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{Spring/Summer 2007}

ADMINISTRATIVE LAW

Ohton v. Bd. of Tr. of the Cal. State Univ., 56 Cal. Rptr. 3d 111 (Cal. Ct. App. 2007). David Ohton, a strength and conditioning coach for the California State University (CSU) football team, filed an internal administrative complaint alleging that Tom Craft, the head football coach, and other members of the athletic department retaliated against him in violation of the California Whistleblower Protection Act (CWPA) because he reported information critical of various athletic department personnel and practices to a university auditor. Under a promise of confidentiality, Ohton provided the auditor with a 103-page report chronicling violations of NCAA rules, among other things. Somehow, Craft managed to get a copy of the report and circulated it to various members of the athletic department staff. After the distribution of the report, Ohton was no longer invited to help run football camps, was replaced as football strength and conditioning coach, was barred from contact with football players, and was not invited to the annual football booster dinner. The Superior Court dismissed his claims of retaliation because he failed to exhaust internal administrative procedures. The Court of Appeals reversed and remanded the Superior Court finding, ruling that the court misinterpreted a clause in the CWPA which required CSU to satisfactorily address Ohton's claims.

Palyani v. State, Department of State, Division of State Athletic Commission, No. 118347/06, 2007 N.Y. Misc. LEXIS 3844 (N.Y. Sup. Ct. Apr. 26, 2007). Palyani sought a judgment compelling the New York State Athletic Commission (NYSAC) to terminate a boxing suspension. In 2003, he was denied a boxing license because an MRI revealed old trauma on his brain. The NYSAC suspended Palyani from boxing indefinitely. Palyani argued that since NYSAC had never granted him a license it did not have the power suspend him, and that since a boxing license is only valid for one year, the suspension would have lapsed at the end of one year anyway. In October 2006, Palyani demanded that the NYSAC remove his suspension because it barred him from fighting in any jurisdiction since the Professional Boxing Safety Act of 1996 required all members of the Association of Boxing Commissions to adopt any medical

suspension issued by another member. The NYSAC refused Palyani's 2006 request and claimed that it failed to meet a four month statute of limitations because he was suspended in 2003. The Supreme Court ruled that Palyani's request was made in relation to the denial of his 2006 demand and his continued suspension, not his initial suspension, therefore his request met the statute of limitations. The court then required the NYSAC to file an answer, after which Palyani was allowed to re-notice the matter for a hearing.

Wilson v. Southern Oregon Univ., No. 06-3016-PA, 2007 U.S. Dist. LEXIS 26767 (Or. Apr. 6, 2007). Southern Oregon University (SOU) filed a motion for partial summary judgment on plaintiff employee's breach of contract claim in his action alleging breach of contract, intentional infliction of emotional distress, and intentional interference with economic relations. Plaintiff, Kevin Wilson, was an assistant professor and head women's basketball coach at SOU in 2004 when allegations of his misconduct surfaced. Wilson was given a letter from SOU which informed him that he was under investigation and that his contract for the following year would not be renewed. In 2005, Wilson initiated a grievance hearing with the school and waived his right to the first two steps of the appeals process, moving directly to a hearing with the president of the university. The president ruled that the letter was untimely and ambiguous and ordered that Wilson's teaching contract be renewed. Wilson was not reinstated as head women's basketball coach, but did not continue his action because he thought his internal avenues of appeal had been exhausted. In reality, he still had the option of taking the president's decision to arbitration. The court granted SOU's summary judgment and dismissed Wilson's breach of contract claim because he had not actually exhausted all internal avenues.

ALTERNATIVE DISPUTE RESOLUTION

Baggaley v. Australian Canoeing Inc. (ACI), Int'l Canoe Fed'n (ICF), & Surf Life Saving Australia (SLSA), CAS 2007/A/1201, partial award of January 20, 2007, award of March 6, 2007. Baggaley was an international athlete in the sport of kayaking and was also involved with surf lifesaving. ICF is the international governing body for canoe, ACI is the national canoe federation in Australia, and SLSA is a volunteer life saving organization. In an out-of-competition test, Baggaley tested positive for a prohibited substance. Baggaley had a hearing before CAS, where SLSA, ACI, and Australian Sports Commission (ASC) were the applicants. CAS imposed a fifteen month suspension following a finding of no significant fault or negligence. ICF was not a party to the decision, nor did it appeal. ICF then suspended Baggaley for a period of two years for the offense. Baggaley appealed the ICF sanction and ICF challenged jurisdiction. CAS issued a partial award, noting that the ICF Doping Control Rules did not meet the requirements under CAS rules to give it jurisdiction. Furthermore, the WADA code does not provide jurisdiction or meet the requirements of a specific arbitration agreement. However, CAS's decision as to the ICF had no effect on CAS's jurisdiction over the other parties. ACI and SLSA eventually accepted the ICF sanction; however, in the final award CAS held that appealing against the decisions of the ACI and SLSA to honor the ICF sanction would be an indirect way for Baggaley to nullify the ICF sanction. Therefore, CAS dismissed the appeal.

Championsworld, LLC v. United States Soccer Fed'n, Inc., No. 06 C 5724, 2007 U.S. Dist. LEXIS 33089 (N.D. Ill. May 4, 2007). ChampionsWorld (CW), a defunct soccer promoter, sued the United States Soccer Federation (USSF) and Major League Soccer (MLS) alleging violations of RICO and the Sherman Act. CW alleged that USSF falsely held itself out to be the exclusive governing body of men's professional soccer in the United States in order to extract sanctioning fees for the promotion of soccer matches. CW also alleged that MLS conspired with USSF in order to gain favorable treatment in the promotion of its matches. USSF and MLS moved to stay or dismiss the action, arguing that CW's claims were subject to arbitration through its agreement with the Federation Internationale de Football (FIFA). CW's match license agreement with FIFA subjected disputes to be handled by a FIFA Players' Status Committee and then made eligible for CAS arbitration on appeal. Alternatively, CW's promotion agreement with USSF subjected disputes to the jurisdiction of the courts which cover Chicago, Illinois. The court ruled that the Federal Arbitration Act and the Supremacy Clause of the United States Constitution ruled the question of arbitrability. Consequently, since CW had agreed to arbitrate disputes arising from the promotion of its US soccer matches with FIFA, it granted USSF and MLS's motion to stay and compelled arbitration.

Chelsea Football Club Limited v. Mutu, CAS 2006/A/1192, award of May 21, 2007. Chelsea Football Clubis, an English Football club and a member of both the Football Association Limited (FA) and Football Association Premier League Limited (FAPL), and Mutu, a Romanian football player, had a five year employment contract. He tested positive for a prohibited substance and Chelsea terminated the contract. FA banned Mutu for seven months, which was extended to eight months by FIFA. Mutu appealed the termination of the employment contract, and the FAPL Appeals Committee (FAPLAC) declared that Mutu breached the contract without just cause. Chelsea then applied to FIFA for compensatory damages against Mutu, but the Dispute Resolution Committeee (DRC) determined it did not have jurisdiction, and so the claim was inadmissible. Chelsea appealed to CAS, but Mutu submitted that the appeal was inadmissible because Chelsea did not have standing against him. CAS determined the appeal was admissible because it was filed in a timely manner and through the employment contract Mutu was required to accept FIFA jurisdiction as to sanctioning and compensation. FAPLAC found that Mutu breached his employment contract, and therefore CAS held that Chelsea was entitled to proceed to the DRC for compensation. Because FIFA Statutes state that the DRC is solely competent in determining what sanction or compensation should be imposed, CAS determined the Mutu could not object to jurisdiction. Therefore, CAS annulled the DRC decision and sent the case back to FIFA.

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Club Galatasaray v. Ribery and Club Olympique de Marseille, CAS 2006/A/1180, award of April 24, 2007. Galatasaray, a Turkish football club and member of the Turkish Football Federation, had a contract with Ribery, a French football player. Olympique de Marseille (OM) is a French football club and member of the French Football Federation. Both clubs are members of FIFA. Ribery's employment contract with Galatasaray prohibited him from negotiating with another club during the specified contract period. After a dispute in which Galatasaray missed payments under the contract, Ribery sent a letter terminating the contract and signed a new contract with OM. FIFA's Dispute Resolution Chamber (DRC) determined that Galatasaray breached the

contract without just cause by not paying the athlete, and therefore, Galatasaray had no valid claims against Ribery or OM. However, Galatasaray did not owe compensation for the breach. Galatasaray appealed to CAS and Ribery counterclaimed for payments he never received. CAS noted that the non-payment or late payments were just cause to terminate a contract, and Galatasaray was warned numerous times about the breach of its obligation. Although Galatasaray claimed Ribery also breached the contract by signing with OM, CAS noted that there was no evidence that the negotiations occurred before the contract was terminated. CAS held that Galatasaray was not owed the penalty for Ribery transferring to another club because it would have only been owed if the termination occurred without cause. Ribery's counterclaim was dismissed because there were no outstanding payments, there was no evidence he was owed collective bonuses, and his contractual terms improved when he signed with OM, so he could not show he suffered any actual damages from the breach.

Del Bosque González, Grande Cereijo, Miñano Espín, Jiménez Martin v. Beşiktaş Futbol Yatirimlari San. VE TİC. A.Ş, CAS 2006/O/1055, award of February, 9, 2007. Vincente Del Bosque González, Antonio Grande Cereijo, Francisco Javier Miñano Espín, and Francisco Jiménez Martin were professional soccer coaches with Besiktas Futbol Yatirimlari, a club in the Turkish Football Federation (TFF). All four coaches had contracts with the team for the 2004-2005 and 2005-2006 seasons. The coaches signed two different contracts with the club; a private contract with the actual terms of employment, and a standard TFF contract, signed to meet a league requirement. After the first season, all of the coaches were terminated. Besiktas paid them for the one season of employment and refused to pay for the second season. The coaches claimed that because they were fired unilaterally and without just cause, a clause in the private contract made Beskitas liable for the entire amount owed for both seasons. The team argued that the league contract, which granted dispute jurisdiction to the Federation Internationale de Football (FIFA) Players' Status Committee, should be enforced over the private contract, which granted jurisdiction to CAS. CAS found that the league contract specifically stated that any terms of an additional, private contract would prevail over the terms of the league contract. Therefore, CAS held that it had jurisdiction to arbitrate the dispute and that Beskitas breached the coaches' contracts by terminating them before the end of the two season term.

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Ex parte Dunn, No. 1051387, 2007 WL 30071 (Ala. Jan. 5, 2007). The Mobile County Public School System recommended to the Board of School Commissioners of Mobile County (Board) that Marion Dunn, a tenured science teacher and head varsity basketball coach at Rain High School in Mobile, be terminated from his positions based on a physically abusive form of team discipline he instituted during basketball practice. The Board voted to terminate Dunn's employment and he filed a notice of contest under Alabama's Teacher Tenure Act which allowed his claim to be heard in arbitration by a hearing officer. The hearing officer did not cancel Dunn's employment contract, but rather barred him from coaching for four years, suspended him from teaching for thirty days without pay, and required him to apologize to his players orally and to their parents in writing. The Board appealed the hearing officer's decision to the Court of Civil Appeals. The court overturned the hearing officer's ruling, finding it arbitrary and capricious, and remanded the claim back to another arbitration hearing. The Supreme Court of Alabama granted certiorari to Dunn and overturned the Court of Civil Appeals. The court found that the appeals

court had substituted its own judgment for that of the arbitrator who had considered all relevant facts of the case, articulated a satisfactory reason for his action, and stated a rational connection between the facts and the discipline he imposed.

Feyenoord Rotterdam N.V. v. Union of European Football Associations (UEFA), CAS 2007/A/1217, award of April 20, 2007. Feyenoord Rotterdam is a professional football club and member of UEFA, the European governing body for football. During a UEFA Cup match between AS Nancy and Feynoord, Feynoord supporters behaved negatively causing damage and delays to the match, despite Feynoord's efforts to prevent the behavior. The UEFA Control & Disciplinary Body fined the team and put the team on probation for three years. The UEFA Appeals Body then disqualified the team from continuing in the competition and sanctioned the team with a large fine. The resulting sanction was one of the harshest sanctions in UEFA's history. CAS held that because of UEFA's strict liability rule where a team is responsible for its supporters' behavior and it is nearly impossible to distinguish official and unofficial supporters, both of which caused trouble before and during the match, a sanction against Feyenoord was appropriate. Furthermore, CAS determined that the sanction itself was not disproportionate to the offense because of the strong need to free football from hooliganism.

Ohuruogu v. UK Athletics Limited & International Association of Athletic Federations (IAAF), CAS2006/A/1165, award of April 3, 2007. Ohuruogu, a London born professional track athlete, missed three out-of-competition doping tests because she had forgotten to update her whereabouts or her schedule changed unexpectedly. UK Athletics Limited (UKA), the United Kingdom track and field governing body and member of the international governing body for track and field (IAAF), considered the three missed tests as equivalent to an anti-doping rule violation. As per the UKA and IAAF Rules, she was given a one year suspension. Ohuruogu appealed to CAS. CAS noted that the IAAF rules, adopted by UKA, were not ambiguous. They clearly stated that three missed tests within an eighteen month period would be considered a doping offense. CAS did not find the rule to be unreasonable, as it allows an athlete the opportunity to give reasons for the missed tests. CAS then held that the sanction fell within the recommended WADA sanctions and was proportionate to the offense. The Panel noted that they did not believe that Ohuruogu intentionally missed the tests, as she was tested close to the date of the third missed test and was not found to be positive. The Panel warned that the result should motivate athletes to be careful about notifying proper authorities on their whereabouts because the fight against doping is one that is taken very seriously.

World Anti-Doping Agency (WADA) v. Federacion Mexicana de Futbol (FMF) & Alvarez, CAS 2006/A/1149 and 2007/A/1211, award of May 16, 2007. FMF is the national football federation in Mexico. Alvarez played for one of the FMF's teams, Club Cruz Azul. Alvarez's A sample tested positive for the prohibited substance Stanozolol in a WADA accredited lab. This was Alvarez's second offense, which would lead to a lifetime ban according to FIFA regulations. After testing positive, FIFA allows an athlete forty-eight hours to request the B sample be tested or accept the results of the A sample. FMF notified the Club, but there was no response. FMF's disciplinary committee did not sanction the athlete because the Club failed to notify the athlete and the committee was under the mistaken impression that the B sample had been destroyed since no confirmatory analysis had been requested. FIFA then referred Alvarez's case to WADA to commence CAS proceedings to nullify the disciplinary committee's decision. The FMF

appealed to CAAD, a Mexican Ministry of Public Education branch that regulated sports. CAAD dismissed FMF's appeal. A second arbitration was then commenced by WADA to declare CAAD's decision irrelevant. Both proceedings requested that Alvarez receive a lifetime ban, as FIFA regulations state. First, CAS held that, as per previous decisions, the CAAD decision had no effect on international sanctions. Addressing the disciplinary committee's decision, CAS noted that Alvarez had been notified, proven by the fact he submitted a defense; therefore, he accepted the A sample results. Part of Alvarez's defense was that a Mexican laboratory, which was not an accredited lab, also tested the sample, and the result was not positive. Alvarez's contention was that because this created doubt, the doubt should be resolved in his favor. CAS noted that only the results from an accredited lab are the results that are considered. Alvarez also argued against the testing of the B sample, arguing that it should have been destroyed. CAS held that this argument lacked credibility, as a B sample is there to protect the athlete; however, CAS decided to not have the B sample tested. Because none of the exceptions to a lifetime ban were present, and the athlete did not attempt to show that there were extenuating circumstances or provide an excuse, CAS held there was no other option than imposing a lifetime ban on the athlete.

AMERICANS WITH DISABILITIES ACT LAW

Badgett v. Alabama High Sch. Athletic Ass'n, No. 2:07-CV-00572-KOB, 2007 U.S. Dist. LEXIS 36014 (N.D. Ala. May 3, 2007). Mallerie Badgett, a wheelchair track and field athlete with cerebral palsy, brought a claim against the Alabama High School Athletic Association (AHSAA) under the ADA because she desired to compete in the able-bodied state track and field competition, but was denied. The AHSAA offered Badgett an opportunity to participate in a wheelchair division of the track and field state championships. She would have been allowed to participate in four track and field events of her choosing and any trophies won would have been identical to those won by the able-bodied athletes. Badgett did not want to participate because there were no other competitors in the wheelchair division and she believed it was closer to an exhibition than a true championship. The court denied her claim, finding that the AHSAA made reasonable modifications for her by establishing the separate wheelchair athlete division, therefore, her request to compete with the able-bodied athletes was unreasonable.

Bowers v. National Collegiate Athletic Association, 475 F.3d 524 (3d Cir. 2007). Michael Bowers, a high school football player with a learning disability, brought claims of discrimination under Titles II and III of the Americans with Disabilities Act and section 504 of the Rehabilitation Act against the National Collegiate Athletic Association (NCAA), ACT/Clearinghouse, the University of Iowa, Temple, and American International College. Bowers submitted an application to the NCAA Clearinghouse on September 13, 1995 and was categorized as a nonqualifier because his high school special education classes did not satisfy the NCAA's core course requirement and he was allowed to take an untimed SAT exam. This designation rendered him ineligible to participate on or have any contact with member institution athletic squads. Bowers was replaced by his mother in proceedings after his untimely death in 2001. The United States District Court for the District of New Jersey granted summary judgment for the NCAA and member institutions on the basis that the universities had Eleventh Amendment sovereign immunity. The third circuit reversed the summary judgment stating that

even though the schools had sovereign immunity as arms of the state, Title II of the ADA abrogated that immunity, making the district court's summary judgment rationale flawed. The case was remanded back to the district court to answer the central question as to whether the defendants, through their treatment of Bowers, violated anti-discrimination law.

McFadden v. Grasmick, No. AMD 07-719, 2007 U.S. Dist. LEXIS 34726 (D. Md. May 12, 2007). McFadden, a wheelchair track and field athlete with spina bifida, claimed that she was discriminated against by state school officials. The Maryland Public Secondary Schools Athletic Association (MPSSAA) implemented a wheelchair racing program into its spring track and field competition. The program allowed wheelchair racers to compete in a separate competition from the able-bodied racers. McFadden moved for a preliminary injunction when the MPSSAA decided that the wheelchair division racers would not be able to earn points for their school's team in the quest for a state championship. The court denied the preliminary injunction because it found that McFadden was not being discriminated against because of her disability. It found that because the MPSSAA had a forty percent rule which only allowed the awarding of team points in an event in which schools representing at least forty percent of the students in a certain class participate covered both able-bodied and disabled athletes. There were only three wheelchair racers in the state, therefore the event did not meet the requirement for team points regardless of the racers disabilities.

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ANTITRUST LAW

Hamilton County Bd. of Comm'rs v. Nat'l Football League, No. 06-3348, 2007 U.S. App. LEXIS 14363 (6th Cir. 2007). Hamilton County sued the Cincinnati Bengals and the NFL, claiming that they had violated the Sherman Act by using a monopoly over professional football to obtain a heavily subsidized lease for the Bengals' new stadium at the expense of the County and its taxpayers. The district court granted summary judgment for the NFL, finding that the four year statute of limitations had run on the County's antitrust claim. The County appealed, claiming that the statute of limitations should be tolled because the Bengals did not fully disclose their financial information during negotiations and painted a misleadingly bleak picture of their financial situation. The County claimed that the statute of limitations was not triggered until it knew it had been injured when the Bengals' true financial situation was revealed four years later. The court of appeals affirmed the district court's grant of summary judgment, finding that the County had plenty of information to file an antitrust claim against the NFL for using its market power to extort one-sided stadium leases in 1997, and had no reason to wait until the Bengals' true financial picture was revealed.

In re NCAA I-A Walk-On Football Players Litigation, No. C04-1254C, 2007 WL 951504 (W.D. Wash. Mar. 26, 2007). Several ex-walk-on Division I players brought suit against the NCAA, claiming antitrust violations stemming from NCAA bylaw 15.5.5, which prohibits Division I football programs from issuing more than eighty-five scholarships per year. The football players claimed that they, and the class of players they represented, would have received scholarships but for bylaw 15.5.5. Furthermore, the players claimed that bylaw 15.5.5 is an anticompetitive

agreement between Division I-A members. The court denied the plaintiffs' motion for class certification because the representatives could not adequately represent all members of the class due to conflicting interests. The players then moved to amend their complaint in order to add one walk-on player who still had NCAA eligibility, which they claimed would solve their conflict of interest. The court disagreed and denied the motion, claiming that adding the active player was futile to their cause.

WAKA LLC v. DC Kickball, No. 06-984 (EGS), 2007 WL 1549091 (D.D.C. May 25, 2007). World Adult Kickball Association (WAKA) owns the copyright to the WAKA Official Kickball Rules. WAKA brought a copyright infringement and defamation claim against DC Kickball (DCK), a rival Kickball league formed by a former WAKA officer, when it allegedly copied the rules and distributed them as its own. DCK brought counterclaims against WAKA alleging violations of sections 1 and 2 of the Sherman Act. The court granted in part and denied in part a motion to dismiss DCK's counterclaims. It found that DCK could not show any evidence of conspiracy to restrain trade in order to sustain a claim under section 1, but that it had sufficiently shown WAKA's monopoly market power over adult kickball leagues in the United States in order to escape a motion to dismiss. The court then stayed discovery on the antitrust claims until the copyright infringement action had been resolved.

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BANKRUPTCY LAW

In re Worldcom, Inc., Case No. 02-13533 (AJG), 2007 Bankr. LEXIS 383 (Bankr. S.D. N.Y. Feb. 13, 2007). Former National Basketball Association (NBA) star Michael Jordan entered into an endorsement contract with Worldcom, which began in September 1995 and was to end in August 2005, in which Jordan endorsed MCI telecommunication products. The agreement paid Jordan a $5 million signing bonus along with a $2 million annual base compensation. On July 1, 2002 MCI filed a chapter 11 claim. In early 2003, Jordan commenced an action to recover the $2 million plus contingent amounts due to him for the year under the agreement. Worldcom rejected the claim, and Jordan subsequently filed a new claim in July of 2003 for $8 million to cover the payments under the contract for 2002 and 2003 and future payments for 2004 and 2005. Both parties moved for summary judgment. Worldcom contended either that 1) the contract was an employment contract and therefore capped under section 502(b)(7) of the Bankruptcy Code, effectively barring any recovery, or 2) that Jordan had a duty to mitigate damages and failed to do so, therefore the claim should be reduced to $4 million to cover only the years 2002 and 2003. Jordan argued that he was a lost volume seller making mitigation inapplicable, that there is no evidence he could have entered into a similar endorsement contract, and that he acted reasonably by not pursuing a new endorsement contract. The bankruptcy court granted, in part, Jordan's motion for summary judgment by finding that the contract was not an employee contract and was not subject to the terms of section 502(b)(7). The court also granted, in part, Worldcom's motion by finding that Jordan did have a duty to mitigate damages and failed to do so. Jordan was not completely barred from recovery, but he was not granted his full claimed award. The court found that a further evidentiary hearing would be necessary to determine what Jordan could have made by mitigating his damages and signing a new endorsement contract.

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In re Allentown Ambassadors, Inc., Bky. No. 04-22368ELF, 2007 Bankr. LEXIS 267 (Bankr. E.D. Penn. Feb. 5, 2007). A Chapter 11 debtor, a corporation that previously operated the Allentown Ambassadors minor league baseball team (Ambassadors), brought an adversary proceeding against North American Baseball, LLC. (the New NE League), the league teams, and the league president. The debtor claimed that the team members exercised control over property of the estate in violation of 11 U.S.C.S. § 362(a)(3). Defendants moved to dismiss. The claims arose out of the defendants' act of dissolving the New NE League and forming a new league without the Ambassadors. After both the 2002 and 2003 seasons, the Ambassadors petitioned the New NE League to allow them to go dark, or shut down for a year and make sure the team was financially viable before playing again. Both times the request was denied. In 2004, the Ambassadors filed a chapter 11 claim and stated that they would be going dark for the 2004 season. The New NE League filed a motion for relief, asserting that the Ambassadors had breached their contract with the league by not fielding a team and therefore could be terminated from league membership. On September 3, 2004, the League withdrew its motion and instead held a membership meeting to vote on the dissolution of the league. The vote passed and less than one month later all of the former New NE League teams, except the Ambassadors, formed the Canadian American League of Professional Baseball. The Ambassadors claimed that the New NE League and its president owed a fiduciary duty to the team to allow the team to go dark or assist in the sale of the team. The League president argued that he had a fiduciary duty to the

league, but not to the team. The bankruptcy court denied the defendants' motion to dismiss, finding that the league had a fiduciary duty to the Ambassadors and there was at least a possibility that the league's actions were part of a pattern designed to oppress the Ambassadors and devalue its membership.

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CONSTITUTIONAL LAW

Cunningham v. Lenape Reg'l High Dist. Bd. of Educ., No. 06-cv-428, 2007 WL 1821010 (D.N.J. June 25, 2007). Thomas Cunningham, the parent of a student-wrestler at Shawnee High School, alleged that the school district violated his First Amendment rights when it barred him from school property after he publicly criticized the school's wrestling coach. Cunningham openly criticized the wrestling coach and started a petition to have the coach removed from his position. The school subsequently sent Cunningham a letter stating that he was no longer allowed on school grounds for what officials had deemed to be abusive behavior towards school employees. The school modified the ban to allow Cunningham on school grounds for his son's wrestling matches and to coach a youth wrestling camp, but he was not allowed to speak to any school employees. Cunningham claimed that the restrictions were placed on him as a way to bar his right to express concern over the performance of a public employee. The school argued that Cunningham was barred from the school as a safety measure to protect the wrestling coach who felt threatened by him. The court granted the Board's 12(b)(6) motion to dismiss. It ruled that the school's reasonable actions when it felt Cunningham posed a danger to its faculty and staff outweighed Cunningham's First Amendment rights to free speech.

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Jackson County Sports Complex Authority v. State, No. SC 87934, 2007 WL 1816868 (Mo. June 26, 2007). The Jackson County Sports Complex Authority (SCA) claimed that the amendments to two new state statutes, resulting in the requirement that it seek competitive bids for any expenditure over five thousand dollars, violated article III of the Missouri Constitution. Article III disallowed the passage of any amendment which changed the original purpose of a bill. The Missouri legislature passed two bills which were originally intended to deal with county governments' expenditures in the procurement of supplies and administrators' salaries. As they moved through the legislative process, the bills were broadened by amendment to deal with political subdivisions and not just county governments. As a political subdivision, the SCA claimed that broadening the bills amounted to changing their original intent. The trial court held in favor of the SCA, but the Supreme Court of Missouri reversed and dismissed the claim. It held that changing the scope of the bills was not the same as changing the intent.

Johnston v. Tampa Sports Authority, No. 06-14666, 2007 WL 1814197 (11th Cir. 2007). Johnston, a Tampa Bay Buccaneer season ticket holder, brought suit against the team claiming that an NFL requirement that all fans be patted down before entering home games was a violation of his Fourth Amendment rights. A state court granted Johnston a preliminary injunction barring the pat-downs. The Sports Authority removed the action to federal court and

moved to vacate and dissolve the injunction, but was denied. The district court found that Johnston did not consent to the searches and his Fourth Amendment rights were violated. The court of appeals reversed, holding that Johnston did in fact consent to the searches because had notice of the pat-downs, allowed team employees to search him at the entrance of the football stadium, and he did not have a constitutionally guaranteed right to attend professional football games that was infringed by requiring he submit to the pat-downs.

Salazar v. NCAA, No. 8:06cv415, 2007 U.S. Dist. LEXIS 16736 (D. Neb. Mar. 5, 2007). Ben Salazar, publisher of Nuestro Mundo, a Mexican-American newspaper, alleged that his first amendment rights were violated when his press credentials were removed and he was ejected from a 2005 College World Series game after a heated argument over seating with the official in charge of press credentials for the NCAA. The NCAA official rudely berated Salazar and removed the credentials by physically pulling them off of Salazar's neck. Salazar subsequently brought claims under section 1983 and the Public Accommodations Title of the 1964 Civil Rights Act. The court denied Salazar's section 1983 claim because it could only be brought against state actors who deprive a constitutional right, and neither the NCAA nor the press credential official were considered state actors. The district court also denied Salazar's public accommodation claim because the only remedy Salazar requested were damages, which are not available under that title.

Stark v. Seattle Seahawks, No. C06-1719JLR, 2007 U.S. Dist. LEXIS 45510 (W.D. Wash. June 22, 2007). Fred Stark, a Seattle Seahawks season ticket holder, challenged the constitutionality of pat-downs at Seattle Seahawk games as a violation of the Fourth Amendment and Article I of the Washington State Constitution. Starks argued that the pat-downs were unreasonable searches. The Seahawks moved for summary judgment on the grounds that they are a private entity which does not meet the state actor requirement for a constitutional violation. Stark contended that the Seahawks are the equivalent of a state actor because they are so entwined with Qwest Field, the Seahawks' stadium which is publicly owned by the Stadium Authority. He argued that the Stadium Authority conferred nearly all of its public function and governmental authority to run the stadium and provide security to the Seahawks. The court granted the summary judgment, holding that the Seahawks conducting pat-downs was not a state action because operating a stadium and providing security are not functions traditionally and exclusively reserved to the state.

Tenn. Secondary Sch. Athletic Ass'n v. Brentwood Acad., No. 06-427, 2007 WL 1773196 (U.S. June 21, 2007). Brentwood Academy's baseball coach sent a recruiting letter to potential middle school baseball players in violation of the Tennessee Secondary School Athletic Association's anti-recruiting rule, which barred schools from using undue influence in students for athletic programs. The Association subsequently sanctioned Brentwood Academy. Brentwood brought constitutional claims, arguing that the rule was a violation of Brentwood's First Amendment rights and that the Association had deprived Brentwood of due process during a sanctioning hearing. After holding that the Association was a state actor, the Supreme Court found that the Association's rule was not a First Amendment violation because it did not ban the dissemination of truthful information, it merely curtailed the speech of its voluntary participant in order to manage an efficient state-sponsored high school athletic league. The Court also found that the Association did not violate Brentwood's due process rights because it held an investigation,

several meetings, a hearing, and kept constant correspondence with Brentwood throughout the appellate proceedings.

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CONTRACT LAW

AT&T Mobility LLC v. NASCAR, 487 F.Supp.2d 1370 (N.D. Ga. 2007). AT&T sought a preliminary injunction against NASCAR to enjoin it from barring AT&T from changing its logo on a racecar that the company sponsored. Cingular was the primary sponsor of the NASCAR number thirty-one car, which allowed it to place its logo on the car as part of its paint scheme. After Cingular entered into its sponsorship agreement, Sprint Nextel entered into an agreement with NASCAR to become the official series sponsor of the NASCAR Nextel Cup Series. Sprint Nextel's agreement with NASCAR allowed for the Cingular brand to remain on the number thirty-one car, but barred any alteration of the logo should Cingular be bought by another wireless communications company. In early 2007, AT&T merged with Cingular and submitted a new paint scheme for the car which called for the addition of the AT&T logo. NASCAR denied the proposed change and AT&T brought multiple claims, including breach of contract. The court granted AT&T's preliminary injunction. It found that NASCAR had entered into a contract with Cingular, which was now AT&T, and the denial of the new paint scheme violated the terms of that agreement by denying AT&T the commercial benefits it paid for.

Bouchard Transp. Co. v. New York Islanders Hockey Club, No. 2006-08530, 2007 N.Y. App. Div. LEXIS 6377 (N.Y. App. Div. May 22, 2007). Bouchard, which holds the lease on the Islanders' stadium, attempted to sue the Islanders for breach of contract when they did not play the 2004-05 season because of the NHL lockout. The Islanders moved for summary judgment claiming that the lockout fell under a force majeure clause contained in the lease agreement which absolved them of liability for nonperformance forced by a cause beyond their control. The trial court denied the Islanders motion, but the appellate division reversed and granted summary judgment. The court found that the lockout was nonperformance forced by a cause which was outside of the Islanders' control because the clause specifically included labor disputes and NHL made it impossible for the Islanders to play because it locked out all of their competing teams.

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Bowers v. Federation Internationale De L'Automobile, No. 06-2718, 2007 WL 1518612 (7th Cir. May 25, 2007). During a practice driving day before a Formula One race in Indiana, a team of drivers using Michelin tires on their racecars became aware of blow-outs of those tires on a specific turn on the racetrack. The team could not acquire different Michelin tires in time for the race, therefore it petitioned the Federation Internationale De L'Automobile (FIA) for an exception to a rule that required cars to race with the same tires they used to qualify. FIA refused, so the fourteen cars that used Michelin tires decided to not participate in the race. Upset spectators sued FIA, Michelin, and Formula One Racing under claims of breach of contract, third-party beneficiary, promissory estoppel, negligence, tortious interference with a contractual relationship, and unjust enrichment. The court granted FIA's motion to dismiss because it found

that spectators were not promised anything about the quality of the race when they purchased tickets and had no rights conferred as third party beneficiaries. They were only promised entrance into the racetrack and could not recover for a race that was not up to their desired standards.

Brookridge Funding Corp. v. Northwestern Human Serv. Inc., No. 3:99 CV 2339 (CFD), 2007 U.S. Dist. LEXIS 46975 (D. Conn. June 26, 2007). During the construction of a minor league baseball stadium, Brookridge bought the original contractor's (CSI) invoice of $2.7 million for $1 million. NHS, as the debtor, refused to pay Brookridge the $2.7 million, claiming that it did not receive adequate consideration to make the transfer of debt an enforceable contract. Brookridge claimed that NHS owed the entire amount of $2.7 million plus prejudgment interest. The court held that NHS did owe Brookridge the entire amount because the consideration it received in the transfer of debt between CSI and Brookridge was the funding necessary to keep the stadium construction project alive. However, the court did not award prejudgment interest because NHS's failure to pay was not deemed wrongful.

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Castillo v. Barrera, 53 Cal. Rptr. 3d (Cal. Ct. App. 2007). Jose Castillo brought breach of contract, fraudulent inducement to enter contract, and quantum meruit claims against professional boxer, and two-time world champion, Marco Antonio Barrera. Castillo alleged that he had an oral contract with Barrera to manage Barrera's boxing career and was due $275,000 in consideration of his efforts. In 2003, Castillo began negotiating exclusive boxing promotion contracts and settling lawsuits for Barrera, which allowed Barrera to continue his career as a successful boxer. In October 2004, Castillo claimed that Barrera owed him money for his services performed. Barrera did not pay and cut off all communications with Castillo. Castillo brought contract claims against Barrera who subsequently moved for summary judgment. The trial court granted Berrara's summary judgment because Castillo referred to himself as Barrera's manager and boxing managers in California must be licensed by the state and their contracts must be in writing. Therefore, Castillo's own judicial admission barred his claims. On appeal, Castillo claimed that his characterization as Barrera's manager was a mere conclusion and not a judicial admission. He also argued that because the fight he set up for Barrera was in Texas, and not California, the California licensing requirement should not apply. The Court of Appeal affirmed the trial court's grant of Barrera's summary judgment because it found that Castillo had admitted to being Barrera's manager and boxing management contracts entered into in California cover fights by boxers in any state. The court affirmed the holding that the oral contract between Castillo and Barrera was unenforceable.

M'Baye v. World Boxing Association, No. 05 Civ. 9581 (DC), 2007 U.S. Dist. LEXIS 23173 (S.D.N.Y. Mar. 21, 2007). M'Baye, a professional boxer, sued defendant World Boxing Association (WBA) for breach of contract and declaratory relief. M'Baye alleged that the WBA accepted sanctioning fees from him, essentially granting him a title bout in the 140 pound weight class if he attained the position of official contender, and then wrongfully bypassed him to sanction more lucrative fights involving other fighters. Here, he moved to add additional claims under the Ali Act and RICO Act, as well as for fraud and unjust enrichment. The court granted the motion to amend with respect to the Ali Act, breach of contract and unjust enrichment claims

because M'Baye reasonably alleged that he was damaged by the WBA's constant ranking changes after it had accepted his sanctioning fees. The court denied the motion with respect to the RICO and fraud claims because M'Baye could not adequately prove that the WBA made fraudulent representations.

MasterCard Int'l Inc. v. Fed'n Internationale de Football Ass'n, No. 06-649-cv, 2007 U.S. App. LEXIS 12309 (2d Cir. May 25, 2007). FIFA appealed a December 2006 final judgment of the United States District Court for the Southern District of New York which permanently enjoined FIFA from granting anyone other than MasterCard the sponsorship rights for the 2007-2014 World Cup soccer tournaments. MasterCard had an agreement to be the exclusive credit card sponsor of the 2003-2006 World Cup quadrennial cycle. The agreement contained a first right to acquire provision which MasterCard believed it had used to acquire a new deal to renew the agreement through 2014. FIFA ultimately sold the sponsorship rights to VISA. MasterCard claimed that it had agreed to the sponsorship deal and that FIFA had not bargained in good faith. The Court of Appeals remanded the case back to the district court in order to determine to what extent the 2006 agreement bound the parties and whether the new agreement superseded the prior agreement.

NFL Enter. LLC v. Comcast Cable Commc'ns, LLC, No. 603469/06, 2007 N.Y. Misc. LEXIS 3160 (N.Y. Sup Ct. May 4, 2007). The NFL brought this claim against Comcast stemming from a dispute over whether an agreement between the NFL and Comcast allowed Comcast to distribute NFL Network on separate pay-basis sports tier. The NFL and Comcast entered into an agreement which allowed Comcast to broadcast the NFL Network. The agreement contained a clause that stated if the parties did not reach any Additional Cable Package agreements by July 31, 2006, Comcast would be allowed to include the network on any cable package of its choice, not necessarily its basic package, which the NFL desired because it would reach the most viewers. On July 28, 2006, the parties agreed to a deal which specifically stated which games the NFL would grant Comcast access to for broadcast on the NFL Network. Comcast then announced that it would be showing the games on a pay-basis sports tier. The NFL brought suit claiming that the agreement reached on July 28 triggered the provision which required Comcast to include the NFL Network in its basic package. Comcast argued that the agreement was merely an amendment to agreement and not a deal for an additional package. The court granted summary judgment for Comcast and allowed it to include NFL Network in a sport tier, finding that the July 28 agreement was an offer for specific games to be broadcast on the NFL Network, not on a new package.

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Parrish v. Nat'l Football League Players Inc., No. C 07-00943, 2007 WL 1624601 (N.D. Cal. June 4, 2007). Several retired National Football League (NFL) players brought a class action suit against the National Football League Players' Association (NFLPA) over licensing revenue for retired players. Parrish claimed that the NFLPA's licensing arm, Players Inc., breached a fiduciary duty to the ex-players by failing to provide information on its licensing practices and failing to pursue licensing opportunities in a fair and equitable manner. The court granted Parrish leave to file a second amended complaint in order to argue that Players Inc. held itself out to be

the exclusive entity which could grant licenses to retired players' likenesses, even though it was not.

Phillips v. Selig, No. 1550, 2007 Phila. Ct. Com. Pl. LEXIS 29 (2007). Attorney Richard G. Phillips and his law firm, Richard G. Phillips Associates, brought multiple claims against Major League Baseball (MLB) commissioner Bud Selig, chairmen of the Major League Umpires Association (MULA), Joseph Brinkman and John Hirschbeck, MLB's general counsel, and attorney Robert Shapiro. The court considered claims of interference with existing and prospective contractual relations and conspiracy. The claims arose out of a failed labor negotiation tactic attempted by Phillips while he represented the MULA in negotiations with MLB. Phillips suggested that instead of strike, the umpires should perform a mass resignation. A majority of members of the MULA followed his suggestion and offered their resignations to MLB. MLB did not give in to the tactic and instead began hiring minor league umpires. Many of the recently resigned umpires panicked and quickly withdrew their resignations. MLB hired back all but twenty-two of the MULA umpires. The umpires were upset at Phillips over the failed strategy. Brinkman and Hirschbeck subsequently formed another union to compete with the MULA which was represented by Robert Shapiro, an attorney in competition with Phillips. The new union then filed a decertification petition against MULA with the National Labor Relations Board which was passed by a member vote by a wide margin. Phillips brought his claims after the decertification of the MULA, claiming that the defendants conspired to interfere and actually interfered with his representation contract with the MULA. The defendants moved for summary judgment on all claims. The Court of Common Pleas of Pennsylvania granted defendants' motions for summary judgment because Phillips failed to meet his burden of showing that the defendants had specific intent to harm him and all of their actions, including decertifying the union Phillips represented, were within their power under the National Labor Relations Act.

Sapp v. K-1 Corp., No. C06-1791-JCC, 2007 WL 101167 (W.D. Wash. Jan. 10, 2007). Sapp, an ex-NFL player turned mixed martial artist, kickboxer, and pro wrestler, sought a preliminary injunction against K-1, a prominent organization in the world of professional kickboxing and martial arts. The injunction would allow Sapp to participate in mixed martial arts events without the approval of K-1, despite the existence of a contractual exclusivity agreement. Sapp began working with K-1 in 2002 and in 2003 he signed management and fighting agreements with K-1 in order to govern their relationship. In February of 2006, Sapp and K-1 had a dispute over a fight in Amsterdam which K-1 would not allow Sapp to fight in. Sapp brought action against K-1, claiming that its invocation of the exclusivity clause was having a substantial negative impact on his career. Sapp claimed that he had a small window of age and physical conditioning to participate in these fights and maximize his earnings and that K-1 was limiting his ability to do so. Sapp attacked a forum selection clause in the agreements designating Japan as the sole forum for disputes, claiming it was extremely inconvenient. The court denied Sapp's preliminary injunction, finding that a showing of mere inconvenience was not enough to meet the higher standard of review.

In re Topps Co. S'holders Litig., Nos. 29980-VCS, 2786-VCS, 2007 WL 1732586 (Del. Ch. June 14, 2007). In the midst of negotiations for the sale of the Topps Company, Topps' shareholders and Upper Deck, a potential buyer, brought a breach of fiduciary duty action against the Topps' board and Michael Eisner, another potential buyer. The shareholders claimed that the Topps'

Board of Directors (board) would not allow Upper Deck to communicate a sales offer to them which would have been substantially greater than Eisner's. They claimed that the board simply did not want Upper Deck, Topps' main competitor in the sports trading card market, to purchase the company. The board refused to acknowledge Upper Deck's superior proposal, even though it would likely have lead to a higher bid by Eisner, and shut out all dissident board members from participating in any board functions. The Topps' board claimed that it did not want to merge with Upper Deck because it would raise too many antitrust issues. The court found that the Topps' board breached its fiduciary duty to its shareholders by not disclosing to them all the facts before the final vote on which merger offer to accept. It then granted a preliminary injunction on a merger vote until Topps took steps to correct its failure to disclose all information on Upper Deck's bid to its shareholders.

White v. National Football League, No. 4-92-906 (DSD), 2007 U.S. Dist. LEXIS 21536 (D. Minn. Mar. 26, 2007). Ashley Lelie, a former Denver Broncos wide receiver, did not report to the team's 2006 mandatory off-season workouts or minicamps after a series of disagreements with the team. The Broncos claimed that Lelie's actions entitled the team to repayment of $220,000 of Lelie's 2007 option bonus through a Stipulation and Settlement Agreement (SSA) in the NFL CBA. Lelie and the Broncos agreed to execute an Acknowledgement and Agreement in which Lelie agreed to pay the Broncos the $220,000 immediately and would allow the Broncos to seek repayment of other designated fines at a later time, in exchange for which the Broncos would assign Lelie's contract to the Atlanta Falcons. After learning of Lelie's repayment, the NFL Players' Association's (NFLPA) class counsel initiated a proceeding to recover the $220,000 payment. The class counsel argued that under section 9(c) of the SSA the Broncos were not entitled to repayment of option bonuses which were salary escalators that were already earned. The district court ruled that the option bonus was earned as soon as the option was exercised and therefore Lelie was entitled to have it returned. The court explained that teams have a number of other ways to fine players for holding out besides recovering money already earned.

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CRIMINAL LAW

U.S. v. Shortt, No. 06-4774, 2007 WL 1366055 (4th Cir. May 10, 2007). Dr. James Shortt was convicted of conspiracy to dispense anabolic steroids and human growth hormone (HGH) to athletes. Shortt was a physician licensed in Wisconsin and South Carolina where he prescribed steroids and HGH for professional athletes, including approximately a half dozen members of the Carolina Panthers, for over seven years. Shortt designed programs, drug regimens, and special tests to get around league drug testing. As part of a plea agreement, Shortt plead guilty to over forty-two counts. He was sentenced to twelve months and one day in prison, which he appealed as unreasonably long. The Fourth Circuit upheld the sentence as reasonable, stating that the nature and circumstances of his offenses warranted the sentence and that a long sentence was needed to show the seriousness of the offense and promote a respect for the law.

DISCRIMINATION LAW

Jackson v. Overton County School Dist., No. 2:06-0096, 2007 U.S. Dist. LEXIS 5667 (M.D. Tenn. Jan. 18, 2007). After being cut from her high school basketball team, Jackson filed a motion for a preliminary injunction. She alleged that she was subjected to discrimination and retaliation in violation of Title VI of the Civil Rights Act of 1964. Prior to her being cut from the team, Jackson's father had brought a complaint before the Office of Civil Rights of the United States Department of Education (OCR). He claimed that the school had allowed a hostile environment to develop by letting white students use the n-word without punishment and that his daughter was denied playing time and then cut from the team on the basis of being of mixed race. The basketball coach claimed that Jackson was cut because of declining skill and a bad attitude. The OCR found that no hostile environment existed and that Jackson had lost playing time due to her skill level, not her race. Jackson's father then appealed the OCR decision, which the basketball coach did not know at the time he cut Jackson from the team. Jackson claimed that being cut from the team was devastating to her goal of someday playing in the WNBA. The court found that Jackson failed to meet the high burden necessary for a preliminary injunction because the evidence as to why Jackson was cut from the team weighed evenly for both sides.

Meyers v. LaPorte Indep. Sch. Dist., No. H-05-1087, 2007 U.S. Dist. LEXIS 30813 (S.D. Tex. Apr. 25, 2007). An African-American, female high school softball player brought an Equal Protection Clause claim, a section 1983 claim, and other claims against the La Porte school district after she was denied the opportunity to play on the varsity team all four years, which she argues would have led to college scholarships. Janelle Meyers played on the La Porte High School softball team from 2000 to 2004. During her first three years at the school she played on the junior varsity team and was moved up to the varsity team for her senior year. Meyers contended that she was good enough to be on varsity all four years, but her coaches and the school would not promote her because of her race. The school argued that Meyers was not promoted before her senior year because her statistics did not warrant a promotion. Since a municipality cannot be held liable for the actions of its employees (ie. softball coaches), Meyers needed to establish the district's section 1983 liability by showing that the school district's board of trustees, being a state actor, had adopted a policy that unconstitutionally discriminated against African-American students. She failed to do so. Therefore, the court granted La Porte school district's motion for summary judgment on all claims.

EDUCATION LAW

Carter v. Escondido Union High Sch. Dist., 56 Cal. Rptr. 3d 262 (Cal. Ct. App. 2007). James Carter, a teacher and basketball coach, sued the Escondido Union High School District for wrongful termination in violation of public policy. Carter claimed that he was not retained because he informed the athletic director at another school that the Escondido football coach had recommended a nutritional supplement to a student. A trial court jury found for Carter and awarded over one million dollars in damages. The Court of Appeals reversed the judgment. The court found that in order for an employer to be liable for wrongful termination in violation of public policy, the employer's conduct must violate a policy that is well established and tethered

to a constitutional or statutory provision. The court denied Carter's claim that his disclosure was connected to a California Education Code provision which prohibits teachers from assisting students in the taking of any medication. The court ruled that weight gain substances are not medication; therefore, Carter's disclosure was merely an internal personnel disagreement, not protected as whistleblowing and not able to sustain a wrongful termination claim.

Lail v. Cleveland County Bd of Educ., No. COA06-1244, 2007 WL 1597968 (N.C. Ct. App. June 5, 2007). Lail, a high school cheerleader, sustained a skull fracture during an unsupervised, student run practice. She brought negligence claims seeking money damages against the cheerleading coach and the Board of Education. The Board moved to dismiss and for summary judgment alleging governmental immunity. The court found that generally a school board has sovereign immunity in actions against individuals acting in their official capacity, but also that North Carolina law allows for a board of education to waive that immunity by acquiring liability insurance. Here, the Board was covered up to $150,000 by a trust, which was not insurance, and up to $1,000,000 by a separate liability policy. The court granted the Board's motion in part and denied in part and remanded back to the trial court. It stated that the Board had not waived its immunity for claims up to $150,000, but it had waived its immunity for claims between $150,000 and $1,000,000, and therefore could be held liable for Lail's injuries caused by the cheerleading coach's alleged negligence.

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EMPLOYMENT LAW

Baldwin v. Bd. of Sup'rs for the Univ. of La. Sys., No. 2006 CA 0961, 2007 La. App. LEXIS 872 (La. Ct. App. May 4, 2007). Jerry Lee Baldwin, the ex-head football coach for the University of Louisiana at Lafayette (ULL), brought claims of racial discrimination against the school stemming from his termination. A state district court granted summary judgment for ULL claiming that the school had presented legitimate reasons for Baldwin's termination. The Court of Appeal reversed the grant of summary judgment. It held that after Baldwin had met his initial burden of showing a prima facie case of discrimination and ULL had presented seemingly legitimate, nondiscriminatory reasons for Baldwin's removal, he should have been given a chance to show that a genuine issue of material fact as to whether ULL's reasons were legitimate or just pretext still existed. The court found that Baldwin had met that burden by providing evidence that he may have been terminated for discriminatory reasons, creating a jury question, and making summary judgment inappropriate.

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Greenwood Public School District v. Mississippi Dept. of Employment Security, No. 2006-CC-00212-COA, 2007 Miss. App. LEXIS 113 (Miss. Ct. App. Feb. 27, 2007). Rodney Major, a physical education teacher and head basketball coach, was employed on a one-year renewable contract by Greenwood Public School District from 2001 until 2005. Major was approached by a

district representative in 2005 and told that his employment contract would not be renewed for the 2005-06 academic year. Major finished the 2004-05 school year and resigned prior to the subsequent year. He then filed for unemployment benefits, which were granted. The school district appealed the grant of benefits claiming that Major voluntarily quit or, alternatively, was fired due to misconduct and was ineligible for benefits. An administrative appeals officer (AAO) upheld the grant of benefits and the district appealed again. A Board of Review upheld the AAO ruling and the district appealed to County Circuit Court, which once again affirmed the grant. The Court of Appeals found that in order for a person in Mississippi to be ineligible for unemployment benefits they must quit voluntarily or be fired for misconduct. It then affirmed the grant of unemployment benefits to Major because he was forced to resign and the district's displeasure with his work did not equate to misconduct.

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Parks v. Dick's Sporting Goods, Inc., No. 05-CV-6590 CJS, 2007 U.S. Dist. LEXIS 20949 (W.D.N.Y. Mar. 21, 2007). PGA Golf Pros employed in Dick's Sporting Goods stores brought a claim under the Fair Labor Standards Act (FLSA) after the chain classified pros in a manner that denied them overtime pay they were entitled to. For approximately one year, Dick's stores classified the golf pros as exempt from the FLSA's mandatory overtime pay requirement for any employee working over forty hours per week. The golf pros moved for, and were granted by the district court, conditional class certification and expedited notice to potential class members. Dick's appealed the decision, claiming that the golf pros were not similarly situated as necessary to gain class certification. It argued that golf pros at each store had wide ranging responsibilities, from glorified stock boy to management. The court affirmed the grant of certification and held that even if the job duties of some golf pros varied from one store to another, it was not a reason to deny class certification at that time.

GAMBLING LAW

Humphrey v. Viacom, Inc., No. 06-2768 (DMC), 2007 U.S. Dist. LEXIS 44679 (D.N.J. June 19, 2007). Charles Humphrey brought claims against ESPN, CBS and other defendants claiming that their pay-for-play fantasy sports websites are illegal gambling schemes in violation of the laws of New Jersey and several other states. Humphrey claimed that he was entitled to recover the individual losses of all participants under the qui tam laws of seven states and the District of Columbia. Qui tam laws provide a method for dependents of gamblers to recover the gambling losses of a family member if the losses come during a traditional gambling activity. Humphrey argued that the fees that participants pay constitute wagers by players whose odds of winning depend on the chances of injury and player performance. The court granted summary judgment for all defendants. It stated that fantasy sports were not gambling because players won based on skill and there were no losses. The court explained that, in order to win, a team owner needed skill to draft and manage their team throughout an entire season and there were no actual losses in fantasy sports because all players receive the services of the companies in return for their fees in the form of statistical and analytical services. It also held that even if fantasy sports were gambling, the qui tam laws were 200-year-old laws intended to keep families from becoming poor and that it would not extend their protections to Humphrey.

GENDER EQUITY LAW

In the Matter of Evergreen Sch. Dist., No. 35127-7-II, (Wash. Ct. App. June 19, 2007). A parent of a female tennis student brought an equal treatment claim against Evergreen School District because they believed that the female tennis teams were not being fairly accommodated. The parent claimed that even though the female tennis teams were much larger than the male teams they received the same accommodations. The parent appealed a Superior Court ruling which reversed an administrative law judge's (ALJ) ruling that the district had failed to keep track of its students' needs and meet them accordingly. The Court of Appeals affirmed the Superior Court's reversal, finding that the ALJ's order was not based on any substantial evidence that the number of tennis courts had a disparate impact on the girls or that increasing the number of courts would increase the practice time or number of students who could participate. The Court did uphold the ALJ's order that the District should conduct a survey every three years to make sure it is still accommodating its students' needs.

Thomka v. Mass. Interscholastic Athletic Ass'n, Inc., No. 051028, 2007 Mass. Super. LEXIS 83 (Mass. Super. Ct. Feb. 8, 2007). Thomka, a female high school golfer, brought a claim of gender discrimination against the Massachusetts Interscholastic Athletic Association (MIAA). She was denied the opportunity to play in the boys' state championship, even though she participated on a mixed-gender team during the school year, by MIAA bylaw 43.2.1.2. The bylaw required male and female players on mixed-gender teams to compete in their own gender's state tournaments. The MIAA offered state championships to male players following both the fall and spring seasons, but only offered a spring championship to female golfers. Thomka claimed that the fall tournament offered a higher level of competition, a greater attendance of college coaches and recruiters, and a better stage for her to showcase her talents. The court found that the MIAA put the female players whose schools decide to play in the fall season at a disadvantage by holding two boys' tournaments and only one girls' tournament. Therefore, the court found that the bylaw violated the Massachusetts Equal Rights Amendment and enjoined the MIAA from enforcing the bylaw against any female golfers.

INSURANCE LAW

Tweet/Garot-August Winter, LLC. v. Liberty Mutual Fire Insurance Comp., No. 06-C-800, 2007 WL 445988 (E.D. Wis. Feb. 7, 2007). Tweet/Garot (TG) is a Wisconsin company which installed the plumbing and HVAC systems at Lambeau Field, home of the Green Bay Packers, during a renovation project in the late 1990's. TG, as a subcontractor, was covered by Lambeau Field's liability insurance issued by Liberty Mutual. In 2004, many of the valves TG had installed in the heating and cooling systems began to leak, causing damage to parts of the field and other Packers property. TG determined that the valves had been improperly coated by the manufacturer and decided to replace all valves in the Lambeau systems. TG filed a claim with Liberty Mutual for approximately $600,000 for the cost of replacing the valves and repairing parts of Lambeau after the replacement. Liberty Mutual denied that claim because there had been no actual physical damage caused by the most of the faulty valves. TG claimed that it had saved Liberty Mutual millions of dollars in potential damages from the valves that had not yet leaked.

The court interpreted the insurance policy as a contract, under Wisconsin law, and determined that loss mitigation was not covered by the policy. Liberty Mutual was granted a summary judgment and not required to pay TG's claim.

INTELLECTUAL PROPERTY LAW

Adidas AG and Adidas (Ireland) Limited v. Gabor Varga and Jozsef Petho, WIPO case number DIE2006-0004, Jan. 18, 2007. Adidas, one of the world's leading athletic footwear and apparel companies, brought a claim against Varga and Petho, residents of Ireland who registered the domain name adidas.ie. The site originally linked to another site which contained shopping links, but then became a site dedicated to creating an internet directory. The Advanced Detailed Internet Directory and Search page had a disclaimer stating that it was not connected to Adidas AG. WIPO found that the domain name was confusingly similar and the registrants had no legitimate rights or interests in the domain name. Additionally, there was ample evidence to indicate the domain name was registered in bad faith because the registrants have exhibited a pattern of similar behavior with other marks, such as Nike, iPod and Google. Therefore, WIPO transferred the domain name to Adidas.

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Adidas AG v. Zhifang Wu, WIPO case number D2007-0032, Mar. 21, 2007. Wu was a Beijing resident who registered the domain name adidas.mobi with the intent of selling it. WIPO found that the domain name was confusingly similar to the Adidas website, Wu had no legitimate rights or interests in the domain name, and the domain name was registered in bad faith with the intent to profit either from Adidas or one of its competitors. Therefore, WIPO transferred the domain name to Adidas.

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Baden Sports, Inc. v. Kabushiki Kaisha Molten, No. 06-cv-00210-MJP, 2007 WL 1526344 (W.D. Wash. May 23, 2007). Baden and Molten are competing basketball manufacturers. Baden was granted a patent on a basketball consisting of a spherical rubber bladder, a layer of winding surrounding the bladder, and a cellular sponge layer which it marketed as Cushion Control Technology. The basketballs achieved much commercial success, including an exclusive manufacturing agreement with Adidas. Years later, Molten began producing basketballs using Dual Cushion Technology. Baden brought suit against Molten alleging patent infringement. Molten moved for summary judgment on the basis that Baden's patent was invalid for obviousness. The court denied the motion because Molten failed to meet its burden of showing that the patented basketball design would be obvious to a person of ordinary skill in the field of basketball design.

Facenda v. N.F.L. Films, Inc., No. 06-3128, 2007 U.S. Dist. LEXIS 38315 (E.D. Pa. May 24, 2007). Facenda, as executor of his late father's estate, sued the NFL, NFL Films, and NFL Properties for the unlicensed use of recordings of his father's voice in a film about the Madden 06 computer-simulation game. The district court initially granted summary judgment to Facenda

on his federal claim of false endorsement under section 43(a) of the Lanham Act and his state claim, under Pennsylvania law, of unauthorized use of name or likeness. The defendants requested certification for interlocutory appeal and a stay of the proceedings. Defendants claimed that summary judgment was inappropriate because Facenda's federal claim would have failed because there was no evidence of consumer confusion and that his state claim should have been preempted by federal copyright law. The court ruled that both issues were controlling questions of law, therefore it granted the defendants motion to certify the interlocutory appeal and stayed the proceedings pending the outcome of the appeal.

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Garden City Boxing Club, Inc. v. 704 Nostrand Corp., No. 06-CV-4875 (CBA) (RER), 2007 U.S. Dist. LEXIS 12691 (E.D.N.Y. Feb. 23, 2007); Garden City Boxing Club, Inc. v. Guerra, No. 05-CV-3712 (SLT) (SMG), 2007 U.S. Dist. LEXIS 11233 (E.D.N.Y. Feb. 16, 2007); Garden City Boxing Club, Inc. v. Alvarado, 2007 U.S. Dist. LEXIS 34719 (E.D. Cal. 2007). (May 11, 2007); Garden City Boxing Club, Inc. v. Focused Enterprises, Ltd., No. 06-CV-4874 (FB)(RER), 2007 WL 1655647 (E.D.N.Y. June 6, 2007). In these cases, Garden City Boxing Club (GCBC), a cable television operator, alleged that defendants violated 47 U.S.C.S. §§ 553 and 605 by unlawfully intercepting and exhibiting a closed circuit telecast of a boxing match event and broadcasting it at their places of business. GCBC held the exclusive license to exhibit the fight within the United States. All defendants failed to respond to the complaints, and a default was entered in favor of GCBC.

Int'l Basketball Fed'n v. Power Bilgisayar, WIPO case number D2006-1648, Mar. 27, 2007. The International Basketball Federation (FIBA), the world governing body for basketball, had registered the marks FIBA and FIBA We Are Basketball with the United States Patent and Trademark Office, European Community Office, and SAR of China. Power Bilgisayar, a Turkish company, registered the domain names of fibaworldcupturkey.com and fiba2010.com. WIPO found the marks confusingly similar, that Power Bigisayar had no legitimate rights or interests in the domain name, and the domain name was registered in bad faith using FIBA's good name for commercial purposes. Therefore, WIPO transferred the domain names to FIBA.

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J&J Sports Productions, Inc. v. Anigilje, No. 06-CV-4020, 2007 U.S. Dist. LEXIS 6566 (E.D.N.Y. Jan. 9, 2007); J&J Sports Productions, Inc. v. Coach's, Inc., No. 3:06CV-491-H, 2007 U.S. Dist. LEXIS 7897 (W.D. Ky. Feb. 2, 2007); J&J Sports Productions, Inc. v. Emanuel, No. 06 Civ. 1950 (RCC), 2007 U.S. Dist. LEXIS 7411 (S.D.N.Y. Jan. 25, 2007); J&J Sports Productions, Inc. v. Guerra, No. 06-CV-3382 (SLT) (SMG), 2007 U.S. Dist. LEXIS 11247 (E.D.N.Y. Feb. 16, 2007); J&J Sports Productions, Inc. v. Foxe, 2007 U.S. Dist. LEXIS 42209 (S.D.N.Y. 2007). (May 29, 2007); J&J Sports Productions, Inc. v. Kosoria, 2007 U.S. Dist. LEXIS 40246 (S.D.N.Y. 2007). (May 31, 2007); J&J Sports Production, Inc. v. Newhouse, No. 06 CV 0478(NG)(RER), 2007 WL 1656283, (E.D.N.Y. June 4, 2007). In these multiple cases, J&J filed a complaint seeking damages for defendants' allegedly unauthorized interception and exhibition of a television program (boxing match) to which plaintiff held distribution rights.

Joe Hand Promotions, Inc. v. Liriano, No. 06-CV-2940, 2007 U.S. Dist. LEXIS 20055 (E.D.N.Y. Feb. 15, 2007). Joe Hand Promotions (JOH) brought action against Liriano claiming that he had willfully violated sections 553 and 605 of the Communications Act of 1934. JOH alleged that Liriano intercepted and broadcast the May 7, 2005, boxing match between Castillo and Corrales, to which JOH held the exclusive license. The court granted JOH its summary judgment because it was able to demonstrate that there were no genuine issues of material fact.

Kingvision Pay-Per-View, Ltd. v. Arnoat, No. 06 Civ. 3616 (KMW) (GWG), 2007 U.S. Dist. LEXIS 13646 (S.D.N.Y. Feb. 28, 2007); Kingvision Pay-Per-View, Ltd. v. Caffe Del Popolo Inc., No. 05-CV-5631 (SLT) (JO), 2007 U.S. Dist. LEXIS 8446 (E.D.N.Y. Feb. 6, 2007); Kingvision Pay-Per-View, Ltd. v. Castillo Restaurant Corp., No. 06-CV-00617 (RJD)(KAM), 2007 U.S. Dist. LEXIS 23223 (E.D.N.Y. Jan. 16, 2007); Kingvision Pay-Per-View, Ltd. v. Espinoza, No. 05 Civ. 10178 (KMW) (GWG), 2007 U.S. Dist. LEXIS 13647 (S.D.N.Y. Feb. 28, 2007); Kingvision Pay-Per-View, Ltd. v. Guerra, 05 Civ. 10178 (KMW) (GWG), 2007 U.S. Dist. LEXIS 11215 (E.D.N.Y. Feb. 16, 2007); Kingvision Pay-Per-View, Ltd. v. Gumbs, 05-CV-5960 (SLT) (CLP), 2007 U.S. Dist. LEXIS 8451 (E.D.N.Y. Feb. 6, 2007); Kingvision Pay-Per-View, Ltd. v. Los Mellizos Bar Restaurant Corp., No. 06 CV 6251(NG)(RER), 2007 WL 1703773 (E.D.N.Y. June 8, 2007). In multiple actions, KPPV filed complaints against various defendants alleging that the defendants made an unauthorized showing of boxing matches which KPPV had the exclusive license to. KPPV claimed that defendants violated sections 553(a)(1), 605(a), and 605(e)(4) of the Communications Act of 1934. The courts found for KPPV on all claims brought.

Merino v. Wilson Sporting Goods Co., No. 06-3480, 2007 WL 1493873 (7th Cir. May 10, 2007). Merino granted a license to Wilson to produce his unpatented tennis ball machine. He then brought multiple claims against Wilson, including fraud, conspiracy, and breach of contract when it sold a modified version of the machine. Merino claimed that Wilson was guilty of fraud when it represented the modified machine as his and coerced him into accepting the new version as his invention. The district court granted summary judgment for Wilson and the Seventh Circuit upheld the decision. The courts both found that Wilson and Merino had entered into a licensing agreement through 2007, under which Wilson paid Merino all royalties agreed to and met all other obligations. The courts held that the agreement placed no responsibility on Wilson to keep the product the same, let alone bring the it to market, therefore it was actually doing Merino a service by selling an improved product and continuing to pay him.

Live Action Motor Sports, Inc. v. Davis, No. 3:06-CV-276-L, 2007 U.S. Dist. LEXIS 2196 (N.D. Tex. Jan. 9, 2007). SFX, a promoter and producer of Supercross motorcycle races, brought trademark, copyright, and unfair competition claims against Robert Davis. In response, Davis brought a counterclaim of trademark infringement against SFX. Davis broadcast webcasts of SFX races on his website, www.supercrosslive.com, without the consent of SFX. The court found that SFX had exclusive rights to perform and display the races under the United States Copyright Act and that Davis had infringed upon those rights. Davis did not deny that he webcast the races, but rather attempted to show an affirmative defense by claiming that SFX infringed on his trademark SupercrossLIVE by using Supercross LIVE on its website and in marketing campaigns. The court found that Davis's claimed mark did not qualify for copyright protection nor did SFX use it in a way that would create any confusion for consumers between the two entities. The court granted SFX's summary judgment and dismissed all of Davis's claims.

Matrix Group Ltd., Inc. v. Rawlings Sporting Goods Co., 477 F.3d 583 (8th Cir. 2007). Matrix and Rawlings brought breach of license agreement claims against each other. Matrix also brought a tortious interference claim against K2, Rawlings' parent company. The two companies had entered into a licensing contract in which Matrix was allowed to use the Rawlings trademark in producing, marketing, and selling equipment bags used for baseball, softball, basketball, and football. The agreement contained a noncompete clause and was to continue as long as certain requirements were met. Seven years after the agreement was formed, K2 acquired Worth, a competitor of Matrix in the sports bag market, and began consolidating the workforce of Rawlings and Worth. Matrix claimed that the consolidation would violate the license agreement's noncompete clause. Matrix brought a breach of contract action against Rawlings, which responded by terminating the licensing agreement. It claimed that Matrix was not meeting the agreement's requirements by failing to appropriately market the brand. Matrix responded by bringing additional claims against Rawlings for wrongfully terminating the contract by failing to not give a required thirty day notice in which Matrix could have cured its breach. Matrix also brought a tortious inference claim against K2 for causing Rawlings to breach its agreement by joining it with Worth's competitor. A jury returned a verdict for Matrix on all claims and awarded approximately $4,000,000 against Rawlings and $2,500,000 against K2. The Court of Appeals affirmed the verdicts and the awards.

Rhino Sports, Inc. v. Sport Court, Inc., Nos. CV-02-1815-PHX-JAT (Lead), CV-06-3066-PHX-JAT (Cons), 2007 WL 1302745 (D. Ariz. May 2, 2007). Sport Court (SC) was granted a preliminary injunction which barred Rhino Sports (Rhino) from using its trademarked term Sport Court. The parties then agreed to a settlement in which Rhino would permanently stop using the term Sport Court in relation to all of its products. SC later discovered that a search for any combination of the words sport and court on the Google internet search engine brought up the Rhino website and filed a new complaint to reopen the case and impose sanctions on Rhino for contempt for violating the injunction. Rhino simultaneously filed a motion to amend the injunction to allow it to buy sport and court as sponsored keywords on Google. The court denied both SC's claim of contempt against Rhino and Rhino's motion to amend. The court found that Rhino had removed Sport Court from all of its products, its website, and its advertising and had no control over what Google keywords brought up their website through natural algorithms. The court, however, would not allow Rhino to purchase sponsored keywords which would directly link their website to the words sport and court.

Sports Holdings, Inc. v. WhoisGuard Protection, WIPO case number D2006-1360, Jan. 11, 2007. Sports Holdings, a subsidiary of Hibbett Sporting Goods, operates over six-hundred stores using the marks Hibbett and Hibbett Sports. WhoisGuard registered the domain name hibbett.com as a commercial search engine with links to Hibbett and its competitors. WIPO found that the domain name was confusingly similar, WhoisGuard had no legitimate rights or interests in the domain name, and the domain name was registered in bad faith with the intent to profit from the name of Hibbett Sports. Therefore, WIPO transferred the domain name to Sports Holdings.

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Torspo Hockey Intern., Inc. v. Kor Hockey Ltd., No. 07-CV-0246 (PJS/JJG), 2007 WL 1752725 (D. Minn. June 18, 2007). Torspo and Kor are competing hockey-skate manufacturers. Out of fear that Kor would sue it for infringing its patent on an ornamental design for the base of a hockey skate, Torspo sought a declaratory judgment stating that it was not infringing Kor's patent and that Kor's patent was invalid. Kor subsequently moved for a preliminary injunction to stop Torspo from producing or selling the alleged infringing hockey skate. The court denied Kor's motion because Kor failed to establish that it would likely succeed on the merits or that it would suffer irreparable harm without an injunction. However, the court did not hold Kor's hockey-skate patent to be invalid because Torspo failed to show that the patent was invalid for obviousness.

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Triple Tee Golf, Inc. v. Nike, Inc., Nos. 05-10934, 05-11442, 2007 U.S. App. LEXIS 8807 (5th Cir. Apr. 17, 2007). Triple Tee (TT) claimed that a former employee, now an employee of Nike, used TT's trade secret to produce two golf clubs for Nike that contained adjustable weighting systems. The district court granted summary judgment for Nike, finding that the Nike clubs were not adjustable at all, therefore non-infringing. TT later discovered that Nike withheld two patent applications for golf clubs with adjustable weighting systems during the discovery process and moved for relief from the summary judgment. The district court denied the motion, ruling that the new evidence was not relevant to the issues it had decided. TT appealed the initial grant of summary judgment and the denial of post-judgment relief to the fifth circuit. The fifth circuit reversed both on the grounds that NIKE should have turned over the patent applications during initial discovery and that the applications would have been relevant to whether the district court granted the summary judgment in favor of NIKE. The court remanded the claims back to the district court for further proceedings.

Unique Sports Products, Inc. v. Wilson Sporting Goods Co., No. 1:05-CV-1816-JEC, 2007 U.S. Dist. LEXIS 21859 (N.D. Ga. Mar. 8, 2007). Unique claimed that Wilson violated section 43(a) of the Lanham Act by continuing to use the image and likeness of Pete Sampras on one of its products after its licensing agreement had expired and Unique had subsequently licensed the likeness. Unique entered into a licensing agreement with Pistol Pete, Inc. which granted it the exclusive, world-wide right to use Sampras's image on tennis ball hoppers from January 1, 2005 until December 31, 2007. In March of 2005, Unique discovered that a store in Atlanta was selling a Wilson 70 Ball Pick-up with Sampras's image on the packaging. An investigation revealed that Wilson had simply failed to remove Sampras's image from its product for several years after it was authorized to do so. Wilson moved for summary judgment claiming that Unique had no trademark rights to Sampras's image. The court disagreed and denied the summary judgment. It ruled that Unique had purchased an exclusive license for Sampras's image and that Wilson's continued, unauthorized use of the image raised a genuine issue of fact as to whether it created a likelihood of consumer confusion.

The Western Australian Turf Club, trading as Perth Racing v. Websitebrokers Ltd., WIPO case number D2007-0213, May 3, 2007. The Western Australian Turf Club (WATC) was in the business of staging horse races in Western Australia and had registered the name Perth Racing. Websitebrokers, a corporate hospitality and services business at race courses in the United

Kingdom, used the website www.perthracing.com, which diverted users to www.racmeetings.co.uk. WIPO noted that the domain name in dispute had been registered ten months prior to the registration of the Perth Racing mark, and the Western Australian Turf Club could not prove that it had a trademark or service mark. Because the domain name was registered before the trademark right was established, there could not have been bad faith. Therefore, the WIPO denied the complaint.

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LABOR LAW

Chelios v. Nat'l Hockey League Players' Ass'n, No. 06 C 5333, 2007 U.S. Dist. LEXIS 4260; 2007 WL 178326 (N.D. Ill. Jan. 18, 2007). National Hockey League (NHL) players and National Hockey League Players' Association (NHLPA) executive board members Chris Chelios, Duane Roloson, and Trent Klatt brought suit against the NHLPA, its current executive director, Ted Saskin, its president, Trevor Linden, and members of its executive committee for breach of contract, violations of the Labor-Management Reporting and Disclosure Act, fraudulent misrepresentation, conversion, and breach of good faith and fair dealing. The players claimed that in the course of negotiations between the NHL and NHLPA, during the labor dispute which lead to the cancellation of the 2004-05 season, the defendants took control of the NHLPA and negotiated a hard salary cap against the wishes of the players. The players also claimed that the NHLPA then misrepresented the actual terms of the salary cap in order to gain the players' approval needed for ratification. The defendants moved for dismissal on forum non conviens grounds. The district court granted the motion to dismiss because it found that none of the events of the labor dispute occurred within the jurisdiction of Illinois and the fact that Illinois had an NHL franchise (Chicago Blackhawks) was not enough to secure jurisdiction.

McPherson v. Tennessee Titans, No. 3:07-0002, 2007 U.S. Dist. LEXIS 39595 (M.D. Tenn. May 31, 2007). Adrian McPherson, a football player for the New Orleans Saints, brought state law claims for negligence and negligent supervision against the Tennessee Titans after he was injured by the Titan's mascot during a 2006 preseason game. McPherson was struck by a golf cart driven by the team's mascot while he was on the field warming up during halftime activities. His injuries eventuallyy lead to the termination of his contract with the Saints. The Titans removed the action to U.S. District Court asserting federal question jurisdiction under section 301 of the Labor Management Relations Act (LMRA) and claimed that the LMRA and NFL CBA preempted McPherson's state claims. McPherson subsequently moved to remand the action back to state court, claiming that the LMRA and CBA do not completely preempt his ability to bring state claims. The district court remanded McPherson's claims to state court, finding that because they had no relationship to any part of the NFL CBA and involved a dispute between employees of two different teams, they were sufficiently independent of the CBA to survive section 301 preemption.

PROPERTY LAW

Goldstein v. Pataki, Nos. 06-CV-5827 (NGG)(RML), 07-CV152 (NGG)(RML), 2007 WL 1654009 (E.D.N.Y. June 6, 2007). Owners of property in Brooklyn, New York brought suit against New York Governor George Pataki, New York City Mayor Michael Bloomberg, and Forest City Ratner Companies (FCRC), a design corporation, for condemning their property. The defendants condemned the land with the intention of using it as part of the Atlantic Yards Arena and Development Project (the project), which would consist of sixteen towers for residential and business use, along with a new sports arena for the New Jersey Nets. The plaintiffs claimed that defendants used eminent domain to take their property, violating the Takings, Equal Protection, and Due Process clauses of the Constitution. They also claimed that giving the land to FCRC was not for the public good, as publicly stated, but rather to confer a private benefit. The District Court found that the condemnation did not violate the Takings Clause because the plaintiffs failed to show that the taking was just a pretext for conferring a private benefit and not actually for the public good, and they were fairly compensated for the land. The court also dismissed the Equal Protection and Due Process claims, finding that the takings were rationally related to a legitimate government purpose and that the plaintiffs had been given satisfactory procedures through which to be heard.

Torres v. Johnston County, No. COA06-1071, 2007 N.C. App. LEXIS 1255 (N.C. Ct. App. June 19, 2007). The Torres bought property in Johnston County and built two soccer fields next to their home for use by an adult soccer league and neighborhood children. The land was zoned as Agricultural-Residential (AR), which allowed the land to be used for such things as golf courses, swimming pools, playgrounds, schools, and similar recreational uses. After several complaints, the County Planning Board told the Torres to cease using the fields and that they would need to apply for a special use permit in order to continue using the fields. The permit was denied by the County Board of Commissioners and the Torres subsequently sought a declaratory judgment. The trial court concluded that soccer fields were a permitted use under the AR zoned land and the Court of Appeals agreed. Both courts found that soccer fields were intended to fall within the similar recreational uses clause of the Johnston County Code Ordinance. The Court of Appeals stated that soccer fields draw similar crowds, sell similar food, and create similar traffic and other possible nuisances to all of the other specifically allowed uses of the land.

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TAX LAW

Campo Jersey, Inc. v. Director, Division of Taxation, 915 A.2d 600 (N.J. Super. Ct. App. Div. 2007). Campo, which had licenses to sell food within Giants Stadium and Continental Airlines Arena, challenged the ruling of the Tax Commissioner (TC) that it owed approximately $100,000 in unpaid sales tax. The TC ruled that Campos' products were intended for immediate consumption on Campos' premises making it liable for sales tax under the New Jersey Administrative Code. Campos appealed and argued that its premises were only the carts from which the products were sold, not the entire stadium, therefore all of its products were sold for off-premise consumption. The Tax Court upheld the TC's ruling, finding that the TC was

justified and in line with the intent of the tax code. It ruled that because Campos' food was prepared in other parts of the stadium and customers paid admission to enter the stadium, therefore expecting to eat Campos' products while inside, Campos' products were prepared for on-premises consumption and vulnerable to sales tax.

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Detroit Lions, Inc. v. City of Dearborn, No. 266260, 2007 WL 1611893 (Mich. Ct. App. June 5, 2007). The Detroit Lions appealed the Michigan Tax Tribunal's decision regarding the true cash value of their headquarters and training facility for the year 2002. The Lions argued that the Tribunal committed errors of law by applying the cost method in determining the property's true cash value, by determining that the property was special use property, and by not adjusting the value for functional obsolescence. The Tax Court affirmed the Tribunal's holding in whole. The court found that the practice facility was being put to its highest and best use as a football practice facility that the Lions built to their exact specifications, therefore it was a special-use facility with no functional obsolescence. The court also stated that the Tribunal has the expertise to determine which value determining method should be used so they should be given a broad discretion.

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Tschetschot v. Comm'r, No. 9498-03, 2007 Tax. Ct. Memo LEXIS 37 (T.C. Feb. 20, 2007). Tschetschot, a professional poker player, was found to have understated her taxable income for the year 2000 by $2,014. She claimed that her poker playing should have been treated as entertainment and professional sports for tax purposes and not gambling, thus not limiting her deductible losses under section 156(d) of the IRS Code. Section 156(d) limits the amount of deductible gambling losses to the extent of gambling gains. The court agreed with Tschetchot that the national perception of professional poker played in a tournament format has changed over the years. Even so, the tax court stated that it is not free to rewrite the code and that professional poker is still too similar to poker played in a pure gambling setting to differentiate between the two for tax purposes. Therefore, the court held that tournament poker is a wagering activity subject to section 156(d).

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TITLE IX

Choike v. Slippery Rock Univ. of Penn. of State System of Higher Education, No. 06-622, 2007 WL 184778 (W.D.Pa. Jan. 22, 2007). The Save Slippery Rock Wrestling Association, a group compromised of current SRU students who wish to wrestle, desired to intervene in this suit eleven months after the plaintiffs initiated it. Both the plaintiffs and defendants opposed the motion. The original plaintiffs in the action were female student-athletes who attended Slippery Rock University (SRU). SRU eliminated eight varsity sports, which included women's swimming and women's water polo. The plaintiffs sued SRU, its president, and its athletic director, claiming SRU violated Title IX's equal participation requirement and Title IX's

requirement to treat female student-athletes substantially equal to the male student-athletes. The plaintiffs also requested a preliminary injunction, seeking the immediate reinstatement of the women's swimming and water polo teams. The court granted the plaintiffs a preliminary injunction because the plaintiffs were able to show a likelihood of success on the merits, that the probability of the plaintiffs sustaining irreparable harm was high, there was a minimal amount of harm to SRU, and that the public interest favored the grant of injunctive relief. The court denied the wrestlers' motion to intervene because it was untimely, stating that the wrestlers had no legitimate reason for delaying their intervention as long as they did.

Jennings v. Univ. of N.C., 482 F.3d 686 (4th Cir. 2007). Melissa Jennings and Debbie Keller appealed a Court of Appeals grant of summary judgment dismissing their Title IX harassment claims against their former university and soccer coaches. Jennings and Keller played soccer at the University of North Carolina (UNC). At the time, Dorrance was the head soccer coach, and Palladino was the assistant soccer coach. Jennings and Keller claimed that the coaches often made offensive remarks regarding the women's sex lives during practice and at meetings. Jennings and Keller alleged the UNC violated Title IX, Dorrance violated their privacy, Dorrance and Palladino sexually harassed them, and several university officials failed to supervise Dorrance and Paladino. The district court granted summary judgment in favor of the defendants, and the Court of Appeals affirmed, because Jennings and Keller failed to raise a genuine issue of material fact about whether the comments were sufficiently severe or pervasive enough. On rehearing en banc, the Court of Appeals vacated the summary judgment on the players' Title IX and section 1983 claims because Jennings had given the university sufficient notice of harassment to raise a triable question of fact.

Williams v. Bd. of Regents of the Univ. Sys. of Ga., 477 F.3d 1282 (11th Cir. 2007). In this case, the Eleventh Circuit vacated its prior 2006 opinion in its entirety and substituted this opinion in its place, even though the same conclusions were reached on all claims. Tiffany Williams was invited to University of Georgia (UGA) basketball player Tony Cole's room, where the two engaged in consensual sex. When Cole went to the bathroom, UGA football player Brandon Williams came out of the closet and attempted to rape Tiffany. Cole also invited a teammate, Steven Thomas, to enter the room and rape Tiffany. Tiffany filed a complaint with the UGA police and withdrew from school. Tiffany sued claiming violations of Title IX by UGA, the Board of Regents, and the University of Georgia Athletic Association. Tiffany also sued the head basketball coach, the athletic director, and the president of UGA under 42 U.S.C. § 1983, as state actors who violated federal constitutional provisions. Tiffany also sought injunctive relief to require UGA to implement policies to protect students from sexual harassment by other students. The district court dismissed all claims. The appellate court remanded the Title IX claims, but affirmed the district court in regards to all other claims.

TORT LAW

Atwater v. National Football League Players Ass'n, No. 1:06-CV-1510-JEC, 2007 U.S. Dist. LEXIS 23371, 2007 WL 1020848 (N.D. Ga. Mar. 29, 2007). Six Former and current professional football players, a spouse of one player, and related entities alleged that defendants, the NFL and NFLPA, breached certain duties in connection with a financial advisor program. The NFLPA

maintains the Registered Financial Advisory Program which lists approved and registered financial advisors from which members of the NFLPA can choose to receive investment assistance. The NFLPA approved the registrations of two financial advisors, but failed to discover that they were not registered as financial advisors in any state or federal jurisdiction prior to the NFLPA registration. Plaintiffs had invested approximately twenty million dollars with the investors and requested the return of their investments when they discovered the NFL and NFLPA's oversight. The investors did not return the money and plaintiffs brought this action against the NFL and NFLPA for negligence, negligent misrepresentation, and breach of fiduciary duty. The NFL and NFLPA brought motions to dismiss claiming that the plaintiffs' claims were preempted by the terms of the collective bargaining agreement (CBA). The court denied the motion because the financial advisory program was formed outside of the CBA and therefore the rights and duties arising from it may be covered by state law and not the CBA.

Cohane v. Nat'l Collegiate Athletic Ass'n, 215 Fed.Appx. 13 (2d Cir. 2007). Timothy Cohane, the head basketball coach at State University of New York at Buffalo (SUNY Buffalo), was forced to resign after allegedly being guilty of major NCAA rule violations. Cohane brought two causes of action against the NCAA. He brought a section 1983 claim, alleging that his constitutional right to due process had been violated, and a tortious inference claim, alleging that the NCAA interfered with his employment contract with SUNY Buffalo. The district court granted the NCAA a motion to dismiss on both counts. The court followed Tarkanian and found that the NCAA's investigation of violations and recommendation that SUNY Buffalo terminate Cohane did not rise to the level of making the NCAA a state actor vulnerable to a section 1983 claim. The tortious interference claim was dismissed because Cohane failed to meet the three year statute of limitations. The Court of Appeals reversed the grant of the motion to dismiss the section 1983 claim. The appeals court ruled that the district court was wrong in interpreting Tarkanian to say categorically that the NCAA can never be a state actor when investigating a state school. The case was remanded for further proceedings.

Cottrell v. Nat'l Collegiate Athletic Ass'n, Nos. 1041858, 1050436, 1050437, 2007 Ala. LEXIS 104 (Ala. June 1, 2007). Ronald Cottrell and Ivy Williams, former University of Alabama assistant football coaches, brought defamation, false-light invasion of privacy, negligence, wantonness, and civil conspiracy charges against the NCAA after they were investigated for alleged bylaw violations. They claimed that during the course of an NCAA investigation in which they were being investigated for academic fraud and illegal recruiting practices, the NCAA released false statements about them to media outlets and published information it knew to be incorrect on its website. Cottrell and Williams claimed that the information leaked into the public was part of a conspiracy by the NCAA and others to paint them in a false light in order to ruin their names, to destroy their careers, and to make them the scapegoats in the investigation. The NCAA Committee on Infractions (COI) did not impose any sanctions on either of them for the alleged violations, but the stigma of infractions arising from the published information made it impossible for them to retain new employment as NCAA football coaches. The court affirmed a trial court grant of summary judgment for the NCAA because Cottrell and Williams failed to produce sufficient evidence to prove that the NCAA was the actual source of the false information.

Elston v. Howland Local Schools, 865 N.E.2d 845 (Ohio 2007). Jeffrey Elston, a high school baseball player, was injured when he was struck in the head by a batted ball which ricocheted around protective netting while he pitched batting practice to a fellow player. His injuries required four titanium plates and screws in his head. Elston brought a negligence claim against the school district and his baseball coach for failure to instruct, supervise, and provide protection to Elston while he used the cage. The trial court granted the school district's motion for summary judgment, holding that the district was covered by immunity. The appellate court reversed the finding, ruling that the immunity only extended to a political subdivision and not its employees who do not take part in policymaking or enforcement. Because its holding conflicted with multiple courts, the appellate court certified the question as to whether immunity from liability extends to employees of political divisions to the Supreme Court of Ohio. The Supreme Court held that since it is undeniable that the state can only act through its employees and officers, the immunity granted to the state does cover its employees' exercise of discretion or judgment, unless the employee acts in a wanton or reckless manner. That was not held to be the case, therefore the trial court's grant of summary judgment was reinstated.

Felder v. Physiotherapy Assoc., No. 1 CA-CV 05-0719, 2007 Ariz. App. LEXIS 84 (Ariz. Ct. App. May 22, 2007). Kenneth Felder, a Milwaukee Brewers' prospect, was injured when he was struck in the eye while taking batting practice at a rehabilitation facility. Felder began a physical rehabilitation program at Physiotherapy Associates (PA) after surgery for a torn elbow ligament. As part of the program, he was told to take batting practice in a caged area at the facility. During one of his sessions, a ball ricocheted and hit Felder in the left eye, causing a fracture of the orbital bone and a decrease in vision quality. He was subsequently released from his contract with the Brewers after failing three team physicals because of the eye injury. Felder brought a personal injury action against PA, claiming that the area where he was told to take batting practice was not actually designed or maintained for that purpose. The Court of Appeals affirmed a jury's verdict granting Felder eight million dollars in damages, reduced by his thirty percent fault, because it was based on the good sense and unbiased judgment of the jury.

Goettsch v. El Capitan Stadium Ass'n, Inc., No. D047921, 2007 WL 1705664 (Cal. Ct. App. June 14, 2007). Herbert Goettsch lost four fingers at a rodeo produced by El Capitan Stadium Ass'n, Inc. (El Capitan) when they became entangled in a horse's rope as he leaned against a fence to view a warm up session. A trial court granted summary judgment for El Capitan on negligence and premises liability claims, finding that they were barred under the doctrine of primary assumption of risk. It found that Goettsch should have known that horses are dangerous and their actions are an inherent danger, similar to foul balls at a baseball game. Goettsch appealed and the summary judgment was reversed. The court of appeal held that a horse tied a chain link fence is not an obvious danger, inherent to rodeos, that Goettsch could have been reasonably expected to notice.

Harting v. Dayton Dragons Professional Baseball Club, LLC, No. 21647, 2007 WL 1288541 (Ohio Ct. App. Apr. 27, 2007). Roxane Harting brought a personal injury claim against the Dayton Dragons (Dragons) and the San Diego Chicken (Chicken) after she was struck in the head by a foul ball and knocked unconscious during a Dragons game. Harting claimed that she was distracted by the antics of the Chicken when the foul ball was hit at her. She argued that the Chicken being specially hired for that specific game was an intervening cause outside the normal

course of the baseball game, which negated her duty of assumed risk in regard to accepted dangers. A Court of Common Pleas granted a summary judgment for the defendants and the Court of Appeals affirmed. Both courts found that it was perfectly reasonable for a spectator at a baseball game to observe mascots, such as the Chicken, during the course of the game. Therefore, Harting's duty to pay attention to the action on the field was not negated by the Chicken's antics.

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Knight v. Longaker, No. C 05-03481 SBA, 2007 WL 1864870 (N.D. Cal. June 28, 2007). Heather Knight brought a personal injury suit against Christopher Longaker, a sailboat owner and captain. Knight was a recreational sailor, with little-to-no training, who served as a part-time member of Longaker's crew during amateur sailboat races. Knight was injured during a race when Longaker's boat's boom and chute struck her in the shoulder, causing her to fall and strike her head on a winch. Knight based her claims on the Jones Act and the Doctrine of Seaworthiness. The court granted summary judgment for Longaker, finding that Knight did not meet the qualifications of a seaman in order to be protected under those laws. It stated that in order to be a seaman, a person needs to have a substantial connection to a vessel and be particularly vulnerable to the perils of the sea as a result of their employment. Knight was merely a voluntary sailor who was not paid and no responsibility to sail in races.

Lombardo v. Cedar Brook Golf & Tennis Club, Inc., 39 A.D.3d 818 (N.Y. App. Div. 2007). Lombardo, an experienced golfer, was injured when he slipped and fell on wet grass on the seventeenth hole of the Cedar Brook golf course. He sued the course owner to recover damages for personal injuries claiming that the course was negligently maintained and negligently designed. The court affirmed a supreme court grant of summary judgment for Cedar Brook. It found that there was no negligence because the wet grass was an open and obvious condition of which Lombardo was fully aware of prior to the accident since he had played almost a full round of golf before the accident occurred. Also, the court found that Lombardo failed to show any industry standard which would lead to a conclusion that the course was negligently designed.

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Milne v. USA Cycling Inc., No. 2:05-CV-675 TS, 2007 WL 1698277 (D. Utah June 13, 2007). Robert Milne and Ben Hall brought negligence actions against USA Cycling, the organizers of the 2004 Tour of Canyonlands (TOC) race. The TOC is an open road race in which the racers share the road with regular vehicle traffic. Milne was injured and Hall was killed when they were struck by a trailer truck during a portion of the race. They contended that the organizers of the race were grossly negligent in failing to protect them from such obvious danger. The court granted summary judgment for USA Cycling. It found that the racers had waived liability arising from USA Cycling or the racers' own negligence by signing a release agreement, and that the organizers were not grossly negligent because they had taken precautions to warn both the racers and drivers in the race area of the possible dangers through oral warnings and physical signs.

Murray v. Chicago Youth Center, 864 N.E.2d 176 (Ill. 2007). Ryan Murray, a seventh grade student at Bryn Mawr school in Chicago, was rendered a quadriplegic when he fell off a

trampoline during an extracurricular tumbling class run by the Chicago Youth Center (CYC). Murray and his parents brought action against the city board of education, CYC, and the instructor of the tumbling class. A district court found, and an appellate court affirmed, that none of the defendants were liable for Murray's injuries because they were local governmental entities that had immunity under Illinois' Tort Immunity Act. The courts found that the only way the immunity granted by the Act would not apply was if the defendants acted willfully and wantonly, which was not determined to be the case. Murray appealed the appellate court's decision that the defendants had not acted willfully and wantonly in their failure to instruct him and supervise him in the use of the trampoline. The defendants argued that the Act granted them complete immunity for any of their discretionary and supervisory decisions, regardless of whether they acted willfully or wantonly. The Supreme Court found that there was a question as to whether the defendants had acted willfully and wantonly and, if they had, whether the Act's tort immunity covered their actions. Therefore, the court ruled that it was improper for the lower courts to grant the defendants' summary judgment and remanded the case back to the circuit court for further proceedings.

Osteen v. Hopkinsville Christian County Bd. of Ed., No. 2006-CA-000288-MR, 2007 WL 1229201 (Ky. Ct. App. Apr. 27, 2007). Osteen and Kaler both owned property next to land on which the Board of Education built softball fields for interscholastic use. Both brought nuisance, inverse condemnation, invasion of privacy and diminished property value claims, and also sought injunctive relief. The trial court granted summary judgment for the defendants on all the tort claims because the board was an agency of the state which was entitled to governmental immunity from tort liability. The court also denied injunctive relief because it found that the use of the softball fields was reasonable consequence of suburban life and not a nuisance. The Court of Appeals affirmed the trial court, reasoning that it could not disturb the trial court ruling unless its decision was clearly erroneous, which the Court of Appeals did not deem it to be.

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Reyes v. City of New York, 2007 WL 738906 (N.Y. Sup. Ct. Mar. 12, 2007). James Reyes brought action against the City of New York (City) to recover damages for injuries allegedly sustained when he was struck in the face with a foul ball while coaching a high school baseball game from inside the third-base dugout. Reyes claimed that the City failed to properly maintain or repair protective fencing around the field. The City moved to dismiss Reyes' complaint because he failed to claim that the fencing on the field was defective and, alternatively, for summary judgment because his injuries were an inherent risk of the sport of baseball. The court denied both the defendant's motion to dismiss and motion for summary judgment. It held that failing to mention the defective nature of the fence was not fatal to Reyes' case because he had been given adequate notice of the general nature of the accident. Regarding the summary judgment, the court found that Reyes' had met the burden to survive summary judgment by raising the triable issue of fact as to whether his injuries occurred from a uniquely hazardous condition caused by the defective fence as opposed to an inherent assumed risk of getting struck by a batted baseball.

Rotolo v. San Jose Sports and Entm't, LLC, H029936, 2007 Cal. App. LEXIS 843 (Cal. Ct. App. May 24, 2007). The parents of Nicholas Rotolo, a teenager who died as a result of sudden cardiac arrest while participating in an ice hockey game, brought a wrongful death action against the

operators of the ice hockey facility. Rotolo collapsed during a game and attempts at manual resuscitation by parents and coaches were unsuccessful. The Rotolos claimed that the operators had a duty to notify users of the ice arena of the existence and location of newly installed automatic external defibrillators (AED). The Court of Appeal affirmed a trial court grant of summary judgment for the ice arena. The court found that California law does not impose a duty on facility operators to make invitees aware of AEDs, but rather protects operators from liability if AEDs are used unsuccessfully in an attempt to revive a person.

Sciarrotta v. Global Spectrum, 920 A.2d 777 (N.J. Super. Ct. App. Div. 2007). Denise Sciarrotta brought a personal injury action against an arena, two hockey teams, and a hockey league after she was struck in the head with a hockey puck during warm-ups prior to a Trenton Titans hockey game. She was injured when a puck ricocheted off a goalpost and into the stands. Sciarotta claimed that she had never been to a hockey game before, that she was only in the seats to watch her daughter sing the national anthem, and that the defendants were negligent in failing to keep the premises in safe condition. The Superior Court, Law Division granted summary judgment for defendants on all claims because it found that Sciarrotta had a duty to pay attention and protect herself from inherent danger. The Superior Court, Appellate Division reversed the summary judgment because it found that the arena and the team may have been negligent in failing to have sufficient safety precautions in place. The court ruled that because the injury occurred during warm-ups, when there are approximately twenty-five pucks on the ice instead of one, there may have been a higher standard of care required of the defendants at that time, which was sufficient enough to raise a genuine issue of fact to avoid summary judgment.

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Sisino v. Island Motocross of N.Y., Inc., 2007 WL 1629958 (N.Y. App. Div. June 5, 2007). Sisino, a motorcyclist, sued the owners of motocross track for injuries sustained during a practice session before a race when he was struck by an all-terrain vehicle (ATV). He claimed that by allowing ATVs to use the track at the same time at the motorcyclists, the owners increased his chances of injury, making a liability waiver he signed unenforceable. The Supreme Court, Appellate Division affirmed a Supreme Court denial of the track owners' motion for summary judgment. The court found that having ATVs on the course was an increased risk to motocross riders and was not an a risk inherent to the sport, therefore the liability waiver was unenforceable.

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Sprewell v. NYP Holdings, Inc., 2007 WL 1747159 (N.Y. App. Div. June 19, 2007). Latrell Sprewell, a former professional basketball player, brought a defamation suit against the New York Post (The Post) and writer Marc Berman. Sprewell suffered a broken right hand in 2002, while a member of the New York Knicks, and claimed that the injury occurred when he fell while on his boat in a Milwaukee harbor. Berman discovered that Sprewell's injury was common to boxers and had two witnesses who claimed to see Sprewell throw a punch at a drunk man during a party on Sprewell's boat on the night the injury occurred. Berman combined his sources' information and The Post subsequently published three articles claiming that Sprewell broke his right (shooting) hand by punching a wall during an altercation at a party on his boat. The

Supreme Court, Appellate Division, reversed the holding of the Supreme Court, New York County, which denied the defendants' motion for summary judgment. The Appellate Division held that in order to be successful on a claim of defamation, Sprewell needed to show actual malice by Berman to intentionally print false information about him or recklessly disregard that his information may be false. The court found that Berman had put forth sufficient investigative effort to show that he did not fail to seek confirmatory information.

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Stringer v. Nat'l Football League, 474 F.Supp.2d 894 (S.D. Ohio 2007). Korey Stringer, a professional football player for the Minnesota Vikings, died during training camp due to complications from heat stroke. Stringer's wife, Kelci, brought claims of wrongful death and negligence against the National Football League (NFL) and NFL Properties and a products liability claim against Ridell, the producer of helmets and shoulder pads for the NFL. The defendants filed a motion for summary judgment and argued that all of Stringer's claims were preempted by section 301 of the Labor Management Relations Act because any duties allegedly breached would have to arise from the collective bargaining agreement (CBA). The district court granted the NFL's summary judgment on Stringer's wrongful death claim, ruling that it was preempted since the court would have to interpret a clause in the CBA in order to make a final determination. However, the court denied the NFL's motion for summary judgment on the negligence claim and Ridell's motion for summary judgment on the products liability claim because interpreting the CBA was not necessary to determine the duty owed to Stringer by the parties.

Ticha v. OTB Jeans, 39 A.D.3d 310 (N.Y. App. Div. 2007). Kamila Ticha, a videographer, was injured while taking video of a specific driver in dirt bike competition when another driver lost control of his bike and slammed into her. She claimed she was told to film a bike rider wearing her customer's brand of clothing and had to stand where she was in order to get the shot. She brought a cause of action against the sponsor of the competition to recover for her injuries. She claimed that she was under inherent compulsion to film the rider from the exact spot on which she was standing. The sponsor argued that Ticha assumed the risk of her injuries by standing in a spot where riders may hit her. The Supreme Court granted summary judgment for the defendants and the Appellate Division affirmed. Both courts held that Ticha could not prove that she was under a direct order to film from exactly where she was standing or that she ever complained to anyone about the possible dangers of standing in that spot.

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Tuttle v. TRC Enterprises, Inc., 38 A.D.3d 992 (N.Y. App. Div. 2007). Tuttle brought a personal injury claim against the defendants when his motocross bike collided with a utility vehicle driven by defendant's employee after he paid to participate in a "fun day" at defendant's cycle park. The supreme court denied Tuttle's motion to dismiss the park's affirmative defenses of release and assumption of risk and granted partial summary judgment on the issue of liability. The Appellate Division reversed the supreme court decision on the affirmative defense of release, but affirmed the holdings on assumption of risk and summary judgment. The court found that the release was unenforceable as against public policy and therefore void, but the issue as to whether Tuttle

assumed the risk of the defendants' utility vehicle on the track was a question for a jury, making summary judgment inappropriate for either side.

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Webber v. Speed Channel, Inc., 472 F.Supp.2d 752 (E.D. Va. 2007). Michael Webber was injured while attending a NASCAR race at Richmond International Raceway (RIR) when he tripped over a metal crowd control barrier. He alleged that defendants were negligent in the inspection, design, clearing, locating, and otherwise setting up of the fairgrounds, and negligent per se in failing to maintain the premises in a reasonably safe condition. Webber claimed $1.2 million in damages. He claimed that the fairgrounds were so busy on the day of the race that he was unable to see the base of the crowd barrier and there was nothing to give him notice that it would be there. The district court granted the defendant's motion for summary judgment, finding that Webber was an invitee on the property during the race and that the defendant was not an insurer of Webber's safety and was not required to give notice of a danger that was open and obvious.

Young v. New Southgate Lanes, No. 88552, 2007 WL 1705095 (Ohio Ct. App. June 14, 2007). Delores Young brought a personal injury suit against Southgate Lanes when she fell while bowling during league play on an unidentified substance on the approach area of her lane. Young had bowled two games with her team during league play before she fell and stated that she was aware that an alley employee had cleaned an unidentified substance off of the approach area of her lane before her games began. The trial court granted summary judgment for the bowling alley because Young was aware of the substance and oil on the lanes is an inherent risk of bowling. The Court of Appeals reversed, finding that because the bowling alley is responsible for putting oil on the lanes, its failure to properly clean it may have caused an unreasonable risk of harm and was evidence of negligence. Therefore, there was a genuine issue of material fact as to whether the bowling alley breached its duty of care, and summary judgment was inappropriate.

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WORKERS' COMPENSATION

Dubinsky v. St. Louis Blues Hockey Club, No. ED 88767, 2007 WL 1246048 (E.D. Mo. May 1, 2007). Steve Dubinsky, a professional hockey player, sought benefits for an injury that occurred during a professional hockey game. The Labor and Industrial Relations Commission awarded Dubinsky $13,604.80 in compensation for his permanent partial disability and gave employer credit in the same amount. Dubinsky appealed the amount of the award, claiming that he was due more compensation because of the loss of income the injury would cause him in the future. The court denied Dubinsky's appeal, stating that he was fairly compensated for the time he missed and the level of injury he suffered.

MEDICAL MALPRACTICE

Hamilton v. Winder, No. 2004 CA 2644R, 2007 WL 1300807 (La. Ct. App. May 4, 2007). Jason Hamilton, a hockey player for the Baton Rouge Kingfish, brought a malpractice claim against his team physician claiming that he failed to timely and adequately diagnose an elbow injury that ended Hamilton's hockey career. Hamilton suffered an elbow laceration during a game in 2000 which lead to treatment by his team's physician, Dr. Winder. Winder performed two surgeries on Hamilton's elbow which were unsuccessful and resulted in a staph infection that needed care from an infectious disease specialist. Hamilton's elbow eventually healed, but not until after his hockey contract had been bought out and his career ended. Hamilton claimed that Winder failed to properly diagnose his injury, request timely cultures, and prescribe adequate antibiotic treatment, amongst other claims. The trial jury found in favor of Winder and Hamilton appealed. Hamilton claimed seven assignments of error, including the denial of certain jurors, the qualifying of Winder as an expert at his own trial, and the exclusion of Hamilton's expert witness. The court of appeal affirmed the jury verdict, finding that the jury was presented with two reasonable views of Dr. Winder's standard of care and its decision to believe the defense was not manifestly erroneous or clearly wrong.

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MISCELLANEOUS

Tatis v. US Bancorp, 473 F.3d 672 (6th Cir. 2007). Fernando Tatis, a former MLB player, filed suit against U.S. Bank alleging violations of Ohio Revised Code section 1304.35, breach of depositor agreement, and negligence. Tatis had opened several bank accounts with U.S. Bank within its Professional Sports Division, which provided financial services to professional athletes. Tatis opened one checking account through the Sports Division, but had numerous savings accounts linked to it to protect against overdrafts. When Tatis's checks arrived at his residence, they were intercepted by an employee of Tatis who wrote numerous checks to himself and various merchants, forging Tatis' signature on each. Bank statements, which would have alerted Tatis to the forgeries, were kept with the bank manager at Tatis' request. Even though the forgeries began in August of 2001, Tatis did not raise the issue of possible forgeries until January 2002. The district court granted U.S. Bank's motion for summary judgment because under Ohio law, if a bank makes statements available to a customer, the customer has thirty days to report possible wrongdoing. Tatis argued that the statements were not made available. The court found otherwise, ruling that Tatis knew they were available, but had elected to keep them at the bank. The Sixth Circuit affirmed the district court holding for the same reasons after a de novo review.

United States Department of Education v. National Collegiate Athletic Association, 481 F.3d 936 (7th Cir. 2007). The University of the District of Columbia (UDC) self-reported violations of NCAA bylaws by its basketball teams during the 2004-05 season. The exact nature of the violations were unknown, but were thought to have included a misuse of federal funds; therefore, the Inspector General of the Department of Education (Department) began an investigation. The Department issued a subpoena to the NCAA for documents that UDC had voluntarily submitted to the NCAA. The NCAA moved to squash the subpoena or, alternatively, for a protective order

that would bar the Department from showing the documents to anyone without a five day notice to the NCAA. The NCAA argued that requiring it to turn over documents that had been voluntarily submitted by member institutions to governmental agencies would dissuade whistleblowers from informing the NCAA of violations. The court found that the documents submitted by UDC to the NCAA did not fall within a legally recognized privilege, such as lawyer-client, and thus denied the NCAA's motions.

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