You Make the Call. . .

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Alternative Dispute Resolution

Metro. Nashville Educ. Ass'n v. Metro. Bd. of Pub. Educ. Mo. M2005-00747-COA-R3-CV, 2006 Tenn. App. LEXIS 604 (Tenn. Ct. App. Sept. 12, 2006). Fuller taught and coached the boys' baseball and basketball teams at Overton High. On April 9, 2002, the Metropolitan Board of Education (Board) placed Fuller on administrative leave and then assigned him as a roving substitute aide in Nashville elementary schools. Fuller and the Metropolitan Nashville Education Association filed a grievance and requested a transfer back to Overton High. The matter went to arbitration and the arbitrator decided that Fuller was to be returned to his position at Overton High. The Board returned Fuller to his teaching position but not his coaching position. The Board argued that the arbitrator exceeded his authority by requiring the school to reinstate Fuller to his coaching position. The court ruled that under the arbitration agreement the teacher's entire dispute with the Board was subject to arbitration, and therefore, the arbitrator did not exceed his authority.

Americans with Disabilities Act Law

Filson v. The Big Ten Conference, No. 06 C 3839, 2006 WL 3626707 (N.D. Ill. Dec. 11, 2006). Filson was a Big Ten football official from 1992-2004. In 2000, Wilson lost his right eye and had a prosthesis put in, but was able to return to officiating. During the five seasons following the accident, his performance reviews were substantially better than those prior to the accident. After being contacted by the University of Michigan's coach about Filson officiating with one eye, the Big Ten Commissioner instructed Filson's supervisor to terminate him. Filson's supervisor told him that the Commissioner did not want to deal with the backlash he would have to face if the public knew about Filson's condition. Filson sued the Big Ten Conference, claiming employment discrimination under Title I and III of the Americans with Disabilities Act and the defendants moved to dismiss the Title III claim. The court dismissed the Title III claim because

such claims apply to places of public accommodation rather than to work-related disability discrimination claims.

Antitrust Law

JES Props., Inc. v. USA Equestrian, Inc., 458 F.3d 1224 (11th Cir. 2006). USA Equestrian was the predecessor of United States Equestrian Federation (USEF), the national governing body of equestrian in the United States. USEF sanctions certain equestrian competitions called recognized competitions. All recognized competitions are subject to General Rule 214.7, which is known as the Mileage Rule. The Mileage Rule requires any A-rated competitions held on the same date to be held at least 250 miles away from each other. The required distance diminishes as the rating decreases. The plaintiffs were unable to secure any dates between December and March in Florida because other promoters had already secured those dates. The plaintiffs claimed that the Mileage Rule violated the Sherman Antitrust Act. The district court granted summary judgment in favor of the defendants, and the plaintiffs appealed. The court applied the Amateur Sports Act (ASA), which gave the defendants immunity from antitrust laws because the ASA requires National Governing Bodies such as USEF to create rules that minimize scheduling conflicts.

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Constitutional Law

Hudson v. Tex. Racing Comm'n, 455 F.3d 597 (5th Cir. 2006). James Hudson was an owner and trainer of a horse named St. Martin's Cloak, which finished first in a race at Lone Star Park. St. Martin's Cloak tested positive for Torsemide during a post-race urine test. The Texas absolute insurer rule required a trainer to ensure that the horse was free from all prohibited drugs. Hudson participated in a hearing conducted by the Board of Stewards at Lone Star Park. Following the hearing, Hudson was suspended for sixty days, the horse was declared unplaced in the race, and the prize money was redistributed. Hudson appealed, and a second hearing was conducted before an administrative law judge. Hudson then filed a petition in Texas state court seeking judicial review of the Commission's decision, claiming that the absolute insurer rule violated the due process clause. The Commission removed the case to federal court. Hudson argued that the rule created an irrebutable presumption that the trainer administered the substance and it subjected the trainer to disciplinary action without a showing of wrongdoing. Hudson was able to prove that he had a property interest in his horse training license. However, he was unable to prove a violation of substantive due process because the rule required the trainer to bear responsibility rather than assign fault, and due process does not require proof of guilty knowledge before being punished.

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Huff v. Penn Harris Madison Sch. Corp., No. 3:05-CV-716RM, 2006 U.S. Dist. LEXIS 70605 (N.D. Ind. Sept. 18, 2006). D.N. violated the Penn High School code of conduct once during his freshman year and again during his senior year of high school. As a result of his second violation, D.N. was suspended from extracurricular activities for one year. D.N.'s parents appealed the suspension, but the suspension was upheld. D.N.'s parents sued claiming a violation of due process rights. The court dismissed the case for failure to state a claim because Indiana does not recognize participation in high school athletics as a protected interest.

Lee v. Pocahontas Area Cmty. Sch. Dist. Bd. of Dirs., No. 6-244/05-1150, 2006 Iowa App. LEXIS 785 (Iowa Ct. App. July 26, 2006). Lee was hired as a science teacher and coach in the fall of 2001. After parents and the superintendent addressed concerns about Lee's coaching philosophy, he requested a closed session with the School Board. Following the Board meeting, Lee claimed that board members called him and told him that they would not vote against him. When the superintendent met with him a few days later, the superintendent learned that Lee had lied about the phone calls from the board members. At a board meeting a week later the board decided to fire Lee. Lee filed a petition for judicial review in the district court, claiming that the School Board violated his due process rights. The court upheld the Board's decision to fire Lee because it found that the School Board gave Lee a fair hearing.

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Perry v. Ohio High Sch. Athletic Ass'n, No. 05-cv-937, 2006 U.S. Dist. LEXIS 74080 (S.D. Ohio Oct. 11, 2006). Perry transferred from Brookhaven High School to Africentric High School, both of which were in the Columbus Public Schools (CPS). CPS is a member of the Ohio High School Athletic Association (OHSAA). OHSAA bylaw 4-7-3 allowed the superintendent to transfer students within the system, but the transfers were eligible only after receiving approval from the Commissioner. The Africentric athletic director was required to send a request for approval of Perry's transfer to the OHSAA office, but the athletic director failed to do so and Perry was declared ineligible. Perry sued the OHSAA, claiming failure to provide due process and that CPS was negligent in failing to properly train and supervise Africentric's athletic director. Summary judgment was granted in favor of the defendants because Perry did not have a protected interest in competing in athletics, and CPS was granted immunity on the negligence claim.

Pinard v. Clatskanie Sch. Dist., 467 F.3d 755 (9th Cir. 2006). The plaintiffs were former members of the 2000-2001 Clatskanie High School varsity boys' basketball team. The students claimed that the head basketball coach was verbally abusive. During a team meeting, the basketball players signed a petition requesting the head coach to resign because they no longer felt comfortable playing for him as a coach. The players turned in the petition on the same day that a game was scheduled. The athletic director gave the students the choice of participating in a mediation process and boarding the bus, or adhering to their petition and not playing in the scheduled game. The high school principal permanently suspended all the players who did not board the bus or play in the game. The players appealed the decision, but the decision was upheld by the school board. The plaintiffs alleged a violation of the First Amendment. The district court granted summary judgment for the defendants because the students' speech did not involve a matter of public concern. The court ruled speech that is not vulgar or school-sponsored is protected speech if it does not substantially disrupt or interfere with a school activity. The

students' petition and complaints against the coach were protected, but failure to board the bus prior to the game was not protected because it interrupted school activities. The case was remanded to the district court to determine whether the petition and complaints against the coach were motivating factors in the decision to suspend the students.

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Smalkowski v. Hardesty Public Sch. Dist., No. CIV-06-845-M, 2006 U.S. Dist. LEXIS 76067 (W.D. Okla. Oct. 18, 2006). Chester and Nadia Smalkowski are the parents of N.S., a Hardesty High student and a member of the girls' basketball team. The plaintiffs alleged that N.S was dismissed from the basketball team and suspended from school because she refused to participate in a team prayer prior to and after games and was falsely accused of threatening another student. The defendants claim that N.S. took other players' shoes, was consistently late to practice, and made derogatory statements about the team, which affected team chemistry. The plaintiffs requested a temporary restraining order to prevent the defendants from allowing employees to promote, lead, or permit prayer with or among students during or after school, demanded the school district to advise students they have a constitutional right not to participate in religious activities, and demanded the school district to reinstate N.S. into the school. The plaintiffs alleged that the coach was the one who required N.S. to recite the prayer; however, he was no longer employed by the school district. Therefore, the court found no evidence that the plaintiffs would be irreparably harmed.

Contract Law

Bailey v. Palladino, 2006 WL 2068136 (N.J. Super. Ct. App. Div. July 27, 2006). Bailey became a member of IMA, a fitness center, which is also a defendant in the case, so that he could enroll in a Brazilian Jiu Jitsu class. When Bailey became a member of IMA he signed a Risk Agreement form, which said that he discharged all instructors and employees from liability for injuries or damages resulting from his participation in any activities. Two days after signing this document, Bailey was seriously injured during a class. During the class, Bailey and Palladino, another student, grappled with each other, but Bailey believed Palladino was an instructor. Palladino was much more experienced and larger than Bailey and had not received any instruction about how to react to the maneuver that Palladino practiced on him. As a result of this incident, Bailey sued Palldino and IMA. IMA claimed that the Risk Agreement form precluded it from being sued. The court ruled that the form was ambiguous because it did not state that IMA was released from liability, nor did it say any of its members could be excluded from liability. Further, the agreement did not make any reference to negligence, which is required to release a party from negligence. Therefore, the court found that IMA could not be released from liability for Bailey's injuries. However, summary judgment was granted in favor of Palladino because in the context of co-participants, the standard that applies is recklessness and Bailey was unable to show that Palladino acted in a reckless manner.

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CoxCom, Inc. v. Okla. Secondary Schs. Athletic Ass'n, 143 P.3d 525 (Okla. Civ. App. 2006). In June 2002, CoxCom and Oklahoma Secondary Schools Athletic Association (OSSAA) signed a contract regarding the telecast rights for the OSSAA state championships. The agreement included a right of first refusal for CoxCom beyond August 2005. Once the contract expired, CoxCom submitted a new contract on September 2, 2005. The Family Broadcasting Group (FBG) presented OSSAA with a proposal to telecast OSSAA's games, and the OSSAA board of directors voted to accept the proposal. CoxCom was given a chance to exercise its right of first refusal, but was told that it would have to match the coverage area of forty-seven counties that FBG was willing to provide. CoxCom presented a proposal that stated the coverage area would be detailed at a later date. OSSAA signed the contract with FBG, and Coxcom sued OSSAA and FBG, claiming breach of contract, unfair competition, wrongful interference with contractual relations and specific performance. CoxCom also sought an injunction to prevent OSSAA from breaching the terms of the CoxCom contract. The trial court denied the injunction, and the appellate court affirmed that decision because CoxCom was not able to show that it suffered any harm that could not be adequately compensated with monetary damages.

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Harrick v. Nat'l Collegiate Athletic Ass'n, 454 F. Supp. 2d 1255 (N.D. Ga. 2006). The plaintiffs, Jim Harrick, Sr. and Jim Harrick, Jr., were basketball coaches at the University of Georgia. Both had contracts that were subject to termination if the coaches did not comply with NCAA or SEC rules. On March 27, 2003 Jim Harrick, Sr. voluntarily resigned as head basketball coach. On February 26, 2004 the plaintiffs sued the NCAA claiming it tortiously interfered with their contractual business relationships. The NCAA moved for summary judgment and the court granted it because the defendants were not strangers to the contract, which is required for tortious interference with contractual business relations.

Johnson v. Amerus Life Ins. Co., No. 05-61363-CIV-COOKE/BROWN, 2006 WL 3826774 (S.D. Fla. Dec. 27, 2006). Johnson played football at the University of Miami and then for the Houston Texans. Prior to playing for the Texans, Johnson claimed that Amerus Life Insurance made false representations to induce him to purchase unnecessary insurance, and that Amerus agents lied to him and took advantage of their superior knowledge to receive large commissions on the sale of his insurance policies. Both Johnson and Amerus filed a third party complaint alleging that Melton, who served as Johnson's financial adviser, made material misrepresentations regarding Johnson's financial status, which led to the litigation between Johnson and Amerus. The court dismissed the third party claims against Melton because Johnson's and Amerus's negligent misrepresentation claims were not alleged with sufficient particularity.

Kaiser v. Bowlen, 455 F.3d 1197 (10th Cir. 2006). Kaiser sold his majority interest in the Denver Broncos to Bowlen in 1983. Bowlen then transferred his interest to a United States subsidiary to avoid tax liability in Canada. The agreement between Bowlen and Kaiser included a right of first refusal that provided Kaiser the right to repurchase any part of the franchise that Bowlen might offer to sell to a third party and a warranty clause that stated Bowlen was purchasing the team for himself. Subsequently, Bowlen offered stock in the corporation to John Elway. Kaiser sued Bowlen claiming that he violated the breach of warranty clause and the right of first refusal clause. The court held that Bowlen did not breach the warranty and was acting for himself, not as

an agent, when he transferred his interest to a United States corporation. The court also held that the right of first refusal clause did not apply to the offering of stock.

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Kurz v. Fed'n of Petanque, U.S.A., 146 Cal. App. 4th 136 (Cal. Ct. App. 2006). Kurz and Carter were umpires for Federation of Petanque, U.S.A. (FPUSA). An entry form for a FPUSA tournament in Sacramento included language prohibiting smoking and drinking of alcoholic beverages on or off the court while playing. Kurz noticed the language and posted a message on an internet website. Carter responded and told him it was not an FPUSA rule and then Kurz responded saying that if Carter were to umpire the tournament he should not enforce the rule. The FPUSA Disciplinary Committee notified Kurz and Carter that they were looking into whether they violated a rule that stated every umpire is to conduct themselves in a manner that reflects well on all FPUSA umpires. Kurz and Carter were allowed to provide a written defense. FPUSA suspended their umpire credentials for one year after which they were to undergo two-year probationary period. Kurz and Carter sued claiming that Corporations Code section 7341, which addresses how non-profit corporations may expel or suspend members, applied and FPUSA had to follow its own rules. The court ruled that FPUSA was not required to follow its rules regarding discipline imposed on members because the decision involved only the suspension of umpire credentials.

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Lesco, Inc. v. Masone, CV 05-3207, 2006 U.S. Dist. LEXIS 54022 (E.D.N.Y. 2006). Lesco manufactures and sells products for turf care professionals. Defendants Masone and Cash worked for Lesco, and both signed non-compete agreements that stated they would not compete with Lesco directly or indirectly for twelve months. In June 2005, Lesco received a letter stating that Masone and Cash were terminating their employment with Lesco, but intended to continue to work in the turf care industry. In July 2005, Lesco sought a preliminary injunction to prevent them from competing. In November 2005, Lesco and the defendants signed a settlement agreement, which included a court order not to compete. After the settlement agreement, a Lesco employee saw Masone at several golf courses and Masone and Cash were working for a sod company. The Lesco employee could not prove that Masone was talking about business when he visited the golf courses and Lesco did not sell sod; therefore, the court held that Masone and Cash were not competing with Lesco in violation of the court order.

Mastercard Int'l, Inc. v. Fed'n Internationale de Football Ass'n, No. 06 Civ. 3036 (LAP), 2006 U.S. Dist. LEXIS 88103 (S.D.N.Y. Dec. 6, 2006). FIFA is the international governing body of soccer and the organizer of the FIFA World Cup. Mastercard sponsored the World Cup for the last sixteen years and its most recent contract included the right to acquire the FIFA World Cup sponsorship for the next four years. Mastercard claimed that FIFA breached the contract when it signed an agreement with VISA. The court granted a permanent injunction against FIFA preventing it from proceeding with its agreement with VISA and granted Mastercard the sponsorship rights the two parties had previously agreed to because Mastercard would have been irreparably harmed without a permanent injunction.

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McBryde v. Ritenour Sch. Dist., 207 S.W.3d 162 (Mo. Ct. App. 2006). McBryde was an assistant basketball coach at Ritenour High School. When McBryde was hired, he was told by the head basketball coach that he needed an African American coach that could relate to his players. McBryde was the only African American on the basketball coaching staff. All other assistant coaches received full time teaching positions at the school, received contracts before the start of the basketball season and received only verbal warnings as a result of misconduct. McBryde was offered a position as a teaching assistant only during basketball season, always received his contracts after the start of basketball season, and was suspended as a result of misconduct without first receiving a verbal warning. McBryde sued Ritenour claiming racial discrimination. The trial court awarded damages and attorneys' fees for McBryde, and Ritenour appealed, claiming the jury instructions were incorrect. Ritenour claimed that the Eighth Circuit Model Instructions should have been used. The court affirmed the circuit court's decision because the court had used Missouri Model Instructions, and a Missouri court is not bound to follow Eighth Circuit case law.

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Nat'l Fire & Marine Ins. Co. v. Adoreable Promotions, Inc., 451 F. Supp. 2d 1301 (M.D. Fla. 2006). Adoreable Promotions held Toughman Competitions at the defendant gym. During one of these competitions one participant was injured and another died as a result of competing in the Toughman Competition. National Fire issued a policy of commercial general liability insurance to Adoreable, but the insurance included a clause that read, this insurance does not apply to bodily injury to any person while practicing for or participating in any sports or athletic contest or exhibition that you sponsor. The defendants claimed that National Fire was required to defend and pay for any of the damages assessed against them in the litigation involving the injured athlete and the deceased athlete. Summary judgment was granted for National Fire because the clause in the insurance contract was not ambiguous and did not cover accidents that occurred while competitors were competing in Toughman Competitions.

O'Brien v. The Ohio State Univ., 859 N.E.2d 607 (Ohio Ct. Cl. 2006). O'Brien was the head basketball coach at The Ohio State University (OSU). He was fired for committing a NCAA violation. O'Brien's contract stated that if he was fired, other than for cause, he would be paid what his normal salary was as well as an amount three and one-half times his base salary for the loss of collateral business opportunities. OSU argued that it did not have to pay O'Brien's

damages because his misconduct and NCAA violation constituted for cause termination. The court ruled that the termination was not for cause because OSU knew about this misconduct prior to firing O'Brien. Therefore, the misconduct was not the reason why it fired him, and OSU had to pay the damages, which were reasonable in light of the anticipated salary.

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Southeastern Sports Mgmt. v. Baker, No. 2:05CV61-B-B, 2006 U.S. Dist. LEXIS 53893 (N.D. Miss. Aug. 1, 2006). Southeastern Sports Management (SSM) entered into an operations agreement with defendant City of Southaven (City) to promote baseball tournaments on the City's baseball fields. The agreement allowed either party to terminate at any time other than from April to August, and any games that were already scheduled could not be cancelled. The agreement covered the 2002-2004 seasons. Defendant Baker was Vice President of Operations for SSM, and his contract included a two-year non-compete and non-solicitation agreement. The City board ended the relationship with SSM on November 2, 2004. Baker resigned on November 12, 2004 and registered a web domain for JBJ Sports Productions that same day. On November 15, 2004, the City entered into a contract with JBJ. SSM claimed that the City breached the Operations Agreement when it terminated the agreement without allowing SSM to manage the tournaments, which SSM alleged were already scheduled for the 2005 season. SSM also claimed that Baker breached his employment contract and the duty of good faith and loyalty. The court granted summary judgment for the City because the term of the agreement did not include the 2005 season. Summary judgment was not granted for Baker because there was a question of fact as to whether he made plans with JBJ while still employed with SSM.

Travelers Prop. Cas. Co., v. Gen. Cas. Ins. Co., 465 F.3d 900 (8th Cir. 2006). Mr. Paine was the head golf professional at Legacy Golf Corporation and taught a golf class at the prep school adjacent to the Legacy golf course. During the class a student was hit by a golf ball, suffered a permanent brain injury, and sued the school and Mr. Paine. Paine was insured by Travelers Insurance while teaching the game of golf for or on behalf of the PGA. Regent was Legacy's insurer, but it denied coverage claiming that he was not acting within the scope of his employment with Legacy. Travelers loaned him sufficient funds to defend the lawsuit against the student. Travelers and Mr. Paine sued Regent, claiming that Regent had a duty to defend him in the lawsuit against the student. The district court granted summary judgment in favor of Regent. The appellate court affirmed the judgment for Regent because Paine was not acting within the scope of his employment with Legacy.

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Criminal Law

In re Ruczynski, 2007 WL 92379 (N.J. Super. Ct. App. Div. Dec. 29, 2006). The New Jersey State Police conducted an investigation called Operation Slap Shot, which allegedly involved a multi-million dollar sports bookmaking enterprise. State Trooper Harney was arrested as a part of the investigation. Deputy Attorney General Dowdell stated that State Trooper Ruczynski had been captured on a wiretap discussing gambling with Harney. As a result, the Superintendent of State

suspended Ruczynski without pay. The hearing officer said that Ruczynski's suspension was warranted and justified, but he appealed and claimed that the New Jersey Wiretapping and Electronic Surveillance Control Act precluded the use of intercepted communications by the Superintendent in a disciplinary matter. The court ruled that the Superintendent properly exercised his disciplinary authority because he had the power to suspend a subordinate pending investigation of possible charges against him.

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Wilson v. Lexington-Fayette Urban County Gov't, 2006 WL 2918817 (6th Cir. 2006). Wilson was arrested for violating an anti-peddling statute when he tried to sell two tickets under face value to a Kentucky basketball game to undercover police officers. The ordinance that Wilson violated defined a peddler as one who carries his merchandise with him while traversing the streets, sidewalks or alleys of Fayette County for the purpose of exhibiting and selling such merchandise. Wilson sued claiming that he was not a peddler and that the ordinance violated his free speech. Wilson also filed a motion for a preliminary injunction to prevent the defendant from enforcing the ordinance. The court did not grant a preliminary injunction because Wilson had plead guilty and admitted he was a peddler, the ordinance included numerous specifics and therefore was not unconstitutionally vague, and the ordinance did not violate his free speech.

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Discrimination Law

Atkinson v. Lafayette Coll., 460 F.3d 447 (3d Cir. 2006). Atkinson was hired as the director of athletics and a professor at Lafayette College in 1989. Atkinson often raised issues about Title IX compliance within the athletic department. She claimed that she was not fired for cause, which was needed to terminate her as a tenured professor. Atkinson claimed that the school violated Title IX by retaliating against her for speaking up about Title IX compliance, breached her contract, and discriminated against her because of her sex. The defendants claimed that she was not a tenured professor and therefore could be terminated without cause. The trial court granted summary judgment for the defendants on all claims. The appellate court affirmed summary judgment on her breach of contract and discrimination claims because she was not tenured and could not show that the reason she did not have tenure was pretextual. The court reversed and remanded her Title IX claim because it allows a private right of action for those individuals who have claimed retaliation.

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Brian v. Westside Cmty. Sch. Dist., No. 8:05CV484, 2006 U.S. Dist. LEXIS 57591 (D. Neb. 2006). John Brian, a New Zealand native, was a coach and a tenured teacher at Westside High School. In 2002, Brian was placed on performance probation, which included a prohibition from coaching, without explanation. The athletic director told him that the official reason he was placed on performance probation was so that he could spend more time in the classroom, but the unofficial reason was because Brian had embarrassed him. Prior to being placed on probation he

received excellent performance evaluations, but during the fall of 2002, he found an evaluation that he had never seen nor signed. In 2003, it was recommended that he be removed from performance probation and allowed to coach, but the athletic director did not allow him to return at that time. Brian alleged that Westside's officials continually referred to his New Zealand speech and mannerisms as rude and sarcastic and that the defendants' actions constituted a violation of his civil rights. He also alleged tortious interference with a business relationship against the athletic director. The court granted summary judgment for the defendants because Brian did not show how he was treated differently from similarly situated American teachers. Brian also could not prove tortious interference with a business relationship because the athletic director was acting as his employer, and therefore, was a party to the contract.

Brown v. Unified Sch. Dist. 501, 465 F.3d 1184 (10th Cir. 2006). Brown, an African American male, was a physical education teacher and a basketball coach for the school district from 1980 to 1996. While working for the school district he received several critical teacher evaluations and was reported to have engaged inappropriate conduct while he was the girls' basketball coach. He was fired as the boys' basketball coach because of the evaluations and inappropriate misconduct. Brown sued the school district in 1991, but lost the lawsuit. Brown applied for a job with the school district in 2001, but it refused to hire him because of his past employment record with the district. In March 2002, the plaintiff filed a complaint with the EEOC and received a right-to-sue letter in April 2002. In order to sue under Title VII, a plaintiff must file suit within ninety days of receiving the right to sue letter from the EEOC. The plaintiff failed to file suit within that time, but claimed that a letter in May 2003 constituted a subsequent related act. The court disagreed because the May 2003 letter stated the same reasons for the lawsuit as the 2001 letter and thus did not qualify as a subsequent act.

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Choike v. Slippery Rock Univ. of Pa., No. 06-622, 2006 U.S. Dist. LEXIS 49886 (W.D. Pa. July 21, 2006). The plaintiffs 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. Alden & Associates performed a Title IX compliance report, and it reported that SRU did not satisfy the substantial proportionality test, it did not have a history and continuing practice of program expansion, and it was not compliant with respect to accommodating the interests and abilities of its female students. However, an internal audit conducted prior to SRU dropping eight teams found that the athletic needs and interests of female students were being met. 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, there was a minimal amount of harm to SRU, and that the public interest favored the grant of injunctive relief.

Coll. Sports Council v. Dept. of Educ., 465 F.3d 20 (D.D.C. 2006). The College Sports Council claimed that the Title IX policy interpretation and subsequent clarifications violated the Constitution, Title IX, and the Administrative Procedure Act. It filed a petition requesting that the Department of Education initiate rulemaking in order to repeal the Three-Part Test and to clarify whether the Department's regulations purported to create private rights of action. The plaintiffs brought many of the same claims that were brought by the National Wrestling Coaches Association against the Department of Education, but that lawsuit had not included the challenge to the denial of its petition for rulemaking. The court ruled that the statutory and constitutional issues were precluded by res judicata because they were conclusively settled in the National Wrestling Coaches Association case, but the case was remanded to the district court to determine the plaintiffs' challenge regarding the Department of Education's refusal to institute rulemaking procedures.

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Cmtys. for Equity v. Mich. High Sch. Athletic Ass'n, 459 F.3d 676 (6th Cir. 2006). The plaintiffs were a group comprised of parents and high school athletes that advocated on behalf of Title IX compliance and gender equity in athletics. They sued the Michigan High School Athletic Association (MHSAA) claiming that MHSAA scheduled the girls' seasons in nontraditional seasons, which violated the Equal Protection Clause and Title IX. The case was remanded from the United States Supreme Court in light of its Rancho Palos decision. The defendants claimed that the plaintiff's exclusive remedy was Title IX, but the court concluded that the plaintiffs could seek remedies under 42 U.S.C. section 1983 as well as under Title IX. The court ruled in favor of the plaintiffs on the equal protection and Title IX claims because MHSAA failed to justify its discriminatory scheduling practices, and a motive was not required to violate Title IX.

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Costello v. Univ. of N.C. at Greensboro, No. 1:03CV01050, 2006 U.S. Dist. LEXIS 90519 (M.D.N.C. Dec. 14, 2006). Costello was a member of the golf team at the University of North Carolina at Greensboro (UNCG). At the beginning of his sophomore year he was diagnosed with Obsessive-Compulsive Disorder (OCD). Costello was late to or missed many practices, tournaments, and study halls as a result of doctor appointments. At the end of Costello's sophomore season the coach decided to remove him from the golf team and did not renew his scholarship. Costello appealed the non-scholarship renewal decision, but the decision was upheld on appeal. Costello sued UNCG and the coach, claiming they violated the Rehabilitation Act. The court granted summary judgment for the defendants because his disability did not substantially limit any major life activity.

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Easterling v. Sch. Bd. of Concordia Parish, No. 05-30868, 2006 U.S. App. LEXIS 19053 (5th Cir. July 28, 2006). Sue Ann Easterling taught and coached basketball, track and field, volleyball, gymnastics, and softball in the Concordia Parish School District. Easterling applied for the head coaching position of the high school girls' basketball team, but a male applicant with a temporary teaching certificate was hired. Easterling filed a discrimination claim with the Equal

Employment Opportunity Commission (EEOC). After she filed a complaint with the EEOC, the school district assigned her to two inferior working offices ten miles apart without increasing her compensation, forced her to work outdoors, hindered her coaching efforts, and excluded her from school-oriented social activities. Easterling resigned from her employment with the school district and claimed it retaliated against her, which resulted in a constructive discharge. The district court granted summary judgment in favor of the school district on both claims. The appellate court remanded the retaliation claim to determine if the employment decision was an ultimate employment decision. Summary judgment regarding the constructive discharge claim was affirmed because Easterling was unable to show that the school district's actions were intended to encourage her to resign.

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Gardner v. Wansart, No. 05 Civ. 3351 (SHS), 2006 U.S. Dist. LEXIS 69491 (S.D.N.Y. Sept. 26, 2006). Gardner was a student and member of the wrestling team at Hunter College of the City University of New York (Hunter) and claimed he was schizophrenic. In 1999, Gardner sent an email to Hunter's president about the wrestling team, and shortly after, he was confronted by the wrestling coach and removed from the wrestling team's roster. Gardner approached the wrestling coach and athletic director and allegedly threatened them. He received a hearing from Hunter's disciplinary committee and was formally removed from the team. Gardner appealed, but the decision was upheld. Gardner sued, claiming that defendants failed to provide him with due process and that he was discriminated against because of his schizophrenia. The court ruled that New York's three-year statute of limitations for personal injury claims applied to the case; therefore, the claim was barred because the incident happened over three years earlier. The due process claims were dismissed because Gardner failed to show that the defendants deprived him of any property right.

Holcomb v. Iona Coll., 05 Civ. 0848, 2006 U.S. Dist. LEXIS 50437 (S.D.N.Y. July 11, 2006). Craig Holcomb was an assistant basketball coach at Iona College from 1995 to 2004. During the early 2000s, the athletic and academic performance of the men's basketball program declined significantly. As a result, the athletic director fired Holcomb. Before Holcomb was fired, he was told that he could no longer bring his wife, who is African American, to alumni functions. Another assistant coach was also told that he could not bring his girlfriend, who was also African American. Further, the Vice President for Advancement and External Affairs, Pettriccione, used derogatory language when talking about African American players. Holcomb sued Iona College, claiming his marriage was a factor in Iona's decision to fire him. The court granted summary judgment for the defendants because Holcomb was unable to show that Pettricione influenced the board's decision to fire Holcomb and the other assistant coach.

Marshall v. Daleville City Bd. of Educ., No. 1:05cv386-WHA, 2006 U.S. Dist. LEXIS 50543 (M.D. Ala. July 24, 2006). Diane Marshall was the principal at Daleville High School when she applied for the athletic director position. Kelley, the superintendent, hired a white male as athletic director. Marshall claimed that a parent of a student told her that Kelley said he would never have a female as an athletic director. Marshall sued the Daleville City Board of Education, claiming that she was denied the position of athletic director based on her gender and race, and she was not allowed to participate in decision making following her complaint about gender and

race discrimination. The Board of Education argued that it hired the white male instead of the Marshall because the white male had coaching experience and interviewed better than Marshall. While these were both subjective reasons, the court ruled that subjective reasons can be sufficient as a legitimate non-discriminatory reason.

Miller v. Cal. Speedway Corp., 453 F. Supp. 2d 1193(C.D. Cal. 2006). Robert Miller, who is disabled and uses a wheelchair, attended three to six NASCAR races a year from 1997 to 2006 at the California Speedway, which has wheelchair spaces located in the upper level. The plaintiff claimed the Speedway violated the Americans with Disabilities Act (ADA) because he could not see the race track when other spectators stood up. The Department of Justice (DOJ) wrote interpretations about what was required to comply with the ADA. In the DOJ's original interpretation it did not mention sight lines in regards to standing spectators, but it did provide a subsequent interpretation, which provided that wheelchair locations should provide a line of sight over standing spectators. However, the second interpretation had been adopted without the notice and comment period required by the Administrative Act. The court granted summary judgment for the defendants because it followed the original DOJ interpretation.

Miller v. Univ. of Cincinnati, No. 1:05-cv-764, 2006 U.S. Dist. LEXIS 89401 (S.D. Ohio Dec. 11, 2006). The plaintiffs claimed that the women's rowing team at the University of Cincinnati was discriminated against because it did not have enough equipment to train together as a team, it was given the least desirable times for weight training, it did not have adequate transportation to their outdoor training area, and the scholarship awards were not substantially proportionate to men's and women's respective rates of athletics participation. The plaintiffs tried to certify the class as all present, prospective, and future participants in the women's athletics programs at the University of Cincinnati. The court did not certify the proposed class because compliance with Title IX could have been achieved by shifting the resources from the women's rowing team to another women's team, which the representatives would most likely not agree with. The court agreed to certify a class of all current and future members of the University of Cincinnati women's rowing team conditioned upon the filing and granting of the motion.

Moore v. Greenwood Sch. Dist., No. 05-1303, 2006 U.S. App. LEXIS 21222 (4th Cir. Aug. 18, 2006). Moore was a basketball coach and math teacher at Ninety Six High School. Moore supported the women's athletic program and was interviewed by the Office of Civil Rights (OCR) during a Title IX investigation. OCR concluded that the school district did not provide equal benefits, opportunities, and treatment to female students at Ninety Six High School. Following the investigation, Moore's contract was not renewed and he claimed it was based on his comments to OCR. OCR determined that by not renewing his contract, the school retaliated against him. Almost two years later, Moore sued the school district claiming Title IX retaliation, a violation of his First Amendment, and a violation of his process rights. The district court dismissed the claims, and Moore appealed. The court affirmed the dismissal of the Title IX retaliation claim because the statute of limitations was the same as the State Human Affairs Law, which was only one year. The court remanded the free speech claim because there was a question of fact as to whether his free speech rights were violated, and affirmed the district court's order in all other respects.

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Steadman v. Calhoun County Bd. of Educ., No. 06-11102, 2006 U.S. App. LEXIS 31981 (11th Cir. Dec. 28, 2006).. Steadman was a physical education teacher, assistant varsity football coach, and head varsity basketball coach at Walter Welborn High School. Steadman was hired in 2002 and fired in 2004. Steadman claimed that the school's principal discriminated against the African American students and that he fired him because of his association with an African American student. He sued the school district claiming discrimination and retaliation based on exercise of free speech. The school district claimed that it did not renew Steadman's contract because of faculty realignment, poor job performance, student discipline issues, and Steadman's indication that he would retire at the end of the year. The district court granted summary judgment for the school district. The appellate court affirmed because the school district was immune in its official capacity from Steadman's discrimination claims and the retaliation claim did not involve speech that was a matter of public concern.

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Wells v. Bd. of Trs. of the Cal. State Univ., No. 05-02073 CW, 2006 U.S. Dist. LEXIS 68260 (N.D. Cal. Sept. 7, 2006). The plaintiff was the track and field and cross country coach at Humbolt State University (HSU) from 1980 to 2004. In 1999, the plaintiff complained to the athletic director about possible Title IX violations, but they were not addressed. The plaintiff and other coaches met with female student-athletes about Title IX concerns and eventually three student-athletes filed a complaint with the Office for Civil Rights. HSU agreed to implement a Voluntary Resolution Plan to resolve Title IX issues raised in the complaint. In 2002, HSU was faced with funding issues and the athletic department was required to reduce its expenditures. As a result, the track and field and cross country coaching positions were reduced to a 0.6 total time base, and a national search for a new coach began. Plaintiff applied for the position, but was not hired because of complaints about lack of participation and ability to work within the athletic department. The plaintiff claimed that HSU violated his right to free speech, retaliated against him for reporting Title IX non-compliance and fiscal irresponsibility, violated the prohibition against the discharge of whistleblowers, and intentionally inflicted emotional distress. The court granted summary judgment for the defendants on all claims except those regarding the plaintiff's reporting fiscal irresponsibility.

Education Law

Bd. of Regents v. Houston, 638 S.E.2d 750 (Ga. Ct. App. 2006). Houston was a student and member of the football team at Georgia Tech. He was suspended on June 22, 2005 because he was charged with conspiracy to distribute marijuana. On August 24, 2005, Georgia Tech allowed him to resume taking classes. On August 30, 2005, Houston received a hearing before the Undergraduate Judiciary Cabinet (UJC) and was suspended. Houston appealed, but the suspension was affirmed. Houston sought a temporary restraining order requiring his reinstatement as a student. The trial court ordered Georgia Tech to readmit Houston on November 15, 2005. The Board of Regents appealed. The appellate court reversed the trial court's decision because the trial court was required to defer to Georgia Tech's administrative decision unless a deprivation proportion was at issue, and there was not evidence that his suspension prejudiced any substantial right.

Bryce v. George W. I.S.D., No. C-05-500, 2006 U.S. Dist. LEXIS 58348 (S.D. Tex. Aug. 18, 2006). Bryce was a Hispanic woman working for the defendant as a coach and a teacher with a temporary license. While Bryce was coaching a track meet, Cathy Taylor, the head coach, requested the starter's pistol from someone and said she wanted to shoot Bryce. Taylor then shot the pistol in the air and said she would feel better if she could shoot the plaintiff and put the pistol on Bryce's chest. Other coaches said that Mexican does not know what she is doing. Bryce reported Taylor's conduct to the police. After the incident, Bryce applied for positions with the defendant as a physical education teacher, but was not hired. Bryce claimed that the defendant retaliated against her for filing a complaint with the police. The court granted summary judgment for the defendants because Bryce's complaint to the police department did not allege that she was assaulted because of race, sex, or any other protected category under Title VII. The defendants also had a legitimate reason for not hiring Bryce because she was not a fully certified teacher.

Ledney v. K.H.S.A.A. Bd. of Control, No. 2005-223 (WOB), 2006 U.S. Dist. LEXIS 53207 (E.D. Ky. Aug. 1, 2006). Ledney attended a private college prep school for his first three years of high school. Ledney did not perform as well as he had hoped and transfered to Highlands High School in Kentucky where he enrolled as a freshman in 2003. Ledney did not compete in athletics at Covington Latin, but he wanted to play football at Highlands. The Kentucky High School Athletic Association (KHSAA) allows students only four years to compete in high school athletics once enrolled in ninth grade. The Highlands principal requested that KHSAA allow Ledney to compete in athletics all four years, but was denied. Ledney appealed, and a hearing officer decided that because of the unfairness, Ledney should be eligible to compete in interscholastic athletics. The KHSAA board met to consider the hearing officer's recommendation. The Board voted to reject the recommendation and sent a letter to the principal in April, but did not copy Ledney or his attorney. In August, Ledney's attorney requested reconsideration, which was denied because the time in which to file a judicial appeal had expired. Ledney sued, claiming his constitutional rights had been violated. The court ruled that the appeal of the KHSAA final order was untimely and the court would not review it. The court ruled that the KHSAA rule was facially neutral, there was no evidence race played a part in the decision, and due process was not violated because there was not a protected interest in playing high school sports.

M.P. v. Cent. Minn. Christian Sch., No. 06-3485 (MJD/AJB), 2006 U.S. Dist. LEXIS 61962 (D. Minn. Aug. 29, 2006). M.P. filed a second restraining order to restrain defendants from refusing to certify the eligibility of M.P. to play in the Minnesota State High School League (MSHSL) soccer games. M.P. could not prove that service was effective because he did not provide evidence whether individuals were qualified to receive service at the school or the MSHSL. The court also ruled that M.P. did not have standing because the injury was not redressable due to the fact that he was no longer enrolled in school and had no right to play on the school's soccer team.

Intellectual Property Law

Barbarian Rugby Wear, Inc. v. PRL USA Holdings, Inc., No. 06 Civ. 2651, 2006 U.S. Dist. LEXIS 50179 (S.D.N.Y. July 21, 2006). Barbarian Rugby Wear, Inc. manufactures sporting apparel for playing rugby and casual clothing for leisure wear. Barbarian filed application to register the following marks: RUGBY ROCKS!, WORLD RUGBY, and BARBARIAN RUGBY WEAR, INC. The marks RUGBY NORTH AMERICA and RUGBY were registered to the defendant. PRL sent a cease and desist letter to Barbarian, stating that it believed Barbarian's use of its three marks constituted trademark infringement and unfair competition. PRL demanded Barbarian agree not to use any trademark incorporating RUGBY unless it was selling clothing and merchandise solely to rugby teams. Barbarian sent a letter stating it would not comply with the PRL's demands. A year and a half later, Barbarian sought a declaratory judgment that its marks do not infringe upon PRL's marks. PRL moved to dismiss the action because it believed the time that lapsed in between the cease and desist letter and when Barbarian filed a declaratory judgment showed that there was no actual case or controversy. The court ruled that the relations between the two parties showed there was still a real possibility that PRL could file suit against Barbarian, and PRL's motion to dismiss was denied.

Bd. of Supervisors of the La. State Univ. v. Smack Apparel Co., 438 F. Supp. 2d 653 (E.D. La. 2006). Louisiana State University, the University of Oklahoma, The Ohio State University, the University of Southern California, and their licensing agent, Collegiate Licensing Company sued Smack Apparel Company alleging that Smack engaged in unfair competition by selling shirts that had university colors and symbols identifying the universities. The court ruled that there was a likelihood of confusion, the schools were able to show that their school color schemes, logos, and designs were not functional, and the fair use defense was not applicable because the plaintiffs showed a likelihood of confusion. Smack argued that the claims were barred by laches because the plaintiffs delayed in filing suit. The court ruled that the laches defense did not apply because Smack did not demonstrate any undue prejudice from the plaintiffs' alleged delay. The court granted summary judgment for the plaintiffs.

C.B.C. Distribution & Mktg., Inc. v. Major League Baseball Advanced Media, L.P., 443 F. Supp. 2d 1077 (E.D. Mo. 2006). CBC distributes and sells fantasy sports products, including fantasy baseball games accessible over the Internet. CBC's website also provides up-to-date information on each player, which is used by game participants to select players. CBC entered into an agreement with the MLB Players Association, which expired in 2004, to use trademarks and player data. In 2005, Advanced Media entered into a similar agreement with the MLB Players Association. After being contacted by Advanced Media, CBC filed an action for declaratory judgment to be able to continue to operate its fantasy baseball games. The court granted summary judgment for CBC because CBC's use of the players' names was not meant to gain a commercial advantage, did not affect the players' ability to earn a living, and therefore, did not violate a right of publicity. Furthermore, the First Amendment took precedence over publicity rights, and the First Amendment protected CBC's speech because it educated and entertained its users with facts already in the public domain.

Garden City Boxing Club v. Mercado, No. 05 Civ. 7608 (DC), 2006 WL 3040947 (S.D.N.Y. Oct. 26, 2006). Garden City owned the exclusive rights to the November 27, 2004 fight between Barrera and Morales. The defendants showed the fight on television at Guacho Grill. The defendants claimed that they purchased the fight through a DirecTV package, but DirecTV said it did not provide the fight. The plaintiffs sued claiming that the defendants violated piracy statutes by showing the fight in their establishment for commercial gain without authorization from the plaintiffs. The plaintiffs moved for summary judgment, and the defendants failed to respond. The court granted summary judgment for the plaintiffs because the defendants only defense was that their subscription to DirecTV allowed them to show the fight, and the DirecTV account shows that it did not purchase the rights to show the fight.

Ignition Athletic Performance Group, LLC v. Hantz Soccer U.S.A., LLC, No. 06-13684, 2006 U.S. Dist. LEXIS 68163 (E.D. Mich. Sept. 22, 2006). The plaintiff provides 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 Detroit Ignition. The plaintiff sued claiming 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 because there was not a likelihood of confusion due to the fact that the plaintiff is located in Cincinnati and the defendant is located in Detroit. Further, the defendant was more likely to suffer substantial harm than the plaintiff.

Kingvision Pay-Per-View, Ltd. v. Jiminez, No. 05 Civ. 5226 (HB), 2006 U.S. Dist. LEXIS 52404 (S.D.N.Y. Aug. 1, 2006). Jiminez is the owner of J&J Sports Bar. J&J showed the Ruiz/Golota fight on November 13, 2004. Kingvision owned the rights to the fight and charged commercial customers for showing the fight. Kingvision claimed that J&J illegally showed the fight. Kingvision contracted with outside entities to investigate unauthorized interception of its signals. Batista was working the night in question and claimed that J&J was showing the fight and captured the evidence with a video camera he used from his van outside of the bar, but it was hard to detect the images on the video. The court found that the quality of evidence was too weak and that Kingvision did not sustain its burden of proving that J&J pirated the fight.

Miken Composites, L.L.C. v. Wilson Sporting Goods Co., No. 02-769 (DSD/SRN), 2006 U.S. Dist. LEXIS 56359 (D. Minn. Aug. 10, 2006). Miken and Wilson are in the business of manufacturing and selling high performance bats. Wilson owned patent technology for a double-walled bat. Miken brought a declaratory action claiming that certain bat models it designed did not infringe on Wilson's patent. Miken claimed that the patent was invalid because it was anticipated. The court ruled that the patent was valid because once a patent has been issued it is presumed valid unless another party can prove by clear and convincing evidence that it is not, and Miken was unable to prove anticipation by clear and convincing evidence. However, the court also found that a reasonable jury could not have found that Miken's bats literally infringed on Wilson's patents, and therefore, a summary judgment for Miken was granted.

Payne v. The Courier Journal, 193 Fed. Appx. 397 (6th Cir. 2006). The Paynes sued the Louisville Courier Journal for using portions of an unpublished children's book written by their brother, Tom Payne, in an article. The article was about Tom Payne's basketball career and his subsequent rape convictions in California and Kentucky. Most of the quotes from the book were in the portion of the article that talked about the rape convictions. The Paynes alleged that the manner and use of the excerpts from Payne's book caused irreparable damage to the character, nature, and meaning of the book. The district court dismissed the complaint because the article's quotations from the book qualified under the fair use doctrine. The appellate court affirmed.

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Patterson v. TNA Entm't, No. 04-C-0192, 2006 U.S. Dist. LEXIS 78629 (E.D. Wis. Oct. 27, 2006). TNA Entertainment (TNA) is a company that produces and promotes live professional wrestling events and markets recordings of these events on and television and DVD. Patterson has used the names Superstars of Wrestling, Superstar Wrestling, and Superstars of Pro Wrestling since 1979 in connection with wrestling events, and he registered World Wrestling Association and S*W Superstars of Wrestling with the United States Patent and Trademark office. TNA advertised events in November and December 2002 that used the words Superstars of Wrestling, but Patterson's attorney did not discover the ads until 2006 while he was conducting research on the internet. Patterson sued claiming that TNA's programs infringed on the names and marks that are his personal property. TNA moved for summary judgment claiming that the names were merely descriptive and entitled to protection. The court granted summary judgment for TNA, finding that it used the trademarks in a non-trademark use because it used TNA or National Wrestling Alliance in the advertisements and the use of superstars and wrestling was used in good faith to describe their services.

Pop Warner Little Scholars, Inc. v. N.H. Youth Football & Spirit Conference, No. 06-cv-98-SM, 2006 U.S. Dist. LEXIS 70262 (D.N.H. Sept. 25, 2006). The plaintiff is a national organization devoted to promoting sports among American youth by offering football and spirit programs throughout the world. The defendant was a local affiliate that operated under a Pop Warner charter, but it ended its relationship with Pop Warner in June 2005 and associated itself with one of Pop Warner's competitors. The defendant changed its name and registered the trade name New Hampshire Pee Wee Football Conference. The new acronym is the same as the acronym for the old corporate name, and the defendant continued to use the same web address. The plaintiff claimed that the defendant violated trademark infringement, trademark dilution and cyberpiracy. The plaintiff also filed state claims, alleging fraud and conversion, but the state court stayed its suit pending the outcome of this case. The defendant moved to dismiss the claim or stay it pending the outcome of the state claims. The court denied the defendant's motions because the state claims and the federal claims were not parallel.

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PRL USA Holdings, Inc. v. United States Polo Ass'n, No. 99 CV 10199, 2006 WL 1881744 (S.D.N.Y. July 7, 2006). Polo Ralph Lauren (PRL) sued United States Polo Association (USPA) alleging infringement of PRL's Polo Player Symbol trademarks. PRL sought an injunction to prevent USPA from using four double horsemen marks. The jury found USPA's double

horsemen mark infringed upon PRL's trademarks, but USPA's solid double horseman mark with USPA, outline double horsemen mark, and outline double horseman mark with USPA did not infringe PRL's trademarks. PRL moved for a new trial because the court denied PRL the full opportunity to establish a likelihood of confusion. PRL claimed that it should have been able to include evidence related to a prior trademark infringement by United States Polo Association, but the court excluded it because the parties had agreed to exclude it in a previous settlement agreement. PRL also claimed that it should have been able to provide the jury with instructions that USPA was obligated to keep a safe distance because it had previously infringed on PRL's trademarks. However, the court ruled that the trial court was correct in not allowing those instructions because that had nothing to do with proving a likelihood of confusion.

Pro-Football, Inc v. Harjo, No. 99-1385, 2006 U.S. Dist. LEXIS 51086 (D.D.C. July 26, 2006). Pro-Football, Inc. owns the Washington Redskins. In 1992, seven Native Americans petitioned the Trial Trademark and Appeal Board (TTAB) to cancel the registrations of six trademarks used by the Washington Redskins because the use of the word redskins is scandalous, may disparage Native Americans, and may cast Native Americans into contempt or disrepute. The TTAB issued a pretrial order in 1994, which dismissed all of Pro-Football's constitutional defenses because it was beyond the Board's authority. In 1999, the TTAB issued a cancellation order of the six contested redskins marks. Pro-Football then filed a complaint with the district court. The district court ruled that TTAB's finding of disparagement was not supported by evidence and the Native American defendants' original trademark action was barred by laches. The Native Americans appealed to the D.C. Circuit. The D.C. Circuit agreed that the laches was an available defense for Pro-Football against the Native Americans, but it runs only from the time the party reaches the age of majority. The D.C. Circuit provided for a limited remand to the trial court to determine whether the youngest defendant, who reached the age of majority in 1984, was prejudiced. In response, the Native Americans filed a motion to conduct limited discovery related to laches, and Pro-Football filed an opposition. The court denied the motion for additional discovery because the defendants did not provide information about what facts were sought, how the facts were reasonably expected to create a genuine issue of material fact, what previous efforts were made to obtain them, and why they were unsuccessful in obtaining them. Further, in its limited remand the D.C. Circuit Court did not anticipate that further discovery and extensive discovery on this issue had already occurred.

Tort Law

Anderson v. Four Seasons Equestrian Ctr., Inc., 852 N.E.2d 576 (Ind. Ct. App. 2006). Anderson took riding lessons at Four Seasons for about fifteen years. In January 2000, Anderson signed a waiver and release form that released Four Seasons from tort and civil liability relating to participation in equine activity. In March 2003, Anderson went to Four Seasons, mounted a horse, fell, and was injured. Anderson sued Four Seasons claiming that they were negligent in caring, conditioning, and training her horse. The court affirmed judgment for the defendant because the alleged acts of negligence were the same acts that were covered in the release.

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Bartolomei v. Twin Ponds Family Recreation Ctr., No. 06-0177 (JBS), 2006 U.S. Dist. LEXIS 93719 (D.N.J. Dec. 13, 2006). Bartolomei, a New Jersey resident, injured herself when she fell at the defendant's ice hockey rink while attending her grandson's hockey game. Plaintiff sued defendant claiming negligence in a district court in New Jersey. The defendant claimed that there was not personal jurisdiction. Plaintiff claimed that defendant's website advertised itself as the home of teams in a league with New Jersey teams. The court agreed that it did not have personal jurisdiction because the defendant conducted all of its business in Pennsylvania and the injury occurred at a rink in Pennsylvania. Therefore, the court granted summary judgment for the defendant.

Bonne v. Premier Athletics, No. 3:04-CV-440, 2006 WL 3030776 (E.D. Tenn. Oct. 23, 2006). Jordan Bonne was competing in a trampoline event hosted by Premier Athletics and sanctioned by USA Gymnastics (USAG). Bonne fell off the trampoline, hit his head on the concrete floor, and died two days later. USAG required all participants in USAG sanctioned events to be members of USAG, which required them to submit a membership application each year. Bonne was a member of USAG, and he and his parents signed a release form when he registered. Jordan's parents sued Premier Athletics, USAG, and the United States Gymnastics Federation (USGF) claiming they were negligent because they failed to provide a safe event. USAG and USGF moved for summary judgment claiming the release that was signed barred all claims. Tennessee law does not allow exculpatory clauses to contract against liability for intentional conduct, recklessness, or gross negligence. The court did not grant summary judgment for the defendants because there was a question of fact as to whether the defendants' conduct constituted gross negligence or reckless conduct.

Bowman v. McNary, 853 N.E.2d 984 (Ind. Ct. App. 2006). Bowman was hit in the eye by a golf club by a teammate while practicing at the driving range with her high school golf team. The trial court granted summary judgment for the defendant, and the appellate court affirmed for the fellow teammate because the injury was an inherent risk in the sport and there was no evidence of reckless or intentional conduct. The appellate court also affirmed summary judgment for the school and school board because Bowman had actual knowledge of the inherent risk involved in the sport of golf.

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Brokaw v. McSorely, 2006 Bankr. LEXIS 2728 (Bankr. S.D. Iowa Oct. 18, 2006). Browkaw alleged that McSorely hit Brokaw with his elbow or fist during a high school basketball game. Brokaw claimed that McSorely was not allowed to discharge his personal injury claim for physical harm and damages because the conduct was willful and malicious. The lawsuit was stayed when McSorely filed a bankruptcy petition. The parties jointly requested that the court determine the dischargeability of the claim should a verdict be entered against McSorely. After looking at a videotape of the basketball game, the court determined McSorely intentionally injured Brokaw. Therefore, Brokaw's personal injury claim was excepted from discharge and Brokaw could proceed in Iowa District Court with his previously filed lawsuit against McSorely.

Colon v. Chelsea Piers Mgmt., No. 2079/04, 2006 N.Y. Misc. LEXIS 2831 (N.Y. Sup. Ct. Oct. 4, 2006). The decedent suffered cardiac arrest and collapsed while playing in a basketball league at Chelsea Piers. After the decedent collapsed, several people involved with the league called 911, and several people tried to revive the decedent, but those attempts failed. The plaintiff claimed that the defendants' negligence caused the decedent's wrongful death. The defendant moved for summary judgment claiming that the decedent assumed the risk, the alleged negligence did not proximately cause his death, and his death was unforeseeable. The plaintiff claimed that the defendant had a duty to maintain resuscitation equipment on the premises and to provide staff adequately trained in emergency medical care. The court granted summary judgment for the defendant because the defendant did not have a duty to provide medical equipment or a medically-trained staff.

Cotillo v. Duncan, 172 Md. App. 29 (2006). Cotillo was injured while attempting to bench press 530 pounds in the 2003 Southern Maryland Open Bench Press & Deadlift Meet, which was organized by Duncan. Cotillo was injured because the spotters failed to grab his bar when he failed to complete the bench press lift. Cotillo claimed the defendants were negligent when they told the spotters not to interfere unless signaled. The district court granted summary judgment because the plaintiff had assumed the risk. The court reversed and remanded because failure to give the spotters proper instructions created an enhanced risk to the sport.

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Doe v. Fulton Sch. Dist., 826 N.Y.S.2d 543 (Sup. Ct. 2006). The plaintiffs sued the school district claiming it failed to provide adequate supervision of the locker room when their son was sexually assaulted by teammates on his eighth grade football team. The district court granted summary judgment, but the appellate court reversed and remanded because there was a question of fact as to whether the injury was reasonably foreseeable, was for the jury.

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Fata v. Sch. Dist. of Horicon, No. 2006AP234, 2006 Wisc. App. LEXIS 1261 (Wis. Ct. App. Dec. 21, 2006). Fata injured her knee while attempting a high jump during the team's first practice of the season. Fata claimed that her leg became trapped in a gap between the foam mats in the landing pit, which resulted in torn knee ligaments. The district court granted summary judgment for the defendant after it determined that it would disregard an affidavit from Fata as a sham affidavit, which is an affidavit of a party submitted in opposition to a motion for summary judgment that tries to create an issue of material fact. The school district claimed that it was a sham affidavit because Fata claimed three sections of the high jump pads were not bound or secured and that statement contradicted what she had said in her deposition. The court reversed the district court's decision granting summary judgment for the school district because it considered Fata's affidavit a supplement to her deposition rather than a complete contradiction.

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Fetisov v. Vigilant Ins. Co., 2006 WL 2051116 (N.J. Super. Ct. App. Div. July 25, 2006). The Detroit Red Wings won the Stanley Cup in 1997. Following their victory many celebrations occurred, which included a golf outing that took place on June 13, 1997. One of the players called Gambino's Westside Limousine Service to hire four limousines and drivers to transport people from the golf outing to and from another function. One of the drivers lost control of the limousine and injured two players and the team masseur. The three that were injured sued Gambino's and the driver, which resulted in a settlement in excess of $2 million. Once the policy limits were paid out by Gambino's insurer, the three injured individuals and their families filed another suit to recover the unsatisfied amount of the judgment, claiming entitlement to benefits as the result of coverage allegedly provided to Gambino's under business auto policies issued to the National Hockey League (NHL) and the corporate owner of the Red Wings. The court ruled that neither the NHL's or the Red Wings policy came into effect because neither of those parties granted permission for the players to use Gambino's limousine.

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Hemady v. Long Beach Unified Sch. Dist., 143 Cal. App. 4th 566 (Ct. App. 2006). Jane Hemady was in a seventh-grade physical education class when she was hit in the head by another student with a golf club. Hemady sued the school district and the teacher for personal injuries. The defendants argued that the limited duty of care for certain sport settings applied, but the plaintiffs argued that the prudent person duty of care applied. The court ruled that the prudent person duty of care applied to a seventh-grade class because the defendants' liability would not result in a fundamental alteration of the game.

Karas v. Strevell, No. 2-05-1218, 2006 Ill. App. LEXIS 1236 (Ill. App. Ct. Dec. 29, 2006). During a junior varsity hockey game, Karas was checked from behind by two players. The collision caused Karas' head to hit the boards and resulted in serious injuries. The Naperville Central Redhawk Hockey Association (NCRHA) had rules against checking from behind and was responsible for coaching and teaching its players to abide by all hockey rules. However, prior to this incident the league had failed to instruct its players to not check from behind and failed to discipline players who checked from behind. Karas also sued the two players that checked him from behind, claiming willful and wanton conduct. Karas sued the NCRHA, the Amateur Hockey Association of Illinois, and the Illinois Hockey Officials Association for negligence and for their willful and wanton conduct that led to his injury. The trial court dismissed all claims, and Karas appealed. The appellate court ruled that the district court improperly dismissed willful and wanton conduct against the players because there was a question of fact as to whether the conduct was willful and wanton. It also found that the district court improperly dismissed the negligence claim against the associations, because the contact sports exception does not apply to willful and wanton conduct. The court also dismissed the willful and wanton claim because there was no evidence that the associations' failure to act constituted an intent to harm Karas.

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Kennedy v. Speedway Motorsports, Inc., 631 S.E.2d 212 (N.C. Ct. App. 2006). A portion of a walkway at Lowe's Motor Speedway collapsed on May 20, 2000. About one hundred people sued the defendant, claiming it was negligent and breached a contract of which the plaintiffs were third party beneficiaries. The Speedway had the walkway constructed in 1995, and acted as a general contractor. The walkway went from the Speedway parking lot to the Speedway race track and crossed over a highway. The Speedway agreed to install and maintain the walkway in a safe and proper condition. Defendant Tindall constructed the walkway. When Tindall constructed the walkway it used a product that contained calcium chloride, which caused the steel in the tees to corrode and the walkway to collapse. The North Carolina statute of repose allows only actions to recover damages based upon or arising out of the defective or unsafe condition within six years from the time the structure was built. However, the plaintiffs brought their action more than eight years after the completion of the walkway. The appellate court ruled that the trial court properly dismissed the claim.

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Leung v. City of New York, 824 N.Y.S.2d 755 (Sup. Ct. 2006). Alison Leung was hit in the face by a lacrosse ball while practicing with the track team at Tottenville High School. The team was practicing on a multi-use sports field that was going to be used for a lacrosse game later that afternoon. The New York City Board of Education (Board) was responsible for the injury because the accident occurred during an after-school practice on high school property. Therefore, summary judgment was granted for the City of New York. The Board argued that the doctrine of assumption of risk applied, but the court ruled it did not apply because Leung assumed the risk in practicing track, which did not include the risk of being hit by a lacrosse ball.

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Mason v. Bristol Local Sch. Dist. Bd. of Educ., 2006 Ohio 5174 (Ct. App. 2006). Brittany Mason was competing at a middle school track and field meet when she was hit by a discus. Following a rain delay, a competitor slipped and fell while throwing the discus and the discus ricocheted off a fence pole and hit Mason. Mason argued that the defendants were negligent for the construction, maintenance, and design of the discus pit, the failed to warn students about the condition of the pit, negligent for failing to properly supervise, and negligent for continuing the track meet in bad weather. The court affirmed summary judgment for the defendants. The defendants qualified for immunity because the manner in which they directed the track meet was a discretionary decision. Further, Mason was considered a recreational user and the Ohio recreational use statute barred her claim.

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Myers v. Friends of Shenendehowa Crew, Inc., 31 A.D.3d 853 (N.Y. App. Div. 2006). Samantha Myers was a fourteen-year-old rower who trained at Friends of Shenendehowa Crew and was coached by Jouri Kolomiets. Myers fainted and hit her head on the gym floor one day at practice. Kolomiets took Meyers to the front desk of the YMCA, asked for a nurse to be summoned, and then returned to the gym. While waiting for a nurse, Myers fainted again and hit her head on the tile floor of the lobby. Myers's mother came to pick her up and took her to her doctor. While at

the doctor's office Myers suffered a seizure and then suffered a second seizure while being transported to the hospital in an ambulance. Myers's father sued Shenendehowa and Kolomiets claiming that Kolomiets negligently supervised Myers during training and after her initial collapse. The lower court denied the defendants' motion for summary judgment, and the defendants appealed. The appellate court affirmed the decision because a question of fact existed as to whether Myers appreciated and assumed the risks associated with participating in Shenendehowa's winter training program and whether it was negligent for Kolomiets to return to the gym before a nurse came and got Myers.

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Neal v. Team Kalamazoo, LLC, No. 267321, 2006 Mich. App. LEXIS 2547 (Mich. Ct. App. Aug. 17, 2006). Neal attended a Kalamazoo Kings baseball game at Homer Stryker field and was hit between the eyes with a baseball. At the time she was hit, Neal was standing by the fence talking to someone. She was facing the batter, but could not see him because the field was obscured by promotional deck and people standing along the fence. The trial court denied the defendant's motion to dismiss, but the appellate court reversed and granted summary judgment for the defendant because a limited duty of care applies to baseball stadium owners and that duty was satisfied by providing screening behind home plate sufficient to meet ordinary demand for protected seating.

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Reaume v. Jefferson Middle Sch., No. 268071, 2006 Mich. App. LEXIS 2517 (Mich. Ct. App. Aug. 15, 2006). Reaume was a middle school student at Jefferson Middle School and a member of the wrestling team. Reaume was in the gym with his back to the door waiting for wrestling practice to begin when the assistant wrestling coach, Nadeau, came behind Reume, grabbed him without notice, and performed two wrestling moves on Reaume. As a result of the second move, Reaume fractured his elbow, which required surgery to repair. The trial court granted summary judgment to the school, but not to Nadeau, and he appealed. Nadeau claimed that he was immune because he was a coach and was teaching a particular wrestling move at the time of the accident. The appellate court affirmed the trial court's decision to deny Nadeau summary judgment because there was a question of fact as to whether Nadeau was grossly negligent by not warning Reaume, and the proximate cause of Reaume's injuries was Nadeau's unannounced demonstration rather than his participation in the wrestling program.

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Rivkin v. City of Carlsbad, No. D046319, 2006 Cal. App. Unpub. LEXIS 8187 (Cal. Ct. App. Sept. 18, 2006). Defendant La Costa Youth Organization (LCYO) held a youth baseball fair at Stagecoach Park, which was owned by the City of Carlsbad. The City closed the baseball field because the field was wet from rain the previous day. Defendant, San Diego School of Baseball (SDSB), set up and operated a pitching exhibit in the grassy area between the parking lot and the field. The pitching exhibit measured the speed of a small squishy baseball thrown at a radar gun held by a SDSB member. Dr. Rivkin participated in the pitching exhibit, and during his second throw, he slipped and fell and dislocated his knee, which required a total knee replacement. Dr.

Rivkin sued SDSB and LCYO for negligence and the City for dangerous condition of public property. Rivkin claimed that pitching a ball to a radar gun is not a sport or recreational activity; therefore, it is not included within the primary assumption of risk doctrine. The court granted summary judgment for the defendants because baseball is covered by the assumption of risk doctrine and the doctrine applies to practice or training for the activity as well.

Ross v. N.Y. Quarterly Meeting, 819 N.Y.S.2d 749 (App. Div. 2006). Ross was a seventh grader and a member of the softball team. Ross fractured her leg while practicing sliding on a hardwood gym floor that was covered in parachute material. Ross sued the school claiming it was negligent for not providing spotters. The court affirmed summary judgment for the defendant because the doctrine of primary assumption of risk applied and the failure to use spotters did not increase the apparent risk.

Schnarrs v. Girard Bd. of Educ., 858 N.E.2d 1258 (Ohio Ct. App. 2006). Jessica Schnarrs was a basketball player at Girard High School. During practice one day, Coach Saxon decided to bring in recent male graduates to practice with the girls' basketball team because he believed that using boys with sound basketball skills would improve the girls and better prepare them for stronger opponents. During a rebounding drill Jessica had the ball and was about to pass the ball when one of the boys stepped in front of her and hit the ball. The impact when the boy hit the ball was so hard that it broke Jessica's arm. The trial court granted summary judgment for the defendant and the plaintiff appealed. The appellate court affirmed. Although immunity did not apply because the male graduates were not employees of the school, the coach had discretion to make decisions about how practices should be run.

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Shin v. Ahn, 141 Cal. App. 4th 726 (Ct. App. 2006). Shin and Ahn were golfing in a group. On the thirteenth hole, Ahn hit his ball before confirming where Shin was standing, and the ball hit Shin. The trial court granted summary judgment in favor of the defendant because Shin assumed the risk of being hit by a golf ball. Shin appealed, and the court granted a new trial because there was an issue of fact as to whether Ahn's conduct increased the risk. Ahn appealed. The court ruled that granting a new trial was proper because the trial court needed to compare the defendant's breach of duty when he did not identify where Shin was standing and the plaintiff's comparative negligence when he stood in the way of Ahn's tee shot.

Stowers v. Clinton Cent. Sch. Corp., 855 N.E.2d 739 (Ind. Ct. App. 2006). Alan and Sherry Stowers had a son, Travis, who played for the Clinton Central football team. On July 31, 2001, Travis vomited during morning practice. The coaches kept an eye on Travis throughout the day, shortened the practices that day, and had a mandatory water break every ten minutes. Travis collapsed during practice that afternoon and died the following day. The Stowers claimed that Clinton Central caused the wrongful death of their son. A jury ruled in favor of the Clinton Central, and the plaintiffs appealed claiming that the trial court abused its discretion by admitting release forms into evidence, denying the Stowers' proposed jury instructions, and instructing the jury about the doctrine of incurred risk. The court ruled that the trial court did not abuse its discretion by admitting the release forms into evidence because they outlined the risk involved in participating and could be used for the affirmative defense of incurred risk. However, the trial

court did abuse its discretion when it gave jury instructions. The court should have given a limiting instruction to the jury instructing them that the release form did not release them from negligence.

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Thomas v. Wheat, 143 P.3d 767 (Okla. Civ. App. 2006). Thomas was hired to paint a house by The Greens Country Club. After cleaning off his brushes, Thomas walked back to a large tree to see if there were any golfers. Wheat was golfing at the time, noticed Thomas, teed off, and yelled fore. Thomas did not hear the warning and was hit in the mouth by the golf ball. The trial court granted summary judgment for the defendant, but the appellate court reversed because there was a question of fact regarding whether the defendant had acted reasonable because she did not yell fore louder and had a propensity to hit shots in the area of where the plaintiff was standing. There was also a question of fact regarding whether the doctrine of assumption of risk applied because the plaintiff was working in area where he knew golf balls could fly.

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Verni v. Harry M. Stevens, Inc., 903 A.2d 475 (N.J. Super. Ct. 2006). Antonia Verni and Fazila Baksh Verni were in a car driven by defendant Ronald Verni that was hit by defendant Daniel Lanzaro. Lanzaro was intoxicated at the time of the accident and had been at the Giants game and two bars prior to the accident. The plaintiffs sued the company that distributed alcohol at the game. The jury found the defendants guilty and awarded the plaintiffs damages. The defendants appealed and argued that during a delay in the trial the judge allowed admission of evidence of a culture of over-serving at the stadium, and that caused undue prejudice against the Aramark defendants, who were the servers at the game. The court agreed. The court also found that the trial judge erred in granting defendants, who had settled with the plaintiffs, summary judgment because it did not allow the jury to seek allocation of negligence to those parties. The court reversed and remanded for a new trial.

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Walker v. Commack Sch. Dist., 2006 WL 2062461 (N.Y.A.D. July 25, 2006). Stephanie Walker was playing floor hockey at Commack Middle School when she was accidentally struck in the mouth by a hockey stick. Walker sued the school district, claiming it was negligent in its failure to provide mouth protectors. The trial court denied the school district's motion for summary judgment. A school district witness testified that it was not the norm for school districts to require its students to wear mouth guards while playing floor hokey. The plaintiff relied on recommendations by the National Intramural-Recreation Sports Association, but there was no proof that the recommendations are reflective of a generally accepted standard of practice. The court granted summary judgment for the defendant.

Workers' Compensation

Jani v. The Bert Bell/Pete Rozelle NFL Player Ret. Plan, No. 05-2386, 2006 U.S. App. LEXIS 30594 (4th Cir. Dec. 13, 2006). The plaintiff was the administrator for the estate of Webster. Webster played for the Pittsburgh Steelers from 1974 to 1988 and developed brain damage as a result of the many head injuries he received as a player. He was awarded disability benefits by the administrator of the NFL's retirement plans, but denied the more lucrative benefits reserved for those whose disabilities began while they were still playing. The plaintiff sued claiming the administrator abused its discretion by ignoring the unanimous medical evidence that established the date of Webster's onset of total and permanent disability was while he was still playing. The administrator claimed that because Webster was employed during the two years following his football career that his total disability did not occur until after he finished playing football. The court ruled that the administrator abused its discretion by ignoring the evidence and the doctors. The court also noted that Webster's employment did not provide an adequate reason to delay benefits because none of his employment ventures provided him any money.

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Liger v. New Orleans Hornets NBA Ltd. P'ship, No. 05-1969, 2006 U.S. Dist. LEXIS 72670 (E.D. La. Oct. 4, 2006). The plaintiffs were a group of people who worked in the sales and fan relations departments of the New Orleans Hornets, and they claimed that the Hornets organization owed them overtime pay because they worked more than forty hours per week on some occasions. The Hornets argued that the amusement or recreational exemption applied, which would not require it to pay overtime to workers. The plaintiffs claimed that the exemption would not apply because they were employed in business offices separate from the organization's amusement or recreational activities and moved for summary judgment. The court did not grant summary judgment because there was a question whether the Hornets' business offices were separate establishments.

Miscellaneous

In re 2003-2004 Term of the State Grand Jury & Concerning the Att'y Gen. of the State of Colo., 148 P.3d 440 (Colo. Ct. App. 2006). The Colorado Attorney General was asked to investigate issues and allegations of sexual offenses and other matters concerning the University of Colorado and its football team and recruiting practices. In August 2004, the state grand jury issued an indictment against a former University of Colorado football aide. The trial court declined to authorize release of the grand jury report because a report could be issued only when a grand jury does not return an indictment from an investigation. The Attorney General filed a motion for reconsideration, claiming that the investigation which resulted in the report was different and separate from the investigation which resulted in the indictment. The court held that the trial court did not err in determining that the grand jury had undertaken a single comprehensive investigation, and it would not release the grand jury report.

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U.S. Dept. of Educ. v. Nat'l Collegiate Athletic Ass'n, No. 1:06-cv-1333-JDT-TAB, 2006 U.S. Dist. LEXIS 64454 (S.D. Ind. Sept. 8, 2006). The University of District Columbia (UDC) cancelled its basketball season in 2004, and the NCAA investigated the reasons that led to the cancellation. The Office of Inspector General (OIG) had also been inspecting the matter to determine if federal student financial aid dollars were misused. The OIG issued a subpoena for all of NCAA's records pertaining to the investigation. The NCAA claimed that the unrestricted disclosure would harm its ability to regulate college sports because it relies on informants to investigate many situations. If informants can not be guaranteed confidentiality, the NCAA's success will be harmed. The court ruled that the NCAA is required to provide the OIG with the documents because Congress has given administrative agencies broad powers to subpoena records and papers and the OIG was not going to publicly disclose the documents and would destroy or return them to the NCAA once they were no longer needed.

United States v. Comprehensive Drug Testing, Inc., No. 05-10067, 2006 U.S. App. LEXIS 31850 (9th Cir. Dec. 27, 2006). While investigating the Bay Area Lab Cooperative (BALCO), the government sought drug testing information from Major League Baseball (MLB) for eleven players with connections to BALCO. MLB said that it did not have the information. The government then subpoenaed two drug testing companies to turn over the drug testing information for all MLB players. The MLB Players Association filed a motion to quash the subpoenas. The government then applied for search warrants for the two drug testing facilities. The district court ordered the government to return seized property and quashed the government's subpoenas. The government appealed. The appellate court reversed and remanded because the searches were reasonable. The government did not have to return the evidence immediately, but it did need to sort through the evidence and return the evidence that was not needed. Furthermore, the appellate court found it was an abuse of discretion for the district court to quash the subpoenas.

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