

## **ROUND TWO**

### ***BEHIND THE MASK***

#### **GENERAL FACTS**

The sports industry and general public have learned a great deal about concussions, their dangerous side effects, and the importance of prevention over the past decade. Not surprisingly, the discussions of concussion liability as well as concussion-related sports lawsuits have also increased. These lawsuits have ranged from high-school football players suing helmet manufactures to retired National Football League players against the League. However, athletes are not the only ones susceptible to concussions during athletic competition. Baseball umpires also suffer head injuries while umpiring home plate, specifically while calling balls and strikes. Concussions suffered by umpires are due to foul balls, broken bats, and 100 mph fastballs missed by the catcher.

#### **The Parties**

##### **Wilson Sporting Goods Company**

The Wilson Sporting Goods Company, a subsidiary of Amer Sports Corporation, is a Chicago-based business which is a leading equipment supplier across a variety of sports. The company has been in business since 1913 and the company has been a leader in protective gear for a number of years. Wilson has been especially present within the game of baseball. Wilson designs, manufactures, and distributes variety equipment including gloves, balls, protective gear, accessories, and uniforms.

Over the last several years, Wilson has become the exclusive and official protective equipment provider to Major League Baseball (MLB) for its umpires. Wilson supplies the League's umpires with protective gear including masks (with wrap-around padding), chest protectors (with hard shells), and shin guards (with thicker padding and hard ankle plates). In the creation of their equipment, Wilson has worked with Major League Umpire and current World Umpires Association (WUA) President, Joe West, to design and patent some of the most advanced umpiring gear on the market. As a result, it is no surprise that a majority of the league's umpires choose to wear the Wilson manufactured chest protector, while two out of every three MLB umpires currently use Wilson facemasks during Major League games.

In 1996, Wilson debuted its single bar, lightweight steel umpire mask that quickly became widely regarded as the best mask on the market. But due to the sharp decline of the United States steel industry, Wilson was forced to change its steel supplier for the steel bars used in the mask in 2002. The new supplier supplied much cheaper steel, but at

a far lower quality. While Wilson did not foresee see any increased safety concerns, injuries by umpires skyrocketed.

Following the 2013 season, Wilson again had to change its steel supplier, diminishing the quality of the steel masks even further. In response, Wilson developed the new titanium frame mask for 2014 but this has only seen an even greater uptick in concussions.

Just prior to the last round of collective bargaining with the WUA in December 2009, Wilson and MLB agreed to a five-year contract (ending with the 2014 season) to be the exclusive protective equipment supplier to umpires working MLB games. As a part of this agreement, Wilson is the only logo that umpires may display in terms of protective equipment with the exception of footwear.

### **World Umpires Association**

The WUA is a union organization representing MLB umpires in their labor negotiations with MLB. The WUA was certified by the National Labor Relations Board in 2000 as a bargaining agent and quickly took over just before the 2000 MLB season, replacing the previous union organization, the Major League Umpires Association. The WUA represents MLB umpires, two AAA minor leagues, and international umpires working MLB events such as the World Baseball Classic, which are covered in the CBA. Major League umpires earn anywhere from \$90,000.00 to \$400,000.00 based on their Major League service time and special events worked

The WUA is charged with the chief responsibility of promoting the interests and safety of its members -- the umpires. In light of the increase number of concussions suffered by MLB umpires during the 2014 season, these concerns have grown even more paramount. Though the WUA itself has not yet brought formal suit against Wilson or MLB during 2014, at least one of its individual members already has previously. MLB umpire Ed Hickox suffered a concussion in 2005 while wearing a Wilson-manufactured mask that was allegedly defective. As a result, he filed suit against Wilson for his injuries related to the allegedly defective product. Hickox brought another claim in 2009 against Wilson again for a concussion suffered due to a defective Wilson facemask. In both matters, settlements were sealed by order of the court.

### **The Conflict**

At the time the sponsorship deal was originally reached, Wilson was the premier protective equipment available to baseball umpires, and Wilson goods were already worn by more than 90% of all professional umpires, making the sponsorship package a natural fit. While Wilson expected to have a prolonged negotiation with MLB for this exclusive sponsorship, MLB did not negotiate much and Wilson secured the exclusive right to

supply MLB umpires with protective equipment, as well as the exclusive right to have only the Wilson logo showing on MLB umpires uniforms and equipment.

In its ongoing efforts to ensure the safety of their umpires, Wilson often conducts independent testing of the equipment to evaluate its effectiveness and to address any preventive measures that might need to be taken. Recently though, internal testing reported that several concussions were experienced with the Wilson's facemasks, raising concerns of safety. The tests were eventually leaked to the press and have now been seen by the WUA.

While MLB has expressed a desire to continue the agreement with largely similar terms, MLB has put the brakes on finalizing the extension of Wilson's sponsorship due to concerns raised by their umpires and the threats of a potential lawsuit against MLB for workplace concussions and safety concerns regarding Wilson equipment. The terms of the agreement between MLB and Wilson requires Wilson to indemnify MLB for any claims brought against MLB relating to Wilson equipment.

As part of the league's collective bargaining process, MLB negotiates with the players union and must reach a separate labor agreement with the umpires. Along with salary and other key terms, the agreement determines the official umpire uniform, including the protective gear to be worn and licensed.

MLB is primarily concerned with ensuring the safety of the umpires and limiting the number of injuries experienced in the course of play. By maintaining an official equipment endorsement, MLB is interested in providing their umpires the best gear on the market, both in terms of protection and comfort. Normally, MLB would negotiate for the WUA as to licensing and equipment use with input from the WUA Executive Leadership. But since injuries have risen with use of the new titanium mask the WUA has exercised its right to negotiate their own terms and conditions of a new equipment deal (specifically a new umpire mask) for its members with final approval by MLB.

Given this, MLB has agreed that within the certain parameters it will approve of a new mask deal presented by the WUA as it is concerned with its legal exposure. This exception is allowed because there is an opt-out clause in the Collective Bargaining Agreement (CBA) between WUA and MLB that the WUA may exercise as a negotiation tool when its members are injured during MLB games while using official equipment. Since WUA umpires were injured during MLB games while using official Wilson equipment masks, MLB and WUA have agreed that the WUA has the right to negotiate a new umpire mask agreement with Wilson in an effort to settle the matter outside of court.

## **Issues to be Negotiated**

Although no individual injuries or claims have yet been filed, the WUA has begun discussions with Wilson to solve this concussion problem. These discussions have been contentious at times, and the WUA has discussed a variety of claims against Wilson under products liability, fraud, personal injury, and a variety of other consumer protection statutes at both the state and federal level. The WUA has also indicated that it may be forced to make claims against MLB for the failure to provide adequate safety equipment under applicable OSHA laws (29 CFR Parts 1910, 1915, 1917, 1918 and 1926) unless this problem can be addressed quickly.

In an attempt to avoid letting differences over the liability issues paralyze the negotiations, the parties at the table today have agreed to put issues of liability for past conduct to the side and limit today's negotiation to the shape of the relationship between Wilson and WUA going forward, including: (1) the safety equipment umpires will use in the 2015 season; (2) the terms of any new sponsorship agreement, including the level of exclusivity, if any, Wilson would enjoy in the new endorsement agreement; (3) the compensation umpires might receive for endorsement of Wilson equipment or the rights the umpires may have to endorse other brands; and (4) future cooperation between the parties in monitoring, developing, and testing equipment to assure state-of-the-art safety in the future. The parties believe that if they can reach agreement on these issues, it will pave the way for a more amicable discussion of the liability issues.

### **Safety of Future Equipment**

In order for a deal to be reached, one critical area to be discussed is the overall safety and expectations of the equipment being supplied to MLB umpires. MLB has stressed to both parties that it is interested in providing umpires with the best equipment available, ensuring that they are adequately protected.

The WUA is chiefly concerned with the safety of its members when it comes to the type of equipment being used under the current collective bargaining agreement. Although the WUA is not partial to any one manufacturer and is currently subject to the league's agreement with Wilson, they remain focused on providing their umpires with the best equipment available with the highest probability of preventing serious injuries—regardless of the manufacturer.

The current practice is that each season, each of the 96 active MLB umpires receive up to four sets of equipment (mask, chest protector, and shin guards) directly from Wilson. Typically, umpires keep two masks, and provide the remainder to minor league or amateur umpires. The WUA has been bringing the issue of faulty and inadequate equipment supplied by MLB to WUA members over the last four seasons. But after seeing more than twenty of its members suffer diagnosed concussions while

wearing the newest Wilson masks, the Union has decided this issue must be addressed urgently.

Ultimately, the WUA and Wilson need to find common ground on the expectations of the equipment options for the umpire so that the WUA understands the risk and likelihood of future injuries to its members for the upcoming term of a new collective bargaining agreement.

### **Terms of Sponsorship**

Currently, MLB has agreed to make Wilson the exclusive equipment provider for league umpires. However, Wilson is not the only manufacturer working in baseball. There are several other major manufacturers who create and design quality baseball equipment, including the protective gear that is worn by umpires. Wilson has remained a leader among this industry, due in part to their role with the league, creating a world-class product line that competes with the best of the equipment available.

MLB has previously chosen to endorse Wilson as its exclusive equipment provider based on their premier status in the industry. In reaching an official endorsement deal, the league is interested in providing the best equipment to their umpires and a finding the right manufacturer to do so. Along with safety and performance, MLB has financial implications surrounding such an agreement which both sides must consider.

Although the WUA is not currently a party to the endorsement deal between MLB and manufacturer, MLB has told both parties that it is in all parties' best interest to have Wilson and the WUA determine the parameters of on-field equipment usage for this sponsorship uniquely, specifically face masks. It is in Wilson's best interest to keep umpires safe, and it is in the WUA's interest in ensuring that its members are receiving access to the best possible equipment available, regardless of who makes it. The WUA is also interested in obtaining fair compensation for its members for, in effect, endorsing Wilson products.

While other considerations in this negotiation are important, the terms agreed upon regarding the endorsement of equipment is crucial. Each of the parties maintains different interests regarding an official endorsement for equipment, both practically and economically, but is willing to discuss these terms in order to reach an agreement and present MLB terms which are acceptable to these two parties, and which each party is confident will be acceptable to MLB.

## **Creative Solutions**

The WUA raised its concerns with the Wilson mask and endorsement contract in order to expedite the current collective bargaining process and to avoid further unnecessary injuries. However, all parties understand that if a resolution cannot be reached, litigation is a very real possibility that could affect the relationship between Wilson, MLB, and/or the WUA. The parties agree such litigation would be disastrous and each believe this problem could be alleviated if their needs can be met.

The parties have agreed to tackle the issues identified above during this negotiation. Each side may have other interests, but the parties concur the above terms could create the framework for a workable agreement. It is up to each side to determine the order of importance and any deal must be within the parameters given to each side. For many of these issues, the parties are willing to propose and listen to viable creative solutions, which can meet each side's interests. The WUA is represented at this negotiation by its president and by its union president. Wilson is represented by its general counsel and by the Director of Safety - Equipment Division.