

You Make the Call. . .



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SUPREME COURT HOLDS THAT STATE INTERSCHOLASTIC ATHLETIC ASSOCIATION IS STATE ACTOR.

Brentwood Academy v. Tennessee Secondary School Athletic Association, 121 S.Ct. 924 (February 20, 2001).

On February 20, 2001, the United States Supreme Court overturned the decision of the United States Court of Appeals for the Sixth Circuit and held that the Tennessee Secondary School Athletic Association (TSSAA) is a state actor.

Prior issues of *You Make The Call. . .* reported on the district court opinion which held that TSSAA was a state actor (13 F. Supp.2d 670 (D. Tn., July 29, 1998)) and the Sixth Circuit opinion that reversed the district court decision. (180 F.3d 758 (6th Cir. June 21, 1999) & 190 F.3d 705 (6th Cir. Aug. 30, 1999)).

After reviewing these earlier decisions, the Supreme Court stated that TSSAA is a state actor "if, though only if, there is such a 'close nexus between the State and the challenged action' that seemingly private behavior 'may be fairly treated as that of the State itself.'" (p. 930).

As the Court pointed out, (1) TSSAA is made up of 84% public schools, (2) meetings concerning recruiting and other rules are held during official school hours, (3) public schools largely provide for TSSAA's financial support, (4) TSSAA "exercises the authority of the predominately public schools to charge admission for their games," (p. 932), enjoying the school's moneymaking capacity as its own, and (5) the State of Tennessee assigns Board members and treats ministerial employees as state employees by making them eligible for the state retirement system. In sum, "[t]here would be no recognizable Association, legal or tangible, without the public school officials, who do not merely control but overwhelmingly perform all but the purely ministerial acts by which the Association exists and functions in practical terms." (Id.).

Due to this substantial entwinement between the state and TSSAA, the Court found that TSSAA is a state actor. TSSAA argued that such a holding would trigger an epidemic of litigation, but the Court noted that every circuit court other than the 6th Circuit had reached the same conclusion. TSSAA also argued that there is no need to find that the Association is a state actor,

because the public school members conduct already is subject to federal constitutional law scrutiny. The Court also rejected this argument as unpersuasive since it did not in any way focus on the real issue in the case, whether TSSAA itself is a state actor.

The Supreme Court reversed the decision of the 6th Circuit and remanded the case for consideration of the merits of the plaintiff's federal constitutional claims.

TENTH CIRCUIT HOLDS THAT DRUG TESTING STUDENTS IN EXTRACURRICULAR ACTIVITIES VIOLATES FOURTH AMENDMENT.

***Earls v. Board of Education of Tecumseh Public School District*, 242 F.3d 1264 (10th Cir., March 21, 2001).**

On March 21, 2001, the United States Court of Appeals for the Tenth Circuit held that drug testing all students in extracurricular activities is an unconstitutional violation of the Fourth Amendment.

In 1998 the Tecumseh Public School District implemented a random suspicionless drug testing policy for all students competing in extracurricular activities in the district (i.e. cheerleading, band, debate team, etc.). Students must produce urine samples while a monitor waits outside the closed restroom stall. The results of the tests are disclosed only to the athletic director and coach and never made public. Any student desiring to participate in extracurricular activities must consent to the testing.

Plaintiff Lindsay Earls is a member of the show choir, marching band, and academic team, while plaintiff Daniel James is a member of the academic team. Both students sued the district challenging required compliance with the policy as a condition to their participation in these activities. The district court granted summary judgment in favor of the school district, concluding that the policy does not violate the Fourth Amendment. Plaintiffs then appealed.

The Tenth Circuit began its review by focusing on the United States Supreme Court's decision in *Vernonia School District v. Acton*, 515 U.S. 646 (1995), which upheld drug testing of only student-athletes. This case and the Supreme Court's subsequent decision in *Chandler v. Miller*, 520 U.S. 305 (1997), establish the court's "special needs" doctrine. Under this doctrine, the court has upheld drug testing policies only where the testing body is able to demonstrate the presence of actual "special needs" as the justification for the testing. Following these cases, the Tenth Circuit agreed that such "special needs" exist in the public school context "where adherence to the traditional Fourth Amendment requirements of a warrant and probable cause 'would unduly interfere with the maintenance of swift and informal disciplinary procedures [that are] needed,' and would undermine 'the substantial need of teachers and administrators for freedom to maintain order in the schools.'" (p. 1270). Therefore, the Tenth Circuit found that "there is a special need for a relaxation of the Fourth Amendment's standards" in this case. (Id.)

The court considered the various parts of the Fourth Amendment balancing test adopted by the Supreme Court. Initially, the court found that students participating in extracurricular activities agree to follow rules established by the coach or other director of the activity and, similar to athletes, have a somewhat lesser privacy expectation than other students. Next, as to the character of the actual intrusion on the student's privacy interests, because the drug testing policy mirrors the policy in *Vernonia*, the court found that "the invasion of privacy was not significant."

The school district argued it was concerned with the health and safety of students because they are often unsupervised while participating in these extracurricular activities and not subject to the supervision necessary to protect them from drug use. The Tenth Circuit found that neither of these concerns was a sufficient justification for the policy. Moreover, unlike the epidemic situation in *Vernonia*, the school district lacked evidence of any serious or immediate drug problem in the district's schools. Finally, because there was no demonstrated drug problem among students participating in extracurricular activities, the efficacy of the school district's policy to solve this problem was also greatly diminished.

In sum, the Tenth Circuit held that students' privacy interests outweighed the school district's professed justifications for the policy, and therefore, the policy violates the Fourth Amendment.

STATE COURT ALSO HOLDS DRUG TESTING OF STUDENTS IN EXTRACURRICULAR ACTIVITIES VIOLATES PENNSYLVANIA CONSTITUTION

***Theodore v. Delaware Valley School District*, 761 A.2d 652 (Comm. Ct. PA, November 6, 2000).**

On November 6, 2000, the Commonwealth Court of Pennsylvania held that a school district drug testing policy applied to students in extracurricular activities violates the Pennsylvania Constitution.

The Delaware Valley School District instituted a drug and alcohol testing policy under which all middle and high school students seeking to participate in extracurricular activities or drive to school must consent to testing. The testing includes collection of blood, urine and breath samples. The specific aim of the policy is to prevent accidents, discourage drug use, and provide assistance programs for student drug users. There are no criminal sanctions or school discipline associated with a positive drug test.

Several students and their parents sued the District claiming that the policy is a violation of their privacy rights under Article I, Section 8 of the Pennsylvania Constitution. Following the United States Supreme Court's *Vernonia* decision, the trial court held that the policy was constitutional because students in public schools have a diminished privacy interest, the intrusion was minimal, they were given proper notice of the policy, and the policy serves the government's interest in protecting the health of the students involved. The trial court then dismissed the students complaint and the students appealed.

Noting that the Pennsylvania Constitution offers greater protection to a person's privacy rights than the U.S. Constitution, the commonwealth court found that students who participate in extracurricular activities do not have lesser privacy interests than normal students.

Even given this substantial privacy interest, the court found that the process used to get samples was minimally intrusive, and there were clear notice requirements. Therefore, the policy itself was not a severe violation of the students' privacy interests. However, the court found that the district gave no evidence of heightened drug use among these students and so there is no special need to test only those students involved in extracurricular activities or driving to school.

Without substantial evidence of a drug problem and given the students' substantial privacy interest, the court found that the policy invades the student's privacy rights against unreasonable searches and seizures and is unconstitutional under the Pennsylvania Constitution.

The court reversed the trial court's decision and remanded the case to the trial court for consideration of the merits of plaintiff's constitutional claims.

NBA ORDERED TO RELEASE PLAYER'S DRUG TEST RESULTS

In the Matter of Federation of Internationale De Basketball, 117 F.Supp.2d 403 (S.D. NY, October 24, 2000).

On October 26, 2000, a New York federal district court held that the National Basketball Association (NBA) must release a former player's drug test results and that such disclosure does not violate the NBA's collective bargaining agreement (CBA) with the National Basketball Players Association (NBPA).

On November 24, 1999, the NBA announced that Stanley Roberts, then with the Philadelphia 76ers, was expelled from the league as the result of a positive drug test. Roberts tried to resume his playing career in Europe with a team from Istanbul. Just before he signed a contract worth a reported \$500,000 per year, the Federation Internationale de Basketball (FIBA) announced that Roberts was banned from competition for two years based on his failed NBA drug test. FIBA rules authorize the organization to ban a player on the basis of a positive drug test administered by the NBA. Consequently, the Istanbul team withdrew its contract offer to Roberts.

After exhausting FIBA's internal appeals process, Roberts filed suit in a Munich, Germany district court, arguing he did not violate the NBA's anti-drug rules, that FIBA could not base its ban simply on a press announcement of his alleged violation, and that the anti-drug policy was not in FIBA's charter. Roberts application for a preliminary injunction was granted and FIBA appealed.

In preparation for the appeal, FIBA requested Robert's actual test results from the NBA but the NBA refused. FIBA then asked the New York federal district court to compel the NBA to provide the drug test results for FIBA's use in the trial in Germany.

Roberts contended that, according to the CBA, drug test results must remain confidential and that FIBA's request should be denied. The NBA agreed, arguing that if confidentiality is compromised, it will hamper the league's ability to reach an agreement with the NBPA on any future anti-drug programs. The court rejected these arguments because it was Roberts, the individual with the only legitimate privacy interest, who was asserting compliance with the NBA's drug policy. Because Roberts had disputed the accuracy of the NBA's tests, he had waived the protection of confidentiality. As the results would only disclose factual information about the nature of the test and the level of drugs found in his bodily fluid, and because the nature of Roberts' suspension had already been made public, the information that the NBA would have to disclose was insignificant. The court agreed that disclosure of these test results might have a negative impact on the NBA's future collective bargaining with the NBPA, but this was not a relevant factor to consider in determining whether the NBA must provide the test results to FIBA.

As a result of these findings, the New York court ordered the NBA to produce Roberts' drug test results to FIBA.

DISTRICT COURT GRANTS NCAA REHEARING ON AMERICANS WITH DISABILITIES ACT CLAIM

***Bowers v. National Collegiate Athletic Association*, 130 F.Supp.2d 610 (D.N.J. February 2, 2001).**

On February 2, 2001, the United States District Court for the District of New Jersey granted the NCAA's motion for reargument of an ADA claim.

Michael Bowers, a learning disabled student-athlete who was declared a non-qualifier by the NCAA because special education classes that he took in high school did not meet the NCAA core course requirements. Bowers sued the NCAA claiming that the eligibility rule violated Title III of the ADA. After the NCAA's motion for summary judgment was denied (9 F.Supp.2d 460, 1998 U.S. Dist. LEXIS 8552 (D. NJ 1998)), the NCAA petitioned the court for reconsideration based on changes in its eligibility rules.

The district court granted the NCAA's motion because the Title III claim was based solely on Bowers losing a year of eligibility as a non-qualifier. When the initial complaint was filed, a student athlete who was a non-qualifier was granted only three years of eligibility. Under the new rule, non-qualifiers have an opportunity to regain a fourth year of eligibility after making sufficient academic progress. Because this rule was not in effect when the district court initially ruled that Bowers was eligible to seek injunctive relief, the court held that Bowers is no longer suffering from "continuing, present, adverse affects" and lacks standing to bring a Title III claim.

SUPREME COURT HOLDS DISABLED GOLFER PERMITTED TO USE CART DURING PGA TOUR COMPETITION

PGA Tour, Inc. v. Casey Martin, 121 S.Ct. 1879 (May 29, 2001).

On May 29, 2001, the United States Supreme Court affirmed the decision of the United States Court of Appeals for the Ninth Circuit (204 F.3d 994 (9th Cir. 2000)), finding that a golf course is a place of public accommodation under Title III of the ADA during a PGA Tour event and that Casey Martin's use of a cart during competition is a reasonable accommodation that does not fundamentally alter the nature of PGA and Nike Tour competitions.

The Supreme Court focused its decision on two issues: (1) whether the ADA protects access to professional golf tournaments by qualified disabled entrants, and (2) whether a disabled contestant may be denied use of a cart during competition because such use would fundamentally alter the nature of the competition.

As a threshold matter, the court determined that Title III of the ADA specifically applies to PGA Tour events because golf courses are identified as public accommodations in the legislation, and the Tour leases and operates golf courses for these events as defined in the legislation. Because the PGA Tour is subject to the requirements of the ADA it may not discriminate against disabled golfers by denying their access to PGA events and must allow reasonable modifications of its events to allow disabled individuals to participate.

The Court then focused on the reasonableness of the modification that would allow Martin access to PGA events. The court considered whether allowing Martin to use a cart during competition would fundamentally alter the nature of PGA Tour golf by either unacceptably modifying an essential aspect of the game of golf, or giving Martin a competitive advantage over other participants. The Court was not persuaded that a waiver of the walking rule for Martin would be a fundamental alteration in either case. The Court found that the PGA Tour's walking rule is not an essential attribute of the game of golf because the essence of golf is shot-making, and the walking rule is not an indispensable feature of tournament golf because the Tour already allows players to use carts on the Senior Tour. The court noted that the district court found the fatigue factor injected into a game of golf by walking is not significant, and when given the option, able golfer's do not use carts. Furthermore, the Court found that the ADA requires that organizations undertake an individualized inquiry into whether a reasonable modification must be made to allow a disabled individual to participate. In making this inquiry for Martin, the Court found that his use of a cart during competition was a reasonable modification.

After looking at all of these factors, the court found that "[a] modification that provides an exception to a peripheral tournament rule without impairing its purpose cannot be said to 'fundamentally alter' the tournament." (p. 1897). Because the walking rule is not an essential aspect of the game of golf, and because Martin did not gain any advantage over other golfers by using a cart, his use of the cart was a reasonable modification of PGA golf. Therefore, the decision of the Ninth Circuit allowing for Martin to use a cart in competition was affirmed.

SUPREME COURT OVERTURNS SEVENTH CIRCUIT DECISION HOLDING THAT USE OF A CART WOULD FUNDAMENTALLY ALTER USGA COMPETITION.

Olinger v. United States Golf Association, 121 S. Ct. 2212 (June 4, 2001).

Following its decision in *Martin*, on June 4, 2001, the Supreme Court also vacated the Seventh Circuit's decision in *Olinger v. United States Golf Association* (205 F.3d 1001 (7th Cir. 2000)), which held that the use of a cart during competition by another similarly disabled golfer would fundamentally alter USGA competition and would be an unreasonable modification under the ADA.

NINTH CIRCUIT AFFIRMS DISTRICT COURT'S DISMISSAL OF LATRELL SPREWELL'S LAWSUIT

Sprewell v. Golden State Warriors, et al., 231 F.3d 520 (9th Cir., November 7, 2000).

On November 7, 2000, the United States Court of Appeals for the Ninth Circuit upheld a district court ruling dismissing Latrell Sprewell's complaint that the National Basketball Association (NBA) and the Golden State Warriors discriminated against him as a result of his race.

On December 1, 1997, during a closed practice, Golden State Warrior guard Latrell Sprewell physically assaulted head coach P.J. Carlesimo after Carlesimo criticized his play. The Warriors suspended Sprewell for a minimum of ten games while reserving the right to terminate his contract. After a subsequent investigation by the NBA, Sprewell was suspended for one-year by the NBA and the Warriors terminated his contract. Sprewell invoked the arbitration provisions of the NBA's collective bargaining agreement (CBA) and challenged his suspension and the termination of his contract. The arbitrator found that both the termination of his contract and the suspension were permissible actions under the CBA, but found that the Warriors termination of Sprewell's contract was improper because it was not supported by just cause, and that the NBA's suspension should be reduced.

On May 20, 1998, Sprewell filed suit against the NBA and the Warriors alleging that the suspension was racially motivated. The district court dismissed his claim for failure to state a claim upon which relief could be granted. Sprewell filed an amended complaint which the court also dismissed because it consisted of "the same baseless claims previously dismissed by the court."

On appeal, Sprewell requested that the court vacate the arbitrator's award as improper. The Ninth Circuit held that the award did not violate the Labor Management Relations Act because it correctly was specifically related to considerations with the CBA, the arbitrator did not exceed the scope of his authority, the award did not run counter to public policy, and it was not procured by fraud.

Sprewell also argued that his punishments were the product of racial discrimination by the NBA and Warriors. The court ruled that these allegations were undermined by the factual determinations contained in the arbitrator's award which no evidence of racial discrimination. The only evidence provided was that Sprewell was suspended as a result of his attack on Carlesimo.

The Ninth Circuit affirmed the district courts dismissal of Sprewell's suit.

MCSORLEY CRIMINALLY CONVICTED FOR ON-ICE ASSAULT

Regina v. Marty McSorley, 2000 BCPC 0116 & 2000 BCPC 0114 (Provincial Court of British Columbia, September 15 & October 6, 2000).

On February 21, 2000, during a game between the Canucks and Bruins, McSorley and Brashear fought early during the first period of a game. Soon after, McSorley attempted to fight again but Brashear would not. McSorley was given a penalty for attempting to fight. Shortly thereafter, Brashear was penalized for interfering with the Bruins' goalie. During the later stages of the game Brashear taunted the Canucks' bench. As the game was coming to an end, Brashear skated away from the goal and McSorley entered the game with the understanding that he was to fight with Brashear to give his teammates something to have pride in despite their impending loss. As the clock wound down, McSorley skated toward Brashear and slashed at him hitting him in the head, knocking him down and causing serious injuries.

In analyzing whether McSorley should be charged with assault, the court examined the written and unwritten rules of hockey, finding that slashing and fighting are parts of the game. Still, the court concluded that McSorley's slash to Brashear's head is not a typical and expected type of conduct, was too dangerous to be consented to and was outside of the rules of hockey. After looking at McSorley's state of mind and the circumstances of the slash, the court found it clear that McSorley went into the game with the specific intent to strike him in the head and was aware of the risk that such a dangerous action could cause serious injury. The court concluded that McSorley was guilty of an intentional assault.

In sentencing McSorley, while attempting to deter such conduct and penalize McSorley, the court concluded that the charge and the court proceedings were enough to teach McSorley that this type of conduct is unacceptable, and that a jail sentence was unnecessary to achieve these objectives. The court granted McSorley an 18 month conditional discharge. During this time he must keep the peace, be of good behavior and he cannot participate in any sporting event where Brashear is on the opposition.

ARBITRATION AWARD IN BASEBALL COLLUSION CASE UPHELD

Major League Baseball Players Association v. Garvey, 121 S. Ct. 1724 (May 14, 2001).

On May 14, 2001, the Supreme Court overturned a Ninth Circuit decision reversing an independent arbitrator's ruling against former Major League Baseball (MLB) player, Steve Garvey, because the Ninth Circuit improperly evaluated the arbitrator's ruling because it disagreed with the factual findings.

In the late 1980s, the Major League Baseball Players Association (MLBPA) filed grievances against MLB claiming collusion in the free-agent market for athletes' services in violation of the league's collective bargaining agreement (CBA). The MLBPA and MLB entered into an agreement establishing a fund to be distributed to players injured by the leagues' collusive practices. The MLBPA also set up a "Framework" to evaluate claims by specific players. Under this "Framework," players could seek an arbitrator's review of the distribution plan, but the arbitrator was only allowed to determine whether the approved Framework and criteria set forth therein were properly applied in the proposed Distribution Plan.

Steve Garvey, a retired player, submitted a claim for damages of approximately \$3 million based on the allegation that due to the collusive refusal by teams to negotiate with players his contract with the San Diego Padres was not extended to the 1988 and 1989 seasons. The MLBPA rejected his claim because he offered no evidence that the Padres had offered to extend his contract. Garvey objected and the dispute went to arbitration.

At the arbitration hearing Garvey presented a letter from former Padres' President and CEO Ballard Smith in 1996 stating that the team had offered to extend his contract, but that they had refused to negotiate thereafter due to collusion. The arbitrator doubted the credibility of Smith's letter, specifically because Smith's statements during the original collusion proceedings contradicted his statements in the letter, and denied Garvey's claim.

Garvey petitioned the district court to vacate the arbitrator's decision on the ground that he violated the Framework criteria. The district court denied Garvey's petition but the Ninth Circuit reversed the arbitrator's decision. The appellate court found that the arbitrator had failed to give due credence to Smith's 1996 statement. The court noted that the arbitrator was part of the original arbitration panel that had not believed Smith and the other owner's statements in the original collusion cases, and so the court presumed that the arbitrator again had some bias against Smith's statements.

The district court then remanded the case back to the arbitrator for further hearings, but Garvey appealed. On this second appeal, the Ninth Circuit pointed out that in its original decision it intended that the district court remand the case to the arbitrator with specific instructions that an award be entered in Garvey's favor.

The MLBPA then petitioned the Supreme Court for writ of certiorari to review the Ninth Circuit's opinion. On certiorari review, the Supreme Court noted that "[c]ourts are not authorized to review the arbitrator's decision on the merits despite allegations that the decision rests on factual errors or misinterprets the parties' agreement." (p. 1728). An arbitrator's decision may be unenforceable only if it strays from interpretation and application of the agreement and effectively "dispenses his own brand of industrial justice." (Id.). The Supreme Court found that the Ninth Circuit improperly overturned the arbitrator's decision because it disagreed with the arbitrator's factual findings.

For these reasons, the Supreme Court reversed the Ninth Circuit's decision and remanded the case for further proceedings.

ARBITRATOR REJECTS NBA PROPERTIES' CLAIMED OWNERSHIP OF WWW.KNICKS.COM

NBA Properties, Inc. v. Adirondack Software Corporation, Case No. D2000-1211 (WIPO Arbitration and Mediation Center, December 8, 2000).

On December 8, 2000, the WIPO Arbitration and Mediation Center decided that NBA Properties does not own of the domain name www.knicks.com.

In 1995, Adirondack Software Corporation registered the domain name www.knicks.com with Network Solutions Inc. (NSI). After unsuccessfully attempting to contact Adirondack to discuss a transfer of the name to the league through NBA Properties, the NBA complained to NSI. In response, NSI put a hold on usage of the domain name pending resolution of its ownership status.

In 1997, NBA attorneys were able to contact Adirondack and the company executed a letter transferring the domain name to the NBA but NSI deemed the letter insufficient to transfer the name. The NBA followed up with Adirondack in 1999 but was unable to contact the company. In March of 2000 NSI informed the NBA that the hold status on the domain name would be lifted unless some action was instituted to determine its ownership. The league responded by filing this complaint asking that all rights in www.knicks.com to be transferred to NBA Properties.

The arbitrator initially noted that the four trademarks relating to the mark "KNICKS" are owned by Madison Square Garden Properties (MSG), not NBA Properties. The purpose of the ICANN Uniform Domain Name Dispute Resolution Policy applied by the arbitrator is to unify control of domain names with the rightful owner of trademark rights related to those names. Because MSG was the rightful owner of the trademarks and the league's request to have the domain name rights transferred to it was without MSG's consent, the arbitrator found that NBA Properties had not proven the requisite ownership interest to necessitate a transfer of the domain name.

The arbitrator also ruled that NBA Properties had failed to show that the domain name was registered and used in bad faith by Adirondack under any of the ICANN Policy criteria. Specifically, the NBA could not show that Adirondack registered the name in order to keep the true trademark owner from registering the name, there was no evidence that Adirondack was a competitor of the NBA attempting to disrupt its business, and there was no evidence that the name had ever been used to attract internet users to the web site.

The arbitrator denied the NBA's request for transfer of the domain name.

NFL AWARDED DAMAGES IN COPYRIGHT INFRINGEMENT SUIT

***National Football League v. Primetime 24 Joint Venture*, 131 F.Supp.2d 458 (S.D. NY February 6, 2001).**

On February 5, 2001, a New York federal district court ordered Primetime 24, a satellite provider, to pay the National Football League (NFL) \$2,557,500 in statutory damages and \$45,792.99 in costs for copyright infringement of NFL telecasts.

Primetime 24 is a satellite carrier that transmits the signals of United States television networks to owners/renters of satellite dishes in the United States and Canada. From 1997 to 2000, Primetime 24 retransmitted numerous NFL games to Canadian satellite dish owners. The NFL claimed that the retransmission violates the NFL-owned copyright for each individual game.

On May 27, 1998, the NFL sued Primetime 24 for copyright infringement because it was retransmitting copyrighted NFL football game telecasts to Canada. On September 27, 1999, a New York federal district court granted summary judgment to the NFL and entered a permanent injunction against any further retransmissions by Primetime 24 to any locations outside of the United States.

Primetime 24 appealed to the United States Court of Appeals for the Second Circuit which stayed the injunction pending the appeal. On April, 28, 2000, the Court of Appeals affirmed the decision of the district court, and on October 17, 2000, it denied a motion by Primetime 24 for a rehearing en banc and remanded the case to the district court for a determination of damages.

The district court assigned a value for each infringement and multiplied that by the number of occurrences. The court segmented the infringements into four categories. First, \$2,500 for each infringement which occurred before the action commenced. Second, \$100,000 for each infringement that occurred after Judge McKenna's summary judgment ruling. Third, \$10,000 for those infringements which occurred during the Second Circuit stay of the permanent injunction. Fourth, \$ 20,000 for each infringement which occurred after the Second Circuit affirmed the decision of the district court.

Implementing the above formula, the court awarded the NFL statutory damages of \$2,557,500 for the copyright infringements. The court declined to award attorney's fees, but awarded \$49,792.99 in costs to the NFL.

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