

Putting the Smackdown on World Wrestling Entertainment Inc. With the Raw Truth: WWE Wrestlers Are Employees

I. Introduction

World Wrestling Entertainment, Inc. (“WWE”) was founded in 1980¹ and has been publicly traded since 1999.² The company’s primary revenue stream comes from its media operations³ which are based on coverage of professional wrestling events. WWE currently has exclusive contracts with more than 300 professional wrestlers⁴ which prohibit the wrestlers from working for any business other than WWE and from marketing their services to any other company.⁵ These exclusive contracts include explicit provisions which state that the wrestlers are independent contractors.⁶ One such provision specifically states that due to the wrestlers’ status as independent contractors, they are not entitled to workers’ compensation coverage for “injury, disability, death or loss of wages” that arise out of the wrestlers’ professional activities.⁷ These contractual provisions, however, are not dispositive evidence of the legal relationship which exists between WWE and the wrestlers.⁸ While the judicial system traditionally is committed to parties’ right to freedom of contract,⁹ when determining proper worker classification the court will disregard contractual language concerning the legal relationship of the parties if it is at odds

¹ <https://bleacherreport.com/articles/713929-wwes-vince-mcmahon-finding-his-true-place-in-the-history-of-pro-wrestling>

² <https://corporate.wwe.com/news/company-news/2000/10-25-2000>

³ <https://corporate.wwe.com/~media/Files/W/WWE/press-releases/2020/3q20-earnings-pr.pdf>

⁴ <https://corporate.wwe.com/what-we-do/live-events>

⁵ See *infra* note 59

⁶ Booking Contract

<https://www.sec.gov/Archives/edgar/data/1091907/000109190713000015/exhibit1017bookingagreement.htm>

⁷ Booking Contract Section 9.12(d) IN THE EVENT OF PHYSICAL INJURY ARISING OUT OF WRESTLER’S PROFESSIONAL ACTIVITIES, WRESTLER ACKNOWLEDGES THAT AS AN INDEPENDENT CONTRACTOR SHE IS NOT ENTITLED TO ANY WORKERS’ COMPENSATION COVERAGE OR SIMILAR BENEFITS FOR INJURY, DISABILITY, DEATH OR LOSS OF WAGES; AND WRESTLER SHALL MAKE NO CLAIM AGAINST PROMOTER FOR SUCH COVERAGE OR BENEFIT.

⁸ 5 Larson’s Workers’ Compensation Law § 61.05 (2020) (“the contractual designation of the relationship as employment or contractorship may be so plainly and completely at odds with the undisputed facts that the contractual designation must be disregarded.”)

⁹ <https://www.law.cornell.edu/constitution-conan/amendment-14/section-1/liberty-of-contract>

with the actual practice of the parties.¹⁰ Each state has implemented a legal employment test used to determine whether a worker is an employee¹¹ and parties may not override this determination.¹² The right to control working conditions and the level of actual control over the working conditions are significant factors in the determination of the proper worker classification.¹³ An investigation of the actual relationship between WWE and its wrestlers provides evidence that WWE has a high degree of control over the wrestlers. This level of control shows that professional wrestlers who work for WWE are employees. As employees, the wrestlers are covered by workers' compensation in most states.¹⁴ While it might be argued that employee status would be detrimental because it may reduce the wrestlers' compensation and infringe on their autonomy, this paper will argue that employee status will require WWE to provide the wrestlers with workers' compensation, and, due to the high probability of wrestlers receiving work-related injuries, this coverage will outweigh any negative impact that may result.

In Part II of this paper, I consider whether professional wrestlers who work for WWE are employees. I evaluate the relationship between WWE and its wrestlers through the common law analysis, which is a ten-part test that focuses on the level of control a putative employer has over a worker. In Part III, I conclude by arguing that professional wrestlers who demand their legal right to workers' compensation coverage will realize significant benefits which outweigh any negative impact of such action.

¹⁰ 5 Larson's Workers' Compensation Law § 61.05 (2020)

¹¹ See *infra* note 16

¹² See *infra* note 37

¹³ 5 Larson's Workers' Compensation Law CHAPTER 61.syn (2020)

¹⁴ Szymendera, S. D. (2020). *Workers' Compensation: Overview and Issues* (CRS Report No. R44580). 5 Retrieved from Congressional Research Service website: <https://fas.org/sgp/crs/misc/R44580.pdf>

II. Professional Wrestlers Who Work for WWE Are Employees

In this part, I discuss the relationship of employee status to workers' compensation eligibility, the variety of definitions that state statutes provide for the term "employee," and the tests used to determine whether a worker is an employee. Then, I analyze whether professional wrestlers who work for the WWE are employees under the standard common law test.

Statutory Definitions of "Employee"

In order for a worker to be eligible for workers' compensation coverage, he must be classified as an employee under the provisions of the state workers' compensation statute.¹⁵ The definition of employee however, is state and statute specific.¹⁶ Each state determines what types of workers are included in the term "employee" and what types of workers are excluded. A state may provide different definitions for the term "employee" across its statutes, which can result in one definition in the labor statute, another definition in the workers' compensation statute and yet a third definition in the unemployment compensation statute.¹⁷ For example, the general definition of employee provided in Connecticut's¹⁸ labor statute is, "any person suffered or permitted to work by an employer."¹⁹ Connecticut's workers' compensation statute defines employee as, "any person who has entered into or works under any contract of service or apprenticeship with an employer, whether the contract contemplated the performance of duties within or without the state."²⁰ The unemployment compensation portion of Connecticut's labor statute defines employee, in part, as any individual who "under the common law rules applicable

¹⁵ <https://www.nolo.com/legal-encyclopedia/are-you-eligible-workers-compensation-32963.html>

¹⁶ 5 Larson's Workers' Compensation Law § 60.01 (2020)

¹⁷ 5 Larson's Workers' Compensation Law § 60.01 (2020) (The definition of the term "employee," for purposes of vicarious liability, employers' liability, workmen's compensation, labor legislation, unemployment compensation, social security and miscellaneous enactments applicable to employees, has probably produced more reported cases than any definition of status in the modern history of law.)

¹⁸ WWE Headquarters is located in Stamford, Connecticut

¹⁹ CT Gen Stat § 31-71(a) (2012)

²⁰ CT Gen Stat § 31-275(9)(a)(i)

in determining the employer-employee relationship...[h]as the status of an employee.”²¹ This section of the statute contains an additional provision which broadens the types of workers who are considered employees for the purpose of unemployment compensation. This provision, commonly known as the ABC test,²² sets out the conditions that must be met for a worker to be classified as an independent contractor. In the absence of these conditions, the worker falls into the default classification of employee. The statute states,

Service performed by an individual shall be deemed to be employment subject to this chapter irrespective of whether the common law relationship of master and servant exists, unless and until it is shown to the satisfaction of the administrator that (I) such individual has been and will continue to be free from control and direction in connection with the performance of such service, both under his contract for the performance of service and in fact; and (II) such service is performed either outside the usual course of the business for which the service is performed or is performed outside of all the places of business of the enterprise for which the service is performed; and (III) such individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.²³

B. Common Law Analysis

In this section, I explain how the court determines whether a worker is an employee if the state’s workers’ compensation statute defines “employee” by using a broad phrase without specific parameters. Then, I analyze the relationship between WWE and its wrestlers under the ten-part test listed in the Restatement (Second) of Agency’s definition of employee.

Most states workers’ compensation statutes use some version²⁴ of the ABC test to determine if a worker is an employee.²⁵ If, however, the state’s statute merely provides an

²¹ CT Gen Stat § 31-222(a)(1)(B)(ii) (2012)

²² https://www.law.cornell.edu/wex/abc_test

²³ CT Gen Stat § 31-222(a)(1)(B)(ii) (2012)

²⁴ Some states that use the ABC test require the existence of all three conditions in order for a worker to be classified as an independent contractor, while other states only require two of the three conditions.

²⁵ <https://www.wrapbook.com/worker-classification-tests-by-state>

ambiguous definition of employee, the majority of courts rely on the common law definition.²⁶ The Restatement (Second) of Agency's definition of employee, on which most courts agree,²⁷ is "a person employed to perform services in the affairs of another and who with respect to the physical conduct in the performance of the services is subject to the other's control or right to control."²⁸ Courts that apply this definition commonly use the associated ten-part test²⁹ to determine whether a worker is an employee or independent contractor based on the level of control the putative employer has over the worker.³⁰ Since this test is commonly used by courts,³¹ it is an effective tool to use to determine whether professional wrestlers who work for WWE are employees.

*1. The extent of control which, by the agreement, the master may exercise over the details of the work.*³²

A worker who retains control over the manner in which his work is done is normally not considered an employee.³³ Even when a putative employer controls the details of the work in regard to the quality of the work, the worker may still not be deemed an employee.³⁴ If, however, the employer controls the worker's physical activity and time, the worker is likely to be classified as an employee.³⁵ An agreement which allows for close supervision of a worker and

²⁶ 5 Larson's Workers' Compensation Law § 60.01 (2020) (Since most compensation acts contain no definition of the term "employee," beyond some such general phrase as "every person in the service of another under any contract of hire, express or implied," it has generally been taken for granted that the common-law definition of employee, or servant, worked out for vicarious tort liability purposes, was meant to be adopted. This "definition" usually consists largely of a listing of relevant characteristics or tests, coupled with the warning that all except the control test are merely indicia pointing one way or the other.)

²⁷ *Id.* (A typical definition and summary of tests, and one on which practically every court in the Anglo-American world would agree, is that given in the *Restatement of Agency (Second)*.)

²⁸ Restatement (Second) of Agency § 220(1) (1958). (This section references control.)

²⁹ Restatement (Second) of Agency § 220(2) (1958). (This section sets out factors for evaluating control.)

³⁰ 5 Larson's Workers' Compensation Law § 60.01 (2020)

³¹ *Id.*

³² Restatement (Second) of Agency § 220(2)(a) (1958)

³³ Restatement (Second) of Agency § 220 (1958) cmt. e

³⁴ 5 Larson's Workers' Compensation Law § 61.03 (2020)

³⁵ Restatement (Second) of Agency § 220 (1958) cmt. e

his work is likely indicative of an employer and employee relationship.³⁶ If a contract, which expressly indicates the legal relationship between the parties, is at odds with the actual relationship between the parties, the specified legal designation within the contract will be disregarded in favor of the true relationship.³⁷ Many of the clauses in the “Booking Contracts” between WWE and the wrestlers are carefully worded to limit WWE’s contractual control over the wrestler’s physical activity and time.³⁸ The contracts also include an express clause which states the legal relationship between WWE and the wrestlers. It states, “Nothing contained in this Agreement shall be construed to constitute WRESTLER as an employee...[W]RESTLER is an independent contractor.”³⁹ Based on this contractual language alone, without considering WWE’s exercise of actual control, a court would likely find the wrestler to be an independent contractor.

However, an investigation of WWE’s actual degree of control over the wrestlers’ physical activity and time reveals a high level of control. According to a Memorandum of Decision on Motion to Dismiss,⁴⁰ WWE argued that wrestling “is not a competitive engagement but is a staged pseudo-match, scripted, choreographed by agents of [WWE] and executed by wrestlers assigned by [WWE] which directs and controls the wrestlers' conduct and the outcome.”⁴¹ This argument directly contradicts a clause in the “Booking Contracts” which

³⁶ *Id.* at cmt. h

³⁷ 5 Larson's Workers' Compensation Law § 61.05 (2020)

³⁸ Booking Contract Section 9.2(b) WRESTLER shall establish her own method of physical conditioning, shall select time for conditioning, duration of conditioning and form of conditioning. WRESTLER shall select time for sleep, time for eating, and time for other activities. WRESTLER shall select her own foods, vitamins and other ingested items, excepting illegal and/or controlled substances and drugs.

³⁹ *Id.* at Section 13.1

⁴⁰ Levy v. World Wrestling Entm't, Inc., No. CIV.A.308-01289(PCD), 2009 WL 455258, at *1 (D. Conn. Feb. 23, 2009)

⁴¹ *Id.*

provides the wrestlers' with a great deal of autonomy over their in-ring performances.⁴²

Additionally, in a 2016 memo, a WWE live event producer was provided a list of instructions from WWE headquarters which outlined WWE CEO's notes concerning a series of upcoming live shows.⁴³ Several of these instructions show a much greater level of control over the physical activities of the wrestlers than is indicated in the "Booking Contracts:"

Per our conversation with Vince, no pile drivers. Please make sure all talent do not go up to the ropes during entrances. Please do not let talent stall too much. No impromptu talent promos. Promos must be approved ahead of time. No one is to do the 'yeah-boo' stuff except for John Cena. No low blows. Use of chairs, tables or other objects must be approved first. Agents need to approve heels taking a walk during their matches and limited to top matches only.⁴⁴

A WWE script⁴⁵ for its Monday Raw show,⁴⁶ which was leaked online,⁴⁷ provides insight into the control WWE has over the wrestlers' dialogue when they are speaking to the audience. The script contains a minute-by-minute account of the three-hour show including specific physical acts that are to be performed by the wrestlers and the exact language the wrestlers are to use when speaking to the audience. One portion of the script goes into extremely specific detail by requiring the wrestler to "pause for a few seconds"⁴⁸ in the middle of his dialogue. These uncovered documents and WWE's own argument found in court records provide evidence of the substantial actual control WWE has over the wrestlers' physical activity and time despite the

⁴² Booking Contract Section 9.4 WRESTLER shall use best efforts in employing WRESTLER's skills and abilities as a professional wrestler and be responsible for developing and executing the various details, movements, and maneuvers required of wrestlers in a professional wrestling exhibition.

⁴³ <https://www.mirror.co.uk/sport/other-sports/wrestling/wwe-live-event-rules-revealed-9454889>

⁴⁴ *Id.*

⁴⁵ <https://www.theofficialwrestlingmuseum.com/full-raw-script.html>

⁴⁶ *Monday Night Raw* is a three-hour primetime program starting at 8PM ET that broadcasts live on USA Network. <https://corporate.wwe.com/what-we-do/media/televised-entertainment>

⁴⁷ <https://bleacherreport.com/articles/2042808-report-stephanie-mcmahon-furious-about-raw-script-leak>

⁴⁸ The script calls for Bray Wyatt to begin his "promo" (dialogue) and provides the exact wording he is to use. Then the script says, "Bray pauses for a few seconds before continuing." The pause is then followed by the remainder of Bray Wyatt's promo. <https://www.theofficialwrestlingmuseum.com/full-raw-script.html>

contractual language to the contrary. This portion of this factor weighs in favor of classifying the wrestlers as employees.

In addition to an employer's control over the physical activity and time of a worker, an absolute right to terminate a worker represents a significant degree of power to control.⁴⁹ However, the right to terminate a contract with a worker due to dissatisfaction with the work being done does not indicate this same level of control.⁵⁰ The "Booking Contracts" between WWE and the wrestlers permit WWE to terminate the wrestlers for a myriad of conduct deemed unacceptable by WWE. The right to terminate for reasons such as violating WWE's drug policy, failing physical exams and failing to maintain proper physical conditioning⁵¹ are indications of WWE's dissatisfaction with the wrestlers' work and therefore not an indication of a high degree of power to control. However, WWE also has the contractual right to terminate wrestlers, "for any or no reason whatsoever"⁵² by providing a ninety-day written notice.⁵³ This provision gives WWE the absolute right to terminate a wrestler and therefore is evidence of WWE's significant degree of power to control the wrestlers. Due to WWE's control over the wrestlers' physical activity and time and its absolute right to terminate the wrestlers, this factor weighs in favor of classifying the wrestlers as employees.

*2. Whether or not the one employed is engaged in a distinct occupation or business.*⁵⁴

A distinct occupation exists when the nature of the work provided by the worker is a separate calling or profession from that of the employer's business.⁵⁵ Professional wrestlers who work for WWE are not engaged in an distinct occupation that is a separate calling from WWE's

⁴⁹ 5 Larson's Workers' Compensation Law § 61.08 (2020)

⁵⁰ *Id.*

⁵¹ Booking Contract Section 12.1 (a)-(e)

⁵² *Id.* at Section 11.1(a)

⁵³ *Id.*

⁵⁴ Restatement (Second) of Agency § 220(2)(b) (1958)

⁵⁵ Sandy v. Salter, 260 Ark. 486, 541 S.W.2d 929 (1976)

business. WWE proudly boasts that their “[m]ultiple sports entertainment brands allow [them] to perform over 450 live events a year within the United States and abroad.”⁵⁶ WWE openly acknowledges that, “The success of WWE is due primarily to the continuing popularity of our Superstars.”⁵⁷ The nature of the work provided by the wrestlers is wholly encompassed by WWE’s business as evidenced by this claim.

A worker who is engaged in a distinct occupation or business generally has the ability to market his services to more than one company.⁵⁸ The “Booking Contracts” between WWE and the wrestlers state,

During the Term, WRESTLER acknowledges and agrees that she shall not work or perform in any capacity for any other martial arts or wrestling organization and/or entity not owned or controlled by PROMOTER or any affiliated or subsidiary company thereof, or otherwise in the entertainment industry, including without limitation appearances in live events, pay-per-view or other televised events.⁵⁹

This contractual language prohibits the wrestlers from marketing their services to more than one company or working for any company or business other than WWE. This factor weighs in favor of classifying the wrestlers as employees.

*3. The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision.*⁶⁰

Professional wrestlers who work for WWE perform at wrestling events throughout the world.⁶¹ WWE sets the place, date and time of the event and decides which wrestlers will participate in the event.⁶² WWE management personnel attend the events and provide direction

⁵⁶ <https://corporate.wwe.com/what-we-do/live-events>

⁵⁷ *Id.*

⁵⁸ *Estrada v. FedEx Ground Package Sys., Inc.*, 154 Cal. App. 4th 1, 64 Cal. Rptr. 3d 327 (2007)

⁵⁹ Booking Contract Section 9.14

⁶⁰ Restatement (Second) of Agency § 220(2)(c) (1958)

⁶¹ <https://corporate.wwe.com/what-we-do/live-events>

⁶² Booking Contract Section 8.3

for the wrestlers during the events.⁶³ However, the work performed by these wrestlers is unique and is not the type of work normally performed by other workers in specific individual locations. Due to the national scope of the work performed by professional wrestlers an appropriate assessment of this factor is difficult. This factor is inconclusive and therefore it has no weight against or in favor of classifying the wrestlers as employees.

*4. The skill required in the particular occupation.*⁶⁴

If the work being performed can be completed by a worker who is uneducated or unskilled, then the worker is likely to be deemed an employee.⁶⁵ Conversely, work which requires a highly educated or skilled worker generally indicates the worker performing the task is not an employee.⁶⁶ Most professional wrestlers who work for WWE have trained for many years and are highly skilled in their craft. While this factor does not appear to weigh in favor of

⁶³ <https://www.mirror.co.uk/sport/other-sports/wrestling/wwe-live-event-rules-revealed-9454889>

⁶⁴ Restatement (Second) of Agency § 220(2)(d) (1958)

⁶⁵ Restatement (Second) of Agency § 220 (1958) cmt. i (“The custom of the community as to the control ordinarily exercised in a particular occupation is of importance. This, together with the skill which is required in the occupation, is often of almost conclusive weight. Unskilled labor is usually performed by those customarily regarded as servants, and a laborer is almost always a servant in spite of the fact that he may nominally contract to do a specified job for a specified price.”)

⁶⁶ *Id.*

classifying the wrestlers as employees, many similarly situated, highly skilled professional athletes are routinely classified as employees under state⁶⁷ and federal laws.⁶⁸

5. *Whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work.*⁶⁹

If tools of “substantial value” which are essential to the completion of the work are supplied by the employer, it is strong evidence that the worker is an employee.⁷⁰ WWE is responsible for providing the wrestling ring,⁷¹ the stage, entrance ramps and sound and lighting equipment.⁷² These tools, which are necessary for the wrestler’s work, have substantial value.⁷³ WWE’s contractual obligation to provide these tools of substantial value indicates that the

⁶⁷ “In team sports, such as football and baseball, where the player competes under the direction and control of a coach or manager, he/she is an employee. On the other hand, in individual sports competition, such as golf or tennis, where the athlete is normally free to determine his/her own style and manner of performing, he/she is an independent contractor. To differentiate between athletes who are employees and those considered to be independent contractors, the Board, in Tax Decision 2363, said: “Among the sports in which the participating athletes have been considered to be employees are football, baseball, basketball, and hockey. Among those in which they have been considered not to be employees are golf, boxing, wrestling, skating, and midget auto racing. In the first group of cases above, there was generally an owner, manager, trainer, coach, or captain who had the right to direct and control the details of the player’s activity. In contrast, in the second group of cases, the sport was generally one that involved athletic competition between individuals rather than teams.” In determining whether an athlete who performs services is an employee or an independent contractor, it can be seen from the above decision that the important factor is whether the athlete is responsible to the principal only for the result and not for the manner and means of accomplishing it.” State of California Employment Development Department Total and Partial Unemployment TPU 415.4 https://www.edd.ca.gov/uibdg/Total_and_Partial_Unemployment_TPU_4154.htm

⁶⁸ In 1935, 1947, and again in 1959, Congress examined the nation’s labor policy as reflected in the National Labor Relations Act; and Congress has consistently affirmed the Act’s basic policy, as expressed in Section 1, of encouraging collective bargaining by “protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing.” Nowhere in Congress’ deliberations is there any indication that these basic rights are not to be extended to employees employed in professional baseball or any other professional sport. Am. League of Prof’l Baseball Clubs, 180 NLRB 190, 192 (1969)

⁶⁹ Restatement (Second) of Agency § 220(2)(e) (1958)

⁷⁰ Restatement (Second) of Agency § 220 (1958) cmt. k

⁷¹ An 18x18 ring costs approximately \$8500. WWE uses a 20X20 ring. <https://www.progear.com/products/pro-wrestling-ring-18-x-18.html>

⁷² Booking Contract Section 8.2(a) In connection with WRESTLER’s appearances and performance at any Events produced by PROMOTER and staged before a live audience, PROMOTER shall bear the cost of location rental, PROMOTER’s third party comprehensive liability insurance for the benefit of the venues, applicable state and local admission taxes, promotional assistance, sound and light equipment, wrestling ring, officials, police and fire protection, and such additional security guards as PROMOTER shall require in its discretion during a professional wrestling match.

⁷³ Restatement (Second) of Agency § 220 (1958) cmt. k

wrestlers are employees. However, if a worker provides the necessary tools to perform his work, it is an indication that he may be an independent contractor.⁷⁴ Nevertheless, some courts have found that if it is a custom or standard practice for a worker in a certain industry to use his own tools, then no inference of independent contract status should be made for a worker who supplies such tools.⁷⁵ Other courts have found that when the tools provided by the worker are relatively minor compared to the tools and supplies provided by the employer, then the worker should not be subject to an inference of independent contractor status.⁷⁶ WWE's "Booking Contracts" state that the wrestlers are, "...[r]esponsible for providing all costumes, wardrobe, props, and make-up necessary for the performance of WRESTLER's services at any Event..."⁷⁷ This requirement, however, is not specific to WWE. It is standard industry practice for wrestlers to provide their

⁷⁴ *Id.*

⁷⁵ "Certified Auto provided the substantial instrumentalities, tools, and place of work. Certified Auto provided the heavy equipment (*e.g.*, hydraulic lift, compressed air, tire changing equipment) and supplies (*e.g.*, oil, filters, lubricants, fluids). Falconi's work was done on premises Certified Auto controlled. Even though Falconi also used his own tools, this fact has less import because the parties agree that it is the custom or standard practice for employee auto mechanics to use their own tools." Falconi v. Coombs & Coombs, Inc., 902 A.2d 1094, 1101–02 (Del. 2006)

"So far as the tools are concerned, it is customary for every brick mason or carpenter to have his own tool kit. The fact that he furnishes his own tools with which to perform labor does not make him an independent contractor." Claus v. De Vere, 120 Neb. 812, 817, 235 N.W. 450, 452 (1930)

"Locke began working for defendant sometime prior to November 5, 1949, as a woodchopper. He was assigned to limbing or trimming trees and was paid seven dollars a day for his labor. He furnished his own ax as is customary." Porter v. Barton, 98 N.H. 104, 105, 95 A.2d 118, 119 (1953). Locke was found to be an employee.

⁷⁶"Another indicia of control looks to the source of materials and equipment to be used by the worker. When the principal provides the equipment and supplies to perform the job, the relationship is usually one of employment. In this case, Mr. Pitcher furnished a hammer, square rule and scaffold. However, Hydro-Kem furnished all of the supplies for the project." Pitcher v. Hydro-Kem Servs., Inc., 551 So. 2d 736, 739 (La. Ct. App. 1989) (internal cite omitted)

"The claimant and Kime jointly owned a box cutter and blower which they brought with them and they also brought a truck and tractor. The other equipment used in the operation was owned by the monastery." McCracken v. Abbey of Gethsemani, Inc., 285 A.D. 1100, 1100, 139 N.Y.S.2d 353, 354 (App. Div. 3rd Dept. 1955)

"The fact that the installers used their own tools and equipment and furnished their own transportation is not decisive." Hartford Acci. & Indem. Co. v. Capitol Home Improv. Co., 2 Conn. Cir. Ct. 664, 671, 205 A.2d 192, 195 (1964)

"The skill required consisted mainly in team work, and the tools furnished by the crew constituted a relatively small part of the appliances used. We do not think the evidence raises the issue of independent contractor." Atna Life Ins. Co. v. Culvahouse, 10 S.W.2d 803, 806 (Tex. Civ. App. 1928)

⁷⁷ Booking Contract Section 9.3

own costumes, wardrobe and props.⁷⁸ Also, these tools are relatively small when compared to the substantial tools and supplies provided by the WWE.⁷⁹ This portion of this factor weighs in favor of classifying the wrestlers as employees.

If the employer controls the premises on which the worker performs his work, then a strong inference exists that the worker is an employee.⁸⁰ WWE is responsible for providing the venue where the wrestlers perform their work.⁸¹ The “Booking Contracts” state that WWE will bear the cost of renting the venue and provide “police and fire protection, and such additional security guards as PROMOTER shall require in its discretion during a professional wrestling match.”⁸² This is evidence of WWE’s control over the premises on which the wrestlers perform their work.

Additional proof of the employer’s control of the premises is provided if the worker is compelled to follow rules associated with employee conduct.⁸³ WWE has the right to terminate the wrestlers if they are “habitually late and/or absent for scheduled Events or appearances as PROMOTER determines in its sole discretion.”⁸⁴ The wrestlers must submit to drug testing⁸⁵ and can be terminated for violations of WWE’s drug policies.⁸⁶ The wrestlers are “required to act at all times with due regard to public morals and conventions”⁸⁷ and WWE has the right to

⁷⁸ Catena, M., & Russo, V. (2020, November 20). personal. Vince Russo has been in the wrestling industry for over 25 years and was the head writer for WWE between 1997-1999. He has also worked for TNA, WCW, Impact and several smaller wrestling promotions.

⁷⁹ See *supra* notes 71 - 72

⁸⁰ Restatement (Second) of Agency § 220 (1958) cmt. 1

⁸¹ Booking Contract Section 8.2(a)

⁸² *Id.* at Section 1.1(a) In connection with WRESTLER's appearances and performance at any Events produced by PROMOTER and staged before a live audience, PROMOTER shall bear the cost of location rental, PROMOTER's third party comprehensive liability insurance for the benefit of the venues, applicable state and local admission taxes, promotional assistance, sound and light equipment, wrestling ring, officials, police and fire protection, and such additional security guards as PROMOTER shall require in its discretion during a professional wrestling match.

⁸³ Restatement (Second) of Agency § 220 (1958) cmt. 1

⁸⁴ *Id.* at Section 12.1(c)

⁸⁵ *Id.* at Section 10.2(a)

⁸⁶ *Id.* Section 12.1(a)

⁸⁷ *Id.* at Section 9.13(a)

terminate or suspend the wrestlers if they commit any act which brings them into “public disrepute, contempt, scandal or ridicule, or which insults or offends the community or any employee, agent or affiliate of PROMOTER or which injures WRESTLER’s reputation.”⁸⁸ These rules, which the wrestlers are compelled to follow, provide evidence of WWE’s control over the premises on which the wrestlers perform their work. WWE supplies the tools and the place of work for the wrestlers doing the work, therefore this factor weighs in favor of classifying the wrestlers as employees.

*6. The length of time for which the person is employed.*⁸⁹

A worker who is employed for only a short time is less likely to “subject himself to control as to details.”⁹⁰ This short-time worker will be more likely to “consider the job his than the job of the one employing him.”⁹¹ Most “Booking Contracts” between WWE and the wrestlers are for a three-year term.⁹² A term of employment for this significant length of time will likely cause the wrestlers to subject themselves to WWE’s control of the details of their work. Due to the length of the contract and the wrestlers’ inability to work for anyone else during the term of the contract,⁹³ the wrestlers are likely to consider the work they do to be the work of WWE rather than their own. This factor weighs in favor of classifying the wrestlers as employees.

*7. The method of payment, whether by the time or by the job.*⁹⁴

⁸⁸ *Id.*

⁸⁹ Restatement (Second) of Agency § 220(2)(f) (1958)

⁹⁰ Restatement (Second) of Agency § 220 (1958) cmt. j

⁹¹ *Id.* (The time of employment and the method of payment are important. If the time of employment is short, the worker is less apt to subject himself to control as to details and the job is more likely to be considered his job than the job of the one employing him. This is especially true if payment is to be made by the job and not by the hour.)

⁹² https://sites.google.com/site/chrisharrington/mookieghana-prowrestlingstatistics/wwe_contracts

⁹³ See *supra* note 59

⁹⁴ Restatement (Second) of Agency § 220(2)(g) (1958)

A worker who is paid by the job is more likely to “consider the job his than the job of the one employing him.”⁹⁵ The “Booking Contracts” between WWE and the wrestlers provide that the wrestlers will receive an annual compensation to be paid in fifty-two weekly installments.⁹⁶ The “Booking Contracts” indicate that in exchange for the annual compensation WWE has the right to,

...[e]ngage WRESTLER's services, appearances, and/or performances in: (i) those professional wrestling matches designated by PROMOTER and those other events, engagements, appearances, filmings, photography shoots, autograph signings and other business and charitable events designated by WWE relating to professional wrestling or sports entertainment, whether or not staged before a live audience, in a television broadcast studio, on location or otherwise and (ii) all other events, engagements, appearances, filmings, photography shoots, autograph signings and other business and charitable events that are not related to professional wrestling or sports entertainment in connection with movies, films, commercials, product endorsements, videos, television programs, radio, magazines, books, theatre, Internet or any other media in the entertainment industry.⁹⁷

The contract further states,

...[W]RESTLER agrees to cooperate and assist without any additional payment in the publicizing, advertising and promoting of scheduled Events, including without limitation, appearing at and participating in a reasonable number of joint and/or separate press conferences, interviews, and other publicity or exploitation appearances or activities.⁹⁸

The contract does not specify the number of events in which the wrestler must participate. Nor does the contract provide any information about event-specific obligations. This contractual language indicates that the wrestlers are paid an annual compensation for their work (by time) rather than by each event in which they participate (or, in the language of the Restatement “by

⁹⁵ Restatement (Second) of Agency § 220 (1958) cmt. j

⁹⁶ Booking Contract Section

⁹⁷ *Id.* at Section 1.1(a)

⁹⁸ *Id.* at Section 9.7

the job”).⁹⁹ Therefore, the wrestlers are less likely to consider the work their own, but rather the work of WWE. This factor weighs in favor of classifying the wrestlers as employees.

8. *Whether or not the work is a part of the regular business of the employer.*¹⁰⁰

If the services performed by the worker are integrated into the business operation of the employer, then the employer likely has the power to direct and control the worker.¹⁰¹ The relationship between the scope and function of the business and the services of the worker must be considered in order to determine if the requisite level of integration exists.¹⁰² If the “success or continuation of a business depends to an appreciable degree upon the performance of certain kinds of services, the people who perform those services must necessarily be subject to a certain amount of control by the owner of the business.”¹⁰³ WWE is an integrated media organization whose operations are focused on media, live events and consumer products.¹⁰⁴ These media, live events and consumer products are centered around professional wrestling. A professional wrestler’s occupation is wholly based on performing at live wrestling events which are broadcast through media outlets. Professional wrestlers are an integral part of WWE’s business and WWE’s operations could not exist without the wrestlers. Therefore, the work performed by professional wrestlers are fully integrated into the business operations of WWE. This factor weighs in favor of classifying the wrestlers as employees.

9. *Whether or not the parties believe they are creating the relation of master and servant.*¹⁰⁵

⁹⁹ Restatement (Second) of Agency § 220(2)(g) (1958)

¹⁰⁰ Restatement (Second) of Agency § 220(2)(h) (1958)

¹⁰¹ https://www.ssa.gov/section218training/advanced_course_10.htm

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ <https://corporate.wwe.com/who-we-are/company-overview>

¹⁰⁵ Restatement (Second) of Agency § 220(2)(i) (1958)

The “Booking Contracts” between WWE and the wrestlers contain language which expressly states that the wrestlers are independent contractors and not employees.¹⁰⁶ This provision, however, does not conclusively bar the existence of a master and servant relationship.¹⁰⁷ Control by one party (master) and submission by the other (servant) are hallmarks of a master and servant relationship.¹⁰⁸ The phrase “at promoter’s sole discretion” are found ten times in the “Booking Contracts” in addition to these provisions:

...[W]RESTLER acknowledges and agrees that PROMOTER, in its sole discretion, shall have the right to assign WRESTLER's obligations under this Agreement for any period of time as PROMOTER sees fit to other promoters in order to enhance or improve WRESTLER's overall wrestling abilities, in-ring skills, conditioning, or other attributes deemed necessary by PROMOTER.¹⁰⁹

...[t]he worldwide rights to WRESTLER's services, appearances and/or performances in the entertainment industry, whether related to professional wrestling, sports entertainment or Other Appearances, are exclusive to PROMOTER.¹¹⁰

...[P]ROMOTER shall endeavor to book WRESTLER as an individual or as a member of a group, which determination shall be made in PROMOTER's sole discretion, in wrestling matches and at various Events.¹¹¹

These provisions provide substantial evidence that WWE has a high level of control over the wrestlers and the wrestlers are required to submit to this control. The “independent contractor clause” of the contract, when read in conjunction with the entirety of the nineteen page “Booking

¹⁰⁶ Booking Contract Section 13.1 Nothing contained in this Agreement shall be construed to constitute WRESTLER as an employee, partner or joint venturer of PROMOTER, nor shall WRESTLER have any authority to bind PROMOTER in any respect. WRESTLER is an independent contractor and WRESTLER shall execute and hereby irrevocably appoints PROMOTER attorney-in-fact to execute, if WRESTLER refuses to do so, any instruments necessary to accomplish or confirm the foregoing or any and all of the rights granted to PROMOTER herein.”

¹⁰⁷ Restatement (Second) of Agency § 220 (1958) cmt. m (“It is not determinative that the parties believe or disbelieve that the relation of master and servant exists, except insofar as such belief indicates an assumption of control by the one and submission to control by the other. However, community custom in thinking that a kind of service, such as household service, is rendered by servants, is of importance.”)

¹⁰⁸ *Id.*

¹⁰⁹ Booking Contract Section 13.1

¹¹⁰ *Id.* at Section 1.1(a)

¹¹¹ *Id.*

Contract,” does little to defeat the master and servant relationship which is detailed throughout the document. The relationship of control by the WWE and submission by the wrestlers proves the existence a master and servant relationship.

If a contract includes a provision that specifies a certain legal relationship and the purpose of the provision is to evade the Workers’ Compensation Act, the provision will be disregarded.¹¹² If this evasive intent is not present, the provision may still be disregarded if the actual relationship between the parties is “plainly and completely at odds” with the legal relationship designated by contract.¹¹³ WWE’s “Booking Contracts” contain a clause which specifically addresses the wrestlers’ independent contractor designation in relation to workers’ compensation coverage. It states, “In the event of physical injury arising out of wrestler’s professional activities, wrestler acknowledges that as an independent contractor he is not entitled to any workers’ compensation coverage or similar benefits for injury, disability, death or loss of wage.”¹¹⁴ If this provision is sufficient evidence to prove that WWE designates wrestlers as independent contractors for the purpose of evading the Workers’ Compensation Act, then the independent contractor designation would be disregarded. However, even if evasive intent cannot be proven, the actual relationship between WWE and the wrestlers is “plainly and completely at odds” with the independent contractor designation.¹¹⁵ This factor weighs in favor of classifying the wrestlers as employees.

*10. Whether the principal is or is not in business.*¹¹⁶

¹¹² 5 Larson's Workers' Compensation Law § 61.05 (2020)

¹¹³ *Id.*

¹¹⁴ Booking Contract Section 9.12(e)

¹¹⁵ See *supra* notes 109-111

¹¹⁶ Restatement (Second) of Agency § 220(2)(j) (1958)

If the principal is not in business, it is less likely that the requisite control over the worker exists. For example, a homeowner who hires an electrician to repair faulty wiring is generally not inclined to closely supervise the electrician's work and control his physical activities and time. An electrician hired by a homeowner expects to provide his own tools, work on the job for a relatively short period of time and be paid by the job. If the principal is a business, however, there is a greater likelihood that a significant degree of control will be exerted over the worker. A business is defined as an "organization or enterprising entity engaged in commercial, industrial, or professional activities."¹¹⁷ The principal, WWE, is a corporation which is publicly traded on the New York Stock Exchange.¹¹⁸ The company reported third quarter revenue in 2020 of \$221.6 million with a net income of \$48.2 million.¹¹⁹ WWE is a business under any standard a court may apply. This factor weighs in favor of classifying the wrestlers as employees.

Based on the analysis of these ten factors, there is sufficient evidence to prove that professional wrestlers who work for WWE are employees. WWE's right to control and extensive actual control over the wrestlers are proven throughout the analysis, therefore the provisions in the "Booking Contracts" that explicitly state that the wrestlers are independent contractors should be disregarded.

III. Conclusion

World Wrestling Entertainment, Inc. currently¹²⁰ has a net worth of \$2.83 billion,¹²¹ has net income of \$118.2 million through the third quarter of 2020¹²² and is on pace to set record

¹¹⁷ <https://www.investopedia.com/terms/b/business.asp>

¹¹⁸ <https://corporate.wwe.com/who-we-are/company-overview>

¹¹⁹ <https://corporate.wwe.com/~media/Files/W/WWE/press-releases/2020/3q20-earnings-pr.pdf>

¹²⁰ As of 3rd Quarter Earnings Statement released on 10/30/20.

¹²¹ <https://www.macrotrends.net/stocks/charts/WWE/world-wrestling-entertainment/net-worth>

¹²² <https://corporate.wwe.com/investors/investor-overview>

profits in 2020¹²³ despite the crippling effects of Covid-related shut down of live events.¹²⁴

While WWE openly acknowledges that this success is “due primarily to the continuing popularity of [their] Superstars,”¹²⁵ the company fails to protect those “superstars” from economic and physical harm by improperly classifying them as independent contractors and failing to provide workers’ compensation coverage. Professional wrestlers who currently work for WWE are employees under the common law test. As employees, they have the ability to shape the future of the industry by demanding their legal right to workers’ compensation coverage. If these wrestlers take action, they will ensure compensation for work-related injuries and death. While this is an important benefit, the ultimate result of such action is the creation of a safer workplace which will significantly reduce the number of injuries and deaths in the wrestling industry.

¹²³ <https://wrestlenomics.com/2020/05/05/despite-covid-19-wwe-will-set-profit-records-in-2020-if-tv-rights-remain/>

¹²⁴ <https://corporate.wwe.com/~media/Files/W/WWE/press-releases/2020/3q20-earnings-pr.pdf>

¹²⁵ <https://corporate.wwe.com/what-we-do/live-events>