What Insurance Has To Do With Baseball's Most Expensive Cups of Coffee

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Gabriel Moya was seventeen when he signed a minor league deal with the Arizona Diamondbacks in 2012. By 2017, Moya had developed into a promising prospect with real hopes of making it in the bigs. That year, the young pitcher struck out 87 batters in 57.1 innings of relief, posting 24 saves, an ERA of 0.77 and a WHIP of 0.771 while playing with the D-Backs' AA club in Jackson and the Twins' AA franchise in Chattanooga.[i] While this sounds like the beginning of a baseball fairy tale, people familiar with the grind of minor league baseball know that Gabriel's road ahead was far from certain. It is estimated that only 10% of all minor league players will play even one game in the Majors.[ii] If Moya was going to hit paydirt in the major leagues, he would need to stay hot and have things break just right.

Bumpy Roads and Baseball Dreams

Many people assume that all professional athletes make millions. Not so for minor league ballplayers – or even young players struggling to prove themselves over their early years in the big leagues. It is not hard to find horror stories told by minor leaguers about the not-so-glamorous conditions endured while chasing their dreams. Dirk Hayhurst wrote that while playing Low-A ball, he mostly ate PB&J because it wouldn't spoil, since he did not have a refrigerator at the time.[iii] While playing Single-A, some players were described as "spread killers" because they ate more than their rationed amount, leaving other players to go hungry.[iv] In Double-A, players passed a hat around so a teammate could travel back to the Dominican Republic to see his newborn baby.[v] Even in Triple-A, he slept on an air mattress in the living room, while another player slept on the floor in a sleeping bag.[vi] These anecdotes don't even account for the players who are married with kids, those players who work third and fourth jobs, or the international players who arguably suffer more due to lack of familial connections. (A charity called "Adopt A Minor Leaguer" will allow you to sponsor a minor league player and support them,[vii] including donating 'Chipotle Gift Cards.'[viii])

In 2023, Major League Baseball ratified a collective bargaining agreement that provided a pay increase for minor league players.[ix] Minimum salaries increased from $4,800 to $19,800 for rookie ball; $11,000 to $27,300 at Single-A; $13,800 to $27,300 at Double-A; and $17,500 to $45,800 at Triple-A.[x] Yet even these higher salaries leave many players wanting. It's hard for many to get by making $30,000 a year and spending 100 days of it on a bus[xi] travelling from town to town while trying to develop the truly elite athletic skills needed to make it in the Majors. The spread between these minor league salaries and what potentially awaits in the bigs is pretty huge: under the new CBA, the minimum major league salary is $740,000 in 2024,[xii] with the average salary now $4.5 million.[xiii] For those on the cusp, with tons of talent but still perhaps only a 10% shot at cashing in, it is reasonable for them to want to lock in a certain cash return.

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Investing in Player Futures

That uncertainty and spread has given rise to companies such as RockFence Capital, LLC ("RockFence"); Fantex Inc. ("Fantex"); and Big League Advantage, LLC ("BLA") – service loan providers that cater to professional athletes. These companies offer players an upfront payment of hundreds of thousands, even millions, in exchange for a percentage of the player's future career earnings. Basically, the lenders are placing a bet on the player's chances of making it in the major leagues. If the player never makes it in professional baseball, then he keeps the money and never has to repay the loan. If he succeeds, then the loan is repaid over time plus profits to the lender out of the player's (substantial) salary.

Per a Fantex statement in 2016, it advanced between $2-4 million to certain players in exchange for promises to pay back 10-12% of their lifetime professional earnings, on and off the field.[xiv] Fernando Tatis Jr, received a $500,000 loan from BLA when he was in the minor leagues, and now that he has made it big with the Padres – he signed a 14-year $340 million contract in 2021 – BLA will receive back about $27 million over the span of that deal.[xv]

Some have called these arrangements predatory,[xvi] but it is not hard to see why they are desirable for both sides. From the prospect's perspective, there are two ways in which these deals make sense. One is a player that uses the money to enhance his chances for a career as a major league ballplayer – spending it on training, nutrition and other investments likely to enhance his chances of success as a professional athlete – something that many players cannot afford on an annual salary of $27,300. Another is a player that uses the money as a hedge in the event he does not end up one of the 10% of players that make it to the major leagues. If it turns out that the player's baseball dreams do not come true, a $500,000 advance wisely invested can be used to pay for a belated college education or to start a small business once the cleats are hung up. That is a far better position for the significant number of players that never make it out of the minors and find themselves

starting over in their mid- to late-20s with no advanced education or seed money for life after baseball.

Even for Tatis, the deal made sense, although it did turn out to be very expensive. Tatis spent six years in the Minor Leagues[xvii]– two with a rookie ball salary of about $5,000 and three in AA being paid $14,000 – with no guaranty that he would ever make it to the Majors. While the $27 million cut of his salary that will go to BLA spread over 14 years is quite a sum, it still pales in comparison to the $313 million that Tatis will be paid by the Padres, plus many millions more in endorsement deals.

From the lender's perspective, they underwrite a portfolio of investments knowing that only some of them are going to be profitable (i.e., knowing that some of the players will not make it to the big leagues and will not repay the money advanced), but expecting that the ones that are profitable will more than offset those losses. BLA, for example, uses a proprietary method to evaluate players to identify a certain type of prospect they want to invest in – a "Ben Zrobist, moneyball type guy."[xviii]

Insurance as Protection on Lenders' Investments

On occasion, a player's path to the major leagues is undermined by injury. To protect against that risk, investors like BLA typically purchase insurance policies on the athletes that insures against their injury or death. Such insurance is not uncommon, especially in professional athletics, and there are a variety of insurance companies eager to accept premiums in exchange for accepting the risk of loss. In insurance arrangements with investors such as BLA, the insurance company promises to pay the outstanding balance on the loan or investment if coverage is triggered.

With these contracts in place, the various parties are all hoping for the same thing – a healthy player making it big as a major leaguer. But what happens if these interests come out of alignment? This brings us back to Gabriel Moya and a lawsuit playing out in California Federal court – *RockFence Baseball, LLC v. Certain Interested Underwriters at Lloyds, et al* 23-cv-01211.[xix]

Insurance Coverage Litigation – Gabriel Moya Case Study

RockFence entered into a player loan agreement with Moya on March 9, 2018, a year when he bounced between the Minnesota Twins and their AAA farm team in Rochester, New York. Under that agreement, RockFence loaned Moya $3,159,450 in exchange for a promise to repay the loan plus interest and fees out of his earnings as a major league ballplayer. If Moya never made it as a professional athlete and was unable to repay the loan with baseball earnings, RockFence would take a loss and write off the debt.

This loan agreement includes accident and sickness permanent and total disability insurance policy

To secure its investment, RockFence purchased annual accident and sickness permanent and total disability insurance policies, including a policy purchased from Underwriters at Lloyd's, London ("Lloyd's") covering the period from March 25, 2019 to March 15, 2020 (the "Policy"). Pursuant to the Policy, if Moya suffered an injury during the policy period that prevented him from playing professional baseball, Lloyd's promised to pay RockFence up to $4,947,514 or the balance of the loan, whichever is less. Specifically, coverage would be owed if Moya suffered an injury that directly culminated in "Permanent Total Disablement" of Moya – defined as "continuous Total Disablement" for twelve months with "no likely hope of improvement, sufficient to Participate ever again in [Moya's] occupation." The Policy defines "Total Disablement" as "complete and total physical inability to Participate" as a "professional baseball player." In turn, the Policy defines "Participate" as being "on the active roster of a professional sports team for which [Moya] is contractually obligated to play, and/or is dressed, and/or is available and/or is physically able to practice or play for such team." The Policy further identifies the "professional sports team for which the Insured is contractually obligated to play" as the Minnesota Twins.

Moya appeared in 35 games for the Twins in 2018, including 6 starts, posting a 3-1 record, a 4.71 ERA and 31 strikeouts over 36.1 innings. In 2019, however, things took a sharp turn for the worse. On February 23, 2019, Moya suffered an injury to his left shoulder during spring training. After some treatment in March, Moya started throwing bullpen sessions in early April, pitched a scoreless inning in a rehab appearance on April 21 and was activated of the 10-day injured list on April 24, 2019. Moya spent the first five months of the 2019 regular season in the minors, posting a 5.56 ERA and 55 strikeouts over 45.1 innings with Twins' AAA and AA squads. Then, on August 23, 2019, after striking out the first two batters he faced, Moya suffered another shoulder injury. He underwent a series of shoulder surgeries in September 2019, January 2020 and July 2020, seemingly dashing his chances of ever making it in the major leagues. On September 23, 2020, RockFence declared Moya permanently disabled, submitted a proof of loss to Lloyd's on June 14, 2021, and requested payment under the Policy.

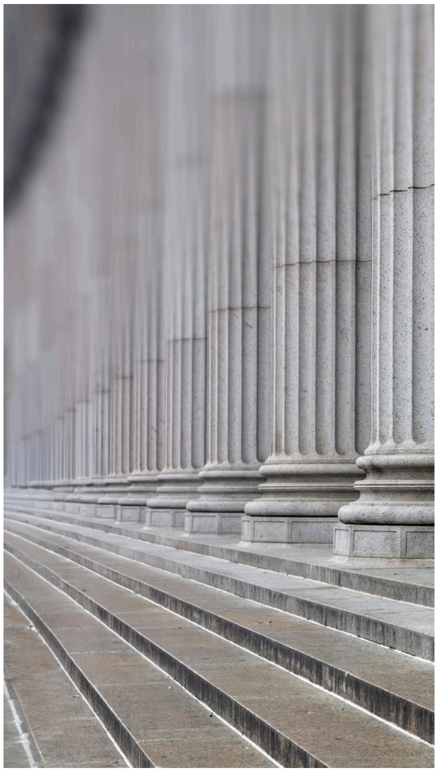
Moya never returned to play in the major leagues, but he did try to get there. In June 2021, he signed with the Lancaster Barnstormers, one of a handful of teams playing in an "independent league" outside the MLB / MiLB umbrella. Tickets to games in this league are under $15 and games are played before a few thousand fans each night. Moya pitched in 44 games with the Barnstormers in 2021, striking out 51 batters over 45.2 innings of relief – posting an ERA of 4.14. In 2022, Moya moved to another team in the same league – the Kentucky Wild Health Genomes – pitching in just 16 games with an ERA of 10.34.

On June 30, 2022, Lloyd's denied coverage on two grounds. First, that Moya's injury occurred in February 2018, prior to the Policy's inception in March 2019 (meaning that the insurance company that sold the prior year's policy would have to pay). Second, Lloyd's contended that Moya was not "Permanently and Totally Disabled" pursuant to the terms of the Policy. Specifically, Lloyd's asserted that a player's ability to play "professional baseball" of any sort (i.e., to be paid any amount of money to play baseball at any level) means that he is not "disabled," and that RockFence was entitled to nothing under the Policy because Moya returned to the field for the Barnstormers in the summer of 2021. Not surprisingly, RockFence disagreed, contending that the whole point of the arrangement was to insure the risk that Moya could possibly pitch in the major leagues, noting that the Policy specifically mentioned the Minnesota Twins as the "professional sports team for which the Insured is contractually obligated to play."

The dis-alignment of the parties' interests at this point could not be more stark. RockFence clearly had lost its gamble on Moya's baseball career, as there was zero chance that he would ever earn enough money on the mound to repay his $4,000,000 debt. Because Moya had suffered an injury for which RockFence purchased insurance, RockFence's focus was on the insurance recovery. For its part, Lloyd's focus was on the fine print of its insurance policy – looking for whatever excuse it could muster to save on a $4,000,000 claim payment. And there was Moya, dreaming of a miracle comeback while playing in front of a few hundred spectators in the Amish country of Southeastern Pennsylvania. Millions of dollars and big league dreams all up in the air like a swirl of characters from varying Springsteen songs.[xx]

On February 12, 2023, RockFence sued Lloyd's in the Superior Court of California in Los Angeles. Lloyd's filed a motion seeking to have the case resolve via a mediation outside the reach of the court's

The Court determined that the arbitration provision is triggered when Defendants disagree with the conclusion



jurisdiction, pursuant to an arbitration clause in the Policy. In deciding that motion, the Court agreed to send the matter to arbitration, but made several important rulings that will frame the consideration and resolution of the parties' dispute in that forum.

The Court granted the motion to compel arbitration but narrowly circumscribed the scope of the arbitration.[xxi] The Court noted that it is undisputed that Moya is capable of playing for teams outside of the MLB umbrella, and that "professional" at least includes any MLB or MiLB team. Thus, the Court held that the arbitrators could decide whether Moya was capable of playing for a MLB or MiLB team despite his injury, in which case he would not be deemed "disabled" under the Policy. If the arbitrators determine that Moya was incapable of playing on an MLB roster, then the case will return to the Court, where the judge will determine the meaning of "professional baseball" and whether Moya's appearances for the Barnstormers let Lloyd's off the hook for the amount owed under the Policy.[xxii]

So the question of what constitutes "professional baseball" in this case will remain unanswered for the time being. Certainly, there is zero doubt in the minds of the folks at RockFence – who specifically bought insurance against the risk that injury would block Moya's path to a big league-sized payday. As a matter of contract law and fair business practices, that is the correct analysis. And yet, there are thousands of guys from Lancaster to Spokane spinning tales of their "cup of coffee" in the bigs that might beg to differ. So who pays for the most expensive cups of coffee in "professional" sports? Stay tuned.

Footnotes

[i] Baseball Reference, https://www.baseball-reference.com/register/player.fcgi?id=moya--000gab
[ii] Dickey, Jack, "Future Considerations: Why Ex-MLB Pitcher Michael Schwimmer Is Investing In Minor League Longshots. Sports Illustrated, September 4, 2018. https://www.si.com/mlb/2018/09/04/michael-schwimer-big-league-advance-minor-league-baseball
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[iv] Id.
[v] Id.
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[vii] https://adoptaminorleaguer.com/
[viii] https://adoptaminorleaguer.com/chipotle-gift-card-program/
[ix] Evan Drellich, "Guide to minor league baseball's first CBA: Everything you need to know" The Athletic, April 3, 2023. https://theathletic.com/4377736/2023/04/03/minor-league-baseball-cba-union/
[x] David Waldstein, "Minor League Salaries Will Double Under New Deal" New York Times, March 31, 2023, https://www.nytimes.com/2023/03/31/sports/baseball/minor-league-union.html
[xi] Benjamin Hill, "For PCL teams, the miles add up" https://www.milb.com/news/gcs-64114202
[xii] J.J. Cooper, "Details From The New 2022-2026 Collective Bargaining Agreement" Baseball America, May 9, 2023, https://www.baseballamerica.com/stories/details-from-the-new-2022-2026-collective-bargaining-agreement/
[xiii] Ronald Blum, "MLB average salary rose 7% to record $4.5M last year but several teams cutting payroll in 2024" https://apnews.com/article/mlb-average-salary-d7df2745aee8dd3dd59bf7a7c747841b
[xiv] https://fantex.com/downloads/Fantex-Inc.-Announces-10-New-Athletes.pdf
[xv] David Keech, "Big League Advantage: The $400 Million Investment Fund That Gives Athletes Cash In Exchange For Future Earnings", OnFocus, June 29, 2023 https://www.onfocus.news/big-league-advantage-the-400-million-investment-fund-that-gives-athletes-cash-in-exchange-for-future-earnings/#:~:text=Take%20Fernando%20Tatis%20Jr%2C%20for,estimated%20%24500%2C000%20upfront%20cash%20payment.
[xvi] Dave Hannigan, "Big League Advance is a Major League Scam targeting the prodigious and vulnerable" The Irish Times, July 21, 2021, https://www.irishtimes.com/sport/other-sports/big-league-advance-is-a-major-league-scam-targeting-the-prodigious-and-vulnerable-1.4625721
[xvii] https://www.milb.com/player/fernando-tatis-jr-665487
[xviii] Sheryl Ring, "CEO of Big League Advance Makes his Case" Fangraphs, April 23, 2018. https://blogs.fangraphs.com/the-ceo-of-big-league-advance-makes-his-case/
[xix] RockFence Baseball, LLC v. Certain Interested Underwriters at Lloyds, et al 23-cv-01211
[xx] Compare Bruce Springsteen, "Glory Days" (Columbia 1984) ("I had this friend, was a big baseball player, back in high school. He could throw that speed ball by you; make you look like a fool. Saw him the other night in this roadside bar; he was walkin in I was walking out. We went back inside and had a few drinks, but all we kept talkin about was glory days.") with Bruce Springsteen, "Atlantic City" (Columbia 1982) ("Well I've been looking for a job but it's hard to find. Down here there's just winners and losers but don't get caught on the wrong side of that line.").
[xxi] Notice of Motion and Motion to Compel, ECF Dkt. 12 at 14.
[xxii] Id at 12.

Anderson Kill practices law in the areas of Insurance Recovery, Commercial Litigation, Environmental Law, Corporate and Finance, Antitrust, Banking and Lending, Bankruptcy and Restructuring, Construction, Foreign Investment Recovery, Employment and Labor Law, Captive Insurance, Intellectual Property, Corporate Tax, Hospitality, and Health Reform. Recognized nationwide by Chambers USA, and best-known for its work in insurance recovery, the firm represents policyholders only in insurance coverage disputes – with no ties to insurance companies and has no conflicts of interest. Clients include Fortune 1000 companies, small and medium-sized businesses, governmental entities, and nonprofits as well as personal estates. The firm has offices in New York, NY; Boston, MA; Denver, CO; Los Angeles, CA; Newark, NJ, Philadelphia, PA; Stamford, CT; and Washington, D.C.

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