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Minnesota Twins Partnership v. State of Minnesota, 592 N.W.2d 847 (MN, April 29, 1999)

MINNESOTA TWINS EXEMPT FROM ANTITRUST INVESTIGATION

In October 1997, Carl R. Pohlad, on behalf of the Minnesota Twins Partnership, announced that he had signed a letter of intent to sell the Twins to North Carolina businessman Donald C. Beaver. The sale was contingent upon the Minnesota State Legislature's refusal to authorize pubic funding for a new stadium by November 30, 1997.

Former Governor Arne H. Carlson and key legislators traveled to Milwaukee to confer with then-Acting Commissioner of Major League Baseball (MLB) Allan "Bud" Selig. Selig informed Governor Carlson that if a publicly funded stadium was not authorized and built, MLB team owners would approve the Twins' move. The Minnesota Legislature subsequently rejected all stadium bills introduced in the special legislative session called by Governor Carlson.

On December 17, 1997, the Minnesota Attorney General served the Twins with civil investigative demands (CIDs) as part of an investigation into possible violations of state antitrust laws. The CIDs served on the Twins requested documents concerning the financial viability of the Twins' current stadium (Hubert H. Humphrey Metrodome), the methods used by other professional baseball teams to obtain stadia, the potential purchase of the Twins by Beaver, and the 1961 relocation of the Washington Senators to Minnesota. In addition, the CIDs included interrogatories seeking information on the Twins' effort to produce a new stadium, as well as information on the structure, governance, and revenues of MLB.

The Twins then filed a motion for a protective order. The Twins argued that they were exempt from Minnesota's antitrust laws because the U.S. Supreme Court previously held that the business of professional baseball is exempt from compliance with federal antitrust laws. However, the Ramsey County District Court rejected this argument and ordered the Twins to comply with the CIDs. The Minnesota Court of Appeals denied the Twins' request for review, holding that the issues presented were "premature."

The Minnesota Supreme Court reversed the district court order, stating the Twins' were under no obligation to comply with the CIDs because the business of professional baseball is exempt from

federal and state antitrust laws. The Supreme Court rejected the Attorney General's argument that the extent of professional baseball's exemption and the effect of the Commerce Clause can be litigated properly only after the state makes specific charges and a factual record is developed.

The Minnesota Supreme Court concluded that the sale and relocation of a baseball franchise is an integral part of the business of professional baseball and falls within the antitrust exemption. Enforcement of the CIDs against the Twins is therefore outside the scope of the Attorney General's authority. As a result, the district court erred when it issued an order compelling compliance with the CIDs. Therefore, the Twins were entitled to a protective order.

Shaw v. Dallas Cowboys Football Club, 172 F.3d 299 (3rd Cir., 1999)

SATELLITE BROADCASTS OF NFL GAMES NOT EXEMPT FROM ANTITRUST SCRUTINY

In 1995, the league made available to residential and commercial satellite dish owners telecasts of all regular season Sunday afternoon NFL games telecast by NBC and Fox through DIRECTV. The 1996-97 subscription rates for this service, dubbed the "NFL Sunday Ticket," were $199.00 per year for residential use, and from $399.00 to $29,999.00 for commercial establishments.

In this case, the plaintiffs alleged that the NFL's member teams agreed to fix the prices of the satellite transmissions and restrict the outputs of their games, in violation of antitrust laws.

In 1961, the Sports Broadcasting Act (SBA) was created. The SBA made pooled television rights for professional sports exempt from antitrust litigation. However, the SBA was intended to only exempt commercial television. Courts have usually narrowly construed exemptions, such as the SBA, to antitrust laws.

DIRECTV is considered to be a non-sponsored telecast with its pre-paid commercial-free package. In the case, the court noted that the NFL has rights in the games themselves and that these rights include the right to sell the images of those games for broadcast. However, to adopt the NFL's argument that it is a sponsored telecast with commercials, Judge Carol Los Mansmann wrote "would allow the exception to swallow the rule: a sponsored telecast to a limited geographic area would secure an antitrust exemption for nationwide sales."

Therefore DIRECTV, which does not have commercial sponsors, was not such a sponsored telecast exempt under the SBA. In addition, at the time the SBA was created satellite transmissions were not covered because the technology did not exist. The ruling opens the door for a class action suit alleging that the league and its member teams have conspired to fix the price of private satellite transmissions of Sunday afternoon game telecasts.

Ortiz-Del Valle v. National Basketball Association, 42 F. Supp.2d 334 (S.D.NY, 1999).

FEMALE REFEREE'S AWARD REDUCED IN HER GENDER DISCRIMINATION SUIT VS. NBA.

Sandra Ortiz-Del Valle's goal was to become the first female referee in the NBA as she was the first female referee to officiate a men's pro game, a USBL game in 1991. She refereed a few preseason New Jersey Nets scrimmages in 1992, but despite her credentials, was passed over repeatedly for an NBA referee position. The league gave her varying reasons for denying her a job, which Ortiz-Del Valle's lawyers called a pretext for discrimination.

She brought suit against the NBA on the grounds of gender discrimination in violation of Title VII. Last spring a jury validated her claim awarding her $100,000.00 in damages for lost wages, $750,000.00 for emotional distress and $7 million in punitive damages. The judgment against the NBA marked the first time that the league had ever lost a discrimination suit.

The NBA moved for judgment as a matter of law or alternatively, for a new trial. The court denied the motion on the condition that the defendant accept reduced damages of $250,000 in punitive damages, $76,926.20 in lost wages, and $20,000 in emotional distress. The court found sufficient evidence to support the jury's finding that Ortiz-Del Valle was discriminated against, however, it felt that the damages were excessive.

As to the emotional distress award, the court concluded that a remitter was proper because there was virtually no evidence of Ortiz-Del Valle needing or having undergone any counseling or psychiatric treatment or of the duration of the mental anguish, its severity or its consequences, that would support the $750,000.00 award.

The Court reduced the amount of back pay owed Ortiz Del-Valle from $100,000.00 to $76,926.20. The new amount is the dollar amount she would have earned more as an NBA referee from 1994-1997 than she actually earned from other sources. Ortiz Del-Valle claims that the original $100,000 award was based on a jury award of interest on the $76,926.20. However, there was no evidence to support this claim.

The biggest reduction in the verdict came in the punitive damages portion of the award, where damages were decreased to $250,000.00, from $7 million. The court simply found the number to be excessive, finding the ratio of 58.3 times the remitted amount of compensatory damages to be too high.

The NBA plans to appeal the latest decision, as it is still baffled by the court's decision. Before the start of the 1997-98 season, the NBA hired two female officials, Violet Palmer and Dee Kanter. Both woman testified that they had been hired on merit and that they did not believe the league discriminated. NBA officials do not understand how a court can claim that the league discriminates against women becoming officials when they have the only female officials in the four major sports. However, the timing of the hiring is conspicuous, coming after the charge was filed and before trial.

Adidas America v. National Collegiate Athletic Association, 40 F.Supp. 2d 1275 (D. Kan., March 26, 1999)

ADIDAS LAWSUIT AGAINST NCAA DENIED.

Adidas America filed an action for damages and injunctive relief against the National Collegiate Athletic Association (NCAA) alleging violations of Sections 1 and 2 of the Sherman Act; state law claims of tortious interference with contractual relations, tortious interference with prospective economic advantage, breach of contract; and violations of public policy and NCAA bylaws. The lawsuit, filed November 19, 1998, charged the NCAA with unfairly enforcing Bylaw 12.5.5, which mandates that there be only one logo on a college athlete's uniform.

Since 1977, the NCAA rules on the use of logos on apparel have continued to change. Currently, the NCAA's policy on the use of logos on equipment, uniforms and apparel is put forth in Bylaw 12.5.5. Bylaw 12.5.5 requires that a student-athlete institution's official uniform and all other apparel shall bear only a single manufacturer's label or trademark, not to exceed 2 &#frac14; square inches in area including any additional material surrounding the normal trademark or logo.

The purpose of Bylaw 12.5.5 is to preserve the integrity of collegiate athletics and to avoid the commercial exploitation of student-athletes. In addition, the bylaw is designed to avoid excessive advertising that could potentially interfere with the basic function of the student-athletes uniforms, which is to provide immediate identification of the athlete's number and team. There is no commercial purpose behind the creation and enforcement of the bylaw.

Adidas' trademark is three descending stripes down the sleeve or pant leg of a piece of apparel. The NCAA has prohibited college athletes from wearing uniforms that carry both the Adidas logo and three stripes. Therefore, the NCAA claims that an Adidas uniform bearing a three-stripe design element larger than two and one-quarter square inches, violates the bylaw. Furthermore, the NCAA considers such a design element to be a second manufacturer's logo or trademark, which also violates the bylaw.

In order for Adidas America to obtain preliminary injunctive relief, it had to demonstrate that (1) it will suffer irreparable injury in the absence of an injunction; (2) the threatened injury to Adidas outweighed whatever damage the injunction may cause to the NCAA; (3) the injunction, if issued, would not be adverse to the public interest; and (4) there is a substantial likelihood that Adidas would eventually prevail on the merits.

First, Adidas failed to establish that they will face irreparable harm in the absence of a preliminary injunction. Adidas claimed that without a preliminary injunction, it would suffer a diminution of its intellectual property and injury to its reputation, its relationship with member institutions, its processing and manufacturing partners, and the buying public. However, Adidas provided only business speculation and conjecture, which is insufficient to make a clear showing of irreparable injury. Adidas' evidence and testimony was speculative and largely without factual support.

Second, Adidas failed to show a likelihood that it would eventually prevail on the merits of its claims. Adidas claimed that the NCAA had unreasonably restrained trade, engaged in a group boycott, and attempted to monopolize in violation of the Sherman Act. In determining if the NCAA had violated the Sherman Act, the court looked to the purpose of Bylaw 12.5.5.

The court concluded that the NCAA and its member institutions are not competitors of Adidas and do not realize any financial or competitive advantage by limiting the amount of advertising allowed on the backs of student-athletes. Furthermore, if Bylaw 12.5.5 places any restraint on the advertising market, it is an incidental by-product of the NCAA's legitimate attempt to maintain the amateurism and integrity of college sports, and it does not economically benefit the NCAA or its member institutions.

The court further concluded that Bylaw 12.5.5 is noncommercial in nature and purpose, and that the NCAA's enforcement of the bylaw is a noncommercial activity not subject to the antitrust laws. Therefore, Adidas failed to show a likelihood of success on the merits of its antitrust claims.

Baum Research & Development v. Hillerich & Bradsby Co., 31 F.Supp.2d 1016 (E.D. MI, Nov. 19, 1998).

BASEBALL BAT MANUFACTURER ANTITRUST LAWSUIT DISMISSED

Baum Research and Development filed a lawsuit against the National Collegiate Athletic Association (NCAA), Hillerich & Bradsby, Easton Sports, Worth Inc., and the Sporting Goods Manufacturers Association (SGMA). Baum claimed that the defendants conspired to keep other bat manufacturers out of amateur baseball.

The NCAA rules contain few restraints on bat manufacturers. The NCAA allows wooden and aluminum bats to be used in NCAA sanctioned competition. Baum, the maker of composite wood bats, alleged that the defendants conspired to manipulate standards for baseball bats used in NCAA sanctioned baseball games to perpetuate their dominance and exclude Baum from the market. In particular, Baum stated that the aluminum bat manufacturers conspired to eliminate competition in the market by engaging in exclusive agreements with universities that foreclose those institutions from using competing products.

The defendants filed a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The defendants argued that the injury Baum claims is not an "antitrust injury," but rather from competition.

Baum had to prove that it had suffered an antitrust injury stemming from a competition reducing aspect or effect of the defendants' behavior, that the alleged violation tended to reduce competition in the baseball bat market, and that Baum's injury would result from a decrease in

that competition rather than from some other consequence of the defendant's action. However, Baum did not provide any facts to satisfy these claims.

The Court concluded that the NCAA rules did not violate antitrust laws, but rather the absence of a rule regulating bat performance actually fostered competition. The lax standards have allowed companies to compete aggressively with each other by designing and manufacturing superior products. Baum's injury stems from the competition itself. Therefore, Baum's alleged injury stems from the NCAA's lawful refusal to change the baseball bat rules in its favor.

In a separate issue, Baum claimed that the defendants unreasonably interfered with its contracts to induce the Mid-American Conference to reject the contracts made with Baum. However, Baum's complaint did not indicate whether any of the contracts were breached as a result of any actions by the defendants. Baum was given the opportunity to clarify this ambiguity in an amended complaint. A failure to amend would result in a dismissal.

Baum also claimed that the defendant bat manufacturers and the SGMA interfered with its prospective economic advantage. However, Baum did not show an interference with a realistic expectation of an economic relationship. Baum was given the opportunity to amend the complaint to better describe its expectations.

In conclusion, the district court granted the defendants' motion to dismiss the antitrust counts of the complaint. Baum was given leave to amend the tort claims.

Alston v. Virginia High School League, Inc., 134 Ed. Law Rep. 180 (W.D. Va., March 31, 1999).

TITLE IX CLASS CERTIFICATION RESTRICTED

On August 19, 1997, eleven female student-athletes brought suit under Title IX of the Education Amendments of 1972 against the Virginia High School League (VHSL). The student-athletes alleged that the VHSL denied certain female athletes opportunities to participate in athletics based on their sex in violation of Title IX and the Equal Protection Clause of Amendment XIV of the United States Constitution.

The plaintiffs asserted that the VHSL's scheduling practices treated boys' sports differently than girls' sports, while at the same time forcing some girls to stop playing sports that they previously were able to play while no boys were forced to stop playing sports because of schedule changes. The plaintiffs further alleged that the current classifications system deprived girls of opportunities to play all sports of their preference and hindered opportunities for college athletic scholarships.

Virginia schools compete in classifications designated A, AA, or AAA, based on enrollment sizes. Because enrollment fluctuates, some schools change classifications when the league

adjusts the grouping every two years. However, the classification system is treated differently among boys' and girls' sports. The sport seasons for girls differ across classifications. AAA schools play basketball in the winter, while A and AA schools compete in the fall. Therefore, if a AAA school is reclassified as AA, a basketball player accustomed to running cross-country, a fall sport, would have to choose between cross-country and basketball. Conversely, boys' sports are played in the same seasons regardless of classification.

Before to trial, the plaintiffs sought class action certification pursuant to Rule 23 of the Federal Rules of Civil Procedure. Class certification is a case-by-case analysis, there are no legal claims that automatically bind the court to certify any and every class bringing those claims. The plaintiffs proposed class definition included all present and future female students enrolled in Virginia public schools who participate in interscholastic athletics.

In order to receive class certification, the plaintiffs had to satisfy the requirements set forth in Rule 23. Under this rule, one or more members of a class may sue as a representative party on behalf of all only if (1) the class is so numerous the joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class [typicality], and (4) the representative parties will fairly and adequately protect the interests of the class [adequacy].

Only two of the prerequisites to class certification were contested: typicality and adequacy. Both requirements look to the potential for conflicts in the class. In examining the adequacy requirement, the court attempted to uncover conflicts between the named parties and the class they sought to represent. The court also wanted to see if the named parties possessed the same interest and suffered the same injury as the class members. In examining the typicality requirement, the court wanted to ensure that only those plaintiffs who could advance the same factual and legal arguments were grouped together as a class.

The court was presented with unrebutted evidence of a conflict of interests between the named plaintiffs and other members of the class which precluded certification under Rule 23. A survey presented by the VHSL indicated that the plaintiffs did not adequately represent the interests of all members of their class and that plaintiffs' claims were not typical of their class. A majority of the female student-athletes who responded to the survey expressed a desire to maintain the current system. This conflict prevented the plaintiffs from satisfying the typicality requirement as well as the adequacy of representation requirement. Therefore, the requested relief would not benefit all other persons subject to the practice under attack, as required in a class action.

After the request for class certification was denied, the plaintiffs proposed a narrower sub-class. The narrower class would consist of all present and future student-athletes enrolled in Virginia public schools who were forced to choose between or among sports because of the VHSL's discriminatory scheduling practices. However, the plaintiffs also failed to meet their burden for the narrow sub-class. As a result the court declined to certify the narrower sub-class.

The court would allow the suit to go forward with the plaintiffs as representatives only of themselves.

Miller v. Wilkes, 172 F.3d 574 (8th Cir., March 31, 1999)

A SCHOOL DISTRICT CAN REQUIRE ALL PUBLIC SCHOOL STUDENTS TO SUBMIT TO RANDOM DRUG TESTING

This suit originated when Pathe Miller, a student at Cave City High School, refused to submit to a drug test. In order to participate in extracurricular activities, all students had to sign a consent form prior to testing. Students withholding consent were denied permission to participate in extracurricular activities. Miller wanted to participated in school activities such as the Radio Club, the prom committee, the quiz bowl and school dances. Miller brought suit alleging that the random drug and alcohol screening violated his constitutional rights.

The court applied a 1995 U.S. Supreme Court decision approving the random drug testing of student athlete. Vernonia Sch. Dist 47J v. Acton, 515 U.S. 646 (1995). The court in Miller found that the district's policy satisfied the constitutional limitations on student drug testing, despite the fact that the district had no record of any drug or alcohol problem and that the policy was not limited to a particular class of students.

The court's opinion relied on four key findings. The first of which was that public school students have a lower expectation of privacy than ordinary citizens. The decision in Vernonia did not limit a school's drug testing authority to athletes. Like athletes, the court opined, students who participate in extracurricular activities have a lower expectation of privacy than non-participating students. Extracurricular clubs, for example, "have their own rules and regulations ...[and] someone will monitor the students for compliance with the rules that the clubs and activities dictate."

It was also held that the district's procedure for collecting urine samples was relatively unintrusive. The court emphasized that the district permits students to provide urine specimens in stalls or other partitioned areas that allow for individual privacy, and that the procedure used by the district does not screen for medical conditions. Also, only one district official remained privy to the results, and the consequences of a positive result included neither law enforcement notification nor expulsion or suspension from class.

Third, the "nature and immediacy" of the district's drug concerns were sufficiently compelling, given the district's interest in discouraging drug and alcohol abuse and the considerable risk of harm once the problem surfaces. Even though drug use was not viewed as a major problem, it is in everybody's best interests to prevent drug abuse. Finally, the court noted that the policy furthered the district's interest in providing a safe learning environment and maintaining the reputation of its schools.

This decision expands the Verne decision by expanding the random drug testing of athletes to all those wanting to participate in extracurricular activities. The question remains as to how far the court is willing to extend drug testing in America's schools.

Caruso v. Blockbuster/Sony Music Entertainment Centre at the Waterfront, 174 F.3d 166 (3rd Cir., April 6, 1999)

ENTERTAINMENT CENTER DID NOT VIOLATE THE AMERICANS WITH DISABILITIES ACT BY FAILING TO PROVIDE WHEELCHAIR PATRONS WITH LINES OF SIGHT OVER STANDING PATRONS.

William Caruso, a disabled Vietnam veteran, attended a concert at the Blockbuster -Sony Music Entertainment Centre ("E-Centre") in Camden, New Jersey. The E-Centre provides 6,200 fixed seats and a lawn area behind the pavilion that seats 18,000 patrons, who either stand or sit on portable chairs or blankets.

The day after the concert, Caruso and the Advocates for Disabled Americans filed an action in the District Court, alleging that the E-Centre violated the Americans with Disabilities Act, 42 U.S.C. $ 12181, et seq., because (1) the wheelchair area in the pavilion does not provide lines of sight over standing patrons and (2) the lawn area is not wheelchair-accessible. The District Court granted summary judgment in favor of the E-Centre on both claims. Caruso appealed to the Court of Appeals for Third Circuit.

As to Caruso's first claim regarding sightlines, the third circuit looked to Standard 4.33.3 of the U.S. Department of Justice's New Construction and Alteration Standards. Standard 4.33.3 requires wheelchair areas to be furnished "so as to provide people with physical disabilities a choice of admission prices and lines of sight comparable to those for members of the general public." Caruso argued that under the plain meaning of Standard 4.33.3, if standing patrons can see the stage when other spectators stand, wheelchair patrons must be able to see the stage when patrons stand. The E-Centre maintained that the Standard refers to providing a comparable opportunity to view the stage from a variety of angles. The Third Circuit considered both interpretations to be plausible and consistent with the ADA's purpose. Therefore, the Third Circuit concluded that the lines-of-sight language was ambiguous.

As to Caruso's claim relating to access to the lawn area, the Third Circuit ruled that the E-Centre was required to provide wheelchair access unless it can prove "structural impracticability." The Third Circuit ruled that it was not "structurally impracticable" to provide wheelchair access to the lawn seating area for those in wheelchairs. They noted that it has been done in other areas and because there was no fixed seating on the lawn ruling that an accessible route to the lawn area was required.

This case could have ramifications in many planned sports arenas and venues around the country. Under the ruling in this case, there must be wheelchair accessibility to grass seating areas, which could affect minor league baseball stadiums and concert venues such as the E-Centre.

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Editorial Staff:
Paul M. Anderson, Editor & Designer
Craig Pintens & Kevin Stangel, Associate Editors

