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Broken Bodies and Broken Dreams: How Social Safety Net Programs Subsidize Professional Boxing and the Need to Improve Legal and Health Protections for Prizefighters

Robert I. Corrales

“Most of us chose this profession because it was the only way for us to rise up from our impoverished backgrounds and get a small piece of the American Dream. We don’t ask for your sympathy or pity, we just ask to be treated fairly. We seek a fair wage for our labor and to work in as safe an environment as possible. You and your predecessors have helped create the minimum wage OSHA and other laws that help American workers, it’s time that you give us the same protection.”¹

INTRODUCTION

While other organized professional sports endeavored to provide health and insurance protections to their participants, professional boxing instead left participants with minimal protection by passing much of the cost of caring for many of its chronically ill and injured practitioners to a diminishing indigent care system.² Though federal law mandates states to require medical insurance coverage for professional boxers, the federal insurance requirement is essentially toothless. No state requires an adequate amount of insurance for catastrophic injuries, and few states require insurance before or after fights.³ Many of the existing laws and regulations thus protect professional boxers only against the most common minor injuries. Because most boxers cannot afford the cost of insurance for severely disabling injuries, those with the most costly medical conditions are often treated under indigent rules at hospitals that never see compensation for the costs of their services. The resulting medical or disability expenses then become the responsibility of the indigent care system. This article explores the lack of basic health and insurance protections for professional boxing participants and proposes changes in policy that will reflect the dangerous nature of

1. *Continuing to Reform Professional Boxing: Hearing Before the Comm. On Commerce, Science, and Transportation*, 108th Cong. 5 (2003) (prepared statement of Bernard Hopkins, middleweight champion).

2. Gerald McClellan was the world middleweight champion when he was permanently disabled during a boxing matching in London on February 25, 1995. McClellan’s income in 2017 was a monthly disability stipend of \$1,920 and donations from friends and family. Dan McGrath, ‘Boxing totally turned its back’ on battered Gerald McClellan, *Chicago Tribune* (August 24, 2017, 11:38 AM), <http://www.chicagotribune.com/sports/breaking/ct-boxing-brain-damaged-gerald-mcclellan-spt-0825-20170824-story.html>. Other boxers who received publicly financed health care or welfare benefits after their boxing careers include Rocky Lockridge and Bobby Chacon. Todd Schmerler, *Former boxing champ Rocky Lockridge living on streets of Camden, estranged from family, abusing drugs and alcohol*, *NJ.com* (June 28, 2009, updated January 29, 2010), http://www.nj.com/sports/njsports/index.ssf/2009/06/former_boxing_champ_rocky_lock.html; Fernando Dominguez, *Former World Champion Boxer Bobby Chacon, 47, Suffers From Pugnistic Dementia and Chronic Substance Abuse, but Again He Is Trying to Get Off the Canvas*, *Los Angeles Times* (May 6, 1999), <http://articles.latimes.com/1999/may/06/sports/sp-34447>.

3. New York made efforts to rectify the state’s inadequate insurance requirements in 2016, by requiring a minimum coverage limit of one million dollars for life-threatening brain injuries. *N.Y. Gen. Bus. Law* § 1015(11) (McKinney 2016). This article will show, however, that even this amount of coverage can be woefully insufficient to treat debilitating, permanent injuries suffered by boxers.

professional boxing and the modern cost of medical services. Recognizing that a legislative remedy may never arrive, this article also examines previously unexplored or underutilized legal doctrines such as tort and workers' compensation law that may provide an alternative to inadequate insurance protection, and suggests a more aggressive approach along those lines to compel fuller protection for prizefighters.

BACKGROUND

To many of its followers, professional boxing offers the spectacle and pageantry of a seductive dance with death, in which well-conditioned prizefighters in their physical prime engage in hand-to-hand combat against similarly capable opponents. To promote itself, big time boxing often dramatizes apparent national, regional, racial or ethnic rivalries in the ultimate man-to-man encounter, where the loser's physical destruction establishes the supremacy of the victor's group.⁴ In the United States, a boxer's typical story generally involves a person from humble beginnings, often a racial minority or a poor white person, who trains exhaustively to convert physical capital into social and economic success.⁵ Extreme violence, blood lust, gambling and the typical boxer's story of overcoming social disadvantage help explain a colossal commercial success that rivals other major professional sports. Professional boxing has existed in its present form for well over 100 years.⁶

Professional boxing places a premium on aggression and violence. The most dramatic victories come in the form of violent and sudden knockouts where the opponent is rendered unconscious or incapable of continuing for a period of at least ten seconds, or where the opponent is unable to continue due to severe injury after a ruling by the referee. The results of a sudden knockout can be devastating, but the dangers associated with professional boxing are not limited to the prizefight. Fighters must also be able to withstand punishment during training that may be the most grueling and demanding of any sport.⁷ Importantly, long-term medical damage is not restricted to the serious trauma associated with the typical "knockout." Serious medical damage can also be caused by an accumulation of punishment from apparently innocuous punches during a boxer's career, including those accumulated in training. In many cases, that damage is not manifested until after a significant period of time has passed.⁸

Professional boxing exists on two levels. The more glamorous public side involves the main event boxers. These boxers have managed to generate fame in the form of television exposure and large gate receipts. They rely on their marquee status to command

4. See KATH WOODWARD, *BOXING, MASCULINITY AND IDENTITY* 24 (2006) where the author discusses the social commentary surrounding the Louis-Schmelling fight (democracy versus totalitarianism) and the first Ali-Frazier fight (Ali speaking out against racial injustice and Frazier serving as the symbol of the white establishment).

5. See JOYCE CAROL OATES, *ON BOXING* (2006) (documenting ethnic and economic identities of typical professional boxers).

6. For a detailed story on the origins of boxing from its days as a fight to the death during the Roman empire to its modern form, see Antoinette Vacca, *Boxing: Why it Should be Down for the Count*, 13 *SPORTS LAW J.* 207, 208-211 (2006).

7. While training for a fight professional boxers typically run three to four miles five to six times a week. In addition, boxers may spend up to one-and-a-half hours, five to six days per week on exercises such as jump rope training, punching a speed bag, punching a heavy bag, and shadowboxing. Full speed sparring is designed to simulate the conditions of an actual fight. Sparring is done two to three times a week and can last up to 12 rounds at a time. Weight training and abdominal exercises combine to add strength and resistance to punishment. A professional boxer may perform up to two thousand sit ups per day. Isolation from family, abstinence from sex and alcohol, and a strict diet complete the training regime for many fighters. Interview with Frank Slaughter, former UNLV boxing coach (February 18, 2011).

8. Robert Glen Morrison, *Medical and Public Health Aspects of Boxing*, in Vol. 255, No. 18 of *The Journal of the American Medical Association* 2475, 2477 (1986).

substantial purses and influence in the sport.⁹ However, not even these successful boxers are immune to misfortune. At its highest level, professional boxing has a history of glamour, corruption, and tragedy. One day a boxer finds himself on top of the world, just to see his fortune and good health gone the next, as he becomes a ward of the state, victimized by either corruption, bad business decisions, mismanagement, an unfortunate result, or a combination of factors.¹⁰

The other side of professional boxing is populated by “journeymen,” who serve as opponents to up-and-coming stars, or who fight each other in club cards or preliminary cards across the country. Most professional prizefighters belong to this category.¹¹ Though some journeymen may find success as they develop their skills and amass a successful record, most of them never become main event boxers. Most journeymen spend their professional lives toiling in the shadows of the sport, fighting for small amounts of money, and end up with little to show for their efforts.¹² With a few exceptions, professional boxing thus leaves in its wake a trail of broken bodies and broken dreams, as it escapes its obligation to provide the most basic safety net to its participants. Unlike other professional sports, professional boxing is filled with implications affecting the public interest and public health, which federal and state regulators have managed to sidestep, even as they implement rules intended to make the sport of boxing marginally safer.

While many have advocated for a prohibition of professional boxing on medical, moral, and ethical grounds,¹³ the author recognizes that despite a history of corruption and tragedy,¹⁴ professional boxing occupies an important niche in society as an occasional engine of upward mobility,¹⁵ and, most importantly, as a vital economic driver in many major cities. Thus, boxing and other forms of professional fighting will continue to thrive despite the many valid medical, moral, and ethical objections to its existence. However, as has been the case in other professional sports, this article argues that taking care of participants is in the best long-term interest of the sport.

NEVADA AS A CASE STUDY

Las Vegas, Nevada, bills itself as the boxing capital of the world. Though not alone in its claim, Las Vegas’ ability to stage a major boxing production, combined with large-scale tourism, legal gambling and glamorous nightlife make this claim nearly impossible to re-

9. Muhammad Ali, George Foreman, Floyd Mayweather, Oscar De La Hoya, and Manny Pacquiao serve as examples of successful boxers who have exercised a great deal of influence in the sport.

10. Leon Spinks, who became the world heavyweight champion when he beat Muhammad Ali went “from heavyweight champion of the world to being homeless in little more than a decade.” See Vacca, *supra* n. 6 at p. 212. Similarly, Jerry Quarry, who was one of the best heavyweight fighters of his time, made over two million dollars in purses, but fought even after it was known that he had brain damage. Quarry lived on a small social security income when he died at 53. *Id.* A similar fate befell Bobby Chacon, who after a successful but troubled career, ended up suffering from dementia, living in the streets, and collecting aluminum cans to survive http://boxrec.com/media/index.php/Bobby_Chacón, and Rocky Lockridge, a former champion who lived in the streets of Camden N.J., and survived on a \$140 a month government check and food stamps http://www.nj.com/sports/nj-sports/index.ssf/2009/06/former_boxing_champ_rocky_lock.html, and former heavyweight champion Greg Page, see *Professional Boxing Safety Act: Hearing on H.R. 1186 Before the Subcomm. On Commerce, Trade, and Hazardous Materials and Subcomm. On Workforce Protections*, 104th Cong. 9-11 (1996) [hereinafter *Professional Boxing Safety Act Hearings*].

11. See *Professional Boxing Safety Act Hearings*, *supra*, note 10, at p. 24 (statement of Sen. John McCain).

12. *Id.*

13. The American Medical Association has called for the abolition of boxing. American Medical Association, *Proceedings of the House of Delegates: 38th Interim Meeting*, Dec. 2-5, 1984, at 371 (1984).

14. See, e.g., McCain, Nahigian, *A Fighting Chance for Professional Boxing*, 15 *STAN. L. & POL’Y REV.* 7 (2004) (detailing boxing’s history of corruption).

15. I say “occasional engine of upward mobility” because for most boxers the possibility of fame and fortune is non-existent.

buke. To that point, Las Vegas often hosts mega fights, attracting worldwide audiences and bringing millions of dollars into the Nevada economy.¹⁶ However, while its claim to the most sophisticated marketing and delivery system is substantial, as is its claim to one of the most comprehensive regulatory systems for professional combat sports in the country,¹⁷ Nevada, like most other states, falls well short of protecting professional fighters and the public from the devastating physical and economic effects of severely disabling injuries. Of particular importance to this article is the fact that any shortcomings of the Nevada regulatory system are magnified in other states.

Nevada requires promoters to obtain medical insurance for injuries that occur during a professional boxing match,¹⁸ but does not require insurance coverage for injuries sustained during training, nor does it require coverage for injuries discovered more than fourteen days after a fight.¹⁹ In addition, the amount of insurance coverage it requires does not reflect the cost of modern medical care for catastrophic injuries associated with boxing. In a little over a decade, at least nine professional prizefighters have suffered catastrophic injuries in Nevada, and mandated insurance policies have provided only a fraction of the cost of treatment.

A typical case involved Zeta Celestino Oliveros Gorres, a Filipino boxer also known as Z. “The Dream” Gorres. Z. Gorres sustained a subdural hematoma when he was struck on the side of the head by his opponent Luis Melendez,²⁰ in a fight card promoted by Top Rank Promotions on November 13, 2009.²¹ Though the punch sent Gorres to the canvas, he was well ahead on points and won the fight via unanimous decision.²² After celebrating by running around the ring with his country’s flag, Gorres collapsed.²³ Gorres was rushed to University Medical Center in Las Vegas in a nonfunctional and vegetative state, literally minutes away from death.²⁴ Gorres’ purse for the fight was \$10,000.²⁵ His share was far less after paying taxes, his manager’s fees and the salaries of other helpers.²⁶ Gorres’ medical bills at University Medical Center of Las Vegas rose to \$562,697 of which merely \$40,489.43 was paid by Health Special Risk Insurance.²⁷ That payment reflected the maximum required coverage. The \$50,000 insurance requirement in Nevada was passed in 1993, and has never been adjusted for inflation. However, even if it had, \$50,000 in 1993 dollars

16. Nevada’s top thirty-five boxing gates alone have brought in over half a billion dollars in gross sales. *Top Boxing Gates*, Nevada State Athletic Commission, http://boxing.nv.gov/results/Top_Boxing_Gates/ (last visited June 9, 2018).

17. Nevada possesses one of the most comprehensive regulatory systems in the country. See ROBERT G. RODRIGUEZ: *THE REGULATION OF BOXING, A HISTORY AND COMPARATIVE ANALYSIS OF POLICIES AMONG AMERICAN STATES*, 108-136 (2009) (describing the regulatory system).

18. Nev. Rev. Stat. § 467.125 (2017).

19. NEVADA STATE ATHLETIC COMMISSION, *NEW INSURANCE MEMO*, http://boxing.nv.gov/HotTopics/Insurance_Memo/ (last visited June 9, 2018).

20. A subdural hematoma can be caused by a blow to the head. This occurs when blood vessels rupture between the brain and the outermost of three membrane layers that cover the brain. The leaking blood causes a hematoma that compresses the brain. If the hematoma keeps growing, a progressive loss of consciousness can result, possibly leading to death. See *Intercranial Hematoma – Symptoms and causes – Mayo Clinic*, Mayo Clinic, <http://www.mayoclinic.com/health/intracranial-hematoma/DS00330/DSECTION=causes> (last visited June 9, 2018).

21. Paul Harasim, *Taxpayers get bill when boxing medical insurance falls short*, Las Vegas Review Journal (January 3, 2010, 10:00 PM), <https://www.reviewjournal.com/news/taxpayers-get-bill-when-boxing-medical-insurance-falls-short/>.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. E-mail message from Danita Cohen, UMC Public Relations Coordinator (on file with author). This information was released because Gorres had signed a consent form for the release of his records.

would purchase only \$102,126.99²⁸ in medical services today, still well short of the amount necessary to pay for Mr. Gorres' treatment.

Leavander Johnson was a world champion in the lightweight division. Johnson's life came to an end after losing a one-sided boxing match to Jesus Chavez of Mexico on September 17, 2005. Chavez scored an 11th round technical knockout on an HBO pay-per-view card televised from the MGM Grand in Las Vegas. Johnson suffered over 400 blows and two-dozen unanswered punches to the head before the referee stopped the fight.²⁹ Johnson underwent emergency surgery at University Medical Center of Las Vegas to relieve pressure on his brain from a subdural hematoma. Johnson was placed in a medically-induced coma but suffered a setback when doctors discovered a second blood clot in his brain the following day. Johnson died on September 23, 2005. His family discontinued efforts to artificially prolong his life. After Johnson's death, a fund was set up in his name to help take care of his family and pay his medical bills.

Martin Sanchez emerged from a life of extreme poverty in Mexico City to become a fireman and an accomplished professional boxer.³⁰ Sanchez's life ended tragically after a ninth-round knockout at the hands of Rustam Nugaev of Russia on July 1, 2005 at the Orleans Arena in Las Vegas.³¹ After an even fight, Nugaev knocked Sanchez down in the ninth round.³² When the referee reached the count of ten, Sanchez arose and walked to his stool where he sat for an unusually long time.³³ After an unsteady walk to the dressing room, the treating physician performed a thorough examination and suspended Sanchez for six months, ordering a CAT scan before Sanchez could return to the ring.³⁴ Sanchez's brain began to swell after the doctor left the dressing room.³⁵ Sanchez was rushed to Valley Hospital in Las Vegas but doctors were unable to save his life.³⁶

Jimmy Garcia was described as a courageous but light-punching 130 pounder from Baranquilla, Colombia. On May 6, 1995, Garcia fought Gabriel Ruelas in the undercard of the Oscar DeLaHoya/Rafael Ruelas main event at Caesar's Palace in Las Vegas, NV. After a brutal, one-sided bout Garcia was rushed to University Medical Center in Las Vegas, NV, where he underwent emergency brain surgery. Garcia never recovered. Ruelas was devastated by the misfortune of his ring rival. Ruelas spent much of the time following Garcia's surgery looking after the fallen fighter and his family. Garcia died May 19, 1995.

The list of fighters who have suffered catastrophic injuries is long and continues to increase. The list of fighters injured in Las Vegas boxing cards includes: Robert Wangila Nyapunyi who was injured in 1994,³⁷ Johnny Montantes, injured in 1997,³⁸ Pedro "El Rock-

28. See <http://www.halfhill.com/inflation.html>, a website dedicated to calculating the cost of inflation of medical services. (last visited May 5th 2011).

29. John Eligon, *5 Days After Title Bout, Fighter Dies of Injuries*, The New York Times (September 23, 2005), <https://www.nytimes.com/2005/09/23/sports/othersports/5-days-after-title-bout-fighter-dies-of-injuries.html>.

30. See *Martin Sanchez Jr.'s Death: Tragedy Hits Hard with Family*, Las Vegas Review Journal (July 10, 2005).

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. Tim Kawakami, *1988 Olympic Gold Medalist Napunyi Dies After KO Loss*, Los Angeles Times (July 25, 1994), http://articles.latimes.com/1994-07-25/sports/sp-19677_1_olympic-boxing-gold.

38. Tim Graham, *Boxer Loses Battle for Life*, Las Vegas Sun (September 29, 1997, 9:54 AM), <https://lasvegas.sun.com/news/1997/sep/29/boxer-loses-battle-for-life/>.

ero” Alcázar, injured in 2002,³⁹ Martin “Bombero” Sanchez, injured in 2005,⁴⁰ and Czar Amonsot, injured July 21, 2007.⁴¹

The problems associated with the cost of treatment exceeding the required insurance coverage can be even worse in states with lower coverage requirements than Nevada. Akeem Anifowoshe, a world-class boxer from Nigeria who at the time resided in Las Vegas, Nevada, sustained severe head injuries at the hands of world junior-bantamweight champion Robert Quiroga on June 15, 1991.⁴² The fight was held in San Antonio, Texas, Quiroga’s hometown.⁴³ Before his near-fatal injury, Anifowoshe’s career was on the upside.⁴⁴ Quiroga prevailed via a unanimous decision in a fairly even fight.⁴⁵ After the fight, a distraught attending physician described the boxer’s condition thusly: “By the time I got to the ring Akeem was having convulsions . . . he was unconscious, having difficulty breathing and the pupil in his right eye was dilated. A dilated pupil means that the brain is trying to push through the hole that is in between the head and the spine in the neck. And that the pressure inside the head was very high. It was like toothpaste being squeezed.”⁴⁶ Having fought for purses in the \$350 to \$600 range while he was still a senior at Rancho High School in Las Vegas, NV, Anifowoshe earned a world championship purse of \$15,000 for the Quiroga fight.⁴⁷ The promoter’s insurance policy provided only \$10,000 for medical bills, far below the actual cost of his treatment.⁴⁸

Greg Page, was severely injured in 2001 in a boxing match with Dale Crow in Erlanger, Kentucky.⁴⁹ During the tenth round of the fight Page was knocked out by a devastating punch to the chin.⁵⁰ Page’s condition required immediate medical attention, but the promoter did not provide for ringside oxygen or an ambulance.⁵¹ The promoter also failed to obtain medical insurance.⁵² In addition, the doctor who was assigned to the fight had been suspended for malpractice in another state and did not have a license to practice medicine in Kentucky.⁵³ Because of the promoter’s failure to take adequate precautions, it took nearly three hours to transport Page to an adequate medical facility.⁵⁴ Page suffered a stroke as a result of his injury and the inadequate medical care he received.⁵⁵ The stroke paralyzed the left side of Page’s body.⁵⁶

Before this tragic fight, Greg Page had fallen on hard times. Having fought before large live and television audiences in his prime, Page, now 43 years of age and long-re-

39. Margaret Goodman, *Ring tragedy from a doctor’s perspective*, ESPN (November 13, 2007), <http://www.espn.com/sports/boxing/news/story?id=3105787>.

40. Associated Press, *WBC launches probe into boxer Sanchez’s death*, ESPN (August 23, 2005), <http://www.espn.com/sports/boxing/news/story?id=2141461>.

41. Dan Rafael, *Brain bleed likely finishes Filipino boxer’s U.S. career*, ESPN (July 25, 2007), <http://www.espn.com/sports/boxing/news/story?id=2949396>.

42. Phil Berger, *Brutally Beaten, A Boxer Still Dreams of Title*, The New York Times (July 14, 1991), <https://www.nytimes.com/1991/07/14/sports/brutally-beaten-a-boxer-still-dreams-of-title.html>.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* The minimum medical insurance requirement in Nevada was raised to \$50,000 in 1993. Nev. Admin. Code § 467.149 (2017).

49. Gary A. Johnson, *Greg Page is Down, But Not Out*, Counterpunch (January 10, 2004), <https://www.counterpunch.org/2004/01/10/greg-page-is-down-but-not-out/>.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

moved from his glory days, was paid a paltry \$1,550 to fight Crow, a fighter 18 years his junior.⁵⁷ In 2004, Page spoke about the details of his personal situation: “[t]here is almost nothing about my life that is the same.” Page estimated that, “my medical bills are probably in the millions by now.” In fact, Page’s medical bills totaled over 5 million dollars, and his prescriptions alone cost over \$1,000 a month.

Despite having generated millions of dollars for his fights, for several years the Page family lived on the brink of homelessness.⁵⁸ Some weeks Page wondered “if we’re going to have enough money to keep the light bill paid, or the phone paid.”⁵⁹ Patricia Page attempted to reach out to the boxing community to sponsor a benefit to help pay the cost of Page’s medical bills.⁶⁰ When no one was willing to sponsor the event, Page told his wife: “I can’t make them any money anymore, so they don’t care about me.”⁶¹ In one of the last interviews before he died, Page lamented that “there is no pension plan” for fighters and “boxing is the only sport that I can think of that don’t take care of its own.”⁶²

Mago Abdusalamov, the former heavyweight once considered the “Russian Tyson,” won his first 18 professional fights, but lost his 19th at Madison Square Garden in November 2013. His opponent in the bout, the 19-0 Mike Perez, landed 312 punches to Abdusalamov’s 248, and won the 10-round fight by unanimous decision for a purse of \$40,000.⁶³

Abdusalamov suffered broken bones in his hand and face in the loss, but was cleared by doctors to travel home to Florida after the fight. The doctors that examined him after the fight failed to realize that his brain had started bleeding and the ambulance that waits after every fight was never summoned. Abdusalamov’s handlers eventually flagged down a taxi to take him to the hospital after he vomited on the pavement outside Madison Square Garden. Once at the hospital, he underwent emergency brain surgery to remove a blood clot, and doctors induced a coma to remove part of his skull to reduce the swelling in his brain. The former heavyweight nearly died from a subdural hematoma and suffered numerous strokes, leaving him in a coma for weeks, and hospitalized for more than 10 months⁶⁴

As a result of the extensive brain damage, Abdusalamov now requires care around the clock, and cannot clean, feed, dress or even go to the bathroom without assistance.⁶⁵ In March 2014, his family filed a \$100 million lawsuit alleging gross negligence and medical malpractice by the New York athletic commission doctors, referee and inspector of the fight.⁶⁶ While this lawsuit drags on, the family relies on the financial support of a friend who has allowed them to live in a house he owns at no cost. A court filing from March 2015 claims that Abdusalamov’s wife and three young daughters are destitute and in danger of losing their place to live.⁶⁷ While Abdusalamov continues to undergo outpatient rehabilitation, the doctor overseeing his post-surgical care does not expect his condition to improve.⁶⁸ Although Abdusalamov’s Connecticut health care coverage has provided for some rehab and

57. *Id.*

58. Interview with Patricia Page, Widow of Greg Page, June 4, 2010.

59. *Id.*

60. *Id.*

61. *Id.*

62. Johnson, *supra*.

63. Dan Barry, *Meet Mago, Former Heavyweight*, The New York Times (May 3, 2015), <https://www.nytimes.com/2015/05/04/sports/meet-mago-former-heavyweight.html>.

64. William Weinbaum, *Magomed Abdusalamov, family ‘destitute’ as lawsuit drags on*, ESPN (April 28, 2015), http://www.espn.com/boxing/story/_/id/12781321/magomed-abdusalamov-family-destitute-lawsuit-drags.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

in-home nursing services, his wife says that it is insufficient for the degree of care her husband requires.⁶⁹

Because of privacy laws, the true cost to the indigent care and social safety net programs that provide services and support for injured and disabled professional boxers is impossible to ascertain. But, given the costs associated with the treatment of injuries about which there is information, and the similarity of other reported injuries, a fair assumption can be made that the cost to the public and to injured prizefighters runs well into the millions of dollars. In the case of Nevada, promoters' claims that they generate millions of dollars for the Las Vegas economy are substantial and largely accurate.⁷⁰ Indeed, major boxing promoters generate huge sums of money not just for the state but also for the nation and other countries through live gates, cable television and pay-per-view. It is clear therefore, that professional boxing benefits from a type of public subsidy that has enabled the sport to continue making a profit while ignoring the fate of its most important contributors.

TYPICAL INSURANCE REQUIREMENTS IN THE MOST POPULAR BOXING STATES

Nevada raised the minimum insurance requirement for injuries sustained during a professional boxing match from \$10,000 to \$50,000 in 1993. Though the cost of medical services has grown dramatically over the last 18 years,⁷¹ the amount of required coverage in professional boxing has remained the same. California, another popular boxing state, requires that boxing promoters maintain a short-term medical insurance program with a minimum of \$50,000 to cover medical costs for injuries that arise from a boxing contest in California which has been approved by the California Athletic Commission.⁷² The \$50,000 minimum insurance policy is also required in Texas⁷³ and Illinois.⁷⁴ At the low end of the scale are New Jersey⁷⁵ and Florida,⁷⁶ which require a \$20,000 insurance policy, as well as Massachusetts⁷⁷ and Kentucky⁷⁸, which require only a \$5,000 medical policy. Ironically, in Kentucky, the very low minimum insurance requirement of \$5,000 was established after former Heavyweight Champion Greg Page sued the Kentucky Athletic Commission for failure to comply with the federal Professional Boxers Safety Act of 1996. In that case, the state boxing commission and the promoter failed to provide medical personnel and an ambulance at the site of fights. The case against the state was settled for over one million dollars.⁷⁹

Significantly, the low levels of insurance coverage are further minimized by the limited window provided for coverage after a professional boxing match. A boxer in Nevada

69. *Id.*

70. The Nevada Boxing Commission lists gross proceeds from top boxing cards in the hundreds of millions of dollars, *See Nevada State Athletic Commission, Nevada's Top 35 Largest Grossing Gates*, http://boxing.nv.gov/results/Top_Boxing_Gates/ (Sept. 16, 2016). The figures do not include earnings from television rights or pay-per-view, nor do they include proceeds from hundreds of smaller fight cards held throughout the year. The figures also do not include the multiplier effect on the Las Vegas economy of professional boxing cards in the form of increased tourism, which helps sell hotel rooms and stimulate shopping, gambling and other forms of entertainment.

71. Among the most important components of the U.S. economy, medical services are the most susceptible to inflation. *See, John Commins, Healthcare Costs Soar Above Overall Inflation*, HealthLeaders Media (October 22, 2010), <http://www.healthleadersmedia.com/finance/healthcare-costs-soar-above-overall-inflation>.

72. CAL. CODE REGS. Tit. 4 § 290 (2019).

73. 16 TEX. ADMIN. CODE § 61.40 (2018).

74. 225 ILL. COMP. STAT. ANN. 105/8 (West 2018).

75. N.J. ADMIN. CODE § 13:46–14.3 (2001).

76. FLA. STAT. ANN. . § 548.049 (West 2018).

77. MASS. GEN. LAWS ANN. Ch. 147 § 39B (West 2018).

78. 201 Ky. Admin. Reg. 27:011 Section 21(1)(2) (2019).

79. Associated Press, *Ex-heavyweight champ Page dies at 50*, ESPN (Apr. 27, 2009), <http://www.espn.com/sports/boxing/news/story?id=4104213>.

may recover for injuries during a fight only if claims are filed within fourteen days.⁸⁰ In California, a policy provided by Gagliardi Bros. Insurance Co. allows for a 15-day window,⁸¹ and a policy provided by Laurence Cole Insurance allows for a 30-day window of coverage.⁸² Florida, Texas, and Illinois⁸³ allow only fifteen days of coverage. In some cases, boxers may still submit claims beyond the coverage window, but there is no guarantee of payment.

The result of these low medical policy requirements and tight coverage windows is that in cases involving catastrophic injuries the boxer is often unable to pay for medical treatment, particularly if the injury is discovered after the effective date of coverage, and enjoys no protection against long-lasting or newly discovered injuries or disability. In addition, because the boxer may reside in a different state, or even a different country, from the site of the fight, social services such as Medicaid are often unavailable to pay the cost of medical care. Therefore, in many of those cases, hospitals cannot collect the cost of medical care, and the fighter is saddled with large medical debt. As a consequence of inadequate insurance, underinsured fighters like Greg Page and Mago Abdusalamov are dumped at hospitals, and society's social safety nets serve as the cushion for injured fighters that their profession has failed to protect.

The rejection of a recent initiative to improve insurance coverage for professional boxers in Nevada leaves little hope of a legislative remedy for the problem of inadequate insurance. The Assembly Committee of the Judiciary in the Nevada legislature considered a change to the minimum insurance requirement for professional prizefighters in 2011.⁸⁴ Assemblyman Harvey Mumford introduced a bill designed to provide assistance to professional fighters to cover medical expenses for injuries suffered during fights by assessing a one dollar surcharge to every ticket for a professional boxing match in the state. Assemblyman Richard Segerblom proposed an amendment to Mumford's bill that would have increased the minimum insurance requirement from \$50,000 to \$200,000 dollars. Testifying in opposition to the bill, Nevada Athletic Commission Chairman Keith Kizer stated, without citing sources, that 99.99% of all injuries sustained by boxers in the state are covered by the \$50,000 insurance minimum.⁸⁵ Despite characterizing the proposed new law as a "good idea," Kizer also stated that a \$100,000 insurance requirement would be so costly that Nevada would never see another professional fight.⁸⁶ The commissioner also stated that he would have to raise the price of every ticket by \$100 to cover the cost of insuring fighters.⁸⁷ Kizer also characterized Nevada as the gold standard in the Nation with respect to boxing insurance.⁸⁸ The Commissioner never addressed the fact that at least nine boxers in Nevada have suffered catastrophic injuries in a little over a decade, nor did he address the fact that the insurance requirement in effect in the state failed to cover the full cost of their medical treatment. In addition, the commissioner did not mention the fact that many injuries to professional fighters can go undetected until after the effective date of coverage, nor did he mention the long-term effect of the accumulation of injuries. Unsurprisingly, the bill died in committee.

80. Nevada State Athletic Commission, *New Insurance Memo*, http://boxing.nv.gov/HotTopics/Insurance_Memo/ (last visited June 9, 2018).

81. Phone call to California Athletic Commission on June 11, 2011.

82. *Id.*

83. Telephone Interview with Athletic Commissions of Florida, Illinois, and Texas (June 11, 2011).

84. See video recording of testimony before Nevada Assembly Judiciary Committee (March 28, 2011) (on file with author).

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

MEDICAL ASPECTS OF PROFESSIONAL BOXING

The American Medical Association (AMA) called for the abolition of boxing in 1984.⁸⁹ The British Medical Association, the Canadian Medical Association, the Australian Medical Association, and the World Medical Association have also called for a ban.⁹⁰ The various medical associations advocate for the abolition of boxing because, in their view, unlike other sports where injuries are manifested as a byproduct of an athletic objective, the only objective in boxing is to inflict bodily injury.⁹¹ According to the AMA, a boxer's aim is to win either by severely injuring his adversary or by short-circuiting the opponent's brain to produce an exciting knockout.⁹² The AMA's concern over boxing is based on the fact that the rate of brain injuries is far greater in boxing than it is in sports such as football, basketball, hockey, and horse racing. Studies place the incidence of chronic brain damage among boxers who have had a significant number of fights at sixty to eighty-seven percent.⁹³

In an article published in the *Journal of the American Medical Association*, Robert Glenn Morrison identified "punch drunk syndrome" as a condition almost uniquely associated with boxing.⁹⁴ Morrison noted that symptoms ranging from unsteadiness in gait and slight mental confusion, to leg dragging, hand tremors, general slowing of muscular movements, hesitant speech and nodding movements of the head, to more advanced symptoms such as mental deterioration so severe as to require commitment to an asylum, had been found to some degree in about fifty percent of all boxers, according to records dating back to 1928.⁹⁵ The great Muhammad Ali is the most dramatic public example of this medical condition.⁹⁶

Significantly, the "punch drunk syndrome," technically known as traumatic encephalopathy, has also been found to affect professional football players who have endured years of traumatic contact to the head, even though they are required to wear protective helmets. In contrast, a professional boxer often receives well over 100 punches to the head, many of them characterized as "power punches," during a twelve-round fight.

A study cited in the Morrison article revealed that when rabbits and cats were subjected to mechanically-produced blows to the head that simulated the punches delivered to a boxer's head, the subject animals showed symptoms similar to boxer's long term effects.⁹⁷ Importantly, the blows in the study were not designed to simulate single knockout punches.⁹⁸ They were instead multiple subconcussive blows designed to simulate the accumulated effect of punches to a boxer's head over a career.⁹⁹ Multiple subconcussive blows in rapid succession produced more severe brain damage than did impacts of greater intensity delivered less frequently.¹⁰⁰ That is not to say that there is less to fear from greater intensity blows delivered less frequently. However, the study shows that damage to a boxer's brain cannot necessarily be isolated to a specific punch and argues for a more careful look at future medical needs for all fighters.

89. American Medical Ass'n, Proceedings of the House of Delegates: 38th Interim Meeting, Dec. 2-5, 1984.

90. UNTERHARNSCHIEDT & TAYLOR-UNTERHARNSCHIEDT, *BOXING: MEDICAL ASPECTS* 614-626 (2003).

91. Robert G. Morrison, *Medical and Public Health Aspects of Boxing*, 255 JAMA 2475 (1986).

92. *Id.*

93. *Id.* See also Walsh, *Boxing, Regulating a Health Hazard*, 11 J. CONTEMP. HEALTH L. & POL'Y, 63 (1994) at n.5 (citing George C. Lundberg, *Boxing Should be Banned in Civilized Countries, Round 3*, 255 JAMA 2483 (1986)).

94. See Morrison, *supra* note 91, at p. 2475-76.

95. *Id.* at 2475.

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

Not surprisingly the injuries that most concern the AMA and threaten the careers and lives of professional boxers are those associated with the head.¹⁰¹ Unlike football, hockey, and baseball where athletes use helmets to minimize damage and contact with the head is either prohibited or discouraged by the rules of the sport, professional boxing emphasizes attacks on the opponent's head. Significantly, the ability of a boxer's head to withstand punishment does not increase with the size of the fighter. Unlike other parts of the body, which may be strengthened through rigorous exercise to withstand punishment, there is nothing a boxer can do to strengthen his cranium's ability to absorb punches. Inside the cranium the brain is suspended in a liquid environment.¹⁰² Upon impact the brain inside the cranium is compressed on the impact side and expanded when it reaches the opposite side.¹⁰³ During a fight a boxer may sustain several hundred punches to the head in addition to the thousands of punches to the head in sparring sessions during training. When the force of the punch is large enough, the fighter may experience a concussion with the possible loss of consciousness.

Importantly, some practices designed to protect professional fighters may instead end up harming them. Fighters who are knocked out by a single punch often experience less punishment than those who are supposedly protected by a "standing eight" count, which is ostensibly designed to protect them.¹⁰⁴ A standing eight count occurs when the referee determines that a fighter is in a state of grogginess but deserves a chance to recuperate in order to continue fighting.¹⁰⁵ To allow the fighter to recuperate, the referee counts to eight while keeping the opponent away. At no time in the fight is a fighter more vulnerable than after a "standing eight" count.¹⁰⁶ It is after the standing eight that the fight crowd typically goes into the biggest frenzy of the fight in anticipation of a knockout.¹⁰⁷ At that time, the boxer with the advantage may press in an attempt to score a dramatic victory by pummeling the opponent into unconsciousness.¹⁰⁸ The crowd also may affect an experienced referee, who, not wanting to be seen as an obstruction, allows the fighter with the advantage to beat on a defenseless opponent until he falls to the mat.¹⁰⁹

There are many ways in which professional boxing can lead to structural damage to the brain. One the most dangerous is an acute episode commonly referred to as an acute subdural hematoma, which happens when the force of trauma to the head causes bleeding inside the brain cavity and a subsequent increase in pressure to the brain.¹¹⁰ A subdural hematoma occurs under the thick membrane that lines the inside of the skull. The pressure on the brain can be relieved through a costly procedure called a craniectomy where a portion of the skull is removed to allow the fluid to drain and the brain to expand. As was the case with Z. Gorres, a boxer may make a recovery but also may experience a permanent disabling condition.

Of importance to the fighter's safety is the fact that, in most cases, there is no transient effect for blows to the head. Even subconcussive blows can have detrimental effects on a

101. A study conducted by the U.S. Army on the effect of boxing on military personnel found that sixty-eight percent of the boxers studied suffered head injuries such as, intracranial injuries, concussions, intracranial hemorrhages, and skull fractures. See, Kevin M. Walsh, *supra* note 96 at 63,65 (citing Robert W. Enzenauer et al., *Boxing-Related Injuries in the U.S. Army, 1980 Through 1985*, 261 JAMA 1463, 1464 (1989)).

102. See Melissa Neiman, *Protecting Professional Boxers: Federal Regulations With More Punch*, 15 SPORTS LAW J. 59, 68-71 (2008).

103. *Id.*

104. See Unterharnscheidt & Taylor-Unterharnscheidt, *supra* note 90, at 57-58.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* at 272, 273.

boxer's health long after the boxer has retired. Moreover, repair processes in the brain are very limited.¹¹¹

EYE INJURIES

Injuries to the eyes are very different in boxing than they are in other activities. Unlike athletes in other sports, professional boxers have a strong incentive to mount direct attacks upon their opponent's eyes. Continued punches to a severely injured eye provide a distinct advantage during a fight.¹¹² A fighter who cannot see cannot defend himself, and his ability to mount a successful offensive attack can be severely impaired by his lack of vision. If the injury to the eye is severe enough, the fight may end in a technical knockout.¹¹³

Detached retinas and other severe injuries to the eye are the natural byproduct of those legitimate tactics. Common eye injuries in boxers include the tearing of internal ocular structures, which are resistant to stretching when the eye undergoes the deformation introduced by the force of a punch, especially when the attack on the eye is unrelenting.¹¹⁴ Because in many cases there is no immediate loss of sight, injuries to the eye can take months and sometimes even years to detect.¹¹⁵ In a study of retinal tears in professional boxers, Drs. Joseph I. McGuire and William E. Benson found that in many cases retinal tears went undetected for months and in some cases years after a fight.¹¹⁶ McGuire and Benson found that most of the fighters studied were completely asymptomatic until they noted decreased visual acuity.¹¹⁷ According to the doctors, the anterior location of the eye where these injuries occur combined with the lack of early symptoms causes the detached retinas to be easily overlooked during routine examinations.¹¹⁸ Similarly, severely impairing injuries such as glaucoma from angle recession may occur years after retirement, and the correlation between boxing and the condition will not be made.¹¹⁹

Another important factor that contributes to the exacerbation of eye injuries as well as other types of injuries is the boxer's fear of being suspended.¹²⁰ Because of fear of not being allowed to fight again, boxers have been known to hide symptoms and fight while visually impaired.¹²¹ Such delays negatively affect the ability of physicians to treat the injured eye because the healing processes have become so well established that it may be too late for constructive treatment.¹²²

111. *Id.* at 621.

112. *Id.* at 138.

113. *Id.* at 161.

114. See Bianco, Vaiano, Colella, et. al., *Ocular Complications of Boxing*, 39 Br J Sports Med 70, 73 (2005). David McCleod, Professor of Ophthalmology at the Manchester Royal Eye Hospital, noted that "the effect of such frontal assault [on the eye] is the momentary deformation of the globe similar to that of a golf ball on impact." See David McCleod, *Ocular Injuries From Boxing*, BMJ Vol. 304 (Jan. 25, 1992).

115. Professor McCleod also observed that "[t]he retinal breaks [from boxing] thus differ from those causing spontaneous retinal detachment in old age or myopia. The breaks may extend over ninety degrees of the retinal circumference – 'giant tears' – as have occurred recently in three senior British heavyweights. . . . The subsequent traumatic retinal detachments are often slow to progress towards the macula and may present some months or even years after the injury." McCleod, *supra* note 114.

116. See Joseph I. McGuire, MD and William E. Benson, MD, *Retinal Injury and Detachment in Boxers*, 255 JAMA, No. 18, 2451 (1986). See also Unterharnscheidt & Taylor-Unterharnscheidt, *supra* note 90, at 161.

117. McGuire and Benson, *supra* note 116, at 2453.

118. *Id.*

119. See Unterharnscheidt & Taylor-Unterharnscheidt, *supra* note 90, at 138.

120. *Id.* at 163 (discussing fear of suspension).

121. See *id.* at 187 (discussing the cases of Ezzard Charles, who was partially blind when he fought Rocky Marciano, and "Kid" Gavilan and others whose careers were cut short by damaged eyes).

122. *Id.* at 163.

Brain damage and eye injuries are examples of injuries that may not be discovered during the coverage window for most insurance policies for professional boxers, and medical care can be costly. As discussed earlier, most required insurance policies limit coverage to injuries that occur during a fight and impose a window of only a few weeks to file claims. Those policies offer no protection for injuries that manifest themselves over time leaving the fighter to fend for himself or to rely on the indigent care system for medical care. A small number of jurisdictions require a larger window of coverage, but those jurisdictions also have small monetary coverage requirements,¹²³ negating the benefit of the larger window for costly injuries.

CAN FEDERAL LAW HELP?

Since its beginning in the 1880's, professional boxing has received relatively little attention at the federal level.¹²⁴ Congress passed the Professional Boxing Safety Act (PBSA) in 1996¹²⁵ due in large part to the inability or unwillingness of the states to provide basic health and safety protections. The inadequate patchwork of state-by-state regulation had enabled unscrupulous characters to shop for states with lax regulations, endangering the economic and personal well-being of professional boxers. The PBSA was followed by the Muhammad Ali Act, which sought to minimize financial exploitation of professional prizefighters. The two statutes were merged and are now collectively known as the Muhammad Ali Act.

The PBSA was designed to promote the health and safety of professional boxers by requiring that: (1) each boxing match should be supervised by a state boxing commission,¹²⁶ (2) boxers undergo a medical examination by a medical doctor to certify that they were fit to safely compete,¹²⁷ (3) an ambulance or medical personnel with appropriate resuscitation equipment should be present at ringside throughout the fight,¹²⁸ (4) a physician shall be present at ringside throughout the fight,¹²⁹ (5) each promoter be required to provide medical insurance coverage for any injuries sustained during the bout,¹³⁰ and, (6) an identification card be required of each boxer, renewable every four years.¹³¹

At first glance, the PBSA would appear to have improved the health and safety of professional prizefighters almost immediately. A medical examination before each fight would ensure that the boxers would be medically fit to fight; the requirement of an ambulance or medical personnel with appropriate resuscitation equipment would provide immediate medical assistance and transportation to a well-equipped hospital in an emergency; a physician present at the site would ensure that a fight would be stopped before a boxer suffered irreparable damage; health insurance would provide the means to pay for medical expenses for any injuries sustained in the match; and, critically, the registration and identification card requirements would prevent any injured boxer from fighting in a different U.S. jurisdiction under an assumed name, helping to minimize mismatches and preventing

123. New Jersey requires insurance coverage extend at least six months from the date of a fight, but the minimum coverage is only \$20,000.00. N.J. Stat. Ann. § 5:2A-14.2 (2000); N.J. Admin. Code § 13:46-14.3 (2001). Maryland does not specifically limit coverage windows, but only requires \$10,000.00 of coverage. Md. Code Regs. 09.14.03.03 (2003).

124. See Melissa Neiman, *Protecting Professional Boxers: Federal Regulations With More Punch*, 15 *SPORTS LAW J.* 59, 74-78 (2008) (tracing federal attempts to regulate professional boxing, most of which failed until the 1990s).

125. 15 U.S.C. §§ 6301-13 (2000).

126. *Id.* at § 6304.

127. *Id.* at (1).

128. *Id.* at (2).

129. *Id.* at (3).

130. *Id.* at (4).

131. *Id.* § 6305 (a)-(c).

boxers from fighting before recovering from serious injuries. Unfortunately, a close analysis of the Act reveals that, other than the registration and identification card requirement, the rest of the Act's provisions did little to ensure the health and safety of professional prizefighters.¹³²

The PBSA is minimally invasive of states' authority to regulate professional boxing. As the 1996 Act was being considered, a number of legislators expressed concern that the 1996 law did not go far enough to protect the health and safety of professional prizefighters. The law merely codified much of what the major boxing states were already doing and did not force other states to follow along.¹³³ For example, though the act requires professional boxers to undergo a pre-fight examination by a physician, it does not define the minimum requirement for a medical examination. Thus, while some states require neurological testing such as Magnetic Resonance Imaging exams (MRIs) for boxers who have been knocked out before they can fight again, not all states do.¹³⁴ To the extent that they require some form of medical examination, however minimal, all such states are in compliance with the PBSA.¹³⁵

Additionally, a promoter's obligation under the PBSA to provide medical assistance on-site can be satisfied by either an ambulance or medical personnel with appropriate resuscitation equipment. By treating ambulances and medical personnel as equivalents, the Act allows, and in fact may help create, unreasonably dangerous conditions. Treating an ambulance on-site as the equivalent of medical personnel with resuscitation equipment ignores the simple medical reality that in many cases the ability to transport an injured fighter without significant delay to a trauma facility can be crucial to the fighter's recovery or survival. However, providing one or the other satisfies the minimum federal requirement. So, while a strong regulatory state like Nevada requires both medical personnel with resuscitation equipment *and* an ambulance, on-site,¹³⁶ other states can essentially ignore a crucial protection without running afoul of the federal requirements.¹³⁷

Further, though the PBSA appeared to enact positive changes to promote the health and safety of boxers, it allowed states to satisfy its "mandates" with equivalent "alternative requirements," contained in regulations passed by state commissions,¹³⁸ thereby leaving some unsafe state practices undisturbed. Thus, a state commission's regulation allowing for locating the site of the fight near a hospital in lieu of providing an ambulance at the scene of the fight satisfies the federal requirement for an ambulance on-site.¹³⁹ That policy ignores the fact that hospitals are busy places and that an ambulance may not be available when one is needed in the event of a catastrophic injury. It also ignores the fact that even if the

132. Senator McCain acknowledged that the registration and identification card requirements were the most effective provisions of the PBSA. See McCain, Nahigian, *A Fighting Chance for Professional Boxing*, 15 STAN. L. & POL'Y REV. 7, 23 (2004).

133. See Professional Boxing Safety Act Hearings, *supra*, note 10, at p. 24 (statement of Mr. Martinez) "This bill would improve things, I estimate, for a little less than 2 percent of the boxing matches held in America, because a little less than 2 percent of the boxing matches held in America are under the standards of this bill, and so it doesn't have a great effect. Federally mandating the status quo is not going to solve the dilemma in the fight game today."

134. See U.S. GOV'T ACCOUNTING OFF., GAO-03-699, PROFESSIONAL BOXING: ISSUES RELATED TO THE PROTECTION OF BOXERS' HEALTH, SAFETY, AND ECONOMIC INTERESTS (July 2003) at 15.

135. In Neiman, *supra* note 124, at 80-8, Melissa Neiman points out that while states such as Connecticut require a complete eye exam, an EEG, computerized tomography (CT) or magnetic resonance imaging (MRI) of the brain, pre and post-fight physicals and blood testing, other states do little more than an abbreviated physical exam. Even those states are in full compliance with the PBSA.

136. Nev. Admin. Code § 467.414 (2018).

137. Arizona requires a physician be present, but does not require an ambulance on-site. Ariz. Rev. Stat. Ann. § 5-233 (2013).

138. 15 U.S.C.A. § 6304 (West 1997).

139. Rodriguez, *supra* note 17, at 73. (noting that Wisconsin has such a rule).

ambulance is available, travel time to the site of the fight and back to the hospital can cut into the time an injured boxer has for life-saving treatment.

Such a policy may have played a role in the death of Randie Carver in September of 1999 and in the exacerbation of injuries suffered by Fernando Maldonado in January of 1999 in two professional fights held in Missouri. In the Carver fight, consistent with Missouri policy, an ambulance was not on site because the state did not require one if a hospital was located near the venue of the fight.¹⁴⁰ Carver died from his injuries, a result that may have been prevented had an ambulance been required at the site of the fight.¹⁴¹ In Maldonado's case, the contract with the promoter provided for an ambulance on site, but the promoter failed to provide one.¹⁴² Maldonado won a verdict of \$13.7 million.¹⁴³

The inadequacy of the Professional Boxing Safety Act to protect the health and safety of professional boxers, and the federal government's impotence to enforce the laws were highlighted in a study of the sport in ten jurisdictions conducted by the General Accounting Office (GAO) in 2003.¹⁴⁴ The GAO based its study of the 1996 federal laws and subsequent state practices on 15 elements it considered crucial to judge the extent to which boxers' health, safety and economic well-being were being protected by the legislation and state practices.¹⁴⁵ The GAO focused its study on the eight most popular fight states and two Indian Tribes. Of the 15 elements the GAO identified, six were designed to help protect the health and safety of professional boxers: 1) medical examinations, including neurological testing; 2) monitoring of training injuries; 3) assessments of medical risks; 4) health and life insurance; 5) the presence of appropriate medical personnel and equipment; and, 6) enforcement of suspensions for injuries.¹⁴⁶ According to the GAO, those elements are crucial because of the greater risk of neurological injuries among professional boxers as compared to other professional athletes.¹⁴⁷ Importantly, the GAO also emphasized the need to expand monitoring of injuries during training and the need to expand both health and life insurance to the periods before and after a fight.¹⁴⁸ Additionally, the GAO recognized that having an ambulance and medical personnel on site, as opposed to on call could make a significant difference in the case of an accident where every second matters.¹⁴⁹

Comparing the fundamental elements necessary to protect the health and safety of professional boxers to the contents of the Act, the GAO found that: 1) though the Act requires pre-fight medical examinations, it did not impose post-fight medical examinations nor neurological testing; 2) though the Act requires the presence of appropriate medical personnel and equipment during and after each match, the Act does not require the filing of post-fight medical reports, 3) though the Act requires states to honor other states' suspensions of boxers, it does not require states to monitor training injuries in real time or suspend boxers who sustain debilitating training injuries, and 4) though the Act requires health insurance for injuries sustained during each match, it does not require health insurance for boxers before and after each match, nor does it require life insurance.¹⁵⁰

Given the care it put into the design and investigation of all the other factors related to the health and safety of professional boxers, the GAO's failure to analyze fully the subject

140. For a complete analysis of the fights, see Rodriguez, *supra* note 17, at 9-10. For more on Maldonado's case, see *infra* at note 165.

141. Rodriguez, *supra* note 17, at 75.

142. See *infra* note 165. .

143. *Id.*

144. See GAO, *supra* note 134.

145. *Id.* at 4.

146. *Id.* at 7.

147. *Id.* at 8.

148. *Id.*

149. *Id.*

150. *Id.* at 11.

of health insurance for professional boxers defies explanation. This oversight is magnified by the fact that the failure to meet minimum health and safety requirements would seem to make adequate health insurance much more crucial. Though the GAO identified health insurance for boxers before, during, and after a match as a fundamental element to protect the health and safety of professional prizefighters, it did nothing to define the level of coverage necessary to that goal nor did it discuss the negative consequences of the variations in coverage from state to state. The GAO reported that all but one of the jurisdictions investigated was in partial compliance with the provision that requires insurance coverage for boxers during fights, and seven of the ten jurisdictions were in full compliance¹⁵¹ though the range of coverage varied significantly.¹⁵²

In an article written for the *Stanford Law and Policy* review in 2004, Senator John McCain, a co-sponsor of the PBSA and the Muhammad Ali Boxing Reform Act, lauded the legislation for ushering a new era of boxing regulations in which states would finally have to comply with minimum health, safety, and economic regulations in professional boxing.¹⁵³ In the article McCain recognized that, despite the new legislation, problems continued to exist regarding enforcement of the laws, citing the 2003 study by the General Accounting Office.¹⁵⁴ He also acknowledged that of all the new provisions, the most effective provision of the two laws is the PBSA's requirement that boxers register for a federal identification card to enable regulators to prevent boxers who have been suspended from fighting in a different state.¹⁵⁵ Despite having written a requirement into the PBSA that fighters cannot perform without health insurance for injuries sustained during a bout, nowhere in his article did McCain mention the subject of health or disability insurance. The only mention made of health insurance by Senator McCain can be found in the legislative history of the PBSA where he states that though the PBSA would require the purchase of medical insurance for injuries sustained during a fight, the minimum insurance requirement would be left to the states.¹⁵⁶

TORT LAW AND PROFESSIONAL BOXING

The extent to which the PBSA and the Muhammad Ali Boxing Amendments Act (Ali Act) may support a cause of action on behalf of a professional boxer has been explored primarily in the area of economic harm.¹⁵⁷ The Ali Act, an amendment to the PBSA, focused on the abuses associated with typical business practices in the sport.¹⁵⁸ The

151. *Id.* at 36.

152. *Id.* at 14-15.

153. See McCain, Nahigian, *A Fighting Chance for Professional Boxing*, 15 *STAN. L. & POL'Y REV.* 7 (2004).

154. *Id.* at 23-25.

155. See *id.* at 25.

156. See Professional Boxing Safety Act Hearings, *supra* note 10, at 25 (statement of Sen. John McCain).

157. See *Maskaev v. Rappaport*, No. 12-CV-6008, 2014 WL 5427539, at *4 (E.D.N.Y. Oct. 24, 2014) (boxer brought action against his promoter alleging that the promoter failed to disclose promoter's compensation to the plaintiff boxer and mismanaged the boxer's payments, summary judgment granted to defendant due to statute of limitations); *M'Baye v. World Boxing Ass'n*, Nos. 05 Civ. 9581(DC), 06 Civ. 3439(DC), 2009 WL 2245105, at *6 (S.D.N.Y. July 28, 2009) (dismissing plaintiff boxer's Ali Act claim when the plaintiff alleged that the defendant caused economic harm by permitting other fighters to move ahead of the plaintiff to fight for championship title when plaintiff was rated number one); *Main Events Productions, L.L.C. v. Lacy*, 358 F.Supp.2d 391, 396-97 (D.N.J. 2004) (holding that promoter failed to meet Ali Act disclosure requirements when the promoter sent financial disclosures to the boxer's manager but not the boxer himself, this provided evidence that could infer boxer suffered economic injury).

158. Among other things, the Ali Act established a one year limit on promotional rights that a promoter may require a boxer to concede as a condition of promoting the boxer's fights. 15 U.S.C. § 6307(b). The Act also established disclosures of: fees and charges imposed on the boxer by promoters, payments to sanctioning organizations, reductions in purses and revenues received by the promoter for the event. 15 U.S.C. § 6307(e). It further barred promoters from having a financial interest in the management of a boxer. 15 U.S.C. § 6308. The Act

amendment also introduced into the statute a provision that assigned the Justice Department enforcement authority over violations of the Act,¹⁵⁹ and introduced an individual cause of action for economic damages resulting from violations of the statute.¹⁶⁰

The private cause of action provision for economic damages in the amendment to the PBSA could cause problems for careless readers of the statute. A plain reading of the two merged initiatives would seem to limit cases under the new statute (now known collectively as the Muhammad Ali Act) to contractual and other non-tort matters. The sloppy drafting and merging of the two enactments create an interesting problem of statutory construction. A plain reading of the statute, outside of the context under which the two statutes were merged, would deny a cause of action for physical injuries resulting from violations of the statute. Such a reading would emphasize the imprecision in the language of that section and the imprecision in the merging of the two statutes, to the detriment of injured fighters. More troubling still, such a reading would result in a windfall for unscrupulous operators in violation of the spirit of the law.

The key to ascertaining the meaning of the Ali Act thus is not its plain language, but its contextual meaning.¹⁶¹ Relying on the plain meaning of the provision leads to an unsettling conclusion at odds with its apparent purpose and background.¹⁶² To unravel the meaning of the merged statutes, a court would have to identify the separate purposes of the two enactments, which are to: 1) to protect the health and safety of boxers in the case of the PBSA, and, 2) to protect their economic well-being in the case of the Ali Act. A court would also have to consider the context under which the two separate statutes were enacted. The Ali Act was passed strictly as a means to protect boxers' economic interests. In that context, recognizing a cause of action for economic harm makes legislative sense. Indeed, when Congress passed the Ali Act, it recognized the need for a vigorous private enforcement mechanism.¹⁶³ But by including a cause of action for economic damages in the Ali Act, Congress could not have meant to restrict a boxer's rights to recover for physical harm under the PBSA. Because restricting a boxer's right to recover for physical injuries resulting from a violation of the PBSA would contradict the spirit of that statute, which was to promote the protection of boxers' health and economic well being.

On at least two occasions, professional boxers have been able to recover tort damages for physical injuries sustained as a result of conduct that would have violated the PBSA. In neither case were defenses based on the apparent restriction in the PBSA to economic damages. One of those cases involved former heavyweight champion Greg Page.¹⁶⁴ Because of the promoter's failure to provide an ambulance on site, it took nearly three hours to get Page to a hospital. Attorney Doug Moore filed a lawsuit on behalf of Greg Page against the

provided for reciprocal enforcement of suspensions of boxers, and provided for enforcement of the Act by State Attorneys General and the U.S. Attorney General. 15 U.S.C. § 6309(b), (c).

159. 15 U.S.C.A. § 6309(a) (West 2000).

160. 15 U.S.C.A. § 6309(d) (West 2000).

161. See REED DICKERSON, *THE INTERPRETATION AND APPLICATION OF STATUTES* 2-3 (1975).

162. Though no court has found that the PBSA does not support a cause of action for a violation of its health and safety provisions, it is possible that a court may be swayed by a "plain meaning" argument. In *The Collaborative Model of Statutory Interpretation*, 61 S. CA. L. REV. 541, 598-99 (1988) Professor William D. Popkin explained that conflicts between language and purpose in statutory interpretation always exist, and can only be resolved by a judicial weighing of the political values that support reliance on either the words or context. According to Popkin, purpose can be defined either narrowly or broadly, and the background under which the statute was enacted can also have uncertain significance. *Id.* Therefore, the author's interpretation of the Ali Act may not be predictive. According to Popkin, "Sometimes the plain meaning prevails, but only because of the political values it serves." *Id.* at 601.

163. Congress found that professional boxing's lack of centralized, private organizations that could establish uniform business practices and ethical standards across the sport led to "repeated occurrences of disreputable and coercive business practices in the boxing industry." 145 Cong. Rec. H11649-08 (1999).

164. For facts of the Page case, see *Professional Boxing Safety Act Hearings*, *supra*, note 10.

promoter, the owner of the venue and the Kentucky administrative agency charged with regulating professional boxing. Moore alleged negligence, gross negligence, and violations of the PBSA for failure to make oxygen available on site, for failure to provide an ambulance, and for failure to provide medical insurance. The state of Kentucky settled the lawsuit for approximately \$1.2 million.

Maldonado v. Gateway Holdings involved a professional boxer who sued a boxing promoter and a hotel that served as the site of a fight in 1999, in which he was knocked out.¹⁶⁵ After the sudden and violent end to the fight, Maldonado was revived and was able to walk to his dressing room, where he later lost consciousness.¹⁶⁶ The promoter had failed to provide an ambulance or medical monitoring on-site.¹⁶⁷ At trial, Maldonado produced evidence that indicated that the injury was caused by negligence occurring after the match, not by any injury during the match itself.¹⁶⁸ A jury returned a verdict in favor of the plaintiff awarding \$13.7 million in compensatory damages.¹⁶⁹ Importantly, the case before the court involved the responsibility of the owner of the site of the fight under the “inherently dangerous activity” doctrine, a premises liability doctrine focused on non-delegable duties. Under that doctrine, a landowner hiring an independent contractor to perform an inherently dangerous activity has a “non-delegable duty to take special precautions to prevent injury from the activity.”¹⁷⁰ The defendant argued that Maldonado failed to prove it was liable under the inherently dangerous activity doctrine because the boxer had assumed any risks inherent in boxing.¹⁷¹ Maldonado argued that he had assumed the “primary risk” of being injured by a punch, but claimed that he did not assume the risk of being injured because of the failure to provide medical monitoring or an ambulance on site.¹⁷² The court agreed with Maldonado and affirmed the jury’s verdict.¹⁷³

In addition to causes of action under the PBSA, professional prizefighters may be able to rely on the tort system in a limited range of cases as an alternative to the inadequate system of insurance for boxing injuries. A careful review of tort cases reveals a small number of reported opinions involving professional boxing. The absence of cases may be explained by the deterrent effect of consent clauses, which constitute one of the most basic terms in contracts involving professional fights.¹⁷⁴ When a fighter signs an agreement to enter the ring, he essentially consents to be intentionally assaulted, battered, injured and possibly killed throughout the fight.¹⁷⁵ Express assumption of the risk thus constitutes a formidable defense to most tort claims that may arise from injuries incurred in a professional boxing match. However, express assumption of the risk to the dangers inherent in the sport does not constitute a complete defense to all injuries.

The legal meaning of customary practices in professional sports and the limits of express consent were analyzed by the Tenth Circuit in *Hackbart v. Cincinnati Bengals*.¹⁷⁶ In *Hackbart*, the court ruled that a professional football player stated a cause of action in tort for an injury suffered in violation of the rules of football.¹⁷⁷ In that case, a player, having

165. See *Maldonado v. Gateway Holdings, L.L.C.*, 154 S.W.3d 303, 306 (Mo. Ct. App. ED 2005).

166. *Id.*

167. *Id.*

168. *Id.* at 313-314.

169. *Id.* at 306.

170. *Id.* at 308.

171. *Id.* at 309.

172. *Id.*

173. *Id.* at 312.

174. See <http://boxing.nv.gov/Hot%20Topics/contract%20web.pdf> for an example of a typical contract, which includes an assumption of risk and release clause.

175. *Id.*

176. *Hackbart v. Cincinnati Bengals, Inc.*, 601 F.2d 516, 520 (10th Cir. 1979).

177. *Id.* at 524-525.

grown frustrated after his team had been intercepted, attacked a player on the opposite team who was kneeling and looking in the opposite direction after the play was over.¹⁷⁸ The film of the game showed that the defendant struck the plaintiff in the back of the neck, causing a fracture.¹⁷⁹ Concerned over the difficulty of sorting out permissible violence from actionable conduct,¹⁸⁰ the trial court had found that the injured player had assumed the risk of conduct such as that committed by the defendant.¹⁸¹ The appellate court reversed, emphasizing that “there are no principles of law which allow a court to rule out certain tortious conduct by reason of general roughness of the game or difficulty of administering it.”¹⁸² Noting that the rules of the game specifically prohibit the conduct at issue,¹⁸³ the appellate court ruled that the appropriate standard for liability was recklessness where intent cannot be shown.¹⁸⁴ In conclusion, the court ruled that the trial court had not limited the case to the evidence bearing on the defendant’s liability but rather on its determination that “as a matter of social policy the game was so violent and unlawful that the value lines could not be drawn.”¹⁸⁵ The court thus recognized that it is not the nature of the game, but whether the conduct of the participants violates rules established for their protection, that should determine liability.

In *Navozny v. Barnhill*,¹⁸⁶ a soccer forward entered the opposite team’s penalty area and intentionally kicked the goalie on the head after the goalie had secured a ball that had crossed into the penalty area.¹⁸⁷ The kick caused permanent skull and brain damage to the goalie.¹⁸⁸ All witnesses agreed that the forward had time to avoid the collision and the goalie was in possession of the ball when he was kicked.¹⁸⁹ Three experts agreed that the kick to the goalie’s head violated F.I.F.A. rules, which prohibit intentional contact with a goalkeeper inside the penalty area.¹⁹⁰ Ruling for the goalie, the court of appeals reversed a directed verdict by the trial court, stating: “[A] player is liable for injury in a tort action if his conduct is either deliberate, willful or with reckless disregard for the safety of the other player so as to cause injury to the other player.”¹⁹¹

The modern trend in tort law allows for recovery when the allegedly tortious conduct by the participants is either intentional or reckless.¹⁹² Because of the inherent nature of many sports, mere negligence rarely supports a cause of action against participants.¹⁹³ But how does the modern trend apply to a sport such as professional boxing where the aim is to win by intentionally damaging the opponent’s body? The answer is simply that professional boxing is not a free-for-all gladiator sport. In contrast to its ancient beginnings, modern professional boxing is not a fight to the death without limits. Contrary to the opinions of some of its detractors, complete physical destruction of an opponent is not necessary to win

178. *Id.* at 519.

179. *Id.*

180. *See* *Hackbart v. Cincinnati Bengals*, 435 F. Supp. 352, 358 (1977).

181. *Id.* at 356.

182. *Hackbart*, 601 F.2d at 520.

183. *Id.* at 521.

184. *Id.* at 525.

185. *Id.* at 526.

186. *Nabozny v. Barnhill*, 31 Ill. App. 3d 212, 214 (1st Dist. 1975).

187. *Id.* at 214.

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.* at 215.

192. *See generally* David J. Stephenson, *Competitive Sports Torts*, 19 COLO. LAW. 2457 (1990); Michael K. Zitelli, *Unnecessary Roughness: When On-Field Conduct Leads to Civil Liability in Professional Sports*, 8 WILMETTE SPORTS L.J. 1 (2010).

193. *See e.g.* *Gauvin v. Clark*, 404 Mass. 450 (Mass. 1989); *Lestina v. West Bend Mut Ins. Co.*, 176 Wis. 2d 901 (Wis. 1993).

a professional boxing match. As Floyd Mayweather, Pernell Whitaker, and other defensive stylists have proven, a professional boxer may prevail by outpointing and outclassing his opponent while defending effectively.

The rules that govern professional boxing are designed to minimize the danger in an admittedly violent sport. For example, fighters are generally prohibited from engaging in conduct such as hitting below the belt, tripping, kicking, head butting, kneeling, striking with the elbow, forearm or shoulder, hitting with an open glove or the inside, side or wrist of the glove to prevent contact with an abrasive surface in the equipment, hitting a fallen opponent, hitting on the break after a clinch, thumbing the eyes of an opponent, and biting.¹⁹⁴ But, given the fact that no professional fight is devoid of questionable tactics and that even legitimate blows can inflict substantial harm, the issue of causation can be particularly problematic.

With respect to causation in tort, illegal blows that lead to an immediate isolated result to a particular part of a boxer's body will be the easiest to identify. For example, a punch to the back of the head occurring during the early part of the fight resulting in a localized subdural hematoma, or an elbow to the side of the face resulting in a fractured orbital bone, or a bite to an opponent's ear are all easily identified. Similarly, establishing causation will be possible in cases where a fighter strikes an opponent with gloves containing a hardened substance or where a boxer strikes an opponent with gloves without proper padding where the intent is to gain an unfair advantage by enabling the fighter to punch harder.¹⁹⁵ A case in point involved Billy Collins, a promising professional prospect who was knocked out by Luis Resto, on June 16, 1983.¹⁹⁶ Resto's trainer had removed padding from Resto's gloves and had dipped Resto's wrapped hands in Plaster of Paris to enable him to hit harder.¹⁹⁷ Still, distinguishing whether an injury came from a multitude of blows accumulated during a fight or from potentially tortuous blows that fell outside the rules will be difficult if not impossible in many cases. However, the difficulty of ascertaining causation has never been a barrier to a lawsuit in tort.¹⁹⁸

WORKERS' COMPENSATION AS A POTENTIAL REMEDY

Workers compensation is a system of compelled insurance for work-related injuries. Since its inception in the early part of the 20th century, workers compensation has constituted a compromise whereby employees forgo tort claims for work-related injuries in exchange for the certainty of a recovery under a no-fault system.¹⁹⁹ Workers' compensation statutes generally cover all workers in the state unless otherwise excluded.²⁰⁰ While workers' compensation laws protect professional athletes in many jurisdictions, a few states have explicitly exempted athletes by statute and others have limited the amount of protection for which they are eligible.²⁰¹ A much smaller number have considered whether professional boxers qualify for coverage.²⁰² Therefore, whether professional boxers are eligible for workers' compensation continues to be an open question in many states. A careful analysis of

194. See e.g. NEV. ADMIN. CODE § 467.675 (prohibiting much of the conduct described above).

195. See *Collins v. State of New York*, 162 Misc.2d 770 (N.Y. Ct. Cl. 1994) (dismissing claims against New York State Athletic Commission Inspectors, but recognizing a cause of action against Luis Resto and his trainer.)

196. *Id.*

197. *Id.*

198. See *Hackbart*, 601 F.2d at 525-26.

199. See e.g. Fishback, Kantor, *The Adoption of Workers' Compensation in the United States, 1900-1930*, 41 J.L.ECON. 305 (1998).

200. 3 LEX K. LARSON, LARSON'S WORKERS' COMPENSATION, DESK EDITION §7151.02 (Matthew Bender, Rev. Ed., 2018).

201. For example, Florida specifically exempts professional athletes by statute (FLA. STAT. ANN. § 440.02 (17)(c)(3) (West 2015)), and Massachusetts provides limited coverage (MASS. GEN. LAWS ch.152, § 1(4) (2011)).

202. New York State is one example, see *infra* note 204, at pp. 42.

cases involving occupations that parallel, or at least share some common factors with professional boxing, reveals that absent specific exclusion from coverage, workers' compensation may be a viable alternative to inadequate insurance. The positive trends involving professional athletes, advocates' ability to compel workers' compensation coverage through the courts, and the unlikely possibility of a legislative remedy for inadequate insurance all indicate that professional boxers would be well-advised to seek the protection of workers' compensation laws.

A careful search of appellate cases yields few reported opinions involving professional prizefighters. The reason for the relatively small number of cases may be that insurance requirements in most states cover the most common minor injuries. Another reason for the absence of cases may be that most states exclude independent contractors from workers' compensation coverage, and, for all appearances, professional boxers look like self-employed entrepreneurs. In addition, the fact that many injuries that are intentionally inflicted by other workers have been traditionally excluded may have created the impression that a professional boxer's injuries should be treated the same. Other issues that may complicate filings include the jurisdictional question of who is responsible for an injury under workers compensation when the professional boxer does not reside in the jurisdiction where the injury took place, and who is responsible to an injured fighter who is not a U.S. resident.

The issue of whether a professional athlete is involved in an employer–employee relationship does not frequently arise for athletes working for a professional team, but poses a formidable barrier in cases involving independent contractors such as golfers, tennis players, or bowlers, who are not paid pursuant to a contract for hire but compete for individual cash prizes.²⁰³ The “statutory employee” doctrine is the principal means by which states determine whether a person, purported to be an independent contractor, should nonetheless be covered by workers' compensation.²⁰⁴ The statutory employee doctrine is designed to prevent employers from evading the obligation to provide workers' compensation insurance by using independent contractors rather than employees.²⁰⁵ To determine whether the employee is an independent contractor courts generally rely on the “right of control” test, the “relative nature of the work” test, or the “economic realities” test.²⁰⁶

The right of control test focuses on the power of the employer over the worker by assessing the extent of control that, by agreement, the master may exercise over the details of the work.²⁰⁷ It also looks at whether the employee is engaged in a distinct occupation or business, the kind of occupation, the skill required to do the job, whether the employer or workman supplies the tools necessary to do the job, the length of time for which the person is employed, the method of compensation (whether by the time or by the job), whether the work is part of the regular business of the employer, whether the parties believe they are creating a master/servant relationship, and whether the principal is a business.²⁰⁸

A second test commonly used by courts to determine whether an employee is an independent contractor, and thus not eligible for workers' compensation, is the “relative nature of the work” test.²⁰⁹ The relative nature of the work doctrine focuses on the nature of the employee's work in relation to the regular business of the employer.²¹⁰ If the work is part of

203. See GARY A. UBERSTINE, *LAW OF PROFESSIONAL AND AMATEUR SPORTS* § 17.3 (2002)

204. 2 LEX K. LARSON, *LARSON'S WORKERS' COMPENSATION, DESK EDITION* §71.01 (Matthew Bender, Rev. Ed., 2018).

205. *Id.*

206. See Uberstine, *supra* note 204.

207. See Uberstine, *supra* note 204, at n. 6.

208. *Id.*

209. *Id.*

210. *Id.*

the regular course of business, as opposed to something unrelated to the business, the worker may be afforded protection.²¹¹

Finally, courts use the “economic realities” test to determine independent contractor status. In applying this test courts assess control over the worker’s duties; payment of wages; right to hire, fire and discipline; and performance of the duties as an integral part of the employer’s business.²¹²

The nature of the relationship between professional boxers and those who promote, train and manage them is often unclear. Trainers and managers generally work for the fighter.²¹³ The trainer instructs and prepares the boxer for the fight, and the manager represents the fighter in business transactions related to his career.²¹⁴ Agents and trainers are paid from the money generated by the boxer.²¹⁵ Promoters, by contrast, wield most of the power and control in the business of professional boxing.²¹⁶

A close examination of boxers’ relationships with their promoters reveals that strong arguments can be made for coverage under any of the three tests. A promotional contract is the most significant contractual arrangement for a professional boxer.²¹⁷ The promotional agreement determines the boxer’s earnings from bouts, the number of fights in which he will perform, training allowances, television exposure and the boxer’s conduct in and out of the ring.²¹⁸ Promoters are roughly analogous to ownership groups that “own” and control professional sports franchises. Though the Ali Act established some restrictions, boxers generally sign exclusive promotional contracts with promoters, giving the promoter exclusive rights and significant control over the boxers’ careers.²¹⁹ Promoters generally work with large groups of seasoned boxers, up-and-coming boxers, and “opponents,” as they build up a boxer’s career to maximize his earning potential. Given the control exercised by promoters, professional boxers are dissimilar to independent contractors, such as a plumber who comes to a customer’s house to perform a one-time repair. Instead, they better resemble professional football players who are members of a team that controls every aspect of their professional performance from training camp, to daily practices in preparation for games, to performance in actual games, to rehabilitation of injuries sustained in games or during practices. In essence, professional boxers work for promoters, and should thus fall within the traditional definition of “employees” for purposes of workers’ compensation.

The second potential impediment to workers’ compensation claims by professional boxers concerns the definition of an accident for purposes of workers compensation statutes. In most jurisdictions, “an accident” is defined as “a sudden unexpected occurrence,” a definition that, at first glance, appears restricted to a negligence claim based on an unforeseen event. Indeed, many workplace injuries are the result of negligence, frequently workers’ carelessness in the performance of job duties. Further, injuries inflicted intentionally by co-workers often fall outside of their job-assigned responsibilities.²²⁰ However, while intentional conduct by a fellow employee can preclude many claims, whether the injury was

211. *Id.*

212. Michelle M. Lasswell, Note, *Workers’ Compensation: Determining the Status of a Worker as an Employee or an Independent Contractor*, 43 *DRAKE L. REV.* 419, 422-423 (1994).

213. See Jeffrey S. Fried, *The Sweet Science, Legally Speaking (Professional Boxing)*, 14 *J. LEGAL ASPECTS SPORT* 75, 90-93 (2004).

214. *Id.* See also, Neiman, *supra* note 102.

215. See Fried, *supra* note 214.

216. See Fried, *supra* note 214 pp. 81-90.

217. See Fried, *supra* note 214.

218. See Fried, *supra* note 214, at 81-87.

219. See Fried, *supra* note 214, at 65-66.

220. See *Schutt v. Lado*, 138 Mich. App. 433 (Mich. Ct. App. 1984) (holding that assault, battery and false imprisonment were unrelated to the claimant’s employment and thus fell outside of the exclusivity provision of the workers’ compensation statute).

caused by the intentional conduct of a co-employee has never been a defense to all workers' compensation claims. Rather, whether an intentional injury is covered by workers' compensation focuses on the nature of the work. For example, a security guard injured from an intentional battery by a thief is nonetheless eligible for benefits under workers' compensation because the nature of the work requires the guard to confront danger in the form of intentional physical attacks.²²¹

The distinction between intentional and negligent conduct led to confusion in *Estate of Gross v. Three Rivers Inn Inc.*,²²² one of the few cases to consider whether professional boxers are eligible for worker's compensation protection. In *Estate of Gross* the N.Y. Supreme Court Appellate Division reversed a finding by the N.Y. Workers' Compensation Board in favor of the claimant, a professional boxer's family, when it refused a workers' compensation claim for death benefits holding that "willful intention of the injured employee to bring about the injury or death of himself or another" precluded death benefits under the statute.²²³ A similar problem arose in *Palmer v. Kansas City Chiefs*,²²⁴ an appellate opinion where a court found against a professional athlete in a workers' compensation case. In *Palmer*, a professional offensive lineman was injured while executing a trap block.²²⁵ The *Palmer* court rejected a claim for workers' compensation benefits, because the workers' compensation statute "simply does not contemplate that the deliberate collision between human bodies constitutes an accident or that injury in the usual course of such an occupation is caused by an unexpected event."²²⁶ The court's opinion in *Gross*, and the *Palmer* opinion provide some insight into difficulties faced by courts when confronted with workers' compensation claims from professional boxers.

Extending the trial courts' opinions in *Gross* and *Palmer* to their logical conclusion would preclude claims in many occupations with a high-risk injury factor that have traditionally been covered by workers' compensation. Police officers are required to protect the public by daily confronting danger and potential physical confrontations, even when off-duty. Exposure to the high possibility of intentional violence on the job has never been relied upon to deny coverage to police officers. Security personnel in banks and nightclubs are similarly situated, as are prison guards, firefighters, and others whose jobs involve carrying money.²²⁷ Being able and willing to confront almost certain danger, and in many cases intentional physical violence, can be considered a job requirement for all of those occupations. Not surprisingly, every one of those occupations is protected against such work-related injuries by workers' compensation laws.²²⁸ Importantly, *Estate of Gross* was later reversed by the New York appellate court, which held that the professional boxer was engaged in a hazardous but legally sanctioned professional sport, and was doing the job for which he was hired.²²⁹ Since there was no exception excluding the claimant from coverage, he was entitled to benefits even though the sport was dangerous.²³⁰

The trend in other sports supports the idea that professional boxers should be able to invoke workers' compensation protection for injuries suffered in the ring and during training, and should qualify for disability benefits. Professional hockey and football provide the

221. 1 LEX K. LARSON, LARSON'S WORKERS' COMPENSATION, DESK EDITION §78.01 (Matthew Bender, Rev. Ed., 2018).

222. 238 A.D. 2d 12, 667 N.Y.S.2d 71 (N.Y. App. Div. 1997) *rev'd* 92 N.Y.2d 970 (N.Y. 1998).

223. *Id.* at 15 (relying on the plain language of the statute).

224. 621 S.W.2d 350 (Mo. Ct. App. 1981)

225. *Id.* at 351.

226. *Id.* at 356.

227. See Larson, *supra* note 222, at §8.01[1][a].

228. *Id.*

229. *Gross v. Three Rivers Inn, Inc.*, 92 N.Y. 2d 970 (N.Y. 1998).

230. *Id.*

closest parallels to professional boxing. *Norfolk Admirals v. Jones*²³¹ involved a workers' compensation claim by a professional hockey player who sustained a severe shoulder injury in a fight he instigated with an aggressive player for the opposite team.²³² The claimant instigated the fight at the direction of his coach.²³³ As the defendants had argued in *Estate of Gross*, the employer argued that intentional actions by any design are not accidental, and thus not compensable.²³⁴ Upholding a workers' compensation award for the injured player, the Court of Appeals held that the claimant's injury satisfied the statutory definition of an "injury by accident" that arose "out of and in the course of his employment."²³⁵ The intentionality of the conduct did not matter to the Court of Appeals. Instead, the court focused on the fact that the injury could be traced to a precipitating event during the game (the fight that occurred on the instructions of the coach), the fact that the fight damaged the claimant's shoulder, and the fact that the damage resulted in a mechanical or structural change that resulted in his injury.²³⁶ The court's conclusion, that the injury arose in the course of employment, focused sharply on the fact that fighting is an integral part of professional hockey, and that the claimant had been injured while performing a task that was assigned by his employer.²³⁷ In fact, the evidence had established that the claimant was hired for the purpose of fighting as an "enforcer."²³⁸ Testimony from Lawrence J. Landon, Executive Director of the Professional Hockey Players' Association, established further that fighting is part of professional hockey and that the claimant had been injured while doing what he was paid to do, which was to "go get" the opposite player.²³⁹

In another case involving a professional athlete, the Virginia Supreme Court held that professional football players are not exempt from coverage under workers' compensation when they suffer injuries in a game they are employed to perform.²⁴⁰ As the defendants in *Norfolk Admirals* had unsuccessfully argued, the defendant Pro-Football Inc. similarly argued that given the "high likelihood of injury in professional football"²⁴¹ where "injuries are customary, foreseeable and expected"²⁴² such injuries cannot be deemed "accidental" under the [workers' compensation] act.²⁴³ Significantly, the defendant also warned the court that recognizing workers' compensation protection for professional football players would open the floodgates to claims from professional boxers and wrestlers for whom the object of the game was to subject the opponent to intentional harm.²⁴⁴ The court awarded benefits to the injured player despite these warnings by opposing counsel.

CONCLUSION

Despite the many legitimate objections to its very existence, professional boxing continues to be a legitimate occupation and a vital economic force in many communities across the country. Its practitioners invest vast amounts of physical capital to make a living, and, as is the case in many other industries, its management depends on this physical capital to

231. *Norfolk Admirals v. Jones*, Case No. 0050-05-4, 2005 WL 2847392 (Va. App. 2005).

232. *Id.*

233. *Id.*

234. *Id.* at 4.

235. *Id.* at 3-6.

236. *Id.* at 4.

237. *Id.* at 4-5.

238. *Id.*

239. *Id.*

240. *See Pro-Football, Inc., v. Uhlenhake*, 265 Va. 1 (Va. 2003).

241. *Id.* at 414.

242. *Id.* at 412.

243. *Id.*

244. *See Brief for Appellants at 23-24, Pro-Football Inc., v. Uhlenhake*, No. 020343, 2002 WL 32919666 (Va. June 27, 2002)

generate wealth for itself and jobs for other members of society. Legislatures across the country must reexamine the devastating consequences of disabling injuries in boxing to the health of their citizens and the health of their communities. In the absence of adequate insurance, advocates for injured fighters must begin exploring alternatives. As it has done with athletes in other sports, society must find a way to protect boxers' health, safety and welfare.