injury in any other employment. There is nothing in the record of the case that establishes how much Larramore was actually paid for attending pre-season camps. Therefore, nothing in the record supports that Larramore's pay as a teacher's assistant and temporary service employee was less than he received for attending the camps.

In *Renfro*,¹⁰⁶ the Industrial Commission found that Renfro suffered a compensable injury and that he would have made the team but for the injury. The court of appeals affirmed, based on the competent evidence standard. Renfro testified that his wrist had never been forced into a downward position while blocking a lineman, as it had been on the day the injury occurred. Based on this testimony, the Commission and the court concluded that the injury happened by accident. This is hardly competent evidence to support the decision that Renfro's injury happened by accident. In workers' compensation, an accident is defined by unusualness and unexpectedness and cannot be caused by an event that occurs regularly in employment.¹⁰⁷ The court relied on the testimony of one player that the wrist position that caused his injury was unusual. No other evidence from other players or experts was entered regarding the unusualness of the wrist position. The Workers' Compensation Act was likely not enacted to award compensation based on what one individual thinks is unusual in his experience; otherwise, there would be endless workers' compensation claims. It is absurd to think that one player's testimony alone can define what is unusual for an entire sport. Therefore, the evidence was not sufficiently competent to support that the injury occurred during an accident. The Commission and the court relied on the following facts as competent evidence that Renfro would have made the team but for the injury: (1) Because of the injury, Renfro had to wear a cast that hindered his ability to play; (2) Renfro was let go from the team because his performance was unsatisfactory as compared to other players competing for his positions; (3) the positions he was competing for were vacant; (4) Renfro believed he was performing better than other players competing for his positions; and (5) as Renfro testified, a positions coach told Renfro he was progressing well and that watching film, as he was doing, was "the kind of thing that helped a player make the team."¹⁰⁸

106. *Renfro v. Richardson Sports Ltd. P'ship*, 616 S.E.2d 317 (N.C. Ct. App. 2005).

107. N.C. GEN. STAT. § 97-52 (2005) and *Renfro*, 616 S.E.2d at 322 (quoting *Smith v. Cabarus Creamery Col.*, 8 S.E.2d 231, 233 (N.C. 1940)).

108. *Renfro*, 616 S.E.2d at 326.

Once again, the court is mistaken; most of the evidence does not support the decision, and the evidence that does is not sufficiently competent evidence. There is no proof in the record that Renfro's injury is what made his play unsatisfactory; on the contrary, it can be argued that his play was unsatisfactory before his injury, based on the fact that other teams had released him when he was not injured.¹⁰⁹ Furthermore, just because a player believes he is performing better than other players does not mean he is, making Renfro's opinion on his play a factor the court should not have relied on as competent evidence. Lastly, the fact that a team has a vacancy in a position does not guarantee any one individual a position on the team, even if he is progressing well. Therefore, the court should not have relied on these factors in deciding that Renfro would have made the team but for the injury.

In *Swift*,¹¹⁰ the court of appeals upheld a decision by the Industrial Commission that Swift suffered a compensable injury and was entitled to workers' compensation benefits because he was injured when two other players fell on his leg during an attempt to block an extra point. The court reasoned that the injury was unusual because this was the first time Swift had been injured though he had attempted to block extra points on numerous occasions. Furthermore, the court held that it was unexpected that players would fall on his leg and cause a career-ending injury. Because the injury was unusual and unexpected, the court decided that it was caused by accident. However, as in *Renfro*,¹¹¹ the court's reasoning does not make sense. The injury was neither unexpected nor unusual; many players get injured each year in the NFL, and unfortunately, some of those injuries are career-ending. In fact, cornerbacks and other defensive players are more likely to get injured, so it is not unusual that Swift, a cornerback, was injured. Furthermore, a professional football player should expect other players to land on him; it's part of the game. Moreover, the injury occurred during Swift's normal work routine (as evidenced by his many attempts at blocking an extra point) and under normal working conditions (in that it is normal for players from the opposing team to tackle players trying to stop their team from scoring). The court failed to consider that Swift was not under a contract with the Panthers for the 2001 season, nor were the Panthers under an obligation to renew Swift's contract. There is no proof that the Panthers would have re-signed Swift but for

109. It should be noted that the author could find no authority that Renfro was dismissed from previous teams because of unsatisfactory performance. The author is merely intending this sentence to support the proposition that Renfro's performance may have been unsatisfactory before his injury.

110. *Swift v. Richardson Sports Ltd. P'ship*, 620 S.E.2d 533 (N.C. Ct. App. 2005).

111. *Renfro*, 616 S.E.2d 317.

his injury.¹¹² The court had no business *forcing the Panthers to pay Swift workers' compensation benefits* when there was no guarantee that Swift would have been employed with the team.

There are also many practical reasons for not allowing professional athletes to recover workers' compensation benefits. First of all, inclusion of most professional athletes defeats the policy behind workers' compensation. As previously stated, the basic concept behind workers' compensation is to provide an injured employee with money until they are able to return to work. It can be argued that many professional athletes are not in need of money to live on during the time that they are injured. Besides the fact that many professional athletes make more money than the average person, they have several other avenues for recovery that are not available to the average working citizen. For example, during the season of injury, professional football players can continue to earn their yearly salary while they are injured, provided that they meet certain requirements found in Article 9 of the CBA; receive injury protection payments in the season after their injury, provided that they meet certain requirements found in Article 9 of the CBA; receive severance pay; and recover under an injury grievance settlement.

Awarding workers' compensation to professional athletes is unfair for two other reasons. First of all, the courts will likely continue to grant these benefits to athletes who would not have made the team if uninjured. There is no way the court can ever be certain of the reason a player was released. The standard players' contract provides that a team can let a player go at any time if the player's performance is unsatisfactory as compared with other players. There is no doubt that football players work hard and deserve high compensation, but as any player will likely tell you, playing in the NFL is not a very secure job unless you are a franchise player. It is not unusual for a player to be cut from a team before being placed on the active roster, before he becomes an employee of the team. By awarding workers' compensation benefits to all NFL players who come before the court, even players who are not yet on the team, the court is interfering with the teams' rights under the contract. The courts are essentially playing coach and deciding for themselves which players are good enough to be NFL players.

Secondly, a major requirement to qualify for workers' compensation is the employee must prove he or she is permanently disabled.

112. It should also be noted that there is no proof in the record that the Panthers would not have re-signed Swift if he had not been injured. This statement is being used to support the proposition that the court did not have enough competent evidence to support the conclusion that he would have been re-signed.

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This is arguably a presumption in favor of professional athletes who suffer career-ending injuries and can no longer play on a professional team. This is because not many jobs pay as well as professional sports; especially jobs that an athlete is likely to get after his sports days are over. Why should a professional football player, who may have made more money in his years in the NFL than the average person will make in a lifetime, continue to be granted compensation at the maximum rate because not many other jobs pay at the rate the NFL does?¹¹³ In light of the fact that there is no guarantee that a player will continue to play for a team during their contract years, this result seems even less fair.

To avoid these problems, the legislature or the courts need to take some action. The ultimate solution is to follow in Florida's footsteps and exempt professional athletes from workers' compensation coverage by excluding professional sports from the definition of employment. Or, professional athletes could be exempted from the definition of employee. However, both of these solutions involve amending statutes and would have to be effected by the legislature. In addition to the statutes being amended, the CBA would also have to be amended. It currently requires teams to provide coverage under workers' compensation laws of the state or "otherwise guarantee equivalent benefits to its players."¹¹⁴ In order to completely exempt athletes from workers' compensation benefits, this provision would have to be deleted. Opponents may claim this solution is too harsh and will leave athletes without any recourse, but this is not true. Amending the statute would not preclude athletes from bringing common-law negligence actions against the teams. Furthermore, nothing would stop professional football players from recovering through the NFL's injury grievance procedure. Another solution is similar to how Missouri handles workers' compensation, but with a twist. The legislature can allow professional athletes to remain statutorily covered under workers' compensation, but there should be a rebuttable presumption that injuries suffered during games, practices, or camps are not by accident and thus are not compensable. Athletes would still be able to receive workers' compensation benefits, but they would have the burden of proving that the injury was unusual and unexpected, which would be a high standard. However, some critics may attack this as too harsh as well. The least harsh solution, but also the least effective, would be for the legislature to keep professional athletes covered by the Workers'

113. While there are many employees outside of the NFL that may be allowed to recover at the maximum rate when they are injured on the job, it is not as likely that those employees will suffer career-ending injuries and have to receive the maximum rate.

114. Article LIV, § 1 of the CBA, available at <http://www.nflpa.org/Members/main.asp?subPage=CBA+Complete#art54>.

Compensation Act, but to amend the Act to limit the amount of compensation a professional athlete can receive for partial disability, as in Pennsylvania. The first solution is the most preferable, but any change will be a good change.

V. CONCLUSION

Workers' compensation is a valuable statutory system set up to ensure that injured employees are given the compensation they need until they return to work. Not all employees are, nor should they be, given coverage under the acts. Every state, including North Carolina, statutorily excludes certain employees from coverage under the workers' compensation acts. However, only one state excludes professional athletes. Given the inequities of granting workers' compensation benefits to professional athletes, it is a wonder that more states do not exclude these athletes from coverage under the acts. Through the Panthers' cases, North Carolina was given the opportunity to deny workers' compensation benefits to professional NFL athletes; it failed to do so even though the court had a reason to reverse the decision of the Industrial Commission in each case. The North Carolina Court of Appeals could have interpreted the Workers' Compensation Act as not applying to professional NFL athletes or could have held that certain football injuries are not compensable; instead it granted the maximum rate of compensation to athletes who may not have been selected for employment with the Panthers the following season. By continuing to give all NFL athletes coverage under these acts, society is perpetuating the cycle of treating professional athletes differently than average Americans. It is time for a change.