

POST-MINOR LEAGUE BASEBALL RESTRUCTURING, PLAYER LITIGATION AND NEGATIVE PUBLICITY REGARDING PAY CONTINUES

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In 2020 Major League Baseball (“MLB”) faced major financial and labor challenges in the midst of the COVID-19 pandemic. Prior to a first pitch being thrown, MLB and the Major League Baseball Players Association (“MLBPA”) had open disputes on various subjects including the number of games to be played and how to prorate compensation for an abbreviated season. The commencement of the season ended up being delayed by nearly 4 months and the number of games reduced dramatically from 162 to 60. Developments in minor league baseball (or “MiLB”) relating to economics and labor were less public, but significant for an industry with a presence in communities throughout the US. Major changes ultimately implemented by MLB have been quite consequential for the business of minor league baseball. On the other hand, a long simmering class action suit by former minor league players and recent negative publicity regarding pay evidence that labor issues remain unsettled.

The Professional Baseball Agreement (“PBA”) governing the relationship between MLB and MiLB was up for renewal at the end of the 2020 season. In the past, negotiations over extensions were mostly not protracted or contentious. As discussions beginning in 2019 carried into 2020, it became clear that this time it was going to be different. MLB wanted more transformational change in how minor league baseball operated and its relationship to the parent league. As the year 2020 unfolded, MLB suddenly faced significant, unprecedented challenges of its own resulting from the pandemic – ultimately leading to the much shorter season and without fans. The 2020 MiLB season was canceled altogether, which alone was devastating to an industry consisting of (at the time) 160 clubs located largely in smaller communities which often struggle financially even in better economic times. Heading into the final months of 2020 it became apparent MLB was going to prevail in its vision of how minor league baseball should be restructured – in particular, a material contraction in the number of minor league clubs affiliated with MLB teams by 40 (a 25% reduction), issuance of licenses directly by MLB to govern how the remaining 120 clubs would operate (which included requirements regarding stadium improvements) and the replacement of an independent MiLB organization with direct MLB oversight and control.^[1]

There were many reasons offered by MLB for seeking major change but at least publicly the theme of its messaging was player welfare. Commissioner Rob Manfred cited inadequate facilities, excessive travel, poor pay, and the issue of drafted players in MiLB who realistically won’t ever reach the majors as among the concerns being addressed. In a letter to Congress in response to growing criticism of proposed changes, Deputy MLB Commissioner Dan Halem cited goals of improving “compensation^[2], accommodations, and amenities” for minor league players.^[3] There is no debating that MLB achieved its objective of giving minor league baseball a major overhaul, which was implemented before the start of the 2021 season. But are the purported goals of the Commissioner’s office being realized? It is too early to reach final judgement but, as described below, ongoing litigation and negative media stories regarding player pay and living conditions certainly raise questions.

In 2014, attorney and former minor league pitcher Garrett Broshuis, on behalf of certain former MiLB players, sued MLB and various major league clubs in Federal Court in the Northern District of California. The complaint alleged violations of federal and state statutes regarding pay to minor league players, including minimum wage requirements.[4] There was no disputing that players were being paid below applicable minimum hourly wage rates (based on their low salaries in relation to hours worked). But MLB and its clubs have taken the position that minor leaguers were “seasonal” employees and therefore exempt – comparable to an aspiring actor serving a short-term “apprenticeship” at little to no pay. Attorney Broshuis’ initial efforts to certify a broad class of former minor leaguers was denied by the District Court, but subsequently the class was narrowed by limiting the scope of alleged wage and hour law violations and such class was approved. In the Fall of 2020, the US Supreme Court denied MLB’s request to hear its challenge to class certification in the suit.[5]

It is important to note that in 2018, during earlier stages of litigation, MLB successfully lobbied Congress for passage of federal legislation: the “Save America’s Pastime Act.” This law, which was reported to have been buried in an omnibus spending bill, exempted minor league players from the federal Fair Labor Standards Act. At the time, MLB solicited “grass roots” support from minor league baseball in getting this legislation passed (it has been reported that some in MiLB expressed resentment later when, after supporting this initiative, MLB pushed to significantly restructure how the minor leagues operated to purportedly improve player pay and conditions). In any event, because of this legislation the claims in the pending litigation are being pursued solely under *state* law (in Florida, California and Arizona).[6]

More recently, MLB can point to increases in minor league player pay, implemented before the 2021 season, as evidence it is in fact addressing issues with compensation.[7] The increases ranged from 38% to 72%. While anyone would welcome a boost in their pay at those percentages, one must consider the *level of pay*. For instances, here are the minimum weekly salaries for those at the higher levels of the minor leagues *after the increases*: \$600 for Double A and \$700 for Triple A. More significantly, players are only paid *during the season*, which is up to 5 months – not in the offseason. After the increases were announced, Mr. Broshuis expressed these sentiments: "It's good to see that MLB is finally serious about increasing salaries. They've been ignored for way too long and an increase is long overdue. At the same time, even with this increase, the majority of players are still going to be paid at a level that's below the poverty line. And this increase doesn't do anything about the players who are required to report to spring training and extended spring training, and who aren't paid at all during those work periods," he said. "This is an encouraging step, but more work needs to be done, without a doubt." And so this former minor leaguer-turned lawyer continued with the class action litigation.

Defenders of the current pay system cite bonuses that young prospects receive when drafted. A bonus can serve as a “nest egg” for players to make up for low wages and give them a financial “bridge” until they reach the majors. Critics point out, however, that only those at the top of the draft receive lucrative bonuses. And many never reach the major leagues and an eventual “pay day.” Defenders also refer to the Commissioner’s remarks during MiLB negotiations, specifically his stated objective of improving the overall plight of minor leaguers – not only in terms of compensation but also *accommodations and amenities*.[8] However, as described below, this season there have been negative stories of players’ housing and other living

conditions. These accounts call into question MLB's progress in those areas. Before considering these media reports, first one should not lose sight of the fact that the MiLB restructuring resulted in 40 less teams – a 25% reduction – and thereby materially less available roster spots on MLB-affiliated minor league clubs. Those not on a team either play on independent teams at even lower pay or have left professional baseball altogether.[9]

For MiLB players on the remaining 120 affiliated teams, problems with living conditions made the headlines during the 2021 season. One investigative piece in the *The Athletic* centered on the issue of inadequate housing.[10] Generally, the low salaries of minor league players, even after the recent increases, limits what they can afford. The image of minor league baseball played in small communities throughout the US is largely correct and many MiLB clubs facilitate local families offering boarding in their homes at little or no cost (COVID has complicated this option though). However, this is not available to many minor leaguers, as these media reports reflect. Exacerbating the affordability issue is the fact that there are clubs in medium or larger-sized cities with a much higher cost of living (examples include Nashville, San Antonio, Las Vegas, Rochester, Indianapolis, Brooklyn, Charlotte, Tampa and Sacramento). Under the existing pay scale, the struggle to land adequate housing is magnified in these markets. Another significant issue is the temporary and uncertain nature of the housing need – the season is less than half a year, a player does not know where he will be assigned until towards the end of spring training, and during the season a player can be moved between affiliated teams with little or no notice. Any employee, let alone a professional athlete, would face challenges renting in this context.

Illustrating the impact of these circumstances, *The Athletic* article cites examples of inadequate to deplorable living conditions. Many players are reported to be living together in very crowded quarters. Some sleep in their cars or use them for storage given their cramped housing. The piece cites players who sleep on air mattress, rafts or even lawn chairs. Another challenge can be transportation - some players who do not even own a vehicle reportedly have been sighted (in uniform) walking to and from games along the highway.

Returning to the issue of pay, there was a very recent player protest in a minor league game – a bold move for players aspiring to MLB status. During a High A level game between the Phillies' Jersey Shore BlueClaws and Mets' Brooklyn Cyclones, individuals on both teams wore wristbands reading “#FairBall.”[11] The players also issued this statement to the media: “Minor League baseball players have been severely underpaid and silenced for decades Today we are wearing #FairBall wristbands to show our solidarity with every fan and ally who is working to change that It is time for every Minor Leaguer to be paid a living wage.” The players were backed in this effort by “Advocates for Minor Leaguers,” a group formed in 2020 to give a collective voice to players since they are not part of the MLBPA or independently unionized.[12]

MLB responded to unfavorable media reports during the 2021 season by saying it has implemented many positive changes in a short amount of time and by emphasizing its ongoing efforts to improve working conditions. In its statement reported in *The Athletic* article, MLB cites its Professional Development League (“PDL”) contracts with minor league clubs: “we firmly expect clubs to seek reasonably priced housing options, even in challenging markets with inadequate supply [citing obligations under the PDL contract]”. Minor league clubs are not

responsible for paying their players, their affiliated big-league clubs are. But on other aspects of player living conditions, MLB seems to be placing responsibility firmly on these clubs under the restructured minor league regime.

Recently MLB has publicized what it views as the successes in the 2021 minor league season.^[13] MLB.com references positive assessments (and bullish projections) by Morgan Sword, MLB's Executive Vice President for Baseball Operations, including this statement: "The 2021 season was the best we've ever done in terms of providing an environment conducive to professional development. We are in Year 1 of what's going to be some pretty significant steps forward here in the next couple of years." Among the positive developments Swords attributes to the "significant structural overhaul" in MiLB are: geographic realignment and schedule adjustments to reduce travel, upgrades to ballparks, improved facilities and amenities for players, and experimental rule changes. Many minor league players and other league constituencies would not agree with such a positive overall assessment. Even Sword concedes there is room for more improvement.

In conclusion, minor league baseball has faced major changes over the past year – economic and structural. In pushing for change, MLB's publicly stated reasons for pushing change were rooted in improving conditions for players. This effort is a work in progress. MLB did raise pay across the board for minor league players. For non-salary benefits like housing, the League appears to be relying upon MiLB teams, a majority of whom have financially struggled from the canceled 2020 season and ripple effects from the pandemic.^[14] But MLB is taking credit for certain improvements in conditions this past season. Regardless of these developments and their overall impact of change, it is clear the class action litigation seeking a living wage for future major leaguers will continue grinding away.

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[1] The author is a part owner of a minor league baseball team which is one of the 40 teams no longer affiliated with an MLB team as a result of the restructuring described in this article.

[2] Players on minor league teams affiliated with MLB clubs are employees of such organization, and their salaries are paid by them and not the MiLB club.

[3] Baer, B. (2019, Nov. 21). Rob Manfred Explains Reasoning Behind Proposal To Cut 42 Minor League Teams. *NBC Sports*. Retrieved from <https://mlb.nbcsports.com/2019/11/21/rob-manfred-explains-reasoning-behind-proposal-to-cut-42-minor-league-teams/>

[4] See docket in *Senne v. Office of the Commissioner of Baseball*, et al; Case No. 3:14-cv-00608; United States District Court, N.D. Cal. (Honorable Joseph C. Spero).

[5] Acquavella, K. (2020, Oct. 5). Supreme Court Clears Way For Class-Action Lawsuit From Minor League Players Being Paid Below Minimum Wage. *CBSsports.com*. Retrieved from <https://www.cbssports.com/mlb/news/supreme-court-clears-way-for-class-action-lawsuit-from-minor-league-players-being-paid-below-minimum-wage/>

[6] Mitchell, Williams, Selig, Gates & Woodyard. (n.d.). Saving America's Pastime Means Not Paying Minor League Players. *JDSupra*. Retrieved from <https://www.jdsupra.com/legalnews/saving-america-s-pastime-means-not-45220/>

[7] Associated Press. (2020, Feb. 14). MLB to Raise Minimum Salaries for Minor League Players in 2021. *Sports Illustrated*. Retrieved from <https://www.si.com/mlb/2020/02/14/mlb-minor-league-player-salary-increases-2021>

[8] See Note 2.

[9] MLB might refute this point by arguing that as a result of the contraction, the MiLB player talent pool is less "diluted" from lesser players within its ranks who are unlikely to ever progress to the major leagues.

[10] Ghiroli, B. (2021, Aug. 5). Cockroaches, Car Camping: Why Are Minor-Leaguers Living In Squalor? *The Athletic*. Retrieved from <https://theathletic.com/2750280/2021/08/05/cockroaches-car-camping-poverty-wages-why-are-minor-leaguers-living-in-squalor/?redirected=1>

[11] Ghiroli, B. (2021, Sept. 18). Phillies, Mets Minor Leaguers Protest Pay By Wearing #Fairball Wristbands. *The Athletic*. Retrieved from <https://theathletic.com/news/phillies-mets-minor-leaguers-protest-pay-by-wearing-fairball-wristbands/naDLXKPrAGED>

[12] Media coverage of the issues that minor leaguers face and this advocacy group's efforts has included The Washington Post. Janes, C. (2021, July 16). MLB Overhauled The Minors This Season. Some Advocates Say It Hasn't Been Enough. *The Washington Post*. Retrieved from <https://www.washingtonpost.com/sports/2021/07/16/minor-league-baseball-advocacy-mlb-overhaul/>

[13] Feinand, M. (2021, Sept. 23). Revamped Minor Leagues Enjoy Historic 2021. *MLB.com*. Retrieved from <https://www.mlb.com/news/minor-league-baseball-has-successful-2021-season>

[14] The Houston Astros announced earlier this season they are paying for housing for its minor league players. A few other teams have publicly announced their efforts or plans to support players. It will be interesting if this becomes a prevailing trend over time. Associated Press. (2021, May 12). Houston Astros To Provide Furnished Housing To Minor League Players. *ESPN.com*. Retrieved from https://www.espn.com/mlb/story/_/id/31433955/houston-astros-provide-furnished-housing-minor-league-players