SURVEY

2007 ANNUAL SURVEY: RECENT DEVELOPMENTS IN SPORTS LAW

INTRODUCTION

This survey reports on sports-related cases that were decided between January 1 and December 31, 2007. The survey is not intended to include every case related to sports law decided in the past year; instead, it provides a summary of some of the more important and interesting cases. Ideally, the survey will enlighten the reader as to the depth and breadth of the law and its application within the sports context. For the ease of the reader, the survey is divided into subsections based on particular areas of sports law.[1]

ADMINISTRATIVE LAW

Ohton v. Bd. of Tr. of the Cal. State Univ.[2]

David Ohton, a strength and conditioning coach for the San Diego State University football team, which is a California State University (CSU) football team, filed an internal administrative complaint alleging that head football coach Tom Craft and other members of the athletic department retaliated against him because he reported to a university auditor information that was critical of various athletic department personnel and practices. The action was brought under the California Whistleblower Protection Act (CWPA). Under a promise of confidentiality, Ohton provided the auditor with a 103-page report chronicling violations of National Collegiate Athletic Association (NCAA) rules, among other things. Somehow, Craft managed to get a copy of the report and circulated it to various members of the athletic department staff. After the distribution of the report, Ohton was no longer invited to help run football camps, was replaced as football strength and conditioning coach, was barred from contact with football players, and was not invited to the annual football booster dinner. The superior court dismissed his claims of retaliation

1. The cases are listed in alphabetical order within each section.
2. 56 Cal. Rptr. 3d 111 (Ct. App. 2007).

because he failed to exhaust internal administrative procedures. The court of appeals reversed and remanded the superior court finding, ruling that the court misinterpreted a clause in the CWPA that required CSU to "satisfactorily address" Ohton's claims.

Palyani v. State, Dep't of State, Div. of State Athletic Comm'n[3]

Shalva Palyani sought a judgment compelling the New York State Athletic Commission (NYSAC) to terminate a boxing suspension. In 2003, he was denied a boxing license because an MRI revealed old trauma on his brain. The NYSAC suspended Palyani from boxing indefinitely. Palyani argued that since NYSAC had never granted him a license, it did not have the power to suspend him, and that since a boxing license is only valid for one year, the suspension would have lapsed at the end of one year anyway. In October 2006, Palyani demanded that the NYSAC remove his suspension because it barred him from fighting in any jurisdiction since the Professional Boxing Safety Act of 1996 required all members of the Association of Boxing Commissions to adopt any medical suspension issued by another member. The NYSAC refused Palyani's 2006 request and claimed that it failed to meet a four-month statute of limitations because he was suspended in 2003. The New York Supreme Court ruled that Palyani's request was made in relation to the denial of his 2006 demand and his continued suspension, not his initial suspension; therefore, his request met the statute of limitations. The court then required the NYSAC to file an answer, after which Palyani was allowed to re-notice the matter for a hearing.

Wilson v. S. Or. Univ.[4]

Southern Oregon University (SOU) filed a motion for partial summary judgment on plaintiff employee's breach of contract claim in his action alleging breach of contract, intentional infliction of emotional distress, and intentional interference with economic relations. The plaintiff, Kevin Wilson, was an assistant professor and head women's basketball coach at SOU in 2004 when allegations of his misconduct surfaced. Wilson was given a letter from SOU that informed him that he was under investigation and that his contract for the following year would not be renewed. In 2005, Wilson initiated a grievance hearing with the school and waived his right to the first two steps of the appeals process, moving directly to a hearing with the president of the university. The president ruled that the letter was untimely and ambiguous

3. No. 118347/06, 2007 N.Y. Misc. LEXIS 3844 (N.Y. Sup. Ct. Apr. 26, 2007).

4. No. 06-3016-PA, 2007 U.S. Dist. LEXIS 26767 (D. Or. Apr. 6, 2007).

and ordered that Wilson's teaching contract be renewed. Wilson was not reinstated as head women's basketball coach, but he did not continue his action because he thought his internal avenues of appeal had been exhausted. In reality, he still had the option of taking the president's decision to arbitration. The court granted SOU's summary judgment and dismissed Wilson's breach of contract claim because he had not actually exhausted all internal avenues.

ALTERNATIVE DISPUTE RESOLUTION

Alternative dispute resolution is the use of mediation and arbitration to resolve conflicts outside of the court system. Most major league collective bargaining agreements (CBAs) require arbitration in certain disputes. If a court determines that arbitration is required, it will not hear the case. The Court of Arbitration for Sport (CAS) provides a means to facilitate the settlement of sports-related disputes through arbitration and mediation. CAS is able to provide a quicker form of relief, especially at the Olympic Games where it sets up an ad hoc division and renders eligibility decisions immediately. As a result of CAS, there have been many developments within alternative dispute resolution in the context of sports.

ChampionsWorld, L.L.C. v. U.S. Soccer Fed'n, Inc.[5]

ChampionsWorld, a defunct soccer promoter, sued the United States Soccer Federation (USSF) and Major League Soccer (MLS), alleging violations of the Racketeer Influenced and Corrupt Organizations Act (RICO) and the Sherman Act. ChampionsWorld alleged that USSF falsely held itself out to be the exclusive governing body of men's professional soccer in the United States in order to extract sanctioning fees for the promotion of soccer matches. ChampionsWorld also alleged that MLS conspired with USSF in order to gain favorable treatment in the promotion of its matches. USSF and MLS moved to stay or dismiss the action, arguing that CW's claims were subject to arbitration through its agreement with the Federation Internationale de Football (FIFA). ChampionsWorld's match license agreement with FIFA mandate that all disputes were to be handled by a FIFA Players' Status Committee and then made eligible for CAS arbitration on appeal. Alternatively, ChampionsWorld's promotion agreement with USSF subjected disputes to the jurisdiction of the courts that cover Chicago, Illinois. The court ruled that the Federal Arbitration Act and the Supremacy Clause of the United States Constitution were controlling on the question of arbitrability.

5. 487 F. Supp. 2d 980 (N.D. Ill. 2007).

Consequently, since ChampionsWorld had agreed to arbitrate disputes arising from the promotion of its U.S. soccer matches with FIFA, the court granted USSF and MLS's motion to stay and compelled arbitration.

Ex parte Dunn[6]

The Mobile County Public School System recommended to the Board of School Commissioners of Mobile County (the "Board") that Marion Dunn, a tenured science teacher and head varsity basketball coach at B.C. Rain High School in Mobile, be terminated from his positions based on a physically abusive form of team discipline he instituted during basketball practice. The Board voted to terminate Dunn's employment, and he filed a notice of contest under Alabama's Teacher Tenure Act, which allowed his claim to be heard in arbitration by a hearing officer. The hearing officer did not cancel Dunn's employment contract but rather barred him from coaching for four years, suspended him from teaching for thirty days without pay, and required him to apologize to his players orally and to their parents in writing.

The Board appealed the hearing officer's decision to the Alabama Court of Civil Appeals. The court overturned the hearing officer's ruling, finding it arbitrary and capricious, and remanded the claim back for another arbitration hearing. The Supreme Court of Alabama granted certiorari to Dunn and overturned the Alabama Court of Civil Appeals. The court found that the appeals court had substituted its own judgment for that of the arbitrator, who had considered all relevant facts of the case, articulated a satisfactory reason for his action, and stated a rational connection between the facts and the discipline he imposed.

Morton v. Steinberg[7]

Chad Morton was a football player in the National Football League (NFL). He sued his agent, Leigh Steinberg, alleging breach of contract, negligence, misrepresentation, fraud, breach of fiduciary duty, unjust enrichment, and violation of the Miller-Ayala Athlete Agents Act. Steinberg borrowed $300,000 from Morton in June 2003 and then defaulted on the loan. He offered Morton a five percent interest in a restaurant in China to cover the loan, and Morton agreed. In June 2004, Steinberg borrowed an additional $200,000 from Morton and defaulted on that loan as well. Steinberg filed a motion to compel arbitration because the claims against him were within the scope of the representation agreement between Steinberg and Morton. The

6. 962 So. 2d 814 (Ala. 2007).

7. No. G037793, 2007 Cal. App. Unpub. LEXIS 8564 (Cal. Ct. App. Oct. 22, 2007).

trial court denied the motion for arbitration, and Steinberg appealed. The appellate court affirmed the trial court's decision because the contract that Steinberg allegedly breached was not the representation contract and it did not include an arbitration clause.

Seattle v. Prof. Basketball Club, L.L.C.[8]

The Professional Basketball Club (PBC) purchased the Seattle Supersonics and the Seattle Storm on July 18, 2006. As part of the sale, PBC agreed to assume a lease in Key Arena that was agreed upon between its predecessor and the City of Seattle. The lease required the Sonics to play all home games in Key Arena through the 2009-2010 National Basketball Association (NBA) season. The City of Seattle sued PBC, claiming that its actions have been inconsistent with the lease obligations. PBC has failed at attempts to build a new arena and has filed a demand for arbitration, but the City of Seattle claimed that the lease is not subject to arbitration because the underlying dispute deals with Article II (Term; Use Period). However, PBC claims the dispute deals with Article XXVI (Default and Remedies Therefor), which does require arbitration. The court agreed with the City of Seattle because PBC is seeking to break the terms of the lease under Article II, and such disputes are excluded from arbitration.

AMERICANS WITH DISABILITIES ACT LAW

The Americans with Disabilities Act (ADA) prevents employers and businesses held open to the public from discriminating against people with disabilities. Title I of the ADA prohibits employers from discriminating against employees with disabilities. Title III of the ADA prohibits discrimination against people with disabilities in places of public accommodation. The following cases deal with the application of the ADA to a Big Ten football official, a college wrestler, and a spectator at a National Association of Stock Car Auto Racing (NASCAR) race.

Badgett v. Ala. High Sch. Athletic Ass'n[9]

Mallerie Badgett, a wheelchair track and field athlete with cerebral palsy, brought a claim against the Alabama High School Athletic Association (AHSAA) under the ADA because she desired to compete in the able-bodied state track and field competition but was denied. The AHSAA offered Badgett

8. No. C07-1620RSM, 2007 U.S. Dist. LEXIS 83139 (W.D. Wash. Oct. 29, 2007).
9. No. 2:07-CV-00572-KOB, 2007 U.S. Dist. LEXIS 36014 (N.D. Ala. May 3, 2007).

an opportunity to participate in a wheelchair division of the track and field state championships. She would have been allowed to participate in four track and field events of her choosing and any trophies won would have been identical to those won by the able-bodied athletes. Badgett did not want to participate because there were no other competitors in the wheelchair division and she believed it was closer to an exhibition than a true championship. The court denied her claim, finding that the AHSAA made reasonable modifications for her by establishing the separate wheelchair athlete division, and therefore, her request to compete with the able-bodied athletes was unreasonable.

Bowers v. Nat'l Collegiate Athletic Ass'n[10]

Michael Bowers, a high school football player with a learning disability, brought claims of discrimination under Titles II and III of the ADA and § 504 of the Rehabilitation Act against the NCAA, ACT/Clearinghouse, the University of Iowa, Temple University, and American International College. Bowers submitted an application to the NCAA Clearinghouse on September 13, 1995, and was categorized as a "nonqualifier" because his high school special education classes did not satisfy the NCAA's core course requirement and he was allowed to take an untimed SAT exam. This designation rendered him ineligible to participate on or have any contact with member institution athletic squads. Bowers was replaced by his mother in proceedings after his untimely death in 2001. The United States District Court for the District of New Jersey granted summary judgment for the NCAA and member institutions on the basis that the universities had Eleventh Amendment sovereign immunity. The Third Circuit reversed the summary judgment, stating that even though the schools had sovereign immunity as "arms of the state," Title II of the ADA abrogated that immunity, making the district court's summary judgment rationale flawed. The case was remanded back to the district court to answer the central question as to whether the defendants, through their treatment of Bowers, violated anti-discrimination law.

McFadden v. Grasmick[11]

Tatyana McFadden, a wheelchair track and field athlete with spina bifida, claimed that she was discriminated against by state school officials. The Maryland Public Secondary Schools Athletic Association (MPSSAA) incorporated a wheelchair racing program into its spring track and field

10. 475 F..3d 524 (3d Cir. 2007).

11. 485 F. Supp. 2d 642 (D. Md. 2007).

competition. The program allowed wheelchair racers to compete in a separate competition from the able-bodied racers. McFadden moved for a preliminary injunction when the MPSSAA decided that the wheelchair division racers would not be able to earn points for their schools in the quest for a state championship. The court denied the preliminary injunction because it found that McFadden was not being discriminated against because of her disability. Rather, it found that because the MPSSAA had a "forty percent rule" that only allowed the awarding of team points in an event in which schools representing at least forty percent of the students in a certain class participate. This rule covered both able-bodied and disabled athletes. There were only three wheelchair racers in the state; therefore, the event did not meet the requirement for team points regardless of the racers' disabilities.

Schmitz v. Eau Claire[12]

Joan Schmitz umpired numerous softball games for the City of Eau Claire Parks and Recreation Department from 1998-2001. In 2001, Schmitz was in a car accident, and she had her left arm and left leg amputated. As a result of her limited mobility, Schmitz was assigned a partner to umpire a limited number of softball games and was not chosen to umpire the year-end tournament in 2002. In 2003, Schmitz was evaluated by a neutral evaluator who determined she could umpire games by herself. Schmitz filed two disability discrimination complaints with the Equal Rights Division (ERD) in 2003. Following several complaints about Schmitz by players in 2003, she was given a final warning by the Superintendent of Recreation. After additional incidents involving Schmitz, she was not rehired for the 2004 season. However, she was not informed of these additional incidents prior to not being rehired. Schmitz filed another retaliation claim with the ERD, claiming that she was not rehired because of her disability. The defendant's motion for summary judgment was denied because there was a genuine issue of material fact about why Schmitz was not rehired.

ANTITRUST LAW

Antitrust laws are enforced in the United States to provide a more competitive business environment, which benefits the consumer. However, within the sports context, some agreements that may normally be considered violations of antitrust laws are considered legal. Allowing some degree of cooperation among teams in sports leagues provides consumers with a better product. National governing bodies are also allowed to make certain rules that

12. No. 07-C-183-S, 2007 U.S. Dist. LEXIS 78941 (W.D. Wis. Oct. 16, 2007).

might otherwise be considered illegal in order to provide for more competitive events.

Hamilton County Bd. of Comm'rs v. Nat'l Football League[13]

Hamilton County sued the Cincinnati Bengals and the NFL, claiming that they had violated the Sherman Act by using a monopoly over professional football to obtain a heavily subsidized lease for the Bengals' new stadium at the expense of the county and its taxpayers. The district court granted summary judgment for the NFL, finding that the four-year statute of limitations had run on the county's antitrust claim. The county appealed, claiming that the statute of limitations should be tolled because the Bengals did not fully disclose their financial information during negotiations and painted a misleadingly bleak picture of their financial situation. The county claimed that the statute of limitations was not triggered until it knew it had been injured, which was when the Bengals' true financial situation was revealed four years later. The court of appeals affirmed the district court's grant of summary judgment, finding that the county had plenty of information to file an antitrust claim against the NFL for using its market power to extort one-sided stadium leases in 1997 and had no reason to wait until the Bengals' true financial picture was revealed.

In re NCAA I-A Walk-On Football Players Litig.[14]

Several ex-walk-on Division I football players brought suit against the NCAA, claiming antitrust violations stemming from NCAA bylaw 15.5.5, which prohibits Division I football programs from issuing more than eighty-five scholarships per year. The football players claimed that they, and the class of players they represented, would have received scholarships but for bylaw 15.5.5. Furthermore, the players claimed that bylaw 15.5.5 is an anticompetitive agreement between Division I-A members. The court denied the plaintiffs' motion for class certification because the representatives could not adequately represent all members of the class due to conflicting interests. The players then moved to amend their complaint in order to add one walk-on player who still had NCAA eligibility, which they claimed would solve their conflict of interest. The court disagreed and denied the motion, claiming that adding the active player was futile to their cause.

13. 491 F.3d 310 (6th Cir. 2007).

14. No. C04-1254C, 2007 WL 951504 (W.D. Wash. Mar. 26, 2007).

Madison Square Garden, L.P. v. Nat'l Hockey League[15]

In an effort to strengthen its league brand, the National Hockey League (NHL) and its member clubs decided that the NHL's and clubs' websites would be included on one integrated network. The New York Rangers, which are owned by Madison Square Garden, continued to operate the club website outside of the NHL platform. On September 20, 2007, the NHL sent a letter to the Rangers informing the club that beginning on September 29, it would be fined $100,000 for each day it operated its website outside of the NHL platform. The Rangers filed for injunctive relief on September 28, 2007, alleging that the NHL is engaging in anticompetitive practices. The court did not find an antitrust violation because the league's restriction provided a pro-competitive effect and the restriction was necessary to promote league unity.

CONSTITUTIONAL LAW

Constitutional law often provides people with a certain degree of protection from the government. However, when high school students choose to participate in athletics, some of these protections are given up because participation in high school athletics is not a protected interest. There is a necessary balance between allowing associations and schools to enforce their own rules and providing constitutional protection. The following cases discuss the rights of parents of high school athletes, high school baseball recruiting, the right to use certain sporting equipment, and the hot topic of the year: pat-downs at NFL stadiums.

Cunningham v. Lenape Reg'l High Dist. Bd. of Educ.[16]

Thomas Cunningham, the parent of a wrestler at Shawnee High School, alleged that the school district violated his First Amendment rights when it barred him from school property after he publicly criticized the school's wrestling coach. Cunningham openly criticized the wrestling coach and started a petition to have the coach removed from his position. The school subsequently sent Cunningham a letter stating that he was no longer allowed on school grounds for what officials had deemed to be abusive behavior towards school employees. The school modified the ban to allow Cunningham on school grounds for his son's wrestling matches and to coach a youth wrestling camp, but he was not allowed to speak to any school employees. Cunningham claimed that the restrictions were placed on him as a

15. No. 07 CV 8455 (LAP), 2007 U.S. Dist. LEXIS 81446 (S.D.N.Y. Nov. 2, 2007).

16. 492 F. Supp. 2d 439 (D.N.J. June 25, 2007).

way to bar his right to express concern over the performance of a public employee. The school argued that Cunningham was barred from the school as a safety measure to protect the wrestling coach, who felt threatened by him. The court granted the board's 12(b)(6) motion to dismiss. The court ruled that the school's actions were reasonable because the school felt Cunningham posed a danger to its faculty and staff, which outweighed Cunningham's First Amendment rights to free speech.

Johnston v. Tampa Sports Auth.[17]

Gordon Johnston, a Tampa Bay Buccaneer season ticket holder, brought suit against the team, claiming that an NFL requirement that all fans be patted down before entering home games was a violation of his Fourth Amendment rights. A state court granted Johnston a preliminary injunction barring the pat-downs. The Sports Authority removed the action to federal court and moved to vacate and dissolve the injunction, but the motion was denied. The district court found that Johnston did not consent to the searches and that his Fourth Amendment rights were violated. The court of appeals reversed, holding that Johnston did in fact consent to the searches because he had notice of the pat-downs and he allowed team employees to search him at the entrance of the football stadium. In addition, Johnston did not have a constitutionally guaranteed right to attend professional football games that was infringed by requiring he submit to the pat-downs.

Sheehan v. San Francisco 49ers, Ltd.[18]

The Sheehans sued the San Francisco 49ers for violating the California Constitution when the club instituted a pat-down policy prior to entering the stadium for home games. The court ruled in favor of the 49ers because there was no invasion of privacy. Although the Sheehans had a legally protected interest in not having unwanted pat-downs, they also had advance notice of the pat-downs and could have walked away if they did not want to be subjected to the pat-downs prior to entering the stadium.

Stark v. Seattle Seahawks[19]

Fred Stark, a Seattle Seahawks season ticket holder, challenged the constitutionality of pat-downs at Seattle Seahawks games as a violation of the

17. 490 F.3d 820 (11th Cir. 2007).

18. 62 Cal. Rptr. 3d 803 (Ct. App. 2007).

19. No. C06-1719JLR, 2007 U.S. Dist. LEXIS 45510 (W.D. Wash. June 22, 2007).

Fourth Amendment and Article I of the Washington State Constitution. Stark argued that the pat-downs were unreasonable searches. The Seahawks moved for summary judgment on the grounds that the Seahawks are a private entity that does not meet the state actor requirement for a constitutional violation. Stark contended that the Seahawks are the equivalent of a state actor because they are so entwined with the Seahawks' stadium, Qwest Field, which is publicly owned by the Stadium Authority. He argued that the Stadium Authority conferred nearly all of its public function and governmental authority to run the stadium and provide security to the Seahawks. The court granted the Seahawks' motion for summary judgment, holding that the Seahawks conducting pat-downs was not state action because operating a stadium and providing security are not functions traditionally and exclusively reserved to the state.

Tenn. Secondary Sch. Athletic Ass'n v. Brentwood Acad.[20]

Brentwood Academy's football coach sent a recruiting letter to potential middle school football players in violation of the Tennessee Secondary School Athletic Association's (TSSAA) anti-recruiting rule, which barred schools from using undue influence on students for athletic programs. The TSSAA subsequently sanctioned Brentwood Academy. Brentwood brought constitutional claims, arguing that the rule was a violation of Brentwood's First Amendment rights and that the TSSAA had deprived Brentwood of due process during a sanctioning hearing. After holding that the TSSAA was a state actor, the Supreme Court found that the TSSAA's rule was not a First Amendment violation because it did not ban the dissemination of truthful information, it merely curtailed the speech of a voluntary participant in order to manage an efficient state-sponsored high school athletic league. The Court also found that the TSSAA did not violate Brentwood's due process rights because it held an investigation, several meetings, and a hearing and it kept constant correspondence with Brentwood throughout the appellate proceedings.

USA Baseball v. City of New York[21]

In an effort to prevent injuries to high school baseball players, the New York City Council passed an ordinance that did not allow high school students participating in competitive baseball games sponsored by public or private schools in New York City to use non-wood bats. The plaintiffs consist of high

20. 127 S. Ct. 2489 (2007).

21. 509 F. Supp. 2d 285 (S.D.N.Y. 2007).

school baseball players, parents and coaches of the high school players, manufacturers of sporting goods, the National High School Baseball Coaches Association, and USA Baseball. The plaintiffs sued the City of New York, claiming the bat ordinance violated the Due Process, Equal Protection, and Dormant Commerce Clauses. Both parties moved for summary judgment. The court granted summary judgment for the defendants. The ordinance did not violate the Equal Protection and Due Process Clauses because it has a rational basis in trying to prevent injuries. The court also determined the ordinance was not likely to have a significant impact on interstate commerce, and therefore, it did not violate the Dormant Commerce Clause.

CONTRACT LAW

Contracts are a crucial part of the sports industry. Athletes, coaches, universities, and a multitude of other sports related entities are controlled by contractual terms. As the sports industry continues to grow, contracts are becoming increasingly important. Contracts can be used to lay out every aspect of a sporting event, including television or sponsorship rights deals, concessions, spectator waivers, and much more. The following cases demonstrate the breadth of contract issues in the sports industry.

AT&T Mobility, L.L.C. v. NASCAR[22]

AT&T sought a preliminary injunction against NASCAR to enjoin it from barring AT&T from changing its logo on a race car that the company sponsored. Cingular was the primary sponsor of the NASCAR number thirty-one car, which allowed Cingular to place its logo on the car as part of its paint scheme. After Cingular entered into its sponsorship agreement, Sprint Nextel entered into an agreement with NASCAR to become the official series sponsor of the NASCAR Nextel Cup Series. Sprint Nextel's agreement with NASCAR allowed for the Cingular brand to remain on the number thirty-one car but barred any alteration of the logo should Cingular be bought by another wireless communications company.

In early 2007, AT&T merged with Cingular and submitted a new paint scheme for the car, which called for the addition of the AT&T logo. NASCAR denied the proposed change and AT&T brought multiple claims, including breach of contract. The court granted AT&T's preliminary injunction. It found that NASCAR had entered into a contract with Cingular, which was now AT&T, and the denial of the new paint scheme violated the

22. 487 F. Supp. 2d 1370 (N.D. Ga. 2007), *vacated and remanded by* 494 F.3d 1356 (11th Cir. 2007).

terms of that agreement by denying AT&T the commercial benefits it paid for.

In a later proceeding, the Eleventh Circuit found that AT&T lacked the standing to bring the original action. It found that under Georgia law, AT&T was not a third party to the original contract. Therefore, AT&T was not denied the commercial benefits it claimed to have a right to because, in the court's eyes, it had not been a party to the original contract.

Bouchard Transp. Co. v. N.Y. Islanders Hockey Club[23]

Bouchard Transportation Company, which holds the lease on the New York Islanders' stadium, attempted to sue the Islanders for breach of contract when they did not play the 2004-2005 season because of the NHL lockout. The Islanders moved for summary judgment, claiming that the lockout fell under a *force majeure* clause contained in the lease agreement, which would absolve the club from liability for nonperformance caused by a force beyond the club's control. The trial court denied the Islanders' motion, but the appellate division reversed and granted summary judgment. The court found that the lockout was a *force majeure* because the *force majeure* clause specifically included labor disputes and the NHL lockout made it impossible for the Islanders to play other league teams.

Bowers v. Fed'n Internationale de l'Automobile[24]

During a practice driving day before a Formula One race in Indiana, a team of drivers using Michelin tires on their race cars became aware of blow-outs of those tires on a specific turn on the racetrack. The team could not acquire different Michelin tires in time for the race; therefore, it petitioned the Federation Internationale de l'Automobile (FIA) for an exception to a rule that required cars to race with the same tires they used to qualify. FIA refused, so the fourteen cars that used Michelin tires decided to not participate in the race. Upset spectators sued FIA, Michelin, and Formula One Racing under claims of breach of contract, third party beneficiary, promissory estoppel, negligence, tortious interference with a contractual relationship, and unjust enrichment. The court granted FIA's motion to dismiss because it found that spectators were not promised anything about the quality of the race when they purchased tickets and had no rights conferred as third party beneficiaries. They were only promised entrance to the racetrack and could not recover for a race that was not up to their desired standards.

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23. 836 N.Y.S.2d 654 (App. Div. 2007).

24. 489 F.3d 316 (7th Cir. 2007).

HOK Sport, Inc. v. FC Des Moines, L.C.[25]

Kyle Krause owns about ninety percent of FC Des Moines, which owns The Menace, a minor league soccer team. Krause wanted a new stadium built for The Menace. In November 2001, Krause created a nonprofit organization called The Stadium Foundation (TSF). TSF was formed to construct and maintain the stadium. Although TSF was created as a separate entity, Krause did not always treat The Menace and TSF as separate entities. The Menace selected and contracted with HOK Sport as the architect for the stadium. On December 4, 2001, Krause signed a letter agreement with HOK Sport, agreeing that HOK Sport would provide the architectural services for the stadium. The initial estimate for the cost of the stadium was between $13.3 and $15.4 million; however, the final estimate was over $19 million. HOK Sport eventually stopped work when the City of Urbandale decided not to move forward with the stadium. HOK Sport submitted an invoice to The Menace for over $700,000 for prior work done, but The Menace never paid.

HOK Sport sued TSF and The Menace, claiming breach of contract and unjust enrichment. HOK Sport also sought to hold Krause personally liable for disregarding corporate form. The jury found TSF and The Menace liable for breach of implied contract and unjust enrichment and awarded HOK Sport $436,800. The jury also found that Krause should be personally liable for damages against TSF. TSF, The Menace, and Krause appealed. The court affirmed the jury's decision because Krause had pierced the corporate veil and disregarded the corporate form.

MasterCard Int'l Inc. v. Fed'n Internationale de Football Ass'n[26]

FIFA appealed a December 2006 final judgment of the United States District Court for the Southern District of New York that permanently enjoined FIFA from granting to anyone other than MasterCard the sponsorship rights for the 2007-2014 World Cup soccer tournaments. MasterCard had an agreement to be the exclusive credit card sponsor of the 2003-2006 World Cup quadrennial cycle. The agreement contained a "first right to acquire" provision, which MasterCard believed it had used to acquire a new deal to renew the agreement through 2014. FIFA ultimately sold the sponsorship rights to VISA. MasterCard claimed that it had agreed to the sponsorship deal and that FIFA had not bargained in good faith. The court of appeals remanded the case back to the district court to determine to what extent the 2006

25. 495 F.3d 927 (8th Cir. 2007).

26. 239 Fed. App'x 625 (2d Cir. 2007).

agreement bound the parties and whether the new agreement superseded the prior agreement.

NFL Enters. L.L.C. v. Comcast Cable Commc'ns, L.L.C.[27]

The NFL brought a claim against Comcast stemming from a dispute over whether an agreement between the NFL and Comcast allowed Comcast to distribute the NFL Network on a separate pay-basis "sports tier." The NFL and Comcast entered into an agreement that allowed Comcast to broadcast the NFL Network. The agreement contained a clause that stated if the parties did not reach any "Additional Cable Package" agreements by July 31, 2006, Comcast would be allowed to include the network on any cable package of its choice, not necessarily its basic package, which the NFL desired because it would reach the most viewers. On July 28, 2006, the parties agreed to a deal that specifically stated which games the NFL would grant Comcast access to for broadcast on the NFL Network. Comcast then announced that it would be showing the games on a pay-basis sports tier. The NFL brought suit claiming that the agreement reached on July 28 triggered the provision that required Comcast to include the NFL Network in its basic package. Comcast argued that the agreement was merely an amendment to the agreement and not a deal for an additional package. The court granted summary judgment for Comcast and allowed it to include the NFL Network in a sports tier, finding that the July 28 agreement was an offer for specific games to be broadcast on the NFL Network, not on a new package.

O'Brien v. The Ohio State Univ.[28]

James O'Brien was terminated as the head men's basketball coach at The Ohio State University (OSU) with three years remaining on his contract. O'Brien sued OSU for breach of contract. OSU claimed that when O'Brien lent money to a basketball recruit, which was an NCAA violation, he committed a material breach. The trial court ruled that OSU breached the contract because O'Brien's actions did not constitute a material breach. OSU appealed and O'Brien cross-appealed, claiming that the trial court miscalculated damages. The appellate court determined that O'Brien's actions constituted a material breach because his actions constituted a blatant disregard for the fundamentals of fair competition, which denied OSU many of the benefits of the contract; therefore, OSU had just cause to terminate O'Brien.

27. No. 603469/06, 2007 N.Y. Misc. LEXIS 3160 (N.Y. Sup. Ct. May 4, 2007).

28. 2007-Ohio-4833, 2007 Ohio App. LEXIS 4316 (Ct. App. 2007).

Parrish v. Nat'l Football League Players Inc.[29]

Several retired NFL players brought a class action suit against the National Football League Players' Association (NFLPA) over licensing revenue for retired players. Parrish claimed that the NFLPA's licensing arm, Players Inc., which is responsible for marketing active and retired players by licensing their images, breached a fiduciary duty to the ex-players by failing to provide information on its licensing practices and failing to pursue licensing opportunities in a fair and equitable manner. He also claimed that the defendants unfairly competed and wrongfully interfered with the ex-players' licensing opportunities because the defendants dominated the market for licensing the names and likenesses of current and former NFL players by having exclusive agreements with Topps and Electronic Arts, a videogame producer. The plaintiffs claimed that only 358 of 3500 retired players received payments from Players, Inc. The court dismissed the case because there was no evidence that many of the plaintiffs had ever paid NFLPA dues or signed a group licensing agreement.

Phillips v. Selig[30]

Attorney Richard G. Phillips and his law firm, Richard G. Phillips Associates, brought multiple claims against Major League Baseball (MLB) Commissioner Bud Selig, chairmen of the Major League Umpires Association (MLUA), Joseph Brinkman and John Hirschbeck, MLB's general counsel, and attorney Robert Shapiro. The court considered claims of interference with existing and prospective contractual relations and conspiracy. The claims arose out of a failed labor negotiation tactic attempted by Phillips while he represented the MLUA in negotiations with MLB. Phillips suggested that instead of a strike, the umpires should perform a mass resignation. A majority of members of the MLUA followed his suggestion and offered their resignations to MLB. MLB did not give in to the tactic and instead began hiring minor league umpires. Many of the recently resigned umpires panicked and quickly withdrew their resignations. MLB hired back all but twenty-two of the MLUA umpires. The umpires were upset at Phillips over the failed strategy.

Brinkman and Hirschbeck subsequently formed another union to compete with the MLUA, which was represented by Robert Shapiro, an attorney in competition with Phillips. The new union then filed a decertification petition

29. No. C 07-00943 WHA, 2007 WL 1624601 (N.D. Cal. June 4, 2007); No. C 07-00943 WHA, 2007 U.S. Dist. LEXIS 68355 (N.D. Cal. Sept. 6, 2007).

30. No. 1550, 2007 Phila. Ct. Com. Pl. LEXIS 29 (Pa. Ct. Com. Pl. 2007).

with the National Labor Relations Board against MLUA, which was passed by a member vote with a wide margin. Phillips brought his claims after the decertification of the MLUA, claiming that the defendants conspired to interfere and actually interfered with his representation contract with the MLUA. The defendants moved for summary judgment on all claims.

The Court of Common Pleas of Pennsylvania granted defendants' motions for summary judgment because Phillips failed to meet his burden of proving that the defendants had specific intent to harm him and all of their actions, including decertifying the union Phillips represented, were within their power under the National Labor Relations Act.

White v. Nat'l Football League[31]

Ashley Lelie, a former Denver Broncos wide receiver, did not report to the team's 2006 mandatory off-season workouts or minicamps after a series of disagreements with the team. The Broncos claimed that Lelie's actions entitled the team to repayment of $220,000 of Lelie's 2007 option bonus through a Stipulation and Settlement Agreement (SSA) in the NFL CBA. Lelie and the Broncos agreed to execute an Acknowledgement and Agreement in which Lelie agreed to pay the Broncos the $220,000 immediately and would allow the Broncos to seek repayment of other designated fines at a later time, in exchange for which the Broncos would assign Lelie's contract to the Atlanta Falcons. After learning of Lelie's repayment, the NFLPA's class counsel initiated a proceeding to recover the $220,000 payment. The class counsel argued that under section 9(c) of the SSA, the Broncos were not entitled to repayment of option bonuses, which were "salary escalators that were already earned." The district court ruled that the option bonus was earned as soon as the option was exercised and, therefore, Lelie was entitled to have it returned. The court explained that teams have a number of other ways to fine players for holding out besides recovering money already earned.

CRIMINAL LAW

Unfortunately, the sports world is not immune from criminal acts. The following two cases are examples of individuals breaking the law while carrying out their duties in sports-related employment. The activities leading to charges in the cases, indecent contact with minors and dispersing steroids and human growth hormone (HGH), are, unfortunately, not uncommon in recent years.

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31. 183 L.R.R.M. (BNA) 2796 (D. Minn. 2007).

Sadler v. Commonwealth[32]

Charles Sadler was convicted of taking indecent liberties with a minor while he was in a custodial or supervisory relationship. Sadler was a high school softball coach who told one of his players he was going to marry her when she graduated from high school, had numerous late night conversations with her, and had kissed her. Sadler appealed, claiming that he was never in a custodial or supervisory relationship with the victim. The court determined that because a young athlete trusts his or her coach and a coach is entrusted with the care and custody of players during away games, Sadler was in a custodial or supervisory relationship as a softball coach.

United States v. Shortt[33]

Dr. James Shortt was convicted of conspiracy to dispense anabolic steroids and HGH to athletes. Shortt was a physician licensed in Wisconsin and South Carolina, where he prescribed steroids and HGH for professional athletes, including approximately a half-dozen members of the Carolina Panthers, for over seven years. Shortt designed programs, drug regimens, and special tests to circumvent league drug testing. As part of a plea agreement, Shortt plead guilty to over forty-two counts.

He was sentenced to twelve months and one day in prison, which he appealed as unreasonably long. The Fourth Circuit upheld the sentence as reasonable, stating that the nature and circumstances of his offenses warranted the sentence and that a long sentence was needed to show the seriousness of the offense and promote a respect for the law.

DISCRIMINATION LAW

Equity in Athletics, Inc. v. Dept. of Educ.[34]

Equity in Athletics claimed that the Department of Education's 1979 Policy Interpretation and its 1996, 2003, and 2005 Policy Clarifications violated the Due Process Clause and the Equal Protection Clause by allowing athletic departments to drop men's programs in order to comply with Title IX. After James Madison University (JMU) eliminated ten athletic teams, Equity in Athletics sought a preliminary injunction to prevent JMU from dropping the

32. 654 S.E.2d 313 (Va. Ct. App. 2007).

33. 485 F.3d 243 (4th Cir. 2007).

34. 504 F. Supp. 2d 88 (W.D. Va. 2007).

programs. The court denied the preliminary injunction because none of Equity in Athletics' claims had a strong likelihood of succeeding and there is a public interest in allowing athletic departments to determine how they should run themselves.

Jackson v. Overton County Sch. Dist.[35]

After being cut from her high school basketball team, Rebekah Jackson filed a motion for a preliminary injunction. She alleged that she was subjected to discrimination and retaliation in violation of Title VI of the Civil Rights Act of 1964. Prior to her being cut from the team, Jackson's father had brought a complaint before the Office of Civil Rights of the U.S. Department of Education (OCR). He claimed that the school had allowed a hostile environment to develop by letting white students use the "n-word" without punishment and that his daughter was denied playing time and then cut from the team on the basis of being of mixed race. The basketball coach claimed that Jackson was cut because of declining skill and a bad attitude. The OCR found that no hostile environment existed and that Jackson had lost playing time due to her skill level, not her race. Jackson's father then appealed the OCR decision, which the basketball coach did not know at the time he cut Jackson from the team. Jackson claimed that being cut from the team was devastating to her goal of someday playing in the Women's National Basketball Association (WNBA). The court found that Jackson failed to meet the high burden necessary for a preliminary injunction because the evidence as to why Jackson was cut from the team weighed evenly for both sides.

Meyers v. LaPorte Indep. Sch. Dist.[36]

Janelle Meyers, an African-American, female high school softball player, brought an Equal Protection Clause claim, a § 1983 claim, and other claims against the La Porte school district after she was denied the opportunity to play on the varsity team all four years, which she argues would have led to college scholarships. Meyers played on the La Porte High School softball team from 2000 to 2004. During her first three years at the school, she played on the junior varsity team and was moved up to the varsity team for her senior year. Meyers contended that she was good enough to be on varsity all four years, but her coaches and the school would not promote her because of her race. The school argued that Meyers was not promoted before her senior year because her statistics did not warrant a promotion. Since a municipality

35. No. 2:06-0096, 2007 U.S. Dist. LEXIS 5667 (M.D. Tenn. Jan. 18, 2007).

36. No. H-05-1087, 2007 U.S. Dist. LEXIS 30813 (S.D. Tex. Apr. 25, 2007).

cannot be held liable for the actions of its employees (e.g., softball coaches), Meyers needed to establish the district's § 1983 liability by showing that the school district's board of trustees, being a state actor, had adopted a policy that unconstitutionally discriminated against African-American students. She failed to do so. Therefore, the court granted La Porte school district's motion for summary judgment on all claims.

Meyers then appealed to the Fifth Circuit.[37] There, the court held that although the coach may have discriminated against Meyers, the school district has immunity unless it can be shown it had notice or one of its official policies or customs led to the discrimination, neither of which was shown in this case. Therefore, the court affirmed the summary judgment.

Nicholas v. Bd. of Trs. of the Univ. of Ala.[38]

Jonath Nicholas was the assistant women's basketball coach at the University of Alabama-Birmingham (UAB). After he was accused of making improper sexual advances towards a player, he was given the choice of resigning or receiving new coaching responsibilities. In October 2003, Nicholas decided to accept new coaching responsibilities, which did not include managing players, until his contract expired. However, the head coach complained that Nicholas was still having contact with the players, and he was fired four months later. In November 2003, Nicholas sent a letter to the UAB athletic director, claiming he was discriminated against. He also filed a discrimination claim with Equal Employment Opportunity Commission (EEOC). In March 2004, the head coach was fired and Nicholas applied for the position, but UAB hired Audra Smith, an African-American female who had coaching experience at the University of Virginia. Nicholas sued for racial and gender discrimination due to disparate pay, disparate discharge, not being hired as the head coach, and retaliation for filing a discrimination claim with the EEOC. The court determined that his claims failed because he could not show the assistant coach who was paid more than him had similar job responsibilities, he was not actually discharged, UAB showed legitimate non-discriminatory reasons for not hiring him, and UAB showed a legitimate reason for removing his coaching duties.

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37. Meyers v. La Porte Indep. Sch. Dist., No. 07-20348, 2007 U.S. App. LEXIS 29598 (5th Cir. Dec. 20, 2007).

38. 101 Fair. Empl. Prac. Cas. (BNA) 1443 (11th Cir. 2007).

Peirick v. Ind. Univ.-Purdue Univ. Indianapolis Athletics Dep't[39]

During Debbie Peirick's thirteenth and final season as the head women's tennis coach at Indiana University–Purdue University Indianapolis (IUPUI), the team achieved the highest GPA of all teams on campus, had the best season in team history, and qualified for the NCAA tournament. However, when the season ended, fifty-three-year-old Peirick was fired, and the twenty-three-year-old sister of the men's tennis coach was hired. Peirick sued IUPUI for age and gender discrimination. IUPUI claimed that members of the tennis team had complained about Peirick's abusive language during practices and that she had lied to them. The district court granted summary judgment in favor of the defendants on both claims, and Peirick appealed. Summary judgment was reversed on the gender discrimination claim because there was a question of fact if similarly situated male coaches that had discipline issues were treated differently. There was also a question of fact on whether IUPUI's reasons for discharging Peirick were mere pretext. However, summary judgment in regard to the age discrimination claim was upheld because state entities are immune from age discrimination claims brought in a federal court.

Sanders v. Madison Square Garden, L.P.[40]

Anucha Sanders worked as a marketing executive for Madison Square Garden, L.P. (MSG) from 2000 to 2006. Up until 2004, she received favorable job reviews; however, beginning in 2004 she began having problems with Isaiah Thomas, the President of Basketball Operations for the New York Knicks, and Kevin Layden, the President and General Manager of the Knicks. She was eventually fired in January 2006. Sanders claimed that she was fired because she complained she was sexually harassed by Thomas and for investigating the possible sexual harassment of other female employees within the organization. MSG claimed that it fired Sanders because of her job performance, but it had also issued an internal report that recommended Thomas receive sensitivity training because he occasionally raised his voice, used profanity, and had on occasion greeted Sanders with a hug and a kiss. The report also indicated that Sanders had numerous business disagreements, that she demonstrated poor job performance, and that she should be terminated. However, MSG's chairman stated during a deposition that he would not have terminated Sanders even though her job performance was poor. Sanders sued MSG for sexual discrimination and retaliation. MSG

39. 510 F. 3d 681 (7th Cir. 2007).

40. 101 Fair Empl. Prac. Cas. (BNA) 390 (S.D.N.Y. 2007).

moved for summary judgment because it claimed it terminated Sanders for a valid reason, but the court denied summary judgment because there was a question of fact as to why MSG fired Sanders.

Simpson v. Univ. of Colorado–Boulder[41]

The plaintiffs were sexually assaulted by University of Colorado (CU) football players and high-school recruits. At the time the assaults took place, there were several reports that there was serious risk of assault by student-athletes. The head coach knew about several incidents and a local district attorney had met with CU officials to discuss developing policies for supervising recruits. The plaintiffs sued CU, claiming that CU knew of the risk of sexual harassment of female students in connection with recruiting program, which violated Title IX. CU filed for summary judgment. The court determined that CU officials and coaches ignored several warning signs that this kind of conduct could occur on recruiting trips, which constituted notice of noncompliance with Title IX. Therefore, summary judgment was denied.

EDUCATION LAW

Sports and education are inseparable in the lives of many people. Courts have consistently held that there is no constitutional right to compete in high school athletics. Conflicts of interest can often arise between high school student-athletes and high school athletic associations. However, because there is not a recognized property right in competing in athletics, courts often give substantial deference to athletic associations' rules and decisions. Additionally, within the educational system, individual rights are sometimes stifled for the proposed benefit of many. The following cases discuss the intersection of sports and the educational system.

Fowler v. Tyler Indep. Sch. Dist.[42]

Bridget Fowler slipped and fell and broke her leg while attending a high school football game at a Tyler Independent School District (TISD) stadium, which was rented by the high school teams playing in the game. Fowler sued, claiming that the stadium was in an unreasonably dangerous condition at the time of the football game and that TISD failed to maintain warnings that the stadium was in an unsafe condition. TISD claimed sovereign immunity, but Fowler claimed that TISD was acting in a proprietary capacity because it

41. 500 F.3d 1170 (10th Cir. 2007).

42. 232 S.W.3d 335 (Tex. Ct. App. 2007).

rented the stadium. The court determined that the renting of the stadium was a cooperative sharing of resources among three school districts, which furthered their mission of education. Therefore, TISD was not acting in a proprietary capacity.

Lowery v. Euverard[43]

The plaintiffs were members of the football team at Jefferson County High School. The plaintiffs claimed that the coach used inappropriate language, hit a player in the helmet, threw away college recruiting letters for certain players, and required a year-round conditioning program, which was a violation of the rules. One of the plaintiffs typed a statement that said, "I hate Coach Euverard . . . and I don't want to play for him," and asked other players to sign it. The plaintiffs intended to give it to the principal following the football season, but the coach found out about the petition during the season. The coaches decided to question each member of the football team individually, but the plaintiffs wanted to meet as a group. The head coach told them to leave if they did not want to cooperate, and they all decided to leave. Any students who claimed that they still did not want to play for the head coach were dismissed from the team, but those who apologized to the coach were allowed to continue playing. The plaintiffs sued claiming that they should not have been dismissed from the team. The trial court denied the defendants' motion for summary judgment. The appellate court reversed and granted summary judgment for the defendants because the defendants reasonably believed that the plaintiffs would cause a substantial disruption to the team if they had not been removed.

Marinnie v. Palmyra Bd. of Educ.[44]

Robert Marinnie, Sr. brought §§ 1983, 1985, and 1986 claims against the board of education under the No Child Left Behind Act because his son's high school failed to provide his son, a special education student, with the proper education to be cleared by the NCAA clearinghouse in order to play NCAA Division II athletics. Marinnie claimed that his son was not provided foreign language courses and was not advised that he could receive time consideration for the SAT. The district court granted the board of education's motion to dismiss all claims. The court found that Marinnie failed to state a claim upon which relief could be granted because he did not identify any constitutional right or federal law that had been violated, did not allege that the defendants acted under the color of state law, and did not state how the defendant's

43. 497 F.3d 584 (6th Cir. 2007).

44. No. 06-1977 (NLH), 2007 U.S. Dist. LEXIS 20038 (D.N.J. Mar. 20, 2007).

conduct deprived him of his rights.

EMPLOYMENT LAW

Employment discrimination claims continue to lead to a significant amount of litigation. Employees often claim they were discriminated against in the employment setting because of their race, ethnicity, or sex. The following cases discuss employment discrimination at the high school and collegiate level.

Baldwin v. Bd. of Sup'rs for the Univ. of La. Sys.[45]

Jerry Lee Baldwin, the ex-head football coach for the University of Louisiana at Lafayette (ULL), brought claims of racial discrimination against the school stemming from his termination. A state district court granted summary judgment for ULL, stating that the school had presented legitimate reasons for Baldwin's termination. The court of appeals reversed the grant of summary judgment. It held that after Baldwin had met his initial burden of showing a prima facie case of discrimination and ULL had presented seemingly legitimate, nondiscriminatory reasons for Baldwin's removal, he should have been given a chance to demonstrate that a genuine issue of material fact existed as to whether ULL's reasons were legitimate or merely pretext. The court found that Baldwin had met that burden by providing evidence that he may have been terminated for discriminatory reasons, creating a jury question and making summary judgment inappropriate.

Dubinsky v. St. Louis Blues Hockey Club[46]

Steve Dubinsky, a professional hockey player, sought benefits for an injury that occurred during a professional hockey game. The Labor and Industrial Relations Commission awarded Dubinsky $13,604.80 in compensation for his permanent partial disability and gave employer credit in the same amount. Dubinsky appealed the amount of the award, claiming that he was due more compensation because of the loss of income the injury would cause him in the future. The court denied Dubinsky's appeal, stating that he was fairly compensated for the time he missed and the level of injury he suffered.

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45. 2006-0961 (La. App. 1 Cir. 5/4/07), 961 So. 2d 418.

46. 229 S.W.3d 126 (E.D. Mo. 2007).

GAMBLING LAW

Humphrey v. Viacom, Inc.[47]

Charles Humphrey, Jr. brought claims against ESPN, CBS, and other defendants, claiming that their pay-for-play fantasy sports websites are illegal gambling schemes in violation of the laws of New Jersey and several other states. Humphrey claimed that he was entitled to recover the individual losses of all participants under the *qui tam* laws of seven states and the District of Columbia. Q*ui tam* laws provide a method for dependents of gamblers to recover the gambling losses of a family member if the losses come during a traditional gambling activity. Humphrey argued that the fees that participants pay constitute wagers by players whose odds of winning depend on the chances of injury and player performance. The court granted summary judgment for all defendants. It stated that fantasy sports were not gambling because players won based on skill and there were no losses. The court explained that, in order to win, a team owner needed skill to draft and manage his or her team throughout an entire season and there were no actual "losses" in fantasy sports because all players receive the services of the companies, in the form of statistical and analytical services, in return for their fees. It also held that even if fantasy sports were gambling, the *qui tam* laws were 200-year-old laws intended to keep families from becoming poor and that the court would not extend their protections to Humphrey.

GENDER EQUITY LAW

Title IX of the Education Amendments was passed over thirty years ago, but there continues to be litigation about the application to athletics at both the high school and collegiate level. While the amount of opportunities for women and girls in athletics has increased significantly over the past thirty years, many female college athletes claim that they have not been provided an equal opportunity to compete in college athletics. There also continues to be problems at the high school level in providing female athletes comparable facilities. The following cases discuss equal opportunities at the college level, comparable facility issues at the high school level, and retaliation claims.

47. No. 06-2768 (DMC), 2007 U.S. Dist. LEXIS 44679 (D.N.J. June 19, 2007).

Choike v. Slippery Rock Univ. of Pa. of the State Sys. of Higher Educ.[48]

The plaintiffs in the action were female student-athletes who attended Slippery Rock University (SRU). SRU eliminated eight varsity sports, which included women's swimming and women's water polo. The plaintiffs sued SRU, its president, and its athletic director, claiming SRU violated Title IX's equal participation requirement and Title IX's requirement to treat female student-athletes substantially equal to the male student-athletes. The plaintiffs also requested a preliminary injunction, seeking the immediate reinstatement of the women's swimming and water polo teams. The court granted the plaintiffs a preliminary injunction because the plaintiffs were able to show a likelihood of success on the merits, that the probability of the plaintiffs sustaining irreparable harm was high, that there was a minimal amount of harm to SRU, and that the public interest favored the grant of injunctive relief.

The parties then participated in settlement negotiations supervised by a judge and agreed to a $300,000 fund created to promote women's athletics and changes in SRU's practices and policies. Once the parties agreed to a settlement, they sought to have it approved by the court. The court determined the settlement was fair based on the fact that there was extensive discovery completed, further litigation would be costly, the class did not object to the settlement, and the settlement is within the range of what could be awarded if the case went to trial.

In re Evergreen Sch. Dist.[49]

A parent of a female tennis student brought an equal treatment claim against Evergreen School District because the parent believed that the female tennis teams were not being fairly accommodated. The parent claimed that even though the female tennis teams were much larger than the male teams they received the same accommodations. The parent appealed a superior court ruling that reversed an administrative law judge's (ALJ) ruling that the district had failed to keep track of its students' needs and meet them accordingly. The court of appeals affirmed the superior court's reversal, finding that the ALJ's order was not based on any substantial evidence that the number of tennis courts had a disparate impact on the girls or that increasing the number of courts would increase the practice time or number of students who could participate. The court did uphold the ALJ's order that the district should conduct a survey every three years to make sure it is still accommodating its

48. No. 06-622, 2007 WL 184778 (W.D. Pa. Jan. 22, 2007); No. 2:06-cv-00622-DWA, 2007 U.S. Dist. LEXIS 57774 (W.D. Pa. Aug. 8, 2007).

49. 139 Wash. App. 1024 (Ct. App. 2007).

students' needs.

Jennings v. Univ. of N.C.[50]

Melissa Jennings and Debbie Keller appealed a court of appeals grant of summary judgment dismissing their Title IX harassment claims against their former university and soccer coaches. Jennings and Keller played soccer at the University of North Carolina at Chapel Hill (UNC). At the time, Anson Dorrance was the head soccer coach and William Palladino was the assistant soccer coach. Jennings and Keller claimed that the coaches often made offensive remarks regarding the women's sex lives during practice and at meetings. Jennings and Keller alleged that UNC violated Title IX, Dorrance violated their privacy, Dorrance and Palladino sexually harassed them, and several university officials failed to supervise Dorrance and Paladino. The district court granted summary judgment in favor of the defendants and the court of appeals affirmed because Jennings and Keller failed to raise a genuine issue of material fact as to whether the comments were sufficiently severe or pervasive. On rehearing en banc, the court of appeals vacated the summary judgment on the players' Title IX and § 1983 claims because Jennings had given the university sufficient notice of harassment to raise a triable question of fact.

Thomka v. Mass. Interscholastic Athletic Ass'n, Inc.[51]

Lindsey Thomka, a female high school golfer, brought a claim of gender discrimination against the Massachusetts Interscholastic Athletic Association (MIAA). She was denied the opportunity to play in the boys' state championship per MIAA bylaw 43.2.1.2, even though she participated on a mixed-gender team during the school year. The bylaw required male and female players on mixed-gender teams to compete in their own gender's state tournaments. The MIAA offered state championships to male players following both the fall and spring seasons, but only offered a spring championship to female golfers. Thomka claimed that the fall tournament offered a higher level of competition, a greater attendance of college coaches and recruiters, and a better stage for her to showcase her talents. The court found that the MIAA put the female players whose schools decide to play in the fall season at a disadvantage by holding two boys' tournaments and only one girls' tournament. Therefore, the court found that the bylaw violated the Massachusetts Equal Rights Amendment and enjoined the MIAA from

50. 482 F.3d 686 (4th Cir. 2007).

51. No. 051028, 2007 Mass. Super. LEXIS 83 (Mass. Super. Ct. Feb. 8, 2007).

enforcing the bylaw against any female golfers.

Williams v. Bd. of Regents of the Univ. Sys. of Ga.[52]

In this case, the Eleventh Circuit vacated its prior 2006 opinion in its entirety and substituted this opinion in its place, even though the same conclusions were reached on all claims. Tiffany Williams was invited to University of Georgia (UGA) basketball player Tony Cole's room, where the two engaged in consensual sex. When Cole went to the bathroom, UGA football player Brandon Williams came out of the closet and attempted to rape Tiffany. Cole also invited a teammate, Steven Thomas, to enter the room and rape Tiffany. Tiffany filed a complaint with the UGA police and withdrew from school. Tiffany sued, claiming violations of Title IX by UGA, the Board of Regents, and the UGA Athletic Association. Tiffany also sued the head basketball coach, the athletic director, and the president of UGA under 42 U.S.C. § 1983 as state actors who violated federal constitutional provisions. Tiffany also sought injunctive relief to require UGA to implement policies to protect students from sexual harassment by other students. The district court dismissed all claims. The Eleventh Circuit remanded the Title IX claim, but it affirmed the district court in regard to all other claims.

INSURANCE LAW

Sport carries with it a high degree of risk. From personal injury to facility management issues, insurance is key to ensuring the physical and financial health of those who participate. The following two cases are prime examples of the role insurance can play in injuries while participating in a sport and issues that can arise while dealing with the physical maintenance of a sports facility.

Regan v. Mut. of Omaha Ins. Co.[53]

Brendan Regan was a member of the St. Ambrose University (SAU) baseball team and traveled with the team to a baseball tournament in Florida in March 2002. During the team's day off, Regan was paralyzed when he dove into a wave and hit the ocean floor at the beach next to the team's hotel. Mutual of Omaha issued a catastrophic athletic insurance policy to SAU, and a claim was made on Regan's behalf following his injury. Mutual of Omaha denied the claim because the injury occurred during a day off and did not occur during a covered activity or event. Regan claimed that the entire trip to

52. 477 F.3d 1282 (11th Cir. 2007).

53. 874 N.E.2d 246 (Ill. App. Ct. 2007).

Florida was a covered activity or event. Regan sought a declaratory judgment finding that he was a covered insured, and the trial court granted summary judgment for Regan. The appellate court affirmed the trial court's decision because Regan was not violating any team rules while at the beach.

Tweet/Garot-August Winter, L.L.C. v. Liberty Mut. Fire Ins. Co.[54]

Tweet/Garot is a Wisconsin company that installed the plumbing and HVAC systems at Lambeau Field, home of the Green Bay Packers, during a renovation project in the late 1990s. Tweet/Garot, as a subcontractor, was covered by Lambeau Field's liability insurance, which was issued by Liberty Mutual. In 2004, many of the valves Tweet/Garot had installed in the heating and cooling systems began to leak, causing damage to parts of the field and other Packers property. Tweet/Garot determined that the valves had been improperly coated by the manufacturer and decided to replace all valves in the Lambeau Field systems. Tweet/Garot filed a claim with Liberty Mutual for approximately $600,000 for the cost of replacing the valves and repairing parts of Lambeau Field after the replacement.

Liberty Mutual denied the claim because there had been no actual physical damage caused by most of the faulty valves. Tweet/Garot claimed that it had saved Liberty Mutual millions of dollars in potential damages by replacing the valves that had not yet leaked. The court interpreted the insurance policy as a contract under Wisconsin law and determined that loss mitigation was not covered by the policy. Liberty Mutual was granted summary judgment and was not required to pay Tweet/Garot's claim.

INTELLECTUAL PROPERTY LAW

Currently, intellectual property law is arguably the fastest growing and most disputed area of law in the sports industry. Athletes' rights of publicity, trademark protections, fantasy statistics, and ownership of memorabilia are just some issues that have arisen. The following cases demonstrate the type of intellectual property disputes that can arise in the sports context.

Am. Needle, Inc. v. New Orleans La. Saints[55]

NFL Properties is responsible for the development and production of all thirty-two NFL teams' intellectual property rights. For over twenty years, NFL Properties had granted licenses to American Needle to use NFL

54. No. 06-C-800, 2007 WL 445988 (E.D. Wis. Feb. 7, 2007).

55. 496 F. Supp. 2d 941 (N.D. Ill. 2007).

trademarks. However, in 2000, NFL Properties entered into an exclusive license with Reebok and did not renew its contract with American Needle. American Needle claimed NFL Properties violated antitrust regulations when it granted an exclusive license to Reebok. The court granted summary judgment for NFL Properties because it was acting as a single entity rather than as thirty-two separate entities and, therefore, was allowed to grant an exclusive license.

Baden Sports, Inc. v. Kabushiki Kaisha Molten[56]

Baden Sports, Inc. (Baden) and Kabushiki Kaisha Molten (Molten) are competing basketball manufacturers. Baden was granted a patent on a basketball consisting of a spherical rubber bladder, a layer of winding surrounding the bladder, and a "cellular sponge layer," which it marketed as "Cushion Control Technology." The basketballs achieved much commercial success, including an exclusive manufacturing agreement with Adidas. Years later, Molten began producing basketballs using "Dual Cushion Technology." Baden brought suit against Molten, alleging patent infringement. Molten moved for summary judgment on the basis that Baden's patent was invalid for obviousness. The court denied the motion because Molten failed to meet its burden of proof to show that the patented basketball design would be obvious to a person of ordinary skill in the field of basketball design.

Later, the court directed a verdict in favor of Baden regarding validity, and the jury found that Molten had continued to sell the infringing basketball regardless. The jury awarded over $8 million in damages, but Baden requested enhanced damages and a permanent injunction. The court granted a permanent injunction preventing Molten from advertising "Dual Cushion Technology" within the United States and towards consumers in the United States because continued infringement would damage Baden's goodwill. The court did not award enhanced damages because Baden did not prove that Molten acted in bad faith, but it did award Baden attorneys' fees and pre-judgment interest on the patent infringement claim.

Brooks v. Topps Co.[57]

James Bell was a well known baseball player who played in the Negro leagues from 1922 to 1950 and was inducted into the Baseball Hall of Fame in 1974. Once inducted, he gave the Baseball Hall of Fame permission to use his

56. No. 06-cv-00210-MJP, 2007 WL 1526344 (W.D. Wash. May 23, 2007); No. C06-210MJP, 2007 U.S. Dist. LEXIS 70776 (W.D. Wash. Sept. 25, 2007).

57. No. 06 CIV. 2359 (DLC), 2007 U.S. Dist. LEXIS 94036 (S.D.N.Y. Dec. 21, 2007).

likeness. Following his death, his daughter granted permission to use his likeness to several different companies. However, in 2001 and 2004, Topps released some trading cards with Bell on them without getting permission from Bell's daughter. His daughter also claimed that there was information on the cards that was both false and derogatory. The right of publicity claim was barred by the statute of limitations, and all other claims were dismissed at summary judgment.

C.B.C. Distrib. And Mktg., Inc. v. Major League Baseball Advanced Media, L.P.[58]

C.B.C. Distribution & Marketing, Inc. (CBC) sold fantasy sports products on the Internet, including a fantasy baseball league. From 1995 to 2004, CBC licensed use of many of the names and information of MLB players. However, in 2005 the MLB Players Association licensed the information to MLB Advanced Media. CBC sued the defendant to determine if it could continue operating its fantasy baseball games. The court granted summary judgment for CBC, and the defendants appealed. Although CBC was using the information for commercial purposes, its First Amendment rights superseded the players' rights of publicity. Based on this reasoning, the court of appeals affirmed the district court's judgment in favor of CBC.

Facenda v. N.F.L. Films, Inc.[59]

John Facenda, Jr., as executor of his late father's estate, sued the NFL, NFL Films, and NFL Properties for the unlicensed use of recordings of his father's voice in a film about the *Madden 2006* computer-simulation game. The district court initially granted summary judgment to Facenda on his federal claim of false endorsement under § 43(a) of the Lanham Act and his state claim, under Pennsylvania law, of unauthorized use of name or likeness. The defendants requested certification for interlocutory appeal and a stay of the proceedings. The defendants claimed that summary judgment was inappropriate because Facenda's federal claim would have failed, as there was no evidence of consumer confusion, and because his state claim should have been preempted by federal copyright law. The court ruled that both issues were controlling questions of law; therefore, it granted the defendants' motion to certify the interlocutory appeal and stayed the proceedings pending the outcome of the appeal.

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58. 505 F.3d 818 (8th Cir. 2007).

59. No. 06-3128, 2007 U.S. Dist. LEXIS 38315 (E.D. Pa. May 24, 2007).

Ignition Athletic Performance Group, L.L.C. v. Hantz Soccer U.S.A., L.L.C.[60]

The plaintiff provided sports-specific training in the Cincinnati area. The plaintiff applied for trademark protection on February 5, 2005, and registered the "Ignition" mark and logo with the United States Patent and Trademark Office on March 5, 2006. On September 12, 2005, the defendant announced that it would operate a soccer team in Detroit named the Detroit Ignition. The plaintiff sued for trademark infringement and moved for a temporary restraining order and preliminary injunction. The court did not grant the temporary restraining order or the preliminary injunction. The plaintiff appealed, and the defendant moved for summary judgment. The court granted summary judgment for the defendant because the plaintiff's mark is only strong in the Cincinnati area, the users of the plaintiff's mark are likely to use a high degree of care when using its products and services, and the likelihood of confusion is low because the Detroit Ignition do not play in any of the same cities as the Cincinnati Kings, another soccer team in the league. The appellate court affirmed the district court's denial of both a temporary restraining order and a preliminary injunction.

Live Nation Motor Sports, Inc. v. Davis[61]

SFX Motor Sports, Inc. (SFX), a promoter and producer of Supercross motorcycle races, brought trademark, copyright, and unfair competition claims against Robert Davis. In response, Davis brought a counterclaim of trademark infringement against SFX. Davis broadcast webcasts of SFX races on his website, www.supercrosslive.com, without the consent of SFX. The court found that SFX had exclusive rights to perform and display the races under the United States Copyright Act and that Davis had infringed upon those rights. Davis did not deny that he webcast the races, but rather he attempted to show an affirmative defense by claiming that SFX infringed on his trademark, "SupercrossLIVE," by using "Supercross LIVE" on its website and in marketing campaigns. The court found that Davis' claimed mark did not qualify for copyright protection and SFX did not use it in a way that would create any confusion for consumers. The court granted SFX summary judgment and dismissed all of Davis's claims.

60. No. 06-13684, 2007 U.S. Dist. LEXIS 51456 (E.D. Mich. July 17, 2007); 245 F. App'x 45 (6th Cir. 2007).

61. 81 U.S.P.Q. 2d (BNA) 1826 (N.D. Tex. 2007).

Matrix Group Ltd. v. Rawlings Sporting Goods Co.[62]

Matrix Group Ltd. (Matrix) and Rawlings Sporting Goods (Rawlings) brought breach of license agreement claims against each other. Matrix also brought a tortious interference claim against K2, Rawlings' parent company. The two companies had entered into a licensing contract in which Matrix was allowed to use the Rawlings trademark in producing, marketing, and selling equipment bags used for baseball, softball, basketball, and football. The agreement contained a noncompete clause and was to continue as long as certain requirements were met. Seven years after the agreement was formed, K2 acquired Worth, a competitor of Matrix in the sports bag market, and began consolidating the workforce of Rawlings and Worth. Matrix claimed that the consolidation would violate the license agreement's non-compete clause. Matrix brought a breach of contract action against Rawlings, which responded by terminating the licensing agreement. It claimed that Matrix was not meeting the agreement's requirements by failing to appropriately market the brand. Matrix responded by bringing additional claims against Rawlings for wrongfully terminating the contract by failing to give a required thirty-day notice in which Matrix could have cured its breach. Matrix also brought a tortious inference claim against K2 for causing Rawlings to breach its agreement by joining it with Worth's competitor. A jury returned a verdict for Matrix on all claims and awarded approximately $4,000,000 against Rawlings and $2,500,000 against K2. The Eighth Circuit affirmed the verdicts and the awards.

Merino v. Wilson Sporting Goods Co.[63]

Dana Merino granted a license to Wilson to produce his unpatented tennis ball machine. He then brought multiple claims against Wilson, including fraud, conspiracy, and breach of contract, when it sold a modified version of the machine. Merino claimed that Wilson was guilty of fraud when it represented the modified machine as his and coerced him into accepting the new version as his invention. The district court granted summary judgment for Wilson, and the Seventh Circuit upheld the decision. Both courts found that Wilson and Merino had entered into a licensing agreement through 2007, under which Wilson paid Merino all royalties agreed to and met all other obligations. The courts held that the agreement placed no responsibility on Wilson to keep the product the same, let alone bring it to market. Therefore, it was actually doing Merino a service by selling an improved product and

62. 477 F.3d 583 (8th Cir. 2007).

63. 235 F. App'x 369 (7th Cir. 2007).

continuing to pay him.

Rhino Sports, Inc. v. Sport Court, Inc.[64]

Sport Court (SC) was granted a preliminary injunction that barred Rhino Sports (Rhino) from using its trademarked term, "Sport Court." The parties then agreed to a settlement in which Rhino would permanently stop using the term "Sport Court" in relation to all of its products. SC later discovered that a search for any combination of the words "sport" and "court" on the Google Internet search engine brought up Rhino's website. SC then filed a new complaint to reopen the case and impose sanctions on Rhino for violating the injunction. Rhino simultaneously filed a motion to amend the injunction to allow it to buy "sport" and "court" as sponsored keywords on Google. The court denied both SC's claim of contempt against Rhino and Rhino's motion to amend. The court found that Rhino had removed "Sport Court" from all of its products, its website, and its advertising and had no control over what Google keywords brought up its website through natural algorithms. The court, however, would not allow Rhino to purchase sponsored keywords that would directly link its website to the words "sport" and "court."

Sports Imaging Photography of Utah, Inc. v. Utah Sch. & Sports Imaging[65]

The plaintiff, Sports Imaging Photography of Utah, has been providing photography services to recreational sports leagues, scholastic sports leagues, and other athletic associations in the greater Salt Lake City area for over twenty years. In 2005, defendant Chris Zullinger moved to Utah to start a company with his two brothers called Z3 Creative. In April 2007, both the plaintiff and the defendant submitted bids to Salt Lake County for team and individual sports photography. The plaintiff submitted a bid using its name, Sports Imaging Photography of Utah, and the defendant used the name Utah School & Sports Imaging. Plaintiff sued the defendant for trademark infringement and sought a preliminary injunction to prevent the defendant from using the terms "Utah School & Sports Imaging" and "Sports Imaging." The court declined to enjoin the defendant from using the marks because the marks were descriptive, but the plaintiff could not show that the words had a secondary meaning, which is necessary for common law trademark protection for unregistered trademarks.

64. Nos. CV-02-1815-PHX-JAT (Lead), CV-06-3066-PHX-JAT (Cons), 2007 WL 1302745 (D. Ariz. May 2, 2007).

65. No. 2:07CV517DAK, 2007 U.S. Dist. LEXIS 88589 (D. Utah Nov. 1, 2007).

Triple Tee Golf, Inc. v. Nike, Inc.[66]

Triple Tee Golf (TTG) claimed that a former employee, now an employee of Nike, used TTG's trade secrets to produce two golf clubs for Nike that contained adjustable weighting systems. The district court granted summary judgment for Nike, finding that the Nike clubs were not adjustable at all, therefore non-infringing. TTG later discovered that Nike withheld two patent applications for golf clubs with adjustable weighting systems during the discovery process and moved for relief from the summary judgment. The district court denied the motion, ruling that the new evidence was not relevant to the issues it had decided. TTG appealed the initial grant of summary judgment and the denial of post-judgment relief to the Fifth Circuit. The Fifth Circuit reversed both on the grounds that Nike should have turned over the patent applications during initial discovery and that the applications would have been relevant to whether the district court granted the summary judgment in favor of Nike. The court remanded the claims back to the district court for further proceedings.

Unique Sports Prods., Inc. v. Wilson Sporting Goods Co.[67]

Unique Sports Products (Unique) claimed that Wilson Sporting Goods (Wilson) violated § 43(a) of the Lanham Act by continuing to use the image and likeness of Pete Sampras on one of its products after its licensing agreement had expired and Unique had subsequently licensed Sampras' likeness. Unique entered into a licensing agreement with Pistol Pete, Inc. that granted it the exclusive, world-wide right to use Sampras' image on tennis ball hoppers from January 1, 2005, until December 31, 2007. In March 2005, Unique discovered that a store in Atlanta was selling a Wilson "70 Ball Pick-up" with Sampras' image on the packaging. An investigation revealed that Wilson had simply failed to remove Sampras' image from its product for several years after its licensing agreement expired. Wilson moved for summary judgment, claiming that Unique had no trademark rights to Sampras' image. The court disagreed and denied the summary judgment. It ruled that Unique had purchased an exclusive license for Sampras' image and that Wilson's continued, unauthorized use of the image raised a genuine issue of fact as to whether there was a likelihood of consumer confusion.

66. 485 F.3d 253 (5th Cir. 2007).

67. 512 F. Supp. 2d 1318 (N.D. Ga. 2007).

World Triathlon Corp. v. Dawn Syndicated Productions[68]

World Triathlon Corporation (WTC) owns the mark "Ironman Triathlon." Defendant Warner Brothers distributed a show called ElimiDATE. During five shows of ElimiDATE that were aired in May 2005, the show featured an on screen logo with the words "ElimiDATE Ironman Challenge." WTC sued the defendants for trademark infringement. The court granted summary judgment for the defendants because the mark is a common English word that is used regularly by third parties within the sports industry and the plaintiff's mark does not have a strong significance outside of triathlon competitions. Further, there was little similarity between the plaintiffs and defendants in regard to the marks, the products and services, or the advertising methods. Therefore, there was no likelihood of confusion, and the plaintiffs could not prove that there was any actual confusion. The court also granted summary judgment for defendants on a dilution claim because the plaintiffs did not provide any evidence that consumers would have a different impression of plaintiff's products because of defendant's use of the word "Ironman."

LABOR LAW

Labor law plays a major role in sports. Athletes are employees and thus need the protections that employees in other professions enjoy. CBAs negotiated by player unions and leagues outline the terms under which athletes in most major sports work. The following two cases are examples of situations that have arisen under those terms.

Chelios v. Nat'l Hockey League Players' Ass'n[69]

NHL players and NHL Players' Association (NHLPA) executive board members Chris Chelios, Duane Roloson, and Trent Klatt brought suit against the NHLPA, its current executive director, Ted Saskin, its president, Trevor Linden, and the members of its executive committee for breach of contract, violations of the Labor-Management Reporting and Disclosure Act, fraudulent misrepresentation, conversion, and breach of the duty of good faith and fair dealing. The players claimed that in the course of negotiations between the NHL and NHLPA, during the labor dispute that led to the cancellation of the 2004-2005 season, the defendants took control of the NHLPA and negotiated a "hard" salary cap against the wishes of the players. The players also claimed that the NHLPA then misrepresented the actual terms of the salary cap in order to gain the players' approval, which was necessary for ratification. The

68. No. 8:05-CV-983-T-27EAJ, 2007 U.S. Dist. LEXIS 72544 (M.D. Fla. Sept. 28, 2007).

69. No. 06 C 5333, 2007 U.S. Dist. LEXIS 4260 (N.D. Ill. Jan. 18, 2007).

defendants moved for dismissal on *forum non conveniens* grounds. The district court granted the motion to dismiss because it found that none of the events of the labor dispute occurred within the jurisdiction of Illinois and the fact that Illinois had an NHL franchise (Chicago Blackhawks) was not enough to secure jurisdiction.

McPherson v. Tenn. Titans[70]

Adrian McPherson, a football player for the New Orleans Saints, brought state law claims for negligence and negligent supervision against the Tennessee Titans after he was injured by the Titan's mascot during a 2006 preseason game. McPherson was struck by a golf cart driven by the team's mascot while he was on the field warming up during halftime activities. His injuries eventually led to the termination of his contract with the Saints. The Titans removed the action to U.S. District Court, asserting federal question jurisdiction under § 301 of the Labor Management Relations Act (LMRA), and claimed that the LMRA and NFL CBA preempted McPherson's state claims. McPherson subsequently moved to remand the action back to state court, claiming that the LMRA and CBA do not completely preempt his ability to bring state claims. The district court remanded McPherson's claims to state court, finding that because they had no relationship to any part of the NFL CBA and involved a dispute between employees of two different teams, they were sufficiently independent of the CBA to survive § 301 preemption.

PROPERTY LAW

Property law plays a large part in the sports world in the context of constructing new or renovating existing stadiums and other facilities. The case below examines the issues that can arise during the planning of a major project, such as the new home for the NBA's New Jersey Nets.

Goldstein v. Pataki[71]

Owners of property in Brooklyn, New York, brought suit against New York Governor George Pataki, New York City Mayor Michael Bloomberg, and Forest City Ratner Companies (FCRC), a design corporation, for condemning their property. The defendants condemned the land with the intention of using it as part of the Atlantic Yards Arena and Development Project, which would consist of sixteen towers for residential and business use,

70. No. 3:07-0002, 2007 U.S. Dist. LEXIS 39595 (M.D. Tenn. May 31, 2007).

71. 488 F. Supp. 2d 254 (E.D.N.Y. 2007).

along with a new sports arena for the New Jersey Nets. The plaintiffs claimed that defendants used eminent domain to take their property, violating the Takings, Equal Protection, and Due Process Clauses of the Constitution. They also claimed that giving the land to FCRC was not for the public good, as stated, but rather to confer a private benefit. The district court found that the condemnation did not violate the Takings Clause because the plaintiffs failed to show that the taking was just a pretext for conferring a private benefit and because the plaintiffs were fairly compensated for the land. The court also dismissed the equal protection and due process claims, finding that the takings were rationally related to a legitimate government purpose and that the plaintiffs had been given satisfactory procedures through which to be heard.

TAX LAW

Much as in every individual's life, tax law plays a role in sports. The following cases show how tax issues can be raised through sport's financial aspects.

Campo Jersey, Inc. v. Dir., Div. of Taxation[72]

Campo Jersey (Campo), which had licenses to sell food within Giants Stadium and Continental Airlines Arena, challenged the ruling of the Director of the Division of Taxation (Director) that it owed approximately $100,000 in unpaid sales tax. The Director ruled that Campo's products were intended for immediate consumption on Campo's premises, making it liable for sales tax under the New Jersey Administrative Code. Campo appealed and argued that its premises were only the carts from which the products were sold, not the entire stadium; therefore, all of its products were sold for off-premise consumption. The Tax Court upheld the Director's ruling, finding that the Director was justified and in line with the intent of the tax code. It ruled that because Campo's food was prepared in other parts of the stadium and customers paid admission to enter the stadium, expecting to eat Campo's products while inside, Campo's products were prepared for on-premises consumption and vulnerable to sales tax.

Royster v. Comm'r of Internal Revenue[73]

Darryl Royster created the Royster Basketball School, which gave Chicago area basketball players the opportunity to travel around the country to play in basketball tournaments, giving them more exposure to college and

72. 915 A.2d 600 (N.J. Super. Ct. App. Div. 2007).

73. No. 21199-045, 2007 WL 2457473 (T.C. Aug. 30, 2007).

professional scouts. Royster also hoped to gain recognition for his coaching skills, attract attention from one of the major athletic apparel and shoe companies, and receive an offer from one of them. Royster claimed business expenses from the Royster Basketball School, which he claimed was a not-for-profit. The Internal Revenue Service asked for documentation, but Royster claimed that his house had been broken into and all documentation related to the Royster Basketball School had been stolen. The court determined that he was responsible for paying the deficiencies and that he could not claim business expenses because he had not run the basketball school in a manner that generated profit, he did not model his school on a business model, and the basketball school was maintained to meet his personal goals rather than business goals.

TORT LAW

Because of legal protections for teams and leagues for many on-field incidents, tort law plays a more vital part in the sports industry in situations that arise around the field of play. The cases below, in part, discuss defamation claims, a breach of financial duties, and liability for training facilities. However, a few cases deal with more traditional tort law issues, such as on-field negligence, gross negligence, and negligent supervision.

Atwater v. Nat'l Football League Players Ass'n[74]

Six former and current professional football players, a spouse of one player, and related entities alleged that defendants, the NFL and NFLPA, breached certain duties in connection with a financial advisor program. The NFLPA maintains the Registered Financial Advisory Program that lists approved and registered financial advisors from which members of the NFLPA can choose to receive investment assistance. The NFLPA approved the registrations of two financial advisors, but it failed to discover that they were not registered as financial advisors in any state or federal jurisdiction prior to the NFLPA registration. Plaintiffs had invested approximately twenty million dollars with the investors and requested the return of their investments when they discovered the NFL and NFLPA's oversight. The investors did not return the money, and plaintiffs brought this action against the NFL and NFLPA for negligence, negligent misrepresentation, and breach of fiduciary duty. The NFL and NFLPA brought motions to dismiss, claiming that the plaintiffs' claims were preempted by the terms of the CBA. The court denied the motion because the financial advisory program was formed outside of the

74. 181 L.R.R.M. (BNA) 2993 (N.D. Ga. 2007).

CBA and therefore the rights and duties arising from it may be covered by state law and not the CBA.

Avilla v. Newport Grand Jai Alai, LLC[75]

Edward Avilla worked at Newport Grand Jai Alai (Newport Grand) as a professional jai alai player. At the end of 2001, he was not rehired. Although the players were covered by a CBA, it did not include a grievance procedure and the players were considered at will employees. However, when Avilla learned that he was not rehired, he contacted a union representative. The union representative then spoke with the CEO of Newport Grand and the union president. The CEO told the union representative that Avilla was not rehired because he had too many inconsistencies as a player and had been accused of fixing games. After the union president and representative advocated on behalf of Avilla to be reinstated, Newport Grand decided it would rehire Avilla. However, when the players' manager threatened to quit because he believed Avilla cheated, Newport decided not to rehire Avilla. Avilla then attempted to play jai alai in Florida, but prior to a tryout, he was accused of being the player that fixed games in Newport. Avilla accused Newport Grand of defamation. The defendants claimed that the statements made between the CEO, union representative, union president, and the players' manager were privileged. The trial court granted summary judgment in favor of the defendants, and the appellate court affirmed because the CEO had an interest in answering the union representative's questions regarding why certain players were not rehired. In addition, the plaintiff had not shown there was any malice or ill will on the part of anyone at Newport Grand in making the statements about Avilla.

Berry V. v. Greater Park City Co.[76]

During a skiercross race, the plaintiff fell and fractured his neck, which paralyzed him. The plaintiff sued the defendants for negligence, gross negligence, and strict liability because the jump was too steep and the landing area was too small. The district court granted summary judgment on all claims because the plaintiff had signed a Release of Liability and Indemnity Agreement, which precluded the negligence claims, and the strict liability claim was not applicable because he was involved in an abnormally dangerous activity. The appellate court affirmed summary judgment on the negligence claim and the strict liability claim, but it reversed and remanded the gross

75. 935 A.2d 91 (R.I. 2007).

76. 2007 UT 87, 171 P.3d 442.

negligence claim. The court concluded that while the defendants could contract out of ordinary negligence claims, they could not contract out of gross negligence, which then created a question of fact as to whether the defendants were grossly negligent.

Cohane v. Nat'l Collegiate Athletic Ass'n[77]

Timothy Cohane, the head basketball coach at State University of New York at Buffalo (SUNY Buffalo), was forced to resign after allegedly committings major NCAA rule violations. Cohane brought two causes of action against the NCAA. He brought a § 1983 claim, alleging that his constitutional right to due process had been violated, and a tortious interference claim, alleging that the NCAA interfered with his employment contract with SUNY Buffalo. The district court granted the NCAA's motion to dismiss on both counts. The court followed *Tarkanian v. National Collegiate Athletic Ass'n* and found that the NCAA's investigation of violations and recommendation that SUNY Buffalo terminate Cohane did not make the NCAA a state actor vulnerable to a § 1983 claim. The tortious interference claim was dismissed because Cohane failed to meet the three-year statute of limitations. The Second Circuit reversed the grant of the motion to dismiss the § 1983 claim. It then ruled that the district court was wrong in interpreting *Tarkanian* to say categorically that the NCAA can never be a state actor when investigating a state school. The case was remanded for further proceedings.

Cottrell v. Nat'l Collegiate Athletic Ass'n[78]

Ronald Cottrell and Ivy Williams, former University of Alabama assistant football coaches, brought defamation, false-light invasion of privacy, negligence, wantonness, and civil conspiracy charges against the NCAA after they were investigated for alleged bylaw violations. They claimed that during the course of an NCAA investigation, in which they were being investigated for academic fraud and illegal recruiting practices, the NCAA released false statements about them to media outlets and published information it knew to be incorrect on its website. Cottrell and Williams claimed that the information leaked to the public was part of a conspiracy by the NCAA and others to paint them in a false light in order to ruin their names, to destroy their careers, and to make them the scapegoats in the investigation. The NCAA Committee on Infractions (COI) did not impose any sanctions on either of them for the

77. 215 F. App'x 13 (2d Cir. 2007).

78. Nos. 1041858, 1050436, 1050437, 2007 Ala. LEXIS 104 (Ala. June 1, 2007).

alleged violations, but the stigma of infractions arising from the published information made it impossible for them to attain new employment as NCAA football coaches. The court affirmed a trial court grant of summary judgment for the NCAA because Cottrell and Williams failed to produce sufficient evidence to prove that the NCAA was the actual source of the false information.

Feagins v. Waddy[79]

Tamesha Feagins was a member of the Center Street Middle School track and field team. After arriving to a track and field meet late one day, the head coach informed her that she would be competing in the high jump. Feagins told her coach that she did not know how to do the high jump and that she was apprehensive about attempting it. The coach assured her that she would be able to do it, but he did not instruct her on how to properly complete the high jump. While attempting a practice jump, Feagins tore her anterior cruciate ligament. Feagins' parents sued the coach, the athletic director, and the City of Birmingham school system. Her parents claimed the defendants were negligent when they failed to adequately train her daughter in the high jump. The trial court granted summary judgment for the coach and the athletic director, and Feagins' parents appealed. The appellate court affirmed summary judgment for the coach because he was making decisions as a track and field coach, which entitled him to state-agent immunity. Summary judgment was also affirmed for the athletic director because the plaintiffs did not make an argument on appeal as to why he should be not be granted summary judgment.

Felder v. Physiotherapy Assocs.[80]

Kenneth Felder, a Milwaukee Brewers' prospect, was injured when he was struck in the eye while taking batting practice at a rehabilitation facility. Felder began a physical rehabilitation program at Physiotherapy Associates after surgery for a torn elbow ligament. As part of the program, he was told to take batting practice in a caged area at the facility. During one of his sessions, a ball ricocheted and hit Felder in the left eye, causing a fracture of the orbital bone and a decrease in vision quality. He was subsequently released from his contract with the Brewers after failing three team physicals because of the eye injury. Felder brought a personal injury action against Physiotherapy Associates, claiming that the area where he was told to take batting practice

79. No. 1051349, 2007 Ala. LEXIS 156 (Ala. Aug. 3, 2007).

80. 158 P.3d 877 (Ariz. Ct. App. 2007).

was not actually designed or maintained for that purpose. The court of appeals affirmed a jury verdict granting Felder $8 million dollars in damages, reduced by his thirty percent fault, because it was based on the good sense and unbiased judgment of the jury.

Hamilton v. Winder[81]

Jason Hamilton, a hockey player for the Baton Rouge Kingfish, brought a malpractice claim against his team physician, claiming that the physician failed to timely and adequately diagnose an elbow injury that ended Hamilton's hockey career. Hamilton suffered an elbow laceration during a game in 2000 that led to treatment by the team physician, Dr. Winder. Winder performed two surgeries on Hamilton's elbow that were unsuccessful and that resulted in a staph infection that needed care from an infectious disease specialist. Hamilton's elbow eventually healed, but not until after his hockey contract had been bought out and his career ended. Hamilton claimed that Dr. Winder failed to properly diagnose his injury, request timely cultures, and prescribe adequate antibiotic treatment, among other claims. The trial jury found in favor of Dr. Winder, and Hamilton appealed. Hamilton claimed seven assignments of error, including the denial of certain jurors, the qualifying of Dr. Winder as an expert at his own trial, and the exclusion of Hamilton's expert witness. The court of appeals affirmed the jury verdict, finding that the jury was presented with two reasonable views of Dr. Winder's standard of care and its decision to believe the defense was not manifestly erroneous or clearly wrong.

Harting v. Dayton Dragons Prof'l Baseball Club, L.L.C.[82]

Roxane Harting brought a personal injury claim against the Dayton Dragons (Dragons) and the San Diego Chicken (Chicken) after she was struck in the head by a foul ball and knocked unconscious during a Dragons game. Harting claimed that she was distracted by the antics of the Chicken when the foul ball was hit at her. She argued that the Chicken, being specially hired for that specific game, was an intervening cause outside the normal course of the baseball game, which negated her duty of assumed risk in regard to accepted dangers. A court of common pleas granted a summary judgment for the defendants, and the court of appeals affirmed. Both courts found that it was perfectly reasonable for a spectator at a baseball game to observe mascots, such as the Chicken, during the course of the game. Therefore, Harting's duty

81. 2004-2644 (La. App. 1 Cir. 5/4/07).

82. 171 Ohio App. 3d 319, 2007-Ohio-2100, 870 N.E.2d 766.

to pay attention to the action on the field was not negated by the Chicken's antics.

Haymon v. Pettit[83]

Leonard Haymon was chasing foul and home run balls outside of Falcon Park during a baseball game. Haymon was wearing headphones, and while chasing one ball, he failed to look both ways before crossing a street and was struck by a car. At the time of the incident, the driver had a .11% blood alcohol level. Haymon's mother sued the operator of Falcon Park. She claimed that because it was running a promotion in which it offered free tickets to anyone who returned a ball to the ticket office, it had a duty to prevent fans from chasing balls into a nearby street. The trial court granted summary judgment for the operator. The appellate court affirmed because chasing foul balls was an inherent risk of the sport, regardless of the promotion. Likewise, it would have been impractical to impose a duty to warn all people surrounding the park of the inherent risks of chasing balls into the street without paying attention.

Mantovani v. Yale Univ.[84]

Eugene Mantovani was attending a cookout outside of a New Haven Ravens baseball game when he was hit by a baseball and injured his eye. The plaintiff sued the defendant for negligence because it did not have any safety nets near right field to prevent injuries to bystanders. The defendant moved for summary judgment, but the court denied it. While a limited duty applies to spectators in the stands, it did not apply to a section of the stadium where the defendant encouraged spectators to engage in something other than playing close attention to the game. In addition, there was a question of fact as to whether the threat of a foul ball in the right field pavilion was an open and obvious danger because the defendant did not provide any evidence that Mantovani knew that a foul ball could come into that area.

McGarry v. Univ. of San Diego[85]

Kevin McGarry had been the head football coach for seven years prior to being fired. Shortly before McGarry was fired, a new athletic director was hired, and after a tense exchange with her, McGarry filed a complaint against

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83. 880 N.E.2d 416 (N.Y. 2007).

84. No. 0550000480, 2007 Conn. Super. LEXIS 1908 (Conn. Super. Ct. July 26, 2007).

85. 64 Cal. Rptr. 3d 467 (Ct. App. 2007).

her. The athletic director confronted McGarry about kicking a football towards trainers and towards a player during practice. A day after receiving a written memo memorializing these conversations, McGarry was fired. After he was fired, an article appeared in the *San Diego Union-Tribune* that stated several incidents had led to the firing of McGarry, which included information from anonymous university sources. After the newspaper article was published, two university officials met with the parents of the players and implied that McGarry had committed immoral acts. McGarry sued the university for defamation. The court denied McGarry's motion to compel depositions of the reporters because the coach was a limited purpose public figure and the statements were a matter of public interest. The court also dismissed the claims because McGarry could not show malice on the part of any of the university officials.

Moss v. Pete Suazo Utah Athletic Comm'n[86]

Bradley Rone died during a boxing match sanctioned by the Pete Suazo Utah Athletic Commission (Commission). Rone fought in the match in an attempt to raise money to visit his mother's gravesite. Rone was a boxer who had lost his previous twenty-six fights and had been knocked out less than two months prior to the Utah fight. He was even barred from fighting in Nevada due to his physical condition. The Commission's rules required boxers to be evaluated by a physician not less than eight hours prior to a fight. Even so, Rone was not evaluated prior to the boxing match in which he was fatally injured. Rone's sister sued the Commission for failing to abide by its own rules. The Commission moved to dismiss the case because it claimed the lawsuit was barred by the Utah Governmental Immunity Act. The court dismissed the case because a governmental entity is immune from negligence claims if it is in regard to a licensing decision, and the decision to prevent a boxer from competing is essentially a licensing decision. Furthermore, the Commission did not violate the Utah Constitution because the regulation of boxing is a governmental activity.

Newsom v. Ballinger Indep. Sch. Dist.[87]

Cecyle Newsom was a teacher and the head girls basketball coach at a junior high school within the defendant's school district. On her way to a Saturday practice, she was killed in a car accident. Her husband filed a claim for workers' compensation benefits on behalf of himself and his children. The

86. 2007 UT 99, 175 P. 3d 1042.

87. No. 03-07-00022-CV, 2007 Tex. App. LEXIS 5690 (Tex. Ct. App. July 17, 2007).

defendants denied the claim because her death did not occur in the course and scope of her employment. The Texas Division of Workers' Compensation (Division) held a hearing and determined that Newsom was acting within the scope of her employment when she died. The school district appealed and the Division sought judicial review. The defendants moved for summary judgment. The husband argued that she was within the scope of her employment because the Saturday practice was a special practice, but the school district claimed that it did not direct her to schedule the Saturday practice. The court determined that Newsom was not killed in the course and scope of her employment because she scheduled the Saturday practice, Saturday practices were not unusual, and she was not traveling on a special mission for the school district.

Osteen v. Hopkinsville Christian County Bd. of Ed.[88]

Jay Osteen and Terry Kaler both owned property adjacent to land on which the board of education had built softball fields for interscholastic use. Both Osteen and Kaler brought nuisance, inverse condemnation, invasion of privacy, and diminished property value claims, and they also sought injunctive relief. The trial court granted summary judgment for the defendants on all the tort claims because the board was an agency of the state that was entitled to governmental immunity from tort liability. The court also denied injunctive relief because it found that the use of the softball fields was a reasonable consequence of suburban life and not a nuisance. The court of appeals affirmed the trial court, reasoning that it could not disturb the trial court ruling unless its decision was clearly erroneous, which the court of appeals did not deem it to be.

Reyes v. City of N.Y.[89]

James Reyes brought an action against the City of New York (City) to recover damages for injuries allegedly sustained when he was struck in the face with a foul ball while coaching a high school baseball game from inside the third-base dugout. Reyes claimed that the City failed to properly maintain or repair protective fencing around the field. The City moved to dismiss Reyes' complaint because he failed to claim that the fencing on the field was defective and, alternatively, for summary judgment because his injuries were an inherent risk of the sport of baseball. The court denied both the defendant's motion to dismiss and motion for summary judgment. It held that failing to

88. No. 2006-CA-000288-MR, 2007 WL 1229201 (Ky. Ct. App. Apr. 27, 2007).

89. 835 N.Y.S.2d 852 (Sup. Ct. 2007).

mention the defective nature of the fence was not fatal to Reyes' case because he had been given adequate notice of the general nature of the accident. Regarding the summary judgment, the court found that Reyes had met the burden to survive summary judgment by raising the triable issue of fact as to whether his injuries occurred from a uniquely hazardous condition caused by the defective fence as opposed to an inherent assumed risk of getting struck by a batted baseball.

Rotolo v. San Jose Sports & Entm't, L.L.C.[90]

The parents of Nicholas Rotolo, a teenager who died as a result of sudden cardiac arrest while participating in an ice hockey game, brought a wrongful death action against the operators of the ice hockey facility. Rotolo collapsed during a game and attempts at manual resuscitation by parents and coaches were unsuccessful. The Rotolos claimed that the operators had a duty to notify users of the ice arena of the existence and location of newly installed automatic external defibrillators (AED). The court of appeals affirmed a trial court grant of summary judgment for the ice arena. The court found that California law does not impose a duty on facility operators to make invitees aware of AEDs, but rather protects operators from liability if AEDs are used unsuccessfully in an attempt to revive a person.

Sciarrotta v. Global Spectrum[91]

Denise Sciarrotta brought a personal injury action against an arena, two hockey teams, and a hockey league after she was struck in the head with a hockey puck during warm-ups prior to a Trenton Titans hockey game. She was injured when a puck ricocheted off a goalpost and into the stands. Sciarrotta claimed that she had never been to a hockey game before, that she was only in the seats to watch her daughter sing the national anthem, and that the defendants were negligent in failing to keep the premises in safe condition. The Superior Court, Law Division granted summary judgment for defendants on all claims because it found that Sciarrotta had a duty to pay attention and protect herself from inherent danger. The Superior Court, Appellate Division reversed the summary judgment because it found that the arena and the team may have been negligent in failing to have sufficient safety precautions in place. The court ruled that because the injury occurred during warm-ups, when there are approximately twenty-five pucks on the ice instead of one, there may have been a higher standard of care required of the defendants at

90. 59 Cal. Rptr. 3d 770 (Ct. App. 2007).

91. 920 A.2d 777 (N.J. Super. Ct. App. Div. 2007).

that time, which was sufficient enough to raise a genuine issue of fact and to avoid summary judgment.

Sprewell v. NYP Holdings, Inc.[92]

Latrell Sprewell, a former professional basketball player, brought a defamation suit against *The New York Post* (*The Post*) and writer Marc Berman. Sprewell suffered a broken right hand in 2002, while a member of the New York Knicks, and he claimed that the injury occurred when he fell while on his boat in a Milwaukee harbor. Berman discovered that Sprewell's injury was common to boxers and had two witnesses who claimed to see Sprewell throw a punch at a drunk man during a party on Sprewell's boat on the night the injury occurred. Berman combined his sources' information, and *The Post* subsequently published three articles claiming that Sprewell broke his right (shooting) hand by punching a wall during an altercation at a party on his boat. The New York Appellate Division reversed the holding of the lower court, which denied the defendants' motion for summary judgment. The Appellate Division held that to be successful on a claim of defamation, Sprewell needed to show actual malice by Berman to intentionally print false information about him or recklessly disregard that the information may be false. The court found that Berman had put forth sufficient investigative effort to show that he did not fail to seek confirming information.

Stringer v. Nat'l Football League[93]

Korey Stringer, a professional football player for the Minnesota Vikings, died during training camp due to complications from heat stroke. Stringer's wife brought claims of wrongful death and negligence against the NFL and NFL Properties and a products liability claim against Ridell, the producer of helmets and shoulder pads for the NFL. The defendants filed a motion for summary judgment and argued that all of Stringer's claims were preempted by § 301 of the Labor Management Relations Act because any duties allegedly breached would have to arise from the CBA. The district court granted the NFL's summary judgment on Stringer's wrongful death claim, ruling that it was preempted since the court would have to interpret a clause in the CBA to make a final determination. However, the court denied the NFL's motion for summary judgment on the negligence claim and Ridell's motion for summary judgment on the products liability claim because interpreting the CBA was not necessary to determine the duty owed to Stringer by the parties.

92. 841 N.Y.S.2d 7 (App. Div. 2007).

93. 474 F. Supp. 2d 894 (S.D. Ohio 2007).

Ultimate Creations, Inc. v. McMahon[94]

Warrior was a professional wrestler who used to work for the defendant. The defendant released a DVD titled "The Self-Destruction of the Ultimate Warrior," and Warrior claims that there were several defamatory statements within the video. Warrior, his wife, and their company, Ultimate Creations, sued the defendants for defamation. The defendants filed a motion to dismiss. The court dismissed Ultimate Creations and Warrior's wife because there were no allegations that there were any false statements made about these two plaintiffs on the DVD. However, the court did not dismiss the defamation and false light claims because the statements are capable of being defamatory and some of the statements were regarding the Warrior's personal life. Hence, it did not matter that Warrior was a public figure.

Webber v. Speed Channel, Inc.[95]

Michael Webber was injured while attending a NASCAR race at Richmond International Raceway when he tripped over a metal crowd-control barrier. He alleged that defendants were negligent in the inspection, design, clearing, locating, and otherwise setting up of the fairgrounds, and negligent *per se* in failing to maintain the premises in a reasonably safe condition. Webber claimed $1.2 million in damages. He claimed that the fairgrounds were so busy on the day of the race that he was unable to see the base of the crowd barrier and that there was nothing to give him notice that it would be there. The district court granted the defendant's motion for summary judgment, finding that Webber was an invitee on the property during the race, that the defendant was not an insurer of Webber's safety, and that the defendant was not required to give notice of a danger that was open and obvious.

Yatsko v. Berezwick[96]

Tracey Yatsko was a member of the Tamaqua Area High School basketball team. During a game in January 2005, her head collided with another player's head while attempting to get a rebound. The collision caused vision problems and a severe headache. She told her coaches that she was in severe pain, but the coaches did not take her to the trainer because they did not want the trainer to say she could not play. The following day, she continued to

94. 515 F. Supp. 2d 1060 (D. Ariz. 2007).

95. 472 F. Supp. 2d 752 (E.D. Va. 2007).

96. No. 3:06cv2480, 2007 U.S. Dist. LEXIS 88967 (M.D. Pa. Dec. 4, 2007).

have a headache and told her friends that she suffered a concussion. Two days after the incident, Yatsko had another basketball game. She told her coaches that she had a concussion, but they still allowed her to play. After Yatsko collapsed that night, Yatsko's mom took her to the hospital and she asked the coaches why they allowed her daughter to play. The head coach said that he had made the wrong decision. Yatsko suffered serious brain injuries, missed several months of high school, dropped out of college, and has had large medical expenses. Yatsko sued the school district, claiming a violation of due process rights by failing to keep her free from state-created dangers. The court dismissed the due process claims because the coaches' behavior did not shock the conscience.

MISCELLANEOUS

The following cases do not fit within any of the preceding categories. They discuss possible claims arising from the NFL's treatment of a suspended player, a ruling on athlete-specific bank accounts, and whether university documents related to self-reported NCAA violations are protected under any legally recognized privilege.

Bryant v. Nat'l Football League, Inc.[97]

Antonio Bryant played for the NFL's San Francisco 49ers until the team terminated his contract on March 1, 2007. Despite this termination, the NFL has required Bryant to continue submitting to random drug tests. Additionally, the league told him that as discipline for not complying with the tests, he would be sanctioned as though he had failed a test. The NFL also told teams that if they signed Bryant, he would be suspended. Bryant sued for tortious interference with prospective contractual relations and filed a motion for a temporary restraining order. The court denied the temporary restraining order because Bryant failed to show that he is at risk of suffering an immediate injury. Although the NFL has disclosed the results of past tests to prospective NFL teams, there is nothing that shows the NFL will disclose information in the future.

Tatis v. U.S. Bancorp[98]

Fernando Tatis, a former MLB player, filed suit against U.S. Bank, alleging violations of Ohio Revised Code section 1304.35, breach of depositor

97. No. 07-cv-02186-MSK-MJW, 2007 U.S. Dist. LEXIS 77473 (D. Colo. Oct. 18, 2007).

98. 473 F.3d 672 (6th Cir. 2007).

agreement, and negligence. Tatis had opened several bank accounts with U.S. Bank within its Professional Sports Division, which provided financial services to professional athletes. Tatis opened one checking account through the Sports Division, but had numerous savings accounts linked to it to protect against overdrafts. When Tatis' checks arrived at his residence, they were intercepted by an employee of Tatis who wrote numerous checks to himself and various merchants, forging Tatis' signature on each. Bank statements, which would have alerted Tatis to the forgeries, were kept with the bank manager at Tatis' request. Even though the forgeries began in August 2001, Tatis did not raise the issue of possible forgeries until January 2002.

The district court granted U.S. Bank's motion for summary judgment because under Ohio law, if a bank makes statements available to a customer, the customer has thirty days to report possible wrongdoing. Tatis argued that the statements were not made available. The court found otherwise, ruling that Tatis knew they were available, but had elected to keep them at the bank. The Sixth Circuit affirmed the district court holding for the same reasons after a *de novo* review.

U.S. Dep't of Educ. v. Nat'l Collegiate Athletic Ass'n[99]

The University of the District of Columbia (UDC) self-reported violations of NCAA bylaws by its basketball teams during the 2004-2005 season. The exact nature of the violations were unknown, but they were thought to have included a misuse of federal funds. Therefore, the Inspector General of the Department of Education (Department) began an investigation. The Department issued a subpoena to the NCAA for documents that UDC had voluntarily submitted to the NCAA. The NCAA moved to quash the subpoena or, alternatively, for a protective order that would bar the Department from showing the documents to anyone without a five-day notice to the NCAA. The NCAA argued that requiring it to turn over documents that had been voluntarily submitted by member institutions to governmental agencies would dissuade whistleblowers from informing the NCAA of violations. The court found that the documents submitted by UDC to the NCAA did not fall within a legally recognized privilege, such as lawyer-client, and thus denied the NCAA's motions.

CONCLUSION

Sports continue to offer an extensive and exciting context for interaction

99. 481 F.3d 936 (7th Cir. 2007).

with the law. As the cases included in this survey show, there is no area of law that is immune to the reach of sports. As sports grow financially and expand globally, new laws and guidelines will be needed to direct interactions of leagues, teams, athletes, and fans. Hopefully, the decisions of 2007 were a positive start to a new evolution.

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