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Remember the Titan: Matthews v. NFL Leaves the Playing Field Wide Open for Future Compensation Claimants

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Casenotes

REMEMBER THE TITAN: MATTHEWS V. NFL LEAVES THE PLAYING FIELD WIDE OPEN FOR FUTURE COMPENSATION CLAIMANTS

“The NFL is a powerful narcotic – a great, exciting lifestyle. Yet, like everything the world offers, it’s temporary.”

I. INTRODUCTION

Ancient Greek myths described the Titans as a primeval race of powerful gods. These mighty beings were known for their immortality, stamina, and strength. Despite such seemingly insurmounta-


2. See The Titans, SDSU.EDU, http://edweb.sdsu.edu/people/bdodge/scaffold/gg/titan.html (last visited Dec. 14, 2012) (listing and describing various Titans). For a more comprehensive discussion on the origins and development of the Titans myth, see Walter Burkert, THE ORIENTALIZING REVOLUTION: NEAR EASTERN INFLUENCE ON GREEK CULTURE IN THE EARLY ARCHAIC AGE 94-95 (Harv. Univ. Press, 1995). The myth of the Titans has captured the attention of various cultures for centuries. Id. The positive genetic traits of the Titans, including speed, stamina, and endurance, mirror those embraced by our culture today. Id. For a list of Titan references in popular culture, see Titans in Popular Culture, WIKIPEDIA, http://en.wikipedia.org/wiki/Titans_in_popular_culture (last visited Dec. 14, 2013) (providing examples of sports team names such as Gold Coast Titans, Newport Titans, Titans Cricket Team, New York Titans, Ulster Titans, Victoria Titans, and, of course, Tennessee Titans). Just as the Greeks worshipped their Titans, society today “worships” their version of Titan – the professional athlete. Id. Serving as an exemplar for the best mortal traits, Titans are well suited to market-oriented popular culture. Id.

ble traits, the Titans were eventually conquered and overthrown by a younger generation of deities, the Olympians.\(^4\) Though focused on immortal beings, these ancient tales demonstrate a truism of mortality: no amount of strength or stamina can triumph over the natural processes of time.\(^5\)

Bruce Matthews is a modern-day Titan, both in terms of his ability and franchise association.\(^6\) The ex-Tennessee Titan played football in the National Football League ("NFL") for nineteen years.\(^7\) Described by members of the profession as "extremely durable" and "incredibly valuable," Matthews played more games and seasons than any other offensive linemen in the NFL to date.\(^8\) Perhaps even more astonishing, the player never missed a game due to injury, starting in 229 consecutive games between 1987 and 2002.\(^9\)


5. See Smith, supra note 3 (explaining how this juxtaposition of hardship and strength is portrayed in art).


8. See id. (highlighting that at time of his retirement, Matthews had played more games than any other NFL player). Matthews’ record has since been surpassed by Jerry Rice and Brett Favre, but Matthews still holds several Oilers/Titans records: most seasons played (19), most games played in career (296), most consecutive games played (232), and most consecutive games started (229). \(^id\)

9. See id. (revealing Matthews’ impressive record for consecutive games for which he was starter). Although Matthews was never benched for injury, the constant play was likely to lead to cumulative injury. See 82 AM. JUR. 2D Workers’ Compensation § 314 (discussing cumulative trauma within context of workers’ compensation). Although some jurisdictions do not allow recovery for gradually occurring injuries, others have adopted a “cumulative injury rule.” \(id\) Under this rule, an employee can receive workers’ compensation for disabilities that develop
Yet with time, like the Titans of myth, this man’s awe-inspiring strength, stamina, and durability faded.  

Matthews retired from professional football in 2001, but his mythic story was yet to be complete. In 2009, the ex-Titan captured public attention for tackling a different type of adversary. The challenge was a matter to be tried in a court of law, rather than in a stadium or on a field, and it would be fought against one of the strongest, well-financed entities in the United States: the NFL. The dispute arose in 2008, when Matthews filed an application seeking workers’ compensation benefits from California. In response to his application, the Tennessee Titans and the National Football League Management Council (“NFLMC”) filed a non-injury grievance contending that Matthews breached his employment contract by filing a claim. The NFLMC supported this argument by noting a specific clause in Matthews’ employment provision that expressly provided that all workers’ compensation claims would be gradually. 

gradually. Id. This theory is also known as the “rapid repetitive motion theory.” Id.


12. See id. (explaining that Matthews’ filed his workers’ compensation application in 2008).

13. See, e.g., Jami A. Maul, Comment, America’s Favorite “Nonprofits”: Taxation of the National Football League and Sports Organizations, 80 UMKC L. REV. 199, 199 (2011) (noting that “professional sports in America are an approximately $225 billion industry”). “Imagine a business that has $7.8 billion in revenue in the current year, with an overall operating income of more than $1.0 billion. The business comprises thirty-two individual franchises that themselves each have an average value of $1.0 billion. Now imagine this organization is classified by the Internal Revenue Service as a nonprofit organization under Internal Revenue Code § 501(c)(6), and thus, while the individual franchises may have to pay taxes, the organization itself enjoys tax-exempt status. . . . This organization is not a religious organization or denomination, though many may follow it religiously. This ‘nonprofit’ organization is the National Football League.” Id. Recall that the Titans were gods; the Greeks worshiped the Titans according to their polytheistic religious rituals. See Smith, supra note 3. Ironically, this American legal ritual treats the NFL like a religious organization. See Maul, supra note 15, at 199.

14. See Matthews II, 688 F.3d at 1110 (providing procedural history).

15. See id. (noting that filing of application was arguably breach of Matthews’ employment contract).
decided under Tennessee law. As mandated by the NFL Collective Bargaining Agreement (“CBA”), the controversy was submitted to binding arbitration.

The arbitrator determined that the choice of law clause in Matthews’ employment contract was valid. Siding with the NFL, the arbitrator explained that the filing of a workers’ compensation application constituted a breach by Matthews of his employment contract. Matthews was ordered to “cease and desist” from seeking California benefits. In accord with Matthews’ “extremely durable” nature, the retired Titan filed suit in the Federal District in California, seeking to vacate the arbitrator’s decision. The Federal District Court denied Matthews’ motion to vacate and granted the Titans and NFLMC’s cross-motion to confirm the award in January of 2011. Highlighting his offensive orientation both on and off the field, Matthews appealed to the Ninth Circuit Court of Appeals. The stage was set for the clash of the titans.

On August 6, 2012, the Ninth Circuit Court of Appeals issued its decision in Matthews v. National Football League, denying the former player’s claim for workers’ compensation in California. In examining Matthews’ claim, the court determined that the state policy protecting employees from inadvertently waiving their access to state workers’ compensation regimes could not be appropriately applied to Matthews. The applicability of state policy to Matthews’ claim stemmed from the fact that Matthews could not demonstrate that he would be found eligible to receive workers’ compensation benefits from California, if given the chance to ap-

16. See id. (referring claimant to choice of law provision in employment contract).


18. See id. (upholding choice of law provision).

19. See id. (agreeing with NFL that filing of claim constituted breach).

20. Id. (mandating cease and desist).


22. See id. at *8 (confirming arbitration award).

23. See Matthews II, 688 F.3d 1107 (9th Cir. 2012) (describing procedural history).


25. See Matthews II, 688 F.3d at 1116-17 (affirming lower court’s decision).

26. See id. at 1113 (finding that state policy does not apply to Matthews).
ply. The court explained that it could not use the state public policy against inadvertent waivers to protect a right that might not even exist for Matthews.

Matthews demonstrates the considerable barriers to professional athlete-claimants in workers’ compensation: courts require assurance that players would be eligible for a particular state’s workers’ compensation benefits, if granted access to apply; however, restrictive state laws and obstructive provisions in employment contracts ensure that a player will be enjoined from applying before the appropriate state agency can assess their application. Although these limitations appear insurmountable, this Casenote will highlight how the Ninth Circuit’s opinion in Matthews provides guidance and hope for future NFL claimants.

II. FACTS

Bruce Matthews was born to play football. One need not look further than his lineage to validate this statement; the Matthews family is an NFL dynasty. Bruce Matthews’ father, Clay Matthews, Sr., played for the San Francisco 49ers in the 1950s. Clay Matthews, Jr., Bruce Matthews’ brother, played in the NFL for nineteen years, mostly for the Cleveland Browns. Matthews’ nephews currently play for the Green Bay Packers and the Philadelphia Eagles. In Greek Mythology, the Titans derived from the

27. See id. (prohibiting Matthews’ filing of application because ultimate eligibility under California workers’ compensation regime is unclear).
28. See id. (using hypothetical failure of Matthews’ claim to ban him from applying).
29. For a discussion of the court’s findings in Matthews, see infra notes 141-191 and accompanying text.
30. For a discussion hypothesizing the impact of the court’s findings in Matthews on future cases, see infra notes 222-236 and accompanying text.
32. For a further discussion of Bruce Matthews’ family football bloodlines, see infra note 39 and accompanying text.
33. For a further discussion of Bruce Matthews’ father and his NFL career, see infra note 39 and accompanying text.
34. For a further discussion of the career longevity of both Clay Matthews, Jr. and Bruce Matthews, see infra note 39 and accompanying text.
35. For a further discussion substantiating the claim that NFL involvement is genetic for Matthews, see infra note 39 and accompanying text.
most divine royal bloodlines. To be a Titan in professional football, a place in the Matthews family represents a royal flush.

Bruce Matthews lived up to the high standard set by his family name. After his first year of high school, Matthews moved with his family from Chicago to Los Angeles. College scouts recognized Matthews’ potential from the outset, as he proved to be a standout on both the offensive and defensive lines. Matthews attended the University of Southern California where he earned an All-American title and won the Morris Trophy. He was a first-round draft choice for Tennessee, where he stayed for nineteen years, playing first with the Houston Oilers and later for the team’s successors, the Tennessee Oilers and the Tennessee Titans (“Titans”).

36. See The Titans, supra note 2 (introducing concept of Titans).
37. See Pasquarelli, supra note 31 (supporting claim that Bruce Matthews is genetically inclined to play football).
38. See Bruce Matthews Biography, supra note 6 (describing Matthews’ exceptional career); see also Pasquarelli, supra note 31 (discussing Bruce Matthews’ football family).
39. See Gene Sapakoff, Charleston’s First Family of Football, THE POST AND COURIER (Jan. 21, 2011, 12:01 AM), http://www.postandcourier.com/article/20110121/PC1602/301219931 (describing Bruce Matthews’ family tree and successful football careers of Bruce’s family). “‘[T]here is so much going on with so many Matthews playing football, it can get a little overwhelming at times,’ said Carolyn Matthews, Clay Matthews Sr.’s wife of 29 years.” Id.
40. See Bruce Matthews (American Football), WIKIPEDIA, http://en.wikipedia.org/wiki/Bruce_Matthews_(American_football) (last visited Dec. 14, 2013) (chronicling Bruce Matthews’ football experiences). “[Bruce Matthews] was a standout playing on both the offensive and defensive line at Arcadia High School. He was also an all-league wrestler.” Id.
41. See Bruce Matthews, The Morris Trophy, http://www.morristrophy.com/past-winners/players/bruce-matthews/ (last visited Dec. 14, 2013) (noting that Bruce Matthews “[w]on the Pac-10 Morris Trophy (offense) in 1982[,] [w]as a [two]-time All-Conference first teamer (1981-82)[;] [p]layed in the 1983 Hula Bowl[,] [w]as a 1982 Playboy Pre-Season All-American . . . .”); see also THE MORRIS TROPHY, http://www.morristrophy.com/ (last visited Dec. 14, 2013) (“The Morris Trophy is the college football award given annually to the top offensive lineman and defensive lineman in the Pacific-12 Conference. Founded by Traci Morris, it has been awarded since 1980. Traci’s idea was to have players vote for the best opponent they faced on the field. As such it is one of the best awards a player can receive. It truly comes from his peers.”).
42. See Bruce Matthews Biography, supra note 6 (detailing highlights of Bruce Matthews’ career). The Oilers changed their name to coincide with the opening of their new stadium in 1999. See History: 1990s, THE OFFICIAL SITE OF THE TENNESSEE TITANS, http://www.titansonline.com/team/history/history-1990s.html (last visited on Dec. 14, 2013) (providing that on November 14, 1998, Oilers owner K.S. ‘Bud’ Adams, Jr., [announced] that the Oilers will become the’ Tennessee Titans’ beginning in 1999. ‘We wanted a new nickname to reflect strength, leadership and other heroic qualities,’ Adams said.”). On December 22, 1998, “Oilers owner K.S. ‘Bud’ Adams, Jr., [unveiled] new Tennessee Titans logo and colors, featuring the fire of the Titans and exemplifying power, strength, knowledge and excellence. ‘I feel we have developed a logo that fans throughout the state of Tennessee and around the country will embrace for years to come,’ Adams said.” Id.

Prior to 2002, the NFL used similar scheduling formulas and “teams always played four of the teams from a division in the other conference on a rotating basis (albeit with the standings playing a role in who would play who), but not their own; meaning that while an AFC team would be more likely to play each NFC team on a regular basis, they could go far longer without playing every team in their own conference. For example, between 1970 (when the leagues merged) and 2002 (when the current schedule was introduced) the Denver Broncos and the Miami Dolphins played only 6 times; including a stretch (1976–1997) where they met only once in 22 seasons.”


46. See Complaint and Petition to Vacate Arbitration Award at 14-17, NFL Players Ass’n v. NFL Mgmt. Council, No. 10CV1671 (S.D. Cal. Jan. 5, 2011), 2010 WL 3296826 (offering NFL’s contacts with California). Three of the thirty-two franchises in the NFL are headquartered in California: the San Diego Chargers; the San Francisco 49ers; and the Oakland Raiders. Id.

47. See Matthews II, 688 F.3d at 1110 (noting that Bruce Matthews did not sustain any particular injury in California).
in accumulation, led to his injuries, must have been received in California stadiums.\footnote{\textsuperscript{48}}

In cooperation with the NFLMC, the Titans filed a grievance against Matthews.\footnote{\textsuperscript{49}} The employment agreement the Titans had with Matthews contained a specific clause dictating that Tennessee would be the forum for any workers’ compensation claims brought by players.\footnote{\textsuperscript{50}} Thus, the Titans argued that Matthews’ application for workers’ compensation benefits in California constituted a breach of their employment agreement.\footnote{\textsuperscript{51}} The grievance sought to prevent Matthews from pursuing his workers’ compensation claim in California.\footnote{\textsuperscript{52}} Unable to reach a settlement, the parties arbitrated their dispute pursuant to a binding arbitration clause in Matthews’ NFL collective bargaining agreement.\footnote{\textsuperscript{53}}

The arbitrator determined that Matthews had violated the terms of his contract by pursuing workers’ compensation under California law.\footnote{\textsuperscript{54}} Specifically, the arbitrator found that the choice of law provision in the employment agreement constituted a promise to apply Tennessee law to any workers’ compensation claim Matthews might bring.\footnote{\textsuperscript{55}} As a result of the arbitration, Matthews was

\footnote{\textsuperscript{48}} See id. at 1114 (summarizing Matthews’ claim and explaining why it fails). “In briefing, Matthews argues – without citation to the record – that he was injured in California, apparently on the theory that all the games he played during his career contributed to the ailments he suffers today. Matthews may be correct, as a matter of fact, that every game (or at least most games) contributed to his cumulative injuries, but 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.

\footnote{\textsuperscript{49}} See id. at 1111 (providing procedural history).

\footnote{\textsuperscript{50}} See id. at 1110 n.1 (providing language from Matthews’ contract stating, “Jurisdiction 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.”).

\footnote{\textsuperscript{51}} See id. at 1110 (characterizing Matthews’ actions as breach of employment contract).

\footnote{\textsuperscript{52}} See id. (offering information regarding function and purpose of NFL’s grievance).

\footnote{\textsuperscript{53}} See id. (affirming that grievance would remedy any hypothetical breach because it would prohibit Matthews’ from applying and act of applying is breach); see also Matthews Arbitration, (Aug. 5, 2010) (Sharpe, Arb.), available at http://www.americanbar.org/content/dam/aba/migrated/2011_build/entertainment_sports/matthews_v_tennessee_titans.authcheckdam.PDF (providing arbitration decision).


\footnote{\textsuperscript{55}} See Matthews Arbitration, (Aug. 5, 2010) (Sharpe, Arb.) (deciding arbitration in favor of NFL). “[Matthews] is not precluded under Paragraph 26D from
ordered to “cease and desist” from seeking benefits under California law. Consequently, he filed suit in federal district court to vacate the arbitration award. In January of 2011, Matthews’ motion to vacate the arbitration award was denied by the district court. Matthews’ subsequent appeal was granted by the United States Court of Appeals for the Ninth Circuit.

The court held that Matthews’ workers’ compensation claim did not fall within California’s workers’ compensation regime. In doing so, the court upheld the arbitration award, finding that it did not violate any well-defined or dominant public policy of California law. The court supported its position by stating that Matthews had made no showing that he suffered any discrete injury or need for medical service in California. He had instead relied on alleged cumulative injuries incurred at various locations throughout his playing career.

III. BACKGROUND

The Matthews litigation arrived at the Ninth Circuit just as the professional sports community was beginning to understand the ramifications of cumulative injuries. The simultaneous nature of Matthews’ claim and national acknowledgement of cumulative injury as a threat created a unique context within which the Ninth Circuit Court of Appeals promulgated its decision. In addition to this complex legal and cultural environment, competing federal and state labor law policies on alternative dispute resolution render filing his workers compensation claim in California. However, the Player is required to proceed under Tennessee law, and accordingly shall cease and desist from attempting to persuade the California tribunals to apply California law in violation of Paragraph 26D of [Matthew’s] contract.” Id. at 18.

56. Id. (ordering Matthews to cease and desist from applying for workers’ compensation benefits in California).
57. See Matthews I, 2011 WL 31068, at *8 (chronicling history of litigation and stating Matthews’ appealed arbitrator’s award).
58. See id. (affirming arbitrator’s award).
59. See Matthews II, 688 F.3d 1107, 1109 (9th Cir. 2012) (providing procedural history).
60. See id. at 1114 (affirming arbitrator’s award and district court’s decision).
61. See id. (elaborating on court’s holding).
62. See id. (emphasizing importance of listing specific injuries).
63. See id. (explaining pitfalls of Matthews’ application).
64. For a discussion on cumulative injury and, in particular, how cumulative injuries from concussions are causing serious physical and mental health issues for former professional athletes, see infra note 78 and accompanying text.
65. For a discussion on how the legal and cultural settings render Matthews a particularly unique case, see infra notes 141-163 and 222-236 and accompanying text.
the opinion even more intricate.\textsuperscript{66} The distinct cultural climate and dueling labor law policies make this case particularly compelling.\textsuperscript{67} Although the case is novel in many ways, Matthews also serves to illuminate and review basic concepts of alternative dispute resolution, workers compensation, and jurisdiction.\textsuperscript{68} By placing these traditional principles in an untraditional context, Matthews becomes a dynamic piece of precedent for a variety of future litigants.\textsuperscript{69}

A. Recognition of Cumulative Player Injury as a Stimulus for Reform

Currently, the NFL is defending itself against more than four thousand plaintiff-plaintiffs who allege that team healthcare professionals concealed from them the long-term risks associated with cumulative injury during their careers.\textsuperscript{70} Dubbed the “Concussion Conundrum” by sports law experts, this wave of highly publicized litigation is likely to impact the ways in which the legal, healthcare, and professional sports sectors interact.\textsuperscript{71} In this context, the issue of whether retired professional athletes may benefit from state workers’ compensation programs will become even more pressing.\textsuperscript{72}

Professional athletes have always been treated differently than other types of employees under workers’ compensation laws.\textsuperscript{73} This

\textsuperscript{66} For a detailed analysis of competing federal and state policies, see infra notes 164-170 and accompanying text.

\textsuperscript{67} For a discussion on how the unique setting will impact the case’s utility for future claimants, see infra notes 78 and accompanying text.

\textsuperscript{68} See Matthews II, 688 F.3d at 1109 (introducing variety of legal concepts that Court must reconcile).

\textsuperscript{69} For a discussion on how the case may be used, both by courts and by those in the sports community to reduce risk inherent in the game, see infra notes 78 and accompanying text.


\textsuperscript{72} See NFL CONCUSSION LITIGATION, supra note 70 (exploring complexities of this movement).

\textsuperscript{73} See Rachel Schaffer, Comment, Grabbing Them by the Balls: Legislatures, Courts, and Team Owners Bar Non-Elite Professional Athletes from Workers’ Compensation, 8 AM. U. J. GENDER SOC. POL’Y & L. 623, 635 (2000) (purporting that athletes have been treated differently than other employees in workers’ compensation). For a response to many who might argue that the high salaries of professional athletes alleviates the need for workers’ compensation, see Robert C. Berry & Glenn M.
disparity in treatment manifests itself differently from state to state; but in every state it is more difficult for a professional athlete to receive workers’ compensation when compared to most other types of employees.74 Some states even deny eligibility to professional athletes all together.75 In addition to the limits imposed by state statutes, team owners often use employment contracts to limit the collection of workers’ compensation benefits by professional athletes.76 Players who need state health benefits for injuries stemming from a career of tackles are thus faced with both state and team-imposed barriers.77 As the NFL’s Concussion Conundrum

74. See Stephen Cormac Carlin & Christopher M. Fairman, Note, Squeeze Play; Workers’ Compensation and the Professional Athlete, 12 U. MIAMI ENT. & SPORTS L. REV. 95, 104 (1995) (noting that athletes’ workers’ compensation differs from that received by other employees in two ways: athletes are typically limited by statute and limited by employer contract).

75. See Schaffer, supra note 73, at 635 (recognizing variance between state workers’ compensation laws). For a comprehensive discussion on workers’ compensation and its interaction with professional athletes, see Darryll M. Halcomb Lewis, An Analysis of Brown v. National Football League, 9 VILL. SPORTS & ENT. L.J. 263, 269 (2002) (analyzing retired NFL player’s workers’ compensation claim). Lewis notes that, “[h]istorically, workers’ compensation was the outgrowth of legislative intervention in a litigious feud between labor and industry.” Id. at 270. Arbitration was also a product of such feuds. See 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, 802 (2011) (discussing original goal of arbitration to extend affordable access to justice is harming employees, particularly professional athletes). Some commentators would argue that legislative activism in these areas has created more litigation problems, not less. Id.


77. See Schaffer, supra note 73, at 639 (explaining that “[s]tates generally approach workers’ compensation benefits for professional athletes in the following ways: statutory exclusion method; functional exclusion method; exclusion through case-law method; [and the] election method.”). The statutory exclusion method explicitly carves professional athletes out of the state workers’ compensation scheme. See id. (citing FLA. STAT. ANN. § 440.02(1)(c)-(d) (West 2013)) (stating “employment” does not include service performed by professional athlete). The functional exclusion method implicitly creates a barrier to recovery by altering the way that the regular workers’ compensation laws function. See id. (citing IOWA CODE ANN. § 85.33(6) (West 2013)) (creating additional criteria when determin-
continues to shed light on the health risks associated with participation in professional sports, the issue of access to state workers’ compensation will become even more critical. This tragic, staggering wave of cumulative injury litigation will act as a catalyst, encouraging reform against the stigma of the professional athlete in labor and administrative law contexts.

Due to its favorable employment laws, California is a haven for injured employees. In fact, the state boasts one of the most comprehensive and employee-friendly compensation schemes in the


79. See generally NFL CONCUSSION LITIGATION, supra note 70 (emphasizing importance of comprehensive injury litigation to sports law field).

country. In addition to its employee-friendly workers’ compensation system, California also attracts NFL claimants because the state affords sufficient contacts to establish jurisdiction. With three NFL teams housed within its borders, California is the state where NFL teams play most frequently. As awareness of the long-term health risks of athletic cumulative injuries grows, California appears to be an enticing solution for retired athletes seeking remedy for injuries sustained during their professional careers. Many retired NFL athletes have already taken note. In 2010, the New York Times was first to report the staggering 700-plus cumulative injury cases pending in California; that number continues to grow. At first glance, Matthews’ case casts doubt on the viability of such workers’ compensation claims. Upon closer examination, the case actually

81. See Culhane, supra note 80 (listing reasons why California is popular state in which to file workers’ compensation applications); see also Alan Schwarz, Case Will Test Teams’ Liability in Dementia, N.Y. Times, Apr. 6, 2010, at A1, available at http://www.nytimes.com/2010/04/06/sports/football/06worker.html?page-wanted=all&_r=0 (finding two reasons for California’s attraction: ease in establishing sufficient contacts and easily circumvented statutes of limitations). Explaining that “[m]ost states require workers’ compensation claims to be filed within one to five years of the injury; California’s statute of limitations does not begin until the employer formally advises the injured worker of his or her right to workers’ compensation. N.F.L. teams have almost never brought up workers’ compensation – hoping to avoid even more claims, several lawyers said – so long-retired players can file for injuries sustained decades ago. Dozens of veterans from as far back as the 1960s and ’70s, including the star San Diego Chargers wide receiver Lance Alworth, who retired in 1972 and turns 70 in August, have California cases pending.” Id. (explaining why California’s workers’ compensation system is favorable to NFL former player litigation).


83. See id. (“A player who played just one game or had one practice in [California] – even as a member of another team – is eligible to file a claim.”).

84. See Heitner, supra note 78 (demonstrating that many of these claims attempt to recover for long-term mental and physical health consequences of multiple concussions).

85. See Schwarz, supra note 81 (reporting hundreds of retired athletes flocking to California).

86. See id. (explaining that most of these cumulative injury cases involve orthopedic injuries and aim to receive settlements ranging from $100,000 to $200,000 but stating that concussion cases are on rise and cost, on average, more than $1 million).

provides useful guidance for future player-litigants seeking to recover in California.\footnote{For a discussion on how the Matthews functions as positive precedent for player claimants, see infra notes 192-236 and accompanying text.}

In addition to state statutory barriers, team owners also use employment contracts to deny players future access to state workers’ compensation.\footnote{See Schaffer, supra note 73, at 635-50 (discussing ways that employers and states have disenfranchised players seeking workers’ compensation).} Binding arbitration clauses and choice of law provisions in these contracts are common mechanisms used by teams to prevent player claims from reaching the state workers’ compensation office.\footnote{See Stephen Cormac Carlin & Christopher M. Fairman, supra note 74, at 104-17 (describing how employers and states have used contractual and statutory mechanisms for restricting player access to workers’ compensation).} By signing an employment contract, a player subscribes to a choice of law provision, which, in most team contracts, states that the player of the team for a certain state may only ever apply for workers’ compensation in that particular state.\footnote{See Schaffer supra note 73, at 635-36 (detailing contractual mechanism through which players are denied access to workers’ compensation).} Binding arbitration clauses work in tandem with these choice-of-law provisions to limit a player’s ability to access out-of-state workers’ compensation programs.\footnote{See Stephen Cormac Carlin & Christopher M. Fairman, supra note 74, at 112-14 (emphasizing restrictive power of choice of law provision and binding arbitration clause).} In most circumstances when a player attempts to apply for workers’ compensation in a state other than the state his or her contract mandates, the team will file an injunction with the state court.\footnote{See id. (noting binding arbitration clause functions as second barrier to access).} The binding arbitration clause in the athlete’s employment contract then forces the players to submit the dispute to arbitration.\footnote{See, e.g., Matthews II, 688 F.3d 1107 (9th Cir. 2012) (providing example of arbitrator siding with NFL); see also Cincinnati Bengals, Inc. v. Abdullah, No. 1:09-cv-738, 2013 WL 154077 (S.D. Ohio Jan. 15, 2013) (siding with NFL by upholding employment contract in favor of NFL).} Arbitrators, who are essentially bound by precedent, will uphold and enforce the choice of law provision in the employment contract.\footnote{For detailed discussion of difficulties faced by professional athletes in filing workers’ compensation claims and why theories supporting restrictive con-}

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waive their right to apply for workers’ compensation in most states and may alter the already meager state workers’ compensation protections offered to professional athletes in the state their contract sets forth.97

Although federal labor law policy tends to favor alternative means of remedying disputes, an exception exists when alternative means of dispute resolution contravene public policy.98 Some states, including California, have been progressive in protecting individuals from inadvertently waiving their rights to workers’ compensation benefits through contractual provisions.99 As awareness of the long-term health effects of playing contact sports at a professional level increases, the federal policy which favors alternative dispute resolution will clash with state and public policies that are aimed at protecting individual employees.100 Ultimately, judicial decisions in this area will require a highly factual analysis that turns on whether the individual seeking workers’ compensation adequately meets each state’s unique workers’ compensation regime.101 Matthews v. National Football League provides an example of such an analysis.102
B. Conflicting Federal and State Policies Toward Deference to Alternative Dispute Resolution

The statutory and contractual barriers faced by athletes seeking to recover workers' compensation for cumulative injury provide context for how courts assess player claims. In addition to this prohibitive framework, there is a general federal labor policy of deference towards mechanisms of alternative dispute resolution. Players seeking to overcome these substantial obstacles have limited options. They must either succeed in claiming that the decision of the arbitrator contravened state policy in preventing an employee from inadvertently waiving their eligibility to workers' compensation benefits, or demonstrate that the enforcement of an arbitration award would constitute a manifest disregard of the law. In order to comprehend the ability of Matthews to function as a beneficial case for players, an understanding of these competing policies is required.

Federal labor policy encourages the resolution of labor disputes through arbitration. This policy is deeply grounded in judicial economy and resources; arbitration was designed to provide more affordable access to litigants who would otherwise burden judicial capacity. Scrutiny of an arbitration decision by the judicial

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103. See Schaffer supra note 73, at 635 (detailing contractual mechanism through which players are denied access to workers' compensation).


105. See Stephen Cormac Carlin & Christopher M. Fairman, supra note 74, at 104-15 (explaining that statues and contracts are so restrictive, employees are extremely limited in remedial options).

106. See Aramark, 530 F.3d at 822 (examining narrow exception).

107. For a discussion of the beneficial nature of the Matthews opinion on future workers’ compensation cases, see infra notes 222-236 and accompanying text.

108. See Aramark, 530 F.3d at 822 (favoring alternative dispute resolution in labor dispute contexts). “[i]n [the Ninth Circuit], because federal labor policy strongly favors the resolution of labor disputes through arbitration, [*judicial scrutiny of an arbitrator’s decision is extremely limited.” United Food & Commercial Workers, 74 F.3d at 173 (emphasis in original) (quoting Stead Motors of Walnut Creek v. Automotive Machinists Lodge No. 1173, 886 F.2d 1200, 1208 n.8 (9th Cir. 1989) (en banc), cert. denied, 495 U.S. 946 (1990)).

Accordingly, decisions in arbitration are generally upheld as long as they represent a reasonable interpretation of the contract in dispute. One exception to this judicial trend arises when the enforcement of an arbitration award would be contrary to public policy. In order to vacate an award on such grounds, the court must find that “an explicit, well defined and dominant public policy exists and that the policy is one that specifically militates against the relief ordered by the arbitrator.” In Matthews, a state inclination towards negating any contractual provision that attempted to waive workers’ compensation benefits clashed with federal labor policy favoring alternative means of dispute resolution.

California’s protective labor policy is grounded in Section 5000 of its Labor Code and in the prominent case Alaska Packers’ Association v. Industrial Accident Commission. California’s Labor Code states in part, “No contract, rule, or regulation shall exempt the employer from liability for the compensation fixed by this division.” In Alaska Packers, an employee with a choice of law clause in his employment agreement applied for workers’ compensation in California. The California Supreme Court examined the employment relationship, and it found that sufficient contacts existed to render the employee subject to receive California workers’ compensation benefits. Only after that finding did the court apply California’s Labor Code, concluding that the choice of law clause...
in the employee agreement was unenforceable.¹¹⁹ Thus, the court used a two-step process in determining whether the employee could receive California benefits.¹²⁰ First, the court examined sufficient contacts.¹²¹ Second, the court scrutinized the claim under the California Labor Code.¹²² The employee was not able to invoke the protections of the California Labor Code until he had first met the sufficient contacts test.¹²³ The sufficient contacts test derived from the California Supreme Court decision in Pacific Employers.¹²⁴ Pacific Employers stated that California workers’ compensation applies to an employee who was injured and suffered medical expenses in that state.¹²⁵ At a minimum, the court noted that coverage would extend to an employee whose injury cost had some impact on California’s medical system.¹²⁶

In addition to federal and state public policy exceptions to general deference to arbitration in labor contexts, an employee can argue another exception.¹²⁷ This narrow exception applies when

¹¹⁹. See id. (noting that California Labor Code was not applied until court determined that employee would likely be eligible to receive workers’ compensation).
¹²⁰. For a discussion on how this reasoning is flawed, see supra notes 192-221 and accompanying text.
¹²¹. See Alaska Packers I, 34 P.2d at 718-21 (examining contacts as preliminary matter).
¹²². See id. (applying California Labor Code to claim); CAL. LAB. CODE § 2804 (West 2013) (stating that contracts waiving employee benefits are “null and void” in California); CAL. LAB. CODE § 5000 (West 2013) (”No contract, rule, or regulation shall exempt the employer from liability for the compensation fixed by [the workers’ compensation statute].”).
¹²⁴. See id. at 1062-63 (promulgating California’s sufficient contacts test for workers’ compensation claims that might otherwise be barred from jurisdiction under restrictive contractual claims).
¹²⁵. See Alaska Packers I, 34 P.2d at 718-21 (asserting that contacts will only exist where costs associated with employee’s injury may impact California’s medical system and other resources).
¹²⁶. See id. (hypothesizing that some impact on state medical sources would be prerequisite).
¹²⁷. See Matthews II, 688 F.3d 1107, 1115 (9th Cir. 2012) (“Like the public policy exception, manifest disregard of the law is a narrow exception to the general principle of deference to arbitration awards. It is ‘shorthand for a statutory ground under the [Federal Arbitration Act (FAA)], . . . which states that the court may vacate “where the arbitrators exceeded their powers.”’”); Comedy Club, Inc. v. Improv W. Assoc’s., 553 F.3d 1277, 1290 (9th Cir. 2009) (quoting Kyocera Corp. v. Prudential–Bache Trade Servs., Inc., 341 F.3d 987, 997 (9th Cir. 2003) (en banc)). Although the Titans and NFLMC were unable to decide whether the FAA applies to arbitration of collective bargaining agreements, the Ninth Circuit Court of Appeals in Matthews assumed that they did. Matthews II, 688 F.3d at 1115 n.7 (“The Titans and NFLMC point out that we have not decided whether the FAA applies to
enforcement of an arbitration award would be a manifest disregard of the law.\textsuperscript{128} Vested in both the Federal Arbitration Act and in Ninth Circuit case law, this exception allows employees to evade enforcement of arbitration awards where arbitrators “exceed their powers” by recognizing applicable law and subsequently disregarding it.\textsuperscript{129} Employees seeking relief under this exception often cite to a manifest disregard of the Full Faith and Credit Clause of the United States Constitution.\textsuperscript{130} The Full Faith and Credit Clause states that, “Full Faith and Credit shall be given in each state to the public Acts, Records, and judicial Proceedings of every other State.”\textsuperscript{131} In the context of workers compensation cases in California, an employee could argue that California has a constitutionally guaranteed right to apply its workers compensation laws to claims brought within the state.\textsuperscript{132} As a corollary to this principle, an employee could argue that California has an absolute right to prohibit any contractual waiver of those rights.\textsuperscript{133} By imposing another arbitration of collective bargaining agreements, . . . For purposes of our discussion here, we will assume that it would.

\textsuperscript{128} See Mich. Mut. Ins. Co. v. Unigard Sec. Ins. Co., 44 F.3d 826, 832 (9th Cir.1995) (defining “manifest disregard of the law” exception, stating, “for an arbitrator’s award to be in manifest disregard of the law, it must be clear from the record that the arbitrator recognized the applicable law and then ignored it”).

\textsuperscript{129} See Federal Arbitration Act, 9 U.S.C.A. § 10(a)(4) (2013) (validating manifest disregard of law exception as vacatur of arbitration award). “[T]he United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration . . . where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.” Id.

\textsuperscript{130} U.S. CONST. art. IV, § 1, cl. 1 (mandating respect for each sovereign state’s laws and promulgations). “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.” Id.

\textsuperscript{131} Id. (providing Constitutional language on which exception to arbitration enforcement is based).

\textsuperscript{132} See Alaska Packers Ass’n v. Indus. Accident Comm’n of California, 294 U.S. 532, 547 (1935) [hereinafter Alaska Packers II] (“A rigid and literal enforcement of the full faith and credit clause, without regard to the statute of the forum, would lead to the absurd result that, wherever the conflict arises, the statute of each state must be enforced in the courts of the other, but cannot be in its own.”); Pac. Emp’rs Ins. Co. v. Indus. Accident Comm’n of Cal., 306 U.S. 493, 503 (1939) (holding that Full Faith and Credit Clause did not prevent California from applying its workers’ compensation statute even though it conflicted with laws of Massachusetts).

\textsuperscript{133} See, e.g., Matthews II, 688 F.3d 1107, 1115 (9th Cir. 2012) (arguing that Alaska Packers and Pacific Employers established that “California has the absolute right to apply its workers’ compensation laws within its borders and to prohibit any employee from waiving those rights.”).
state’s laws to a California workers’ compensation controversy, an arbitrator could thus violate the Full Faith and Credit Clause.134

In Alaska Packers and Pacific Employers, the United States Supreme Court held that the Full Faith and Credit Clause did not prevent California from applying its workers’ compensation statute even though it conflicted with the laws of Alaska and Massachusetts, respectively.135 In both cases, the Supreme Court emphasized California’s strong interest in the respective controversies.136 In Alaska Packers, the United States Supreme Court found the interest of California in regulating the labor sector, and more specifically in regulating employee injuries that may result in a burden on state resources, sufficient to justify application of California law.137 Similarly, in Pacific Employers, the Court determined that “[f]ew matters could be deemed more appropriately the concern of [a] state” than the safety, health and economic protection of employees injured within that state’s boundaries.138 These cases, however, do not hold that California has an absolute right to apply its law.139 Rather, the

134. See id. (emphasizing California’s ability to apply its workers’ compensation laws within its borders). Matthews argued that by imposing the law of Tennessee upon the tribunals of the State of California, the arbitrator violated the Full Faith and Credit Clause, and thus manifestly disregarded the law. Id.

135. See id. (noting however that “[t]he Supreme Court did not hold that California had an ‘absolute right’ to apply its law, irrespective of the extent of its contacts with the employee or employment relationship in question.”); see also Pac. Emp’rs v. Indstl. Accident Comm., 306 U.S. 493, 504-05 (1939) (holding that Full Faith and Credit Clause did not prevent California from applying its workers’ compensation statute even though it conflicted with laws of Massachusetts); Alaska Packers II, 294 U.S. 532, 533 (1935) (holding Full Faith and Credit Clause did not prevent California from applying its workers’ compensation statute even though it conflicted with laws of Alaska).

136. See Alaska Packers II, 294 U.S. at 550 (“No persuasive reason is shown for denying to California the right to enforce its own laws in its own courts, and in the circumstances the full faith and credit clause does not require that the statutes of Alaska be given that effect.”); Pac. Emp’rs, 306 U.S. at 503 (emphasizing employee’s contacts and highlighting discrete and specific injuries within California). “Although Massachusetts has an interest in safeguarding the compensation of Massachusetts employees while temporarily abroad in the course of their employment, and may adopt that policy for itself, that could hardly be thought to support an application of the full faith and credit clause which would override the constitutional authority of another state to legislate for the bodily safety and economic protection of employees injured within it. Few matters could be deemed more appropriately the concern of the state in which the injury occurs or more completely within its power.” Id.

137. See, e.g., Matthews II, 688 F.3d at 1116 (establishing burden on state resources as basis for justifying public policy exception).

138. See Pac. Emp’rs, 306 U.S. at 503 (listing primary concerns of the state); see also Carroll v. Lanza, 349 U.S. 408, 413 (1955) (recognizing Arkansas’ interest in providing remedy to employees injured in Arkansas).

139. See Matthews II, 688 F.3d at 1116 (emphasizing that these cases do not establish “absolute right,” as asserted by Matthews).
cases emphasize the factual analysis necessary to establish sufficient contacts to then justify the application of California law.¹⁴⁰

IV. MATTHEWS V. NFL: NARRATIVE ANALYSIS

Ultimately, the Ninth Circuit Court of Appeals determined that California did not have the right to apply its law in Matthews because Bruce Matthews failed to establish sufficient contacts with California.¹⁴¹ The court divided its discussion into three sections: California Public Policy; Federal Labor Policy; and a discussion of the Full Faith and Credit Clause.¹⁴² It determined that the arbitrator’s decision was not a violation of either state or federal public policy.¹⁴³ The court also denied relief to Matthews under his Full Faith and Credit Claim.¹⁴⁴ These decisions ultimately resulted in a loss for Matthews.¹⁴⁵ The decision of the arbitrator was pronounced binding and Matthews’ application for worker’s compensation would never be reviewed.¹⁴⁶

A. California Public Policy

Matthews proposed that California embraced an explicit public policy negating contractual agreements that purport to waive an employee’s right to later seek workers’ compensation benefits.¹⁴⁷ He further noted that the decisions of these Californian tribunals were not swayed by the tenuous nature of the connection between

¹⁴⁰. See Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 818 (1985) (quoting Allstate Ins. Co. v. Hague, 449 U.S. 302, 312–13 (1981) (plurality opinion)) (stating, “‘[F]or a State’s substantive law to be selected in a constitutionally permissible manner, that State must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair.’”). Id.

¹⁴¹. See Matthews II, 688 F.3d at 1117 (holding that none of exceptions offered by Matthews can justify setting aside Tennessee law prescribed in employment agreement).

¹⁴². See id. at 1111-17 (discussing and discarding each of Matthews’ contentions and ultimately deciding for NFL).

¹⁴³. See id. at 1111-15 (examining state and federal policy arguments asserted by Matthews).

¹⁴⁴. See id. at 1111-17 (denying relief for both claims).

¹⁴⁵. See id. at 1115-17 (addressing and invalidating Matthews’ Full Faith and Credit Claim).

¹⁴⁶. See id. at 1117 (affirming arbitrator’s award).

¹⁴⁷. See Matthews II, 688 F.3d at 1111 (“Matthews contends that California has an explicit, well-defined and dominant public policy militating against agreements that purport to waive an employee’s right to seek California workers’ compensation benefits before a California tribunal, no matter how tenuous the connection between California and the employee or the employment. Matthews derives this ‘no waiver’ policy primarily from the California workers’ compensation statute . . . .”).
California and the state employee. To support this position, Matthews relied on California Labor Code Section 5000 and the decision in *Alaska Packers’ Association v. Industrial Accident Commission*. The Ninth Circuit did not accept these interpretations of California law, explaining that the retired football player’s construction of California policy was too broad.

The Ninth Circuit Court of Appeals explained that Matthews’ construction of California policy seemed to grant a universal right to seek workers’ compensation benefits under the state’s regime. Rather, as the court described, California policy only seeks to protect an employee who is otherwise eligible to receive benefits under the state’s workers’ compensation regime from contractually waiving those benefits. The court stated that this California policy, known as the “no waiver rule,” only protected an employee when that employee’s compensation claim was subject to California law.

The Court determined that Matthews was not subject to California law. An individual seeking eligibility under California’s workers’ compensation regime bears the burden of showing that the contested arbitration award violates public policy. The court noted that in order to forgo the common, highly deferential review

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148. See id. at 1112 (contending that strong language contained in California’s Code should be interpreted as to override sufficient contacts hypothesizing by court).

149. See id. at 1111 (“Matthews contends that by prohibiting him from seeking benefits under California law, the arbitration award violates this fundamental policy.”); see also *Alaska Packers*, 34 P.2d 716, 721 (Cal. 1934) (relying on combination of case law and statute to demonstrate that hypothetical problems with sufficient contacts should not act to bar applicant from applying); CAL. LAB. CODE § 5000 (West 2013) (“No contract, rule, or regulation shall exempt the employer from liability for the compensation fixed by [the workers’ compensation statute].”); see also id. LAB. § 2804 (“Any 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 . . . .”).

150. See Matthews II, 688 F.3d at 1113 (deciding against Matthews for this particular claim).

151. See id. at 1111 (stating Ninth Circuit’s problem with Matthews’ interpretation of California policy).

152. See id. at 1111-12 (explaining correct interpretation of California policy). The court further noted that the policy was in place to dually protect the worker from receiving benefits and to ensure employer liability. See id. at 1112. California policy ensures that employers cannot contractually absolve themselves of liability for work-related injury. See id.

153. See id at 1113 (explaining no-waiver rule).

154. See id. at 1114 (“On the record before us, however, Matthews has not shown that his claim falls within the scope of the Pacific Employers rule.”).

155. See id. at 1112 (stating that burden rests with individual seeking workers’ compensation).

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given to an arbitration award, the court must find that California workers’ compensation law applies to Matthews in the first place.\footnote{156. See \textit{Matthews II}, 688 F.3d at 1112 (“Because of our 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.”).} Under the rule in \textit{Pacific Employers}, if Matthews had suffered an injury and was treated for that injury in California, he would be subject to the protections of that state’s workers’ compensation regime.\footnote{157. See \textit{Pac. Emp’rs Ins. Co. v. Indus. Accident Comm’n of Cal.}, 306 U.S. 493, 503 (1939); \textit{see also Alaska Packers I}, 34 P.2d 716, 719-21 (Cal. 1934) (showing discrete or specific injury would absolutely pass sufficient contacts test).} Having established that Matthews would have been subject to the state’s benefits, the court would then be able to apply the California Labor Code to render the choice of law and binding arbitration provisions unenforceable.\footnote{158. See \textit{Alaska Packers I}, 34 P.2d at 721 (providing example of case using this formula where employee was found eligible for workers’ compensation benefits).} 

Unfortunately, Matthews could not proffer any evidence of any particular injury sustained in California.\footnote{159. See \textit{Matthews II}, 688 F.3d at 1113 (explaining that court graciously inferred that he had played in California from Matthews’ participation on NFL team). “In his application for workers’ compensation benefits, Matthews asserted that he suffered cumulative injuries incurred at ‘various’ locations between 1983 and 2001. He did not allege any specific injury in California or a need for medical services in California.” \textit{Id.} “Matthews likewise did not allege in his complaint before the district court that he suffered any discrete injury in California. Nor has he directed us to anything in the record indicating that he tried to prove injury in California, or any burden on the state’s resources.” \textit{Id.}} In his application for benefits, the retired player stated that he suffered cumulative injuries incurred at a variety of locations between 1983 and 2001.\footnote{160. See \textit{id}. (suggesting that arguing cumulative injury could be legitimate way to circumvent fact that Matthews never suffered any particular injury in California).} He was unable to allege any specific injury in California.\footnote{161. For a reference to the fact that Matthews was never benched for injury, see \textit{supra} note 9.} Furthermore, he was unable to allege specific medical treatment or services rendered in California over that time period.\footnote{162. See \textit{id}. (noting that Matthews failed to state that he ever even played football in California on his application but judges were willing to accept clemency on this matter, accepting as obvious fact that he had played in California).} In fact, Matthews did not even allege that he ever played football in California.\footnote{163. See \textit{Matthews II}, 688 F.3d at 1113 (offering proof that Matthews did not allege any injury in California). \textit{But see Heitner, supra} note 78 (discussing emerging recognition of cumulative injury) \textit{and Rovell, supra} note 82 (stating, “[t]he most exposure to teams lies in the state where the most teams play: California.”).}
Matthews’ federal labor policy argument mirrored his state public policy argument.\footnote{See Matthews II, 688 F.3d at 1114-15 (following similar reasoning as state policy claim). Whereas California state policy operates generally against agreements that purport to waive an employee’s right to seek California workers’ compensation benefits before a California tribunal, Federal Labor Policy focuses on Collective Bargaining Agreements (“CBAs”). See id. (“[Federal Labor Policy] provides that an employee may not, through a collective bargaining agreement, bargain away state minimum labor standards.”).} He argued that federal labor policy provides that an employee may not bargain away state minimum labor standards through a collective bargaining agreement.\footnote{See id. at 1115. (focusing on CBAs); see also Livadas v. Bradshaw, 512 U.S. 107, 123–24 (1994) (“[LMRA Section] 301 cannot be read broadly to pre-empt nonnegotiable rights conferred on individual employees as a matter of state law.”); Metro. Life Ins. Co. v. Massachusetts, 471 U.S. 724, 755–56 (1985) (finding that National Labor Relations Act does not permit “unions and employers to bargain for terms of employment that state law forbids employers to establish unilaterally”); Contract Servs. Network, Inc. v. Aubry, 62 F.3d 294, 298–99 (9th Cir. 1995) (finding that California’s workers’ compensation statute “cannot be undercut by collective bargaining”).} By interpreting the NFL collective bargaining agreement and his employment contract as a waiver of his right to state workers’ compensation benefits, Matthews proposed that the arbitration award conflicted with this federal labor policy.\footnote{See Matthews II, at 1115 (applying this rule to facts in Matthews to generate argument that violation of Federal Labor Policy occurred).} In accord with its response to his state policy argument, the Ninth Circuit Court of Appeals focused on the ambiguity of Matthews’ eligibility under California’s workers’ compensation regime.\footnote{See id. (stating, “[I]t is not clear that Matthews’ workers’ compensation claim falls within the scope of California’s workers’ compensation regime. He has therefore not shown that an arbitration award preventing him from seeking California benefits deprives him of something to which he is entitled under state law.”).} The NFL’s grievance was filed before Matthews’ application could be reviewed.\footnote{See id. at 1110 (setting forth procedural history of case).} Consequently, Matthews could not demonstrate with certainty that he would have been deemed eligible for the benefits.\footnote{See id. at 1116 (“California’s interest is highly attenuated in this case. On the facts alleged it is not even clear that the courts of California would consider California’s interest sufficient to justify the application of California law to Matthews’ workers’ compensation claim.”). For a discussion of the flaws in the Ninth Circuit’s reasoning, see infra notes 192-221 and accompanying text.} The arbitration award could not violate federal policy, the court determined, because Matthews could not demonstrate that the
arbitrator’s award deprived him of something to which he was entitled under state law. 170

C. Full Faith and Credit

Matthews’ final contention focused on the “manifest disregard of the law” exception to the general principle of deference to arbitration determinations. 171 “[F]or an arbitrator’s award to be in manifest disregard of the law, it must be clear from the record that the arbitrator recognized the applicable law and then ignored it.” 172 Specifically, Matthews argued that the arbitrator’s award was a violation of the Full Faith and Credit Clause of the Constitution. 173 The Full Faith and Credit Clause states that, “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial proceedings of every other State.” 174

In Alaska Packers and Pacific Employers, the United States Supreme Court determined that the Full Faith and Credit Clause did not preclude California from implementing its workers’ compensation statute, despite the fact it conflicted with the laws of both Massachusetts and Alaska. 175 Matthews claimed that these two decisions established that California has the right to apply its workers’ compensation laws within its borders and to prohibit any em-
employee from waiving those rights. Matthews asserted that the arbitrator ignored the principle set forth in *Alaska Packers* and *Pacific Employers* by imposing the law of Tennessee to his claim. By impermissibly applying this Tennessee law, Matthews argued that the arbitrator disregarded Supreme Court precedent. The arbitrator’s award, he contended, should be set aside under the “manifest disregard of the law” exception.

The Ninth Circuit Court of Appeals disagreed. The court distinguished *Alaska Packers* and *Pacific Employers* by highlighting the extent of contacts between California and the respective employees in those cases. The court explained that California did not have an “absolute right” to apply its law. In *Alaska Packers*, the Court highlighted California’s interest in regulating employment relationships entered into within the state, particularly when injury to the employee might result in a burden on the state’s resources. Likewise, in *Pacific Employers*, the Court considered California’s right to apply its laws to a Massachusetts resident injured while working in California and concluded that, “[f]ew matters could be deemed more appropriately the concern of [a] state” than “legisl[ating] for the bodily safety and economic protection of employees injured within it.” Rather, this right was contingent on the state’s substantial interest in the controversy before it and on

176. See Matthews II, 688 F.3d at 1115 (contending that by imposing law of Tennessee upon tribunals of State of California, arbitrator violated Full Faith and Credit Clause, and manifestly disregarded law).

177. See id. (arguing application of Tennessee law was erroneous); see also Pac. Emp’ts, 306 U.S. 493 at 509 (siding with employee under manifest disregard of the law exception).

178. See Matthews II, 688 F.3d at 1115 (noting Matthews’ argument that arbitrator disregarded binding authority).

179. See id. at 1117 (declining to accept Matthews’ argument and holding for NFL).

180. See Pac. Emp’ts, 306 U.S. at 503 (1939) (holding that Full Faith and Credit Clause did not prevent California from applying its workers’ compensation statute even though it conflicted with laws Massachusetts); *Alaska Packers*, 294 U.S. 532, 547 (1935) (“A rigid and literal enforcement of the full faith and credit clause, without regard to the statute of the forum, would lead to the absurd result that, wherever the conflict arises, the statute of each state must be enforced in the courts of the other, but cannot be in its own.”).

181. See Matthews II, 688 F.3d at 1115 (“The Supreme Court did not hold that California had an ‘absolute right’ to apply its law, irrespective of the extent of its contacts with the employee or employment relationship in question.”).

182. See *Alaska Packers*, 34 P.2d 716, 719-21 (Cal. 1934) (determining contacts will only exist where costs associated with employee’s injury may impact California’s medical system and other resources).

the contacts that each employee had with the state.\textsuperscript{185} The court in \textit{Matth\textipa{e}ws} explained that California did not have an “absolute right” to apply its law.\textsuperscript{186} Instead, this right was contingent on California’s substantial interest in Matthews’ controversy and on the contact that Matthews had with the state.\textsuperscript{187}

In assessing whether the arbitrator’s decision was a manifest disregard of the Full Faith and Credit Clause, the court noted the highly attenuated nature of California’s interest in this case.\textsuperscript{188} On the facts alleged, the court explained that it remained unclear whether the courts of California would consider California’s interest sufficient to justify the application of California law to Matthews’ claim.\textsuperscript{189} “Because 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].”\textsuperscript{190} In essence, the court denied Matthews’ “manifest disregard of the law” Full Faith and Credit claim for the same reasons they denied his claim on California state policy grounds: California’s interest in this case could not be measured to a sufficient degree because Matthews had not proffered specific instances of injuries or presence in California.\textsuperscript{191}

\begin{itemize}
\item \textsuperscript{185} See \textit{Matthews II}, 688 F.3d at 1116 (illuminating lack of “absolute right” by stating that right was contingent on state’s interest and on employee’s contacts with state).
\item \textsuperscript{186} See id. (revealing that no substantial interest existed in \textit{Matth\textipa{e}ws}, unlike \textit{Pacific Employers} or \textit{Alaska Packers}, where “the Court recognized California’s strong interest in regulating employment relationships entered into within the state, particularly when injury to the employee may result in a burden on the state’s resources.”).
\item \textsuperscript{187} For a discussion of the flaws in the Ninth Circuit’s reasoning, see infra notes 192-221 and accompanying text.
\item \textsuperscript{188} See \textit{Matthews II}, 688 F.3d at 1117 (“California’s interest is highly attenuated in this case.”).
\item \textsuperscript{189} See id. (highlighting flaws in Matthews’ factual pleading and suggesting allegations of specific injury and other contacts would benefit future litigants).
\item \textsuperscript{190} Id. (emphasis added).
\item \textsuperscript{191} See id. at 1117 n.9 (“Matthews asserts in his brief that, like the employee in \textit{Pacific Employers}, he suffered injuries while temporarily working in California. We reiterate that the record is silent on this point. Even assuming, however, that games Matthews played in California contributed, cumulatively, to the ailments he suffers today, it is not clear that California would extend its workers’ compensation regime to cover him.”).
\end{itemize}
In analyzing Matthews’ claim, the Ninth Circuit Court of Appeals engaged in circular reasoning that weakened its legitimacy.\(^{192}\) This approach enabled the court to focus exclusively on hypothetical eligibility for workers’ compensation, rather than on the underlying contractual enforcement issues.\(^{193}\) Faced with competing labor law policies and a complex socio-legal environment, the court may have directed audience attention away from contractual issues in an effort to avoid promulgating precedent in a hotly contested and quickly developing area of law.\(^{194}\) The court’s circular reasoning and its resulting narrow focus on eligibility are problematic because they weaken the justification used by the court to ultimately substantiate its holding.\(^{195}\) The method of analysis could prove beneficial, however, to future litigants in the Ninth Circuit who will now be able to draft their pleadings according to the specific roadmap provided in Matthews.\(^{196}\)

The Ninth Circuit began its analysis by stating that Matthews did not allege any specific or discrete injury in California.\(^{197}\) Consequent

\(^{192}\). See id. at 1115 (“As we explained above, it is not clear that Matthews’ workers’ compensation claim falls within the scope of California’s workers’ compensation regime. He has therefore not shown that an arbitration award preventing him from seeking California benefits deprives him of something to which he is entitled under state law.”).

\(^{193}\). See generally Matthews II, 688 F.3d at 1112-1117 (discussing and dismissing each of Matthews’ claims based on his hypothetical ineligibility).

\(^{194}\). See Schwarz, supra note 81 (offering information about how California is dealing with complex issue of cumulative injury and flood of such claims in their courts). In 1997, the NFL tried unsuccessfully to lobby the California legislature to exclude professional athletes from workers’ compensation benefits. Id. The Cincinnati Bengals have incorporated language in their contracts requiring players to file claims only in Ohio (one state where cumulative trauma is not compensable) and are currently fending off more than 30 claims. Id. Other teams have reluctantly resigned themselves to expensive cost of conducting business in California. Id. “Teams’ insurance policies have varied widely over the years, but most provide for a $250,000 deductible per claim, according to several lawyers familiar with the system; that translates to about $175 million in total potential liability just for the 700 players currently pursuing claims, or about $5.5 million per team. Most of that is for players who would be ineligible to file in any other state but California.” Id.

\(^{195}\). See Michael Abramowicz, Constitutional Circularity, 49 UCLA L. REV. 1, 8 (2001) (stating that circular reasoning is inherently suspect).

\(^{196}\). See Benjamin Haynes, Bruce Matthews Denied, but Provides Hope for Future Workers Compensation Claims, SPORT IN LAW (Aug. 8, 2012), http://sportinlaw.com/2012/08/08/bruce-matthews-denied-but-provides-hope-for-future-workers-compensation-claims/ (analyzing this case as providing hope to future players). But see NFL Owners Win Important Victory, supra note 87 (describing case as victory for NFL).

\(^{197}\). See Matthews II, 688 F.3d at 1111 (“Rather 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 Cali-
The court's two-step test to determine eligibility for workers' compensation states that if a player can prove that they would be able to receive California workers' compensation benefits, then the court will render the choice of law and binding arbitration clauses in their contracts unenforceable. Thus, the court's logic is rather circular because it essentially holds that if the player can receive benefits, the court will allow them to receive benefits. The analysis focuses entirely on eligibility, not on contract enforceability.

By focusing on benefit eligibility, rather than on contract enforceability, the court circumvents the underlying contractual issue of unequal bargaining power. Originally designed to provide employees a more accessible and affordable route to justice, arbitration is quickly gaining a reputation for providing employers with a cheap route to injustice. One may construe the court's avoid-

198. See id. at 1112 (“Because of our 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.”).

199. See id. at 1117 (citing Alaska Packers I, 34 P.2d 716, 716 (Cal. 1934)) (“The California Supreme Court concluded that the choice of law clause was unenforceable under the statutory predecessor to § 5000, but only after finding that the employment relationship in question had sufficient contacts with California to apply California’s workers’ compensation law.”).

200. See id. at 1115 (“As we explained above, it is not clear that Matthews’ workers’ compensation claim falls within the scope of California’s workers’ compensation regime. He has therefore not shown that an arbitration award preventing him from seeking California benefits deprives him of something to which he is entitled under state law.”).

201. See id. (disregarding analysis of contractual issues and focusing on eligibility for workers’ compensation).

202. See generally, Matthews II, 688 F.3d at 1112-1117 (avoiding discussion of collective bargaining agreement, choice of law provision, and equitable ramifications of enforcing them).

203. See Roquemore, supra note 75, at 802 (noting arbitration as one mechanism for restricting player access to workers’ compensation).

As workers’ compensation claims from players not in uniform since the 1980s and beyond started trickling into team offices, the initial response was to grin and bear it. Once the trickle became an avalanche, teams began to fight back to try to avoid the ‘extreme cost.’ Now professional sports leagues, namely the NFL, are taking several angles—litigation, legislation, and even arbitration—to combat what they perceive to be a problem. Meanwhile, professional athletes, namely current and former employees of NFL teams, are taking up arms to defend their workers’ compensation rights by blocking methods of litigation, legislation, and arbitration aimed at them.

Id.

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ance of arbitration issues in this case as an expression of dissatisfaction with the current deferential state of arbitration law in the United States. 204 As this area becomes more contested and grows more complex with the NFL cumulative injury litigation, courts may continue to circumvent these intricacies by focusing on other issues within cases. 205

The Ninth Circuit supported its decision based on hypothetical contingencies, rather than on substantive facts offered in Matthews’ brief. 206 The issue before the court was whether the award, which prohibited Matthews from seeking workers’ compensation benefits under the laws of California, violated California public policy. 207 Rather than address this issue directly, the court’s rationale distracted from the pertinent issue and was grounded in circular reasoning. 208 The court prevented Matthews from applying for workers’ compensation benefits in California simply because the workers’ compensation tribunal may deny Matthews’ application. 209 The essence of a workers’ compensation application system is the application. 210 Intrinsmic in the operative word, “apply” is the notion that some applicants will be denied and others will succeed. 211 Still,

204. See generally Matthews II, 688 F.3d at 1115 (demonstrating how court is avoiding issue by engaging in circular reasoning.) One possible reason the court is avoiding these issues is that it disagrees with the current state of arbitration law. See generally id. For a discussion on the court’s circular reasoning, see supra notes 200-201 and accompanying text.

205. See generally, Matthews II, 688 F.3d at 1112-17 (noting that what began as “trickle” is now full-blown “avalanche” of claims); see also Concussion Conundrum: Panels 2 & 3, supra note 71 and accompanying text (discussing NFL “Concussion Conundrum”); NFL CONCUSSION LITIGATION, supra note 70 and accompany text (discussing NFL concussion litigation).

206. See Matthews II, 688 F.3d at 1112 (relying on combination of case law and California Labor Code § 5000 to demonstrate that hypothetical problems with sufficient contacts should not bar applicant from applying).

207. See id. at 1111 (introducing basic facts and summarizing central issue in case).

208. See id. at 1115 (requiring clear answer on his application but prohibiting him from filing it). “As we explained above, it is not clear that Matthews’ workers’ compensation claim falls within the scope of California’s workers’ compensation regime. He has therefore not shown that an arbitration award preventing him from seeking California benefits deprives him of something to which he is entitled under state law.” Id.

209. See id. (providing case analysis).

210. See BLACK’S LAW DICTIONARY (2d ed. 1996), application (defining application as “[t]he act of making a request for something”).

211. See generally id. (implying that judgment must be made on application, or request). See BLACK’S LAW DICTIONARY (2d ed. 1996), judgment (quoting 1 HENRY CAMPBELL BLACK, A TREATISE ON THE LAW OF JUDGMENTS § 1, at 2 (2d ed. 1902)) (“But as no right can exist without a correlative duty, nor any invasion of it without a corresponding obligation to make amends, the judgment necessarily affirms, or else denies, that such a duty or such a liability rests upon the person against whom
the court denied Matthews the right to apply for benefits simply because Matthews may not succeed in his application. In justifying its holding, the Ninth Circuit made logical missteps. These missteps weaken the utility and acceptability of Matthews as precedent.

Matthews did not fail because the choice of law provision in his contract stated that the matter was to be decided according to Tennessee law. He failed because he did not claim a specific injury that arose from his time in California. If he could have demonstrated a specific injury, he could have established sufficient contacts. If he had established specific contacts under Alaska Packers and Pacific Employment, the California public policy would have been triggered, and his claim would have succeeded. Alternatively, Matthews’ argument under the Full Faith and Credit clause would also have succeeded if he could have established sufficient contacts. If a former NFL player can show that he suffered a distinct and specific injury in California, Matthews v. NFL makes it clear that the player will be able to override the choice of law provision in his employment contract and invalidate the arbitrator’s decision. Although the court did not discuss contract enforceability, the eligibility analysis in Matthews v. NFL has vast implications for this area.

the aid of the law is invoked.”). Judgments involve decisions that imply two alternative possible outcomes. See id.

212. For a discussion of why the court Matthews’ application to be uncertain and therefore denying Matthews permission to apply to workers’ compensation, see supra note 127 and accompanying text.

213. For an explanation of how the Matthews court uses circular reasoning, see supra note 208 and accompanying text.

214. See Abramowicz, supra note 195 (identifying problems associated with legitimacy and circular reasoning).

215. See Matthews II, 688 F.3d 1107, 1117 (9th Cir. 2012) (holding that Matthews lacked sufficient contacts and thus failed in his claim).

216. See id. (emphasizing main deficiency with Matthews’ allegations).

217. See Haynes, supra note 196 (hypothesizing what court would have needed to grant Matthews’ claim).

218. See Matthews II, 688 F.3d at 1116 (distinguishing Matthews’ claim from those in Alaska Packers and Pacific Employers on these grounds); see also Haynes, supra note 196 (predicting that Matthews would have succeeded if there had been stronger evidence of California public policy).

219. See Matthews II, 688 F.3d at 1116-17 (highlighting lack of “absolute right” by stating that right was contingent on state’s interest and on employee’s contacts with state).

220. See id. (listing shortcomings of Matthews’ application, thus listing what future claimants would need to include in application to enrich their claim).

221. See Schwarz, supra note 81 (providing New York Times’ analysis of ways that cumulative litigation cases can change not only area of law, but also actual game of football).
VI. MATTHEWS v. NFL: A GAME-CHANGER

The implications for the Matthews opinion are, in a word, titanic.222 The case has the potential to impact not only how football lawsuits are litigated in a courtroom, but also how the very game itself is played in stadiums across the country.223 For example, one sports insurance expert has noted, “More than anything else... the workers’ compensation reality could be the one item that forces significant changes to how the game is played on the field.”224 Rules may be changed to protect players from injury and to protect teams from liability.225 For example, linemen “might not be allowed to crash into each other from three-point stances in the near future.”226

A small addition to Matthews' lifetime of Herculean acts, Matthews v. NFL will provide a roadmap to his fellow retired players.227 His litigation has highlighted that players must be comprehensive in their applications for workers’ compensation.228 The court in Matthews noted that he failed to provide any injuries, medical services, or treatment ever incurred in California.229 In doing so, the court hints that if Matthews had been able to offer some evidence of any of the foregoing, he may have been eligible for the receipt of benefits under the California workers’ compensation regime.230 In denying Matthews’ candidacy for workers’ compensation, the court noted the lack of many factors on Matthews’ application including: alleged injuries sustained in California; records of medical services...

222. See id. (“Given the dozens and perhaps hundreds of players who could file similar claims, experts in the California system said N.F.L. teams and their insurers could be facing liability of $100 million or more. They identified a wide spectrum of possible effects: these costs could merely represent a financial nuisance for a league that recorded $8.5 billion in revenue last year, or, if insurance costs rise drastically because of such claims, the N.F.L. could be forced to alter its rules to reduce head trauma. Officials already are considering decreased contact in practice and forbidding linemen from using the three-point stance.”).

223. See id. (recognizing extensive potential impact for NFL workers’ compensation cases).

224. Rovell, supra note 82 (predicting that if one cultural or economic influence has power to change way football is played, its emergence of cumulative injury cases in workers’ compensation).

225. See id. (suggesting that rules of game may change).

226. Id. (quoting Duke Niedringhaus of J.W. Terrill, a St. Louis-based insurance firm that has brokered workers’ compensation insurance for NFL teams).

227. See generally Matthews II, 688 F.3d 1107, 1111-17 (9th Cir. 2012) (suggesting roadmap in Matthews’ will help future claimants).

228. See Matthews II, 688 F.3d at 1116-17 (providing roadmap).

229. See id. at 1114 (noting lack of specific injury asstention).

230. See Haynes, supra note 196 (explaining how Matthews’ personal loss as litigant may be considered victory for players in general because of helpful roadmap it provides).
received in California; and records of playing football in California.\textsuperscript{231} By listing the numerous aspects that refuted the merit of Matthews’ claim, the court essentially provided a checklist or roadmap to professional football players seeking eligibility for workers’ compensation in California.\textsuperscript{232}

If a former NFL player can show that he suffered a distinct and concrete injury in California, he may be able to override the choice of law and the binding arbitration clauses in his contract.\textsuperscript{233} In denying Matthews’ eligibility, the court might have made it easier for other athletes in the future to successfully file for worker’s compensation in California.\textsuperscript{234} Commentators have described this case as an “NFL Victory.”\textsuperscript{235} Upon closer inspection, however, it seems the court has left the “playing field” wide open for future athletes to benefit from California’s employer-friendly regime.\textsuperscript{236}

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\textsuperscript{231} See Matthews II, 688 F.3d at 1114-17 (listing deficiencies in Matthews’ claim).

\textsuperscript{232} See id. (providing list that functions as guide to future claimants).

\textsuperscript{233} See Haynes, supra note 196 (calling Matthews’ case one of “hope” for future players).

\textsuperscript{234} See id. (describing how roadmap will be used by players).

\textsuperscript{235} See, e.g., NFL Owners Win Important Victory, supra note 87 (describing case as victory for NFL).

\textsuperscript{236} See Haynes, supra note 196 (predicting other litigants will use Matthews to their benefit when applying for workers’ compensation in California).