Volume 9, Number 2

{Fall/Winter 2007}

ALTERNATIVE DISPUTE RESOLUTION

Eastwood Sch. Dist. Bd. of Educ. v. Eastwood Educ. Ass'n, 875 N.E.2d 139 (Ohio Ct. App. 2007). Mitchell Freeman applied for the girls' head basketball position at Eastwood High School, which had an impressive winning record during the past several years. An advisory group of former coaches and players determined that Freeman was not qualified for the position. The board denied Freeman's application and hired an individual that was not a certificated teacher. Freeman and his bargaining representative, Eastwood Education Association, filed a grievance claiming that the question was whether Freeman was qualified to be a head coach rather than the higher standard Eastwood espects from its coach. During the arbitration hearing, the arbitrator ruled in favor of Freeman because the collective bargaining agreement requires hiring a bargaining unit employee before considering a non-employee. The school district moved to vacate the arbitrator's award, and the trial court vacated the award because the arbitrator had incorrectly relied on extraneous statutory requirements not included in the parties' agreement. The appeals court ruled that the trial court erred when it concluded the agreement did not incorporate provisions of the law, and the decision was reversed.

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Morton v. Steinberg, No. G037793, 2007 Cal. App. Unpub. LEXIS 8564 (Cal. Ct. App. Oct. 22, 2007). Chad Morton was a football player in the NFL. He sued his agent, Leigh Steinberg, alleging breach of contract, negligence, misrepresentation, fraud, breach of fiduciary duty, unjust enrichment, and violation of the Miller-Ayala Athlete Agents Act. Steinberg borrowed $300,000 from Morton in June 2003 and then defaulted on the loan. He offered Morton a five percent interest in a restaurant in China to cover the loan, and Morton agreed. In June 2004, Steinberg borrowed an additional $200,000 from Morton and defaulted on this loan as well. Steinberg filed a motion to compel arbitration because the claims against him were within the scope of the representation agreement between Steinberg and Morton. The trial court denied the motion for arbitration, and Steinberg appealed. The appellate court affirmed the trial court's decision because the contract that Steinberg allegedly breached was not the representation contract, and it did not include an arbitration clause.

Scout.com, LLC v. Bucknuts, LLC, No. C07-1444 RSM, 2007 U.S. Dist. LEXIS 87491 (W.D. Wash. Nov. 16, 2007). Scout.com provides information about high school, college, and professional sports teams. The defendants own websites that provide information about The Ohio State University, the University of Texas and Stanford University athletic teams. The defendants wanted to pursue a class arbitration claim so they filed a complaint with the American Arbitration Association (AAA), claiming that class authorization was authorized. Scout.com claimed that the defendants should be required to pursue their arbitration claims individually. Because there was some ambiguity within the agreement, the court determined that it could not force the defendants to proceed with their arbitration claims individually.

Seattle v. Prof. Basketball club, L.L.C., No. C07-1620RSM, 2007 U.S. Dist. LEXIS 83139 (W.D. Wash. Oct. 29, 2007). The Professional Basketball Club (PBC) purchased the Seattle Supersonics and the Seattle Storm on July 18, 2006. As part of the sale, PBC agreed to assume a lease in Key Arena that was agreed upon between its predecessor and the City of Seattle. The lease required the Sonics to play all games in Key Arena through the 2009-2010 NBA season. The City of Seattle sued PBC, claiming that its actions have been inconsistent with the lease obligations. PBC has failed at attempts to build a new arena and has filed a demand for arbitration, but the City of Seattle claimed that the lease is not subject to arbitration because the underlying dispute deals with Article II (Term; Use Period). However, PBC claims the dispute deals with Article XXVI (Default and Remedies Therefore), which requires arbitration. The court agreed with the City of Seattle because PBC is seeking to break the terms of the lease under Article II, which is excluded from arbitration.

AMERICANS WITH DISABILITIES ACT

Badgett v. Ala. 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 high school student with cerebral palsy, is a member of the track and field team at Oxford High School. The Alabama High School Athletic Association (AHSAA) created a wheelchair division for the state track and field championships. Badgett was told she could compete in the wheelchair division, but she would have been the only competitor. Due to lack of competition, which could affect her eligibility to receive a college scholarship, she preferred to compete with the able-bodied competitors. Badgett claimed that the Americans with Disabilities Act (ADA) and the Rehabilitation Act required the AHSAA to accommodate her request. The court determined that Badgett's request to compete against able-bodied athletes was not reasonable because it would raise fairness, administrative, and safety concerns.

Schmitz v. Eau Claire, No. 07-C-183-S, 2007 U.S. Dist. LEXIS 78941 (W.D. Wis., Oct. 16 2007). Joan Schmitz umpired numerous softball games for the City of Eau Claire Parks and Recreation Department from 1998-2001. In 2001, Schmitz was in a car accident, and she had her left arm and left leg amputated. As a result of her limited mobility, Schmitz was assigned a partner to umpire a limited number of softball games and was not chosen to umpire the year end tournament in 2002. In 2003, Schmitz was evaluated by a neutral evaluator who determined she could umpire games by herself. Schmitz filed two disability discrimination complaints with the Equal Rights Division (ERD) in 2003. Following several complaints about Schmitz by players in

2003, she was given a final warning by the Superintendent of Recreation. After additional incidents involving Schmitz, she was not rehired for the 2004 season. However, she was not informed about these incidents prior to not being rehired. Schmitz filed a retaliation claim with the ERD, claiming that she was not rehired because of her disability. The defendant's motion for summary judgment was denied because there was a genuine issue of material fact about why Schmitz was not rehired.

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ANTITRUST LAW

Madison Square Garden, L.P. v. Nat'l Hockey League, No. 07 CV 8455 (LAP), 2007 U.S. Dist. LEXIS 81446 (S.D.N.Y. Nov. 2, 2007). In an effort to strengthen its league brand, the National Hockey League and its member clubs decided that the League's and Clubs' websites would be included on one integrated network. The Rangers, owned by Madison Square Garden, continued to operate a website outside of the NHL platform. On September 20, 2007 the NHL sent a letter to the Rangers informing it that beginning on September 29, it would be fined $100,000 for each day it operated its website outside of the NHL platform. The Rangers filed for injunctive relief on September 28, 2007, alleging that the NHL engaged in anticompetitive practices. The court did not find an antitrust violation because the league's restriction provided a pro-competitive effect, and it was necessary to promote league unity.

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CONSTITUTIONAL LAW

Bennett v. Lucier, 239 Fed. Appx. 639 (2d Cir. 2007). Bennett was a teacher's aide and the lacrosse coach at North Colonie Central School. The school initiated disciplinary proceedings against another teacher's aide, and Bennett called a parent to investigate the report. About two months later, Bennett was charged with disciplinary infractions, and was dismissed from his coaching position, which he claimed was in retaliation for his support of the teacher aide and a violation of free speech. Bennett moved for injunctive relief, but the motion was denied by the district court. The Court of Appeals affirmed the District Court's decision because there was no evidence that the injunction would prevent the deprivation of free speech.

Flagler v. U.S. Attorney D.N.J., No. 06-3699 (JAG), 2007 U.S. Dist. LEXIS 70916 (D.N.J. Sept. 25, 2007). The defendant claimed that the 1992 Professional and Amateur Sports Protection Act (PASPA) violates the 10th Amendment. PASPA prohibits sports gambling, but had a grandfather provision which allows states a one-year window of opportunity to legalize sports wagering conducted exclusively in casinos. The plaintiff claimed that because the Constitution does not mention sports gambling, the states should be allowed to determine whether it should be legalized. The defendants filed a motion to dismiss because the plaintiff did not have constitutional standing. The court dismissed the complaint due to lack of standing because the right to gamble is not a legally protectable interest, and he did not show that he suffered any harm.

Lowery v. Jefferson County Bd. of Educ., 522 F. Supp. 2d 983 (E.D. Tenn. 2007). The plaintiffs' sons were dismissed from the Jefferson County High School varsity football team. The plaintiffs claimed that their First Amendment rights were denied when they were prohibited from speaking at a Jefferson County School Board meeting regarding their sons' dismissal from the team. The School Board claimed that the plaintiffs were not put on the December agenda because they had already spoke at the November meeting and the School Board had no authority over the football program. The plaintiffs still could have requested to speak at the meeting, but they did not do so. The court found that the plaintiffs had ample opportunity to voice their concerns; therefore, it affirmed the jury's decision in favor of the defendants and granted attorneys' fees to the defendants.

Myers v. Loudoun County Sch. Bd., 500 F. Supp. 2d (E.D. Va. 2007). Edward Myers has three children that are students in the Loudoun County Public Schools (LCPS) and has actively protested the daily recital of the pledge of allegiance at LCPS schools. Myers attempted to purchase an ad in an LCPS athletic program advertising the website www.CivilReligionSucks.com, but he was informed that the word sucks was inappropriate for an athletic program. Myers sued the school district, claiming that his First Amendment rights were violated when he was denied the opportunity to purchase advertising space after changing the word sucks to sux. The court ruled in favor of the defendant because the word sucks could reasonably be considered offensive.

Sheehan v. San Francisco 49ers, Ltd, 153 Cal. App. 4th 396 (Cal. Ct. App. 2007). The Sheehan's sued the San Francisco 49ers for violating the California Constitution when it instituted a patdown policy prior to entering the stadium for home games. The court ruled in favor of the 49ers because there was no invasion of privacy. Although the Sheehans had a legally protected interest in not having unwanted patdowns, they also had advance notice of the patdowns and could have walked away if they did not want to be subjected to the them prior to entering the stadium.

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Sidney v. Sprader, No. 3:05-CV-905 (RNC), 2007 U.S. Dist. LEXIS 72596 (D. Conn. Sept. 29, 2007). Sidney was a physical education teacher and a coach for the girls' track and cross-country teams at Staples High School. The collective bargaining agreement required people who had been coaches for at least two years and received a satisfactory written evaluation at the completion of the second year to be offered employment for the succeeding year. During the fall of 2003, Sidney coached the girls' cross country team and received a positive written evaluation following the season. However, parents soon complained about inappropriate behavior. Sidney admitted that he talked with female students with the door closed and on occasion discussed sexual activity with them if they brought it up first. In March, 2004, Sidney was informed that his coaching contract would not be renewed, but he could retain his position as a PE teacher. Sidney appealed the decision, but he lost. He had further opportunity to appeal to the superintendent but chose not to do so, and he accepted another job with a different school district in August, 2004. Sidney claimed he had been terminated without due process and that two individuals had tortiously interfered with his employment. The court dismissed the claim because

Sidney had an opportunity to appeal to the superintendent and did not do so, which constituted adequate due process.

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Smalkowski v. Hardesty Public Sch. Dist., No. CIV-06-845-M, 2007 U.S. Dist. LEXIS 60733 (W.D. Okla. Aug. 17, 2007). Chester and Nadia Smalkowski are the parents of N.S., a former Hardesty High student and member of the girls' basketball team. The plaintiffs alleged that N.S was dismissed from the basketball team and suspended from school because she refused to participate in a team prayer prior to and after games and was falsely accused of threatening another student. The defendants claim that N.S. took other players' shoes, was consistently late to practice, and made derogatory statements about the team, which affected team chemistry. In an attempt to try to get N.S. reinstated, Chester went to the principal's house and a physical altercation occurred. Chester was charged with aggravated assault by defendant Kennedy, the Texas County District Attorney. The plaintiffs claimed that defendant Kennedy, in her individual capacity, conspired with other people to prosecute Smallkowski for his religious beliefs. Kennedy moved for summary judgment. The court granted summary judgment because it found Kennedy's actions to be in preparation and during Smallkowski's trial, which allowed absolute immunity.

USA Baseball v. New York City, 509 F. Supp. 2d 285 (S.D.N.Y. 2007). In an effort to prevent injuries to high school baseball players, the New York City Council passed an ordinance that did not allow high school students participating in competitive baseball games sponsored by public or private school in New York City to use non-wood bats. The plaintiffs consist of the high school baseball players, parents and coaches of the high school players, manufacturers of sporting goods, the national High School Baseball Coaches Association, and USA Baseball. The plaintiffs sued the City of New York, claiming the bat ordinance violated the Due Process and Equal Protection clauses, as well as the dormant Commerce Clause. Both parties moved for summary judgment. The court granted summary judgment for the defendants. The ordinance did not violate the equal protection and due process clauses because it has a rational basis in trying to prevent injuries. The court also determined the ordinance was not likely to have a significant impact on interstate commerce, and therefore, did not violate the dormant Commerce Clause.

CONTRACT LAW

AT&T Mobility, LLC v. Nat'l Ass'n for Stock Car Auto Racing, Inc., 494 F.3d 1356 (11th Cir. 2007). On June 17, 2003, NASCAR and Sprint Nextel entered into a ten year agreement, which provided that Sprint Nextel would be the Official Series Sponsor of the NASCAR Nextel Cup Series. The exclusive agreement defined the category of exclusivity and provided for a list of competitors, but there were some narrow exceptions that allowed certain cars already sponsored by Sprint's competitors to continue sponsoring those cars. One of those cars, Car #31, was sponsored by Cingular Wireless. NASCAR and Car #31 entered into an agreement that would

allow Cingular to continue sponsoring Car #31. Due to a merger, Cingular Wireless later became known as AT&T and Car #31 submitted plans in January 2007 to include the AT&T logo on the back of the car. NASCAR did not approve the plan because it believed it would violate the Sprint Nextel Agreement. AT&T sued NASCAR, claiming breach of contract and breach of the implied covenant and requested a preliminary injunction preventing NASCAR from interfering with its right to use the AT&T logo on Car #31. The district court granted an injunction in favor of AT&T because AT&T was a third party beneficiary. The appellate court vacated the injunction because AT&T did not have standing. AT&T did not have standing because the Agreement was between Car #31 and NASCAR, and it was not intended to benefit Cingular or its successor, AT&T.

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Cavaliers Operating Co. v. Ticketmaster, No. 1:07 CV 2317, 2007 U.S. Dist. LEXIS 80226 (N.D. Ohio Oct. 30, 2007). Plaintiff Flash Seats markets secondary-ticketing software, which allows Cleveland Cavaliers ticket holders to resell their tickets to certain games. Defendant Ticketmaster sells tickets to numerous entertainment events and has marketed secondary-ticketing software that is substantially similar to Flash Seats' software. The Cavaliers and Flash Seats sued Ticketmaster for breach of contract, tortious interference with contract, and antitrust violations. However, Ticketmaster had also filed a suit in California. The court stayed the proceedings pending the outcome of the California case because that lawsuit had been filed thirteen days prior to this lawsuit.

Engelke v. Athle-Tech Computer Systems, Inc., No. 2D06-3133, 2007 Fla. App. LEXIS 15197 (Fla. Ct. App. Sept. 28, 2007). Athle-Tech made video-editing equipment for college and professional sports teams that allowed coaches to manipulate and simultaneously view multiple video clips. In 1993, Athle-Tech and Montage entered into an agreement where Montage was to develop Coaches Graphic User Interface (GUI) for Athle-Tech. Athle-Tech claimed that Montage failed to perform its obligations. Engelke, who worked for Montage, claimed that Athle-Tech was only able to secure two customers, which frustrated Montage. Montage then began producing a product called Omega. Athle-Tech claimed that Omega was the same product as Coaches GUI, but Montage claimed it had split the source code into two code bases and was using one for Athle-Tech and one for a competitor. In 1997, David Engleke formed Digital Editing Services (DES) and Brian Engelke was an employee there. DES purchased the license to the Omega system from Montage in 1999, and Athle-Tech claimed this transaction was completed to avoid any liability to it. The Englekes, who owned all of the stock in DES, sold their shares to Pinnacle Systems for $9.4 million in addition to an earnout. The earnout would be determined based on sales of Omega in the year following the acquisition. Athle-Tech sued DES, Pinnacle, Montage, and the Englekes. All parties except the Englekes settled. The jury awarded damages to Athle-Tech and the Englekes appealed, arguing that a portion of the earnout was from products other than Omega. The court remanded the case for a new trial to determine the amount from the earnout that was specifically related to the Omega product.

Fireman's Fund Ins. Co. v. Univ. Ga. Athletic Ass'n, No. A07A1227, 654 S.E.2d 207 (Ga. Ct. App. 2007). Fireman's Fund Insurance provided liability insurance for the University of Georgia Athletic Association (UGAA). University of Georgia student-athletes were given the option to purchase the disability insurance. On October 23, 2003, Decory Bryant told assistant athletic director Hoke Wilder that he would like to purchase a policy. Wilder got a quote from ESIX Entertainment and Sports Insurance Experts saying that Bryant could purchase a $500,000 policy for $5,103 from Lloyd's of London. Wilder mailed ESIX a letter saying Let's bind coverage on Decory Bryant, but he did not include a coverage request form signed by Bryant, which is required to bind coverage. On October 25, 2003, Bryant suffered a severe spinal cord injury while playing football. Bryant was given a coverage request form to sign on October 29, 2003, but ESIX informed Wilder that Lloyd's of London refused to backdate the coverage to October 23. Bryant sued UGAA, claiming breach of fiduciary duty, breach of contract, and negligence. UGAA notified Fireman's Fund Insurance and requested defense and indemnification, but it refused to provide a defense. UGAA then filed a third-party complaint to determine whether Bryant's complaint is covered by the liability insurance policy. The policy includes provisions that exclude coverage for any claim arising out of failure to keep insurance or any claims related to bodily injury. The court ruled that neither provision allowed Fireman's Fund Insurance to not provide a defense because the failure to keep insurance claim did not contemplate the circumstance with Bryant, and the bodily injury was not a necessary element of the claim.

HOK Sport, Inc. v. FC Des Moines, L.C., 495 F.3d 927 (8th Cir. 2007). Kyle Krause owns about 90% of FC Des Moines, which owns The Menace, a minor league soccer team. Krause wanted a new stadium built for the Menace. In November, 2001, Krause created a nonprofit organization called TSF, which was formed to construct and maintain the stadium. Although TSF was created as a separate entity, Krause did not always treat The Menace and TSF as separate entities. The Menace selected and contracted with HOK Sport as the architect for the stadium. On December 4, 2001, Krause signed a letter agreement with HOK Sport, agreeing that HOK Sport would provide the architectural services for the stadium. The initial estimate for the cost of the stadium was between $13.3 and $15.4 million; however, the final estimate was over $19 million. HOK eventually stopped work when the City of Urbandale decided not to move forward with the stadium. HOK Sport submitted an invoice to The Menace for over $700,000 for prior work done, but it never paid. HOK Sport sued TSF and The Menace claiming breach of contract and unjust enrichment. HOK Sport also sought to hold Krause personally liable for disregarding corporate form. The jury found TSF and the Menace liable for breach of implied contract and unjust enrichment and awarded HOK Sport $436,800. The jury also found that Krause should be personally liable for damages against TSF. TSF, The Menace, and Krause appealed. The court affirmed the jury's decision because Krause had pierced the corporate veil and disregarded the corporate form.

In re Palyani, No. 118347/06, 2007 N.Y. Misc. LEXIS 7262 (N.Y. Sup. Ct. Oct. 25, 2007). Palyani obtained a license to box in Pennsylvania and South Carolina. He applied for a license in New York, but was not given one because an MRI showed signs of previous head trauma. However, instead of denying his application, he was put on an indefinite suspension, which resulted in him being placed on a national suspension list. Palyani sought to have his name removed from the suspension list. He claimed that the New York State Athletic Commission's (Commission) action was not authorized by statute or regulation to place him on the suspension

list because he was never issued a New York boxing license. The court required the Commission to terminate Palyani's suspension because it does not have the authority to indefinitely suspend someone who has submitted an application but has not actually been licensed.

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Mullen v. Parchment Sch. Dist. Bd. of Educ., No. 275116, 2007 Mich. App. LEXIS 1704 (Mich. Ct. App. July 3, 2007). Mullen was a tenured teacher in Parchment School District. He was also hired on a year-to-year basis as the head cross country coach and head women's track coach. Mullen's coaching contracts were not renewed at the end of the 2004-05 season. He sued the school district for breach of contract. The court ruled in favor of the school district because the fact that the school district did not renew the contracts after they had expired does not constitute breach of contract.

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O'Brien v. The Ohio State Univ., 2007 Ohio 4833 (Ohio Ct. App. 2007). O'Brien was terminated as the head men's basketball coach at The Ohio State University (OSU) with three years remaining on his contract. O'Brien sued OSU for breach of contract. OSU claimed that when O'Brien lent money to a basketball recruit, which was an NCAA violation, he committed a material breach. The trial court ruled that OSU breached the contract because O'Brien's actions did not constitute a material breach. OSU appealed and O'Brien cross-appealed, claiming that the trial court miscalculated damages. The appellate court determined that O'Brien's actions constituted a material breach because his action constituted a blatant disregard for the fundamentals of fair competition, which denied OSU of many benefits of the contract; therefore, OSU had just cause to terminate O'Brien.

Parrish v. Nat'l Football League Players Ass'n, No. C 07-00943 WHA, 2007 U.S. Dist. LEXIS 68355 (N.D. Cal. Sept. 6, 2007). Players, Inc. is a subsidiary of the National Football Players Association that is responsible for marketing active and retired players by licensing their images. Retired players may join the NFLPA by paying annual dues. The retired players may then sign group licensing agreements. The plaintiffs claim that only 358 of 3500 retired players received payments from Players, Inc. The plaintiffs sued the defendants on behalf of a class of retired NFL players claiming that the defendants unfairly competed and wrongfully interfered with their licensing opportunities because they dominate the market for licensing the names and likenesses of current and former NFL players by having exclusive agreements with Topps and Electronic Arts, a videogame producer. The court dismissed the case because there was no evidence that many of the plaintiffs had ever paid NFLPA dues or signed a group licensing agreement.

Munster v. Continental Cas. Co., No. 2:07-CV-044RM, 2007 U.S. Dist. LEXIS 59249 (N.D. Ind. Aug. 10, 2007). Gary Booth sued the Town of Munster (Munster) and the Town of Munster Parks and Recreation Department (Munster Parks) after he was hit in the head by a baseball while at a Munster Little League Baseball game. Munster Parks held a liability insurance policy with Continental Casualty Company (Continental), but it declined to defend or indemnify Munster. Munster sued Continental, claiming it had a duty to defend it under the liability policy held by Munster Parks. Although a town may be held liable for a department's actions under the

theory of respondeat superior, this does not make the two governmental units one entity for insurance purposes. Therefore, because Munster was not listed as a named insured in the policy, Continental had no duty to defend the Town of Munster.

Washington v. Bert Bell/Pete Rozelle NFL Player Retirement Plan, 504 F.3d 818 (9th Cir. 2007). Victor Washington played in the NFL and was a participant in the Bert Bell NFL Retirement Plan (Old Plan) until it became the Bert Bell/Pete Rozelle NFL Player Retirement Plan (New Plan) after a merger. Both Plans provided support for former players who have been disabled. The Old Plan classified injuries as either football or non-football injuries. In 1983, Washington made a claim and an arbitrator determined that he was eligible to receive non-football benefits. The football benefits would have resulted in larger payments, but the arbitrator determined the injury must have resulted in a single football injury in order to receive football benefits. Around the same time, another player, Donald Brumm, appealed to a federal court regarding the definition of what defined a football injury for purpsoes of receiving football benefits. The court determined that a football injury could result from a single injury or a cumulative one. As a result of this decision, the Old Plan was amended, and the New Plan now has four different types of classifications. Washington applied for reclassification, but was denied. He hired an attorney and eventually settled his claim, but was never made aware of the Brumm decision. Washington sued claiming that The Plan breached their fiduciary duty by failing to disclose that ruling. The trial court granted summary judgment for Washington and The Plan appealed. The appellate court reversed and ruled in favor of The Plan because the Brumm decision concerned the Old Plan, and Washington's decision concerned the New Plan.

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CRIMINAL LAW

Brown v. Texas, No. 13-05-711-CR, 2007 Tex. App. LEXIS 5549 (Tex. Ct. App. July 12, 1007). Alexander Brown was the Academic Coordinator for the University of Houston Athletic Department. The Athletic Department loaned textbooks to scholarship athletes, and Brown was in charge of selling the used textbooks back to the bookstores. After another employee noticed discrepancies between the amount paid by the bookstores and the amount deposited, Brown was arrested and charged with theft by a public servant. Brown was convicted by a jury, and during his penalty phase admitted that he stole from the athletic department. Brown appealed, claiming there was bias of the trial court against his lead counsel and he should have been able to introduce evidence regarding athletic department's book distribution program. The court affirmed the trial court's decision because there was no evidence that there was bias against the lead counsel and since Brown admitted to stealing during the penalty phase, he could not appeal based on exclusion of evidence.

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Sadler v. Commonwealth, 654 S.E.2d 313 (Va. Ct. App. 2007). Sadler was convicted of taking indecent liberties with a minor while he was in a custodial or supervisory relationship. Sadler

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

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DISCRIMINATION LAW

Allen-Sherrod v. Henry County Sch. Dist., No. 07-11985, 2007 U.S. App. LEXIS 22504 (11th Cir. Sept. 18, 2007). Deborah Allen-Sherrod filed this suit on behalf of her son, Anthony Stallworth. Anthony was cut from the varsity basketball team his senior year and claims that it was due to racial discrimination and retaliation. About eight months prior to being cut from the team, two middle school students walked into the high school gym. The middle school students were told to leave, and while they were leaving Coach Edinger called them thugs. One of the students' mothers walked in and while being escorted out, a physical altercation occurred. Anthony heard the exchange and went home and told his mom. His mom called a member of the school board to discuss the incident and police were investigating the incident as an assault. Eight months following the incident, Anthony was cut from the varsity team by Coach Edinger. Anthony claims that he did not make the team because Coach Edinger knew his mother had reported the derogatory remarks to the school board. The district court granted summary judgment to the defendants because the plaintiffs were unable to prove that Edinger had knowledge Anthony's mom had reported the derogatory remarks. The plaintiffs appealed, claiming that they should have been able to admit evidence about Edinger's credibility as a witness. The appellate court affirmed because it is not appropriate to admit evidence about a witness's credibility during the summary judgment phase, and the plaintiffs did not show any evidence that Edinger knew that Anthony's mother had reported the derogatory remarks to the school board.

Amie v. El Paso Indep. Sch. Dist., No. 07-50666, 2007 U.S. App. LEXIS 26210 (5th Cir. Nov. 8, 2007). Roshern Amie, an African American, had been employed with the El Paso Independent School District (EPISD) since 1984 as a teacher. Amie also coached basketball from 1984-1997. In 2005, Amie applied for a coaching position at Bowie High School. Peter Morales, a Hispanic, was hired instead of Amie. EPISD claimed it hired Morales because it believed he would be better to suited to improve graduation rates and make sure the student-athletes performed well in the classroom and on the court. Amie sued, claiming that EPISD engaged in racial discrimination. Amie had relied on an affidavit by a former employee of EPISD that stated Amie was more qualified and should have been hired. The district court did not admit the affidavit and granted summary judgment for EPISD because it had shown a legitimate reason for hiring Morales, and Amie was unable to prove pretext. Amie appealed. The appellate court affirmed the judgment because the former employee's statement about Amie being the better candidate was purely speculative, especially because Morales had both high school and college coaching

experience and a Masters Degree in Physical Education. However, Amie only had high school coaching experience and did not have a master's degree.

Brust v. Regs. Of Univ. of Cal., No. 2:07-cv-1488 FCD/EFB, 2007 U.S. Dist. LEXIS 91303 (E.D. Cal., Dec. 12. 2007). Several female students who played club sports at the University of California Davis (UCD) claimed that UCD violated Title IX by eliminating female varsity athletic participation and scholarship offers. During the 2005-06 academic year, women were 56% of the student population, but represented only 50% of the members on the varsity athletic teams at UCD. UCD claimed that the 6% disparity qualified as being substantially proportionate, and therefore, compliant with Title IX and filed a motion to dismiss. The Title IX claim was not dismissed because the question of whether the 6% disparity qualified as being substantially proportionate was a question of fact. However, the claims based on the Equal Protection Clause, the California Unruh Civil Rights Act, and the California Constitution were dismissed because Title IX provides the appropriate remedy rather than the Equal Protection Clause and the Board of Regents are immune from state law claims.

Choike v. Slippery Rock Univ., No. 2:06-cv-00622-DWA, 2007 U.S. Dist. LEXIS 57774 (W.D. Pa. Aug. 8, 2007). In this class lawsuit, members of the women's swimming, water polo, and field hockey teams at Slippery Rock University (SRU) claimed that SRU violated Title IX when it dropped those three teams. The court granted a preliminary injunction which enjoined the elimination of any teams and required reinstatement of any teams that were already eliminated. The parties participated in settlement negotiations supervised by a judge and agreed to a $300,000 fund set up for promoting women's athletics and changes in SRU's practices and policies. Once the parties agreed to a settlement, they sought to have it approved by the court. The court determined the settlement was fair based on the fact that there was extensive discovery completed, further litigation would be costly, the class did not object to the settlement, and the settlement is within the range of what could result if the case went to trial.

Cmtys. For Equity v. Mich. High Sch. Athletic Ass'n, No. 1:98-CV-479, 2007 U.S. Dist. LEXIS 50970 (W.D. Mich. July 13, 2007). About nine years ago, the court determined that Michigan High School Athletic Association's (MHSAA) scheduling of interscholastic athletic seasons in Michigan violated the Equal Protection Clause, Title IX, and Michigan's Elliot-Larsen Civil Rights Act. The Court enjoined MHSAA from its scheduling and ordered it to submit a Compliance Plan rescheduling sports seasons to comply with the law. In 2002, the Court approved MHSAA's Amended Compliance Plan. The case was affirmed by the 6th Circuit twice, but the plaintiffs sought to intervene to keep the Lower Peninsula girls' tennis season in the fall. The court determined that the intervention was not timely because the case had been litigated for nine years, and intervention could have happened sooner. Further, allowing intervention would require the defendants to rewrite the Compliance Plan, which would delay implementation. The purpose of the litigation was to ensure the achievement of equity between scheduling both girls and boys sports seasons rather than to ensure that all girls' sports had an advantageous season. Therefore, the plaintiffs were adequately represented during the litigation and did not need to intervene.

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Cookson v. Brewer Sch. Dept., No. CV-06-223, 2007 Me. Super LEXIS 232 (Me. Super. Ct. Nov. 19, 2007). Keely Cookson claimed she was discriminated against when she was not rehired as the softball coach for the Brewer School Department (BSD). Cookson is a homosexual and claimed that BSD hired a heterosexual coach with less experience than her. She also claimed slander per se when the Superintendent told parents he knew things about Kelly that he could not share publicly. Cookson claimed that this statement implied she had committed improper acts and it harmed her professional career. The school district claimed that she was not rehired because she had a history of allowing students to participate in hazing activities. The court determined that Cookson was not discriminated against because BSD was able to provide a non-discriminatory reason for not rehiring Cookson. The court also failed to find slander per se because the Superintendent new information that he could not reveal, which means his statement was a true fact, not slander per se.

E.C. v. Daeschner, No. 3:06CV-643-S, 2007 U.S. Dist. LEXIS 64078 (W.D. Ky. Aug. 27, 2007). E.C.'s mom filed a pro se complaint as next of friend for her daughter, claiming that the cheerleading coach discriminated against her. The court dismissed the case because a parent cannot bring a suit as next of friend for a child if they are not represented by an attorney.

Equity in Athletics, Inc. v. Dept. of Educ., 504 F. Supp. 2d 88 (W.D. Va. 2007). Equity in Athletics claimed that the 1979 Policy Interpretation and its 1996, 2003 and 2005 Policy Clarifications violate the Due Process Clause and the Equal Protection Clause by allowing athletic departments to drop men's programs in order to comply with Title IX. After James Madison University eliminated ten athletic teams, Equity in Athletics sought a preliminary injunction to prevent JMU from dropping the programs. The court denied the preliminary injunction because none of Equity in Athletics' claims had a strong likelihood of succeeding, and there is a public interest in allowing athletic departments to determine how they should run themselves.

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Harrison v. Carrol Indep. Sch. Dist., No. 4:06-CV-424-A, 2007 U.S. Dist. LEXIS 65127 (N.D. Tex. Aug. 31, 2007). Harrison, an African American, was a teacher and an assistant coach for Carroll Independent School District (CISD). In 2004, Harrison applied for the head coaching position of the girls' basketball team, but was not hired. Although Harrison had seventeen years of coaching experience as an assistant coach, members of the interview committee did not believe he was ready to be a head coach. Shortly after Harrison learned he was not selected, he resigned. He did not mention anything about racial discrimination in his exit interview. However, he later sued CISD for racial discrimination. The court dismissed the case because the defendants provided evidence that the interview committee determined that head coaching experience was an important factor in making a hiring decision, and the person that was hired had seven years of head coaching experience.

Hankinson v. Thomas County Sch. System, No. 07-11948, 2007 U.S. App. LEXIS 28205 (11th Cir. Dec. 3, 2007). Hankinson coached the girls' softball team from 2000 to 2003 at Thomas County High School. In 2002, administrators began receiving complaints about her performance and in January, 2003 she received a written notice that her performance needed to improve. Due

to continuing complaints, Hankinson was fired in late 2003. She claimed that she was fired because of her sex and that she received a lower salary than the boys' baseball coach. The district court granted summary judgment for the school district on both claims. The appellate court affirmed the sexual discrimination claim because the school district was able to show non discriminatory reasons for firing Hankinson. However, summary judgment was improper on the Equal Pay Act claim because there was a genuine issue of fact whether the coaching duties of the girls' softball team and the boys' baseball team were substantially similar.

Hess v. Ramona Unified Sch. Dist, No. 07cv00049 W (CAB), 2007 U.S. Dist. LEXIS 67687 (S.D. Cal. Sept. 13, 2007). During previous proceedings, Ramona Unified School District (RUSD) was required to provide softball facilities that are comparable to the boys' baseball team. The parties were involved in a mediation process to come up with a proposal. The parties were able to come up with four different proposals, which included building a new softball field. The court had originally told RUSD to remedy the disparity prior to the 2008 season opener, but the court allowed the district to have the girls play on the middle school field until the new field was finished as long as the middle school field was renovated to fix drainage and irrigation problems. However, the court held that RUSD must provide an expected timeline to the court as well as provide monthly updates to ensure that it remains on schedule.

Mansourian v. Bd. of Regents, No. 2-03-02591-FCD-EFB, 2007 U.S. Dist. LEXIS 77534 (E.D. Cal. Oct. 18, 2007). The plaintiffs are former members of the University of California-Davis (UCD) women's wrestling team who were required to compete for a spot on the men's team when their program was eliminated. The plaintiffs filed Title IX claims against UCD for failing to provide equal opportunities, failing to provide equal athletic financial assistance, retaliation, and ineffective accommodation. The court dismissed all claims except the ineffective accommodation claim because the one-year statute of limitations applied and the last discrete act leading to the claims occurred in 2001. UCD claimed that the ineffective accommodation claim should be dismissed because it was not given notice to remedy the situation and the damages were too speculative. However, the court determined that when the students filed a complaint with the US Department of Education, this provided notice to UCD, and the damages were directly related to the students' lost benefits of not being able to participate in college athletics.

Meyer v. The School Town of Highland, No. 2:06-CV-124 PPS, 2007 U.S. Dist. LEXIS 75306 (N.D. Ind. Oct. 9, 2007). School Town of Highland (STH) had an opening for a varsity basketball coach. Fifty-eight year old Gary Meyer applied for the position, but eventually a twenty-eight year old was hired. Meyer had been contacted by the athletic director and invited to apply for the position. Prior to the interview, the athletic director told Meyer to try to stress that he intended to be there for a long time because some people on the hiring committee were concerned he might not be there very long. When Meyer was notified that he was not selected as the head coach, he was told that some members of the School Board were concerned about his age. Meyer claimed that STH discriminated against him based on his age. STH filed a motion for summary judgment. STH claimed that it did not hire Meyer because he did not qualify for any of the open teaching positions. The court denied the motion for summary judgment because it believed there was a question of fact whether that was the reason he was not hired, especially because there had been discussions with Meyer during the interview process about finding a way to make the teaching situation work if he was selected as the head coach.

Meyers v. La Porte Independent Sch. Dist., No. 07-20348, 2007 U.S. App. LEXIS 29598 (5th Cir. Dec. 20, 2007). Janelle Meyers played on the junior varsity softball team from 2000-03 and on the varsity team from 2003-04. However, she claimed that she was not given sufficient playing time because of her race, which caused her to lose scholarship offers and an opportunity to play softball at the college level. Meyer sued La Porte Independent School (LPISD) District for racial discrimination. The court granted summary judgment in favor of LPISD, and Meyers appealed. Although the coach may have discriminated against Meyers, LPISD has immunity unless it can be shown it had notice or one of its official policies or customs led to the discrimination, neither of which was shown in this case. Therefore, the court affirmed the summary judgment.

Miller v. Univ. of Cincinnati, No. 1:05-cv-764, 2007 U.S. Dist. LEXIS 70484 (S.D. Ohio Sept. 21, 2007). The court granted a motion to revise the Preliminary Pretrial Conference Order in order to determine whether indoor track, outdoor track, and cross country should be considered one sport or separate sports when determining whether there is compliance with Title IX.

Nicholas v. Bd. of Trs., No. 06-14662, 2007 U.S. App. LEXIS 24463 (11th Cir. Oct. 17, 2007). Jonath Nicholas was the assistant women's basketball coach at the University of Alabama-Birmingham. After he was accused of making improper sexual advances towards a player, he was given the choice of resigning or receiving new coaching responsibilities. In October 2003, Nicholas decided to accept new coaching responsibilities, which did not include managing players, until his contract expired. However, the head coach complained that Nicholas was still having contact with the players, and he was fired four months later. In November 2003, Nicholas sent a letter to the UAB Athletic Director, claiming he was discriminated against. He also filed a discrimination claim with the EEOC. In March 2004, the head coach was fired and Nicholas applied for the position, but UAB hired Audra Smith, an African-American female who had coaching experience at the University of Virginia. Nicholas sued for racial and gender discrimination due to disparate pay, disparate discharge, not being hired as the head coach, and retaliation claims for filing a discrimination claim with the EEOC. The court determined that his claims failed because he could not show the assistant coach who was paid more than him had similar job responsibilities, he was not actually discharged, and UAB showed a legitimate reason for removing his coaching duties.

Peirick v. Indiana Univ.-Purdue Univ. Indianapolis, 510 F.3d 681 (7th Cir. 2007). During Peirick's thirteenth and final season as the head women's tennis coach at IUPUI, the team achieved the highest GPA of all teams on campus, had the best season in team history, and qualified for the NCAA tournament. However, when the season ended, fifty-three year old Peirick was fired, and the twenty-three year old sister of the men's tennis coach was hired. Peirick sued IUPUI for racial and gender discrimination. IUPUI claimed that members of the tennis team had complained about Peirick's abusive language during practices and that she had lied to them. The district court granted summary judgment in favor of the defendants on both claims, and Peirick appealed. Summary judgment was reversed on the gender discrimination claim because there was a question of fact if similarly situated male coaches that had discipline issues were treated differently. There was also a question of fact whether IUPUI's reasons for discharging Peirick were pretextual. However, summary judgment in regards to the age discrimination claim was upheld because state entities are immune from age discrimination claims brought in a federal court.

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Potera-Haskins v. Gamble, 519 F. Supp. 2d 1110 (D. Mont. 2007). The plaintiff was hired as the head women's basketball coach at Montana State University (MSU) in 2001. In 2003, the MSU Athletic Director held several meetings with the plaintiff to discuss concerns about the basketball players' welfare due to length of practices and the possibility of injuries. The plaintiff responded with several letters claiming that the support staff was not adequate and that the athletic director was not acting appropriately. In April, 2004, the plaintiff was fired and a female was hired to replace the plaintiff. The plaintiff sued for sexual discrimination and retaliation for statements made that were protected speech, and Title IX violations. Summary judgment was granted in favor of the defendants on the sexual discrimination claims and retaliation claims because a female replaced the plaintiff and her statements were not protected because she was a public official. Summary judgment was not granted for the Title IX claim because there was a question of fact as to whether he was fired for complaining about sexual discrimination or because of her job performance.

Sanders v. Madison Square Garden, L.P., No. 06 Civ. 589 (GEL), 2007 U.S. Dist. LEXIS 57319 (S.D.N.Y. Aug. 6, 2007). Browne worked as a marketing executive for Madison Square Garden, L.P. (MSG) from 2000 to 2006. Up until 2004, she received favorable job reviews; however, beginning in 2004, she began having problems with Isaiah Thomas, the President of Basketball Operations for the New York Knicks, and Kevin Layden, the President and General Manager of the Knicks. She was eventually fired in January 2006. Browne claimed that she was fired because she complained she was sexually harassed by Thomas, and for investigating possible sexual harassment of other female employees within the organization. MSG claimed that it fired Browne because of her job performance, but it had also issued an internal report which recommended Thomas receive sensitivity training because he occasionally raised his voice, used profanity and had on occasion greeted Browne with a hug and a kiss. The report also indicated that Browne had numerous business disagreements, a poor job performance and that she should be terminated. However, MSG's chairman stated during a deposition that he would not have terminated Browne even though her job performance was poor. Browne sued MSG for sexual discrimination and retaliation. MSG moved for summary judgment because it claimed it

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

Sawyers v. Regents of Univ. Of Cal., No. A115221, 2007 Cal. App. Unpub. LEXIS 7078 (Cal. Ct. App. Aug. 30, 2007). In July, 1996, Michael Sawyers was promoted from Director of Recreational Sports to Assistant Athletic Director at University of California at Berkeley (Cal). Immediately after the promotion, Sawyers filed a complaint with Cal claiming there was racial discrimination within the athletic department. During 2001-2002, there were several complaints about Sawyers' job performance, which led to a decrease in his job responsibilities. In 2002, Sawyers wrote a letter to the Cal Chancellor regarding his intent to sue Cal for discrimination. In June 2003, the Cal Chancellor offered to reassign Sawyers to a different department within the university, but Sawyers declined. Sawyers filed a complaint with the California Department of Fair Employment and Housing (DFEH), claiming he had been retaliated against for complaining about racial discrimination. The court affirmed the summary judgment ruling for the defendants because Sawyers was not able to show there was an adverse employment action.

Simpson v. Univ. of Colorado-Boulder, 500 F.3d 1170 (10th Cir. 2007). The plaintiffs were sexually assaulted by University of Colorado (CU) football players and high-school recruits. At the time the assaults took place, there were several reports that there was serious risk of assault by student-athletes. The head coach knew about several incidents, and a local district attorney had met with CU officials to discuss developing policies for supervising recruits. The plaintiffs sued CU, claiming that CU knew of the risk of sexual harassment of female students in connection with the recruiting program, which violated Title IX. CU filed for summary judgment. The court determined that CU officials and coaches ignored several warning signs that this kind of conduct could occur on recruiting trips, which constituted notice of noncompliance with Title IX. Therefore, summary judgment was denied.

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EDUCATION LAW

Fowler v. Tyler Indep. Sch. Dist., 232 S.W.3d 335 (Tex. Ct. App. 2007). Bridget Fowler slipped and fell and broke her leg while attending a high school football game at a Tyler Independent School District (TISD) stadium, which was rented by the high school teams playing in the game. Fowler sued, claiming that the stadium was in an unreasonably dangerous condition at the time of the football game and that TISD failed to maintain warnings that the stadium was in an unsafe condition. TISD claimed sovereign immunity, but Fowler claimed that TISD was acting in a proprietary capacity because it rented the stadium. The court determined that the renting of the stadium was a cooperative sharing of resources among three school districts, which furthered their mission of education. Therefore, TISD was not acting in a proprietary capacity.

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Hatten v. Univ. Interscholastic League, No. 13-06-313-CV, 2007 Tex. App. LEXIS 7795 (Tex. Ct. App. Sept. 27, 2007). C.J. and Matthew Hatten were members of athletic teams at their high school located in the Celina ISD. Both boys had some discipline problems after their parents separated, and the father complained to a Celina ISD coach about how Matthew was disciplined. About a month later, the Hattens moved to Pilot Point, Texas. In order to compete for Pilot Point, the Hattens had to get approval from Celina ISD that their move was not for athletic purposes, but the Celina ISD athletic director did not give approval. The UIL, which regulates competitive high school athletics in Texas, also determined the move was for athletic purposes. The Hattens requested injunctive relief to prevent the UIL from enforcing the decision, but the trial court denied all relief. The Hattens appealed. The case was moot because C.J. graduated and Matthew's period of ineligibility had expired; therefore, the case was dismissed.

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Ind. High Sch. Ath. Ass'n v. Garcia, 876 N.E.2d 350 (Ind. Ct. App. 2007). Angel Garcia played basketball at Lake Forest Academy before transferring to East Chicago Central High School. The Indiana High School Athletic Association (IHSAA) only granted Garcia limited eligibility for a year after enrolling at East Chicago. Garcia filed a complaint against the IHSAA in Lake County seeking a preliminary injunction and a declaratory judgment allowing him to fully participate in high school athletics at East Chicago. After the court issued a temporary restraining order, the IHSAA filed a motion to transfer to a county of preferred venue. The trial court denied IHSAA's motion because it determined that the IHSAA was a governmental organization, which would make Lake County a preferred venue. The IHSAA appealed, claiming it was a not-for-profit based in Marion County, which would make Marion County the only preferred venue. While the IHSAA is not a governmental agency, it did not prove it was not a governmental organization; therefore, the appellate court affirmed the trial court's decision.

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Jones v. Wash. Interscholastic Activities Ass'n, No. C07-711RSL, 2007 U.S. Dist. LEXIS 54711 (W.D. Wash. July 26, 2007). The Washington Interscholastic Activities Association (WIAA) rules limited the amount of time that a football coach may coach middle school students for a maximum of twelve weeks during the high school football season. Jones was the head football coach at Bellevue High School and also wanted to be a volunteer coach for his son's middle school football team, but that season lasted thirteen weeks and four days. Jones applied for a waiver from the WIAA, but it was denied. Jones claimed the rule was unconstitutional. The court determined the rule was not unconstitutional because a brief interruption in not being able to coach his son's team for less than two weeks does not violate a fundamental right, and the WIAA's application of the rule was rationally related to creating a level playing field.

Lawrence County Educ. Ass'n v. Lawrence County Bd. of Educ., No. M2004-02224-SC-R11-CV, 2007 Tenn. LEXIS 1084 (Tenn. Dec. 20, 2007). Jerry Taylor was a tenured teacher and the head girls' basketball coach from 1984-2001. After parents and players complained about Taylor's behavior, he was reassigned as a teacher and was told he would no longer be coaching. Taylor filed a grievance under the collective bargaining agreement and received an arbitration hearing. The arbitrator determined that Taylor should be paid the coaching supplement for the 2001-02 school year and should be considered the incumbent coach when coaching decisions were made for the 2002-03 school year. The school board accepted the findings, but the Director of Schools chose not to select Taylor as the girls' basketball coach for the 2002-03 season in order to operate Loretto High School in the most efficient manner. Taylor, as a member of the Lawrence County Education Association, sued seeking reinstatement as a basketball coach. The court determined that the arbitrator's decision entitled Taylor to his supplemental pay for the 2001-02 school year. However, the case was remanded because there was a question of fact of whether the decision to transfer Taylor for the 2002-03 school year was arbitrary and capricious.

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Lowery v. Euverard, 497 F.3d 584 (6th Cir. 2007). The plaintiffs were members of the football team at Jefferson County High School. The plaintiffs claimed the coach used inappropriate language, hit a player in the helmet, threw away college recruiting letters for certain players, and required a year-round conditioning program, which was a violation of the rules. One of the plaintiffs typed a statement that said, I hate Coach Euverard and I don't want to play for him and asked other players to sign it. The plaintiffs intended to give it to the principal following the football season, but the coach found out about the petition during the season. The coaches decided to question each member of the football team individually, but the plaintiffs wanted to meet as a group. The head coach told them to leave if they did not want to cooperate, and they all decided to leave. Any students who claimed that they still did not want to play for the head coach were dismissed from the team, but those who apologized to the coach were allowed to continue playing. The plaintiffs sued, claiming they should not have been dismissed from the team. The trial court denied the defendants' motion for summary judgment. The appellate court reversed and granted summary judgment for the defendants because the defendants reasonably believed that the plaintiffs would cause a substantial disruption to the team if they had not been removed.

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Newsome v. Miss. High Sch. Athletic Ass'n, No. 1:07CV293-D-D, 2007 U.S. Dist. LEXIS 88478 N.D. Miss. Nov. 30, 2007). Jeremy Newsome completed first through eleventh grades at schools located in the Okolona School District before transferring to Nettleton High School to finish high school. It was determined that he had learning disabilities; therefore, Nettleton provided him with an Individual Education Plan pursuant to the Individuals with Education Act (IDEA). Newsome played basketball at Okolona, but he was not allowed to play basketball at Nettleton because the Mississippi High School Athletic Association (MHSAA) determined he moved for athletic reasons. Newsome sued MHSAA for violating the IDEA, the Americans with Disabilities Act, and the US Constitution seeking to temporary restraining order to compel it to permit him to play basketball immediately. The court denied the temporary restraining order

because the plaintiff did not exhaust the internal remedies prior to suing MHSAA, and he did not show that he would suffer an irreparable injury if the restraining order was not granted.

INTELLECTUAL PROPERTY LAW

American Needle, Inc. v. New Orleans La. Saints, 496 F. Supp. 2d 941 (N.D. Ill. 2007). NFL Merchandising is responsible for the development and production of all thirty-two NFL teams' intellectual property rights. For over twenty years, NFL Properties granted licenses to American Needle to use NFL trademarks. However, in 2000, NFL Properties entered into an exclusive license with Reebok and did not renew its contract with American Needle. American Needle claimed NFL Properties violated antitrust regulations when it granted an exclusive license to Reebok. The court granted summary judgment for NFL Properties because it was acting as a single entity rather than thirty-two separate entities, and therefore, was allowed to grant an exclusive license.

Baden Sports, Inc. v. Kabushiki Kaisha Molten, No. C06-210MJP, 2007 U.S. Dist. LEXIS 51186 (W.D. Wash. July 16, 2007). Baden developed a cushioned basketball and was granted a patent for the ball on June 10, 1997. Baden sued Molten, a Japan corporation, for patent infringement and false advertising. Baden claimed that Molten introduced basketballs to the U.S. market that included the same seam and cellular sponge layer construction as Baden's. The court granted summary judgment on the patent infringement in regards to Molten's old balls. However, there was a question of fact whether Baden's patent is valid because the technology may be so obvious that it cannot be protected. The court did not grant a permanent or preliminary injunction because there were questions about the validity of the patent.

Baden Sports, Inc. v. Kabushiki Molten, No. C06-210MJP, 2007 U.S. Dist. LEXIS 70776 (W.D. Wash. Sept. 25, 2007). Baden sued Molten for patent infringement and false advertising, but Molten claimed the patent was invalid. The court directed a verdict in favor of invalidity and the jury found that Molten had continued to sell the infringing basketball. The jury awarded over $8 million in damages, but Baden requested enhanced damages and a permanent injunction. The court granted a permanent injunction preventing Molten from advertising dual cushion technology within the United States and towards consumers in the United States because continued infringement would hurt the goodwill of Baden. The court did not award enhanced damages because Baden did not prove that Molten acted in bad faith, but it did award attorneys' fees and pre-judgment interest on the patent infringement claim to Baden.

Basketball Mktg Co. v. FX Digital Media, Inc., Nos. 06-2216 & 06-3274, 2007 U.S. App. LEXIS 28605 (3d Cir. Dec. 11, 2007). Basketball Marketing Company, also known as AND 1, has sponsored the AND 1 Mix Tape Tour, which features steetball basketball players. AND 1 had a sponsorship deal with Gittens, which required Gittens to play in the Mix Tape Tour and wear AND 1 apparel during all athletic activities. The agreement between AND 1 and Gittens allowed him to participate in other tours as well. Gittens participated in FX's Legends Basketball Tour and convinced other players to participate as well. FX began marketing the tour as including athletes from the AND 1 Mix Tape Tour. Basketball Marketing sued Gittens for trademark

infringement, but the court ruled in favor of Gittens and awarded him attorneys' fees. Basketball Marketing appealed. The court affirmed the judgment in favor of Gittens because he did not take part in designing the flyers for the tour, and he did not know that they infringed on AND 1's trademark. However, the court reversed the judgment of awarding attorneys' fees because Basketball Marketing had a meritorious claim.

Brooks v. Topps Co., No. 06 CIV. 2539 (DLC), 2007 U.S. Dist. LEXIS 94036 (S.D.N.Y. Dec. 21, 2007). James Bell was a well known baseball player who played in the Negro leagues from 1922 to 1950 and was inducted into the Baseball Hall of Fame in 1974. Once he was inducted, he gave the Baseball Hall of Fame permission to use his likeness. Following his death, his daughter granted permission to use his likeness to several different companies. However, in 2001 and 2004, Topps released some trading cards with Bell on them without getting permission. His daughter also claimed that there was information on the cards that was both false and derogatory. Brooks sued Topps, claiming a violation of right of publicity, vioaltions of the Lanham Act and unfair competition. The right to publicity claim was dismissed because the statute of limitations had run out. The Lanham Act claims were dismissed because there was no evidence of liklihood of confusion and no false statements were made. The unfair competition claim was dimissed for the same reasons the Lanham Act claims were dismissed.

C.B.C. Distrib. And Mktg., Inc. v. Major League Baseball Advanced Media, L.P., 505 F.3d 818 (8th Cir. 2007). CBC sold fantasy sports products on the internet, including a fantasy baseball league. From 1995 to 2004, CBC licensed the information of many of the names and information about Major League Baseball players. However, in 2005, the Players Association licensed the information to Advanced Media. CBC sued the defendant to determine if it could continue to operate its fantasy baseball games. The court granted summary judgment for CBC and the defendants appealed. Although CBC used the information for commercial purposes, its First Amendment Rights superseded players' right of publicity.

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Cent. Mfg., Inc. v. Brett, 492 F.3d 876 (7th Cir. 2007). Brett Brothers Sports sells a variety of wood bats that have the feel of a wood bat and the break-resistance of a metal bat. One of the models is called the Stealth model. Leo Stoller operates a variety of businesses, including Central Manufacturing, and claims that the companies have been using the Stealth mark for a variety of products since 1982. In 2001, Central Manufacturing filed a trademark application for using the Stealth word mark on baseball bats and numerous other products. Central Manufacturing sued Brett Brothers Sports for trademark infringement and unfair competition. Brett Brothers asked for information regarding the amount of money Central Manufacturing made from baseball bats sold under the term Stealth, but it did not provide that information to Brett Brothers. The District Court canceled the trademark registration because Central Manufacturing failed to show it had used it commercially. The appellate court affirmed the decision because Central Manufacturing did not provide documentation about its sales, and therefore, could not prove it had used the mark commercially.

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Garden City Boxing Club, Inc. v. Paquita's Café, No. 06 Civ. 6953 (RMB)(JCF), 2007 U.S. Dist. LEXIS 70893 (S.D.N.Y. Sept. 26, 2007). The plaintiff was granted the right to distribute the telecast of the fight between Oscar De La Hoya and Shane Mosely on September 13, 2003, and it sublicensed the right to show the fight to several establishments. Once the establishments paid, they received the decoding equipment and satellite signal to show the fight. However, Pacquita's Café showed the event without paying Garden City. Garden City sued Pacquita's Café under the Cable Communications Policy Act for the unauthorized authorized interception and commercial exhibition of the fight. The court awarded damages in the amount of $10,000, the statutory maximum, because the violation was willful and was done for the purpose of gaining commercial profits.

Ignition Athletic Performance Group, LLC v. Hantz Soccer U.S.A., LLC, No. 06-13684, 2007 U.S. Dist. LEXIS 51456 (E.D. Mich. July 17, 2007) and Ignition Athletic Performance Group, LLC v. Hantz Soccer U.S.A., LLC, No. 06-2308, 2007 U.S. App. LEXIS 19091 (6th Cir. Aug. 8, 2007). The plaintiff provided sports-specific training in the Cincinnati area. The plaintiff applied for trademark protection on February 5, 2005, and registered the Ignition mark and logo with the United States Patent and Trademark Office on March 5, 2006. On September 12, 2005, the defendant announced that it would operate a soccer team in Detroit named Detroit Ignition. The plaintiff sued claiming trademark infringement and moved for a temporary restraining order and preliminary injunction. The court did not grant the temporary restraining order or the preliminary injunction. The plaintiff appealed and the defendant moved for summary judgment. The court granted summary judgment for the defendant because the plaintiff's mark is only strong in the Cincinnati area, the users of the plaintiff's mark are likely to use a high degree of care when using its products and services, and the likelihood of confusion is low because the Detroit Ignition do not play in any of the same cities as the Cincinnati Kings. The appellate affirmed the district court's denial of a temporary restraining order and preliminary injunction.

Interforever Sports, Inc. v. Lopez, No. H-06-2420, 2007 U.S. Dist. LEXIS 49812 (S.D. Tex. July 10, 2007). The plaintiff had a license agreement with the promoter of the soccer match between Mexico and Costa Rica. The license agreement permitted the plaintiff to sublicense the right to show the match on closed circuit television to commercial establishments in Texas. The only establishments that could show the match on television in Texas were those that the plaintiff had authorized. The defendant intercepted the broadcast of the match and showed it to patrons at Billares Salamanca without paying a licensing fee to the plaintiff. The plaintiff moved for summary judgment, which was granted, and was awarded $60,000. The award included $50,000 in punitive damages because it was shown that the defendant intercepted the broadcast for financial gain and the defendant had previously broadcasted an unauthorized boxing match.

Izzo Golf, Inc. v. King Par Golf, Inc., No. 02-CV-6012T, 2007 U.S. Dist. LEXIS 48709 (W.D.N.Y. July 5, 2007). The plaintiff claimed that the defendant infringed on its Dual Strap Carrying System for Golf Bags patent. The patent is for a golf bag that includes a strap designed to evenly distribute the weight of a golf bag across both shoulders. The defendant moved for summary judgment claiming that it did not infringe on the patent and the patent was invalid. The court granted summary judgment for the defendant on infringement claim, but denied summary judgment on whether the patent is invalid. The infringement claim was dismissed because the defendant's golf bag was designed differently than the plaintiff's in several different ways. The

defendant's motion for summary judgment on the issue of validity was denied because the defendant could not prove that other golf bags in the United States had the same design prior to the plaintiff filing for a patent.

J & J Sports Prod., Inc. v. Meyers, No. 06 Civ. 5431 (BSJ) (JCF), 2007 U.S. Dist. LEXIS 50834 (S.D.N.Y. July 16, 2007). The plaintiff purchased the right to sublicense the distribution rights of the fight between Bernard Hopkins and Jermain Taylor on July 16, 2005. The plaintiff sublicensed the right to show the fight to hundreds of establishments throughout the country. Because the plaintiff believed that establishments would intercept the fight without paying for the licensing fee, the plaintiff hired private investigators. One of the plaintiff's private investigators entered the defendant's hair salon and saw portions of the fight. The plaintiff claimed that the defendant violated the Cable Communications Policy Act when it showed the fight in her hair salon. The court ruled in favor of the plaintiff and awarded $3000 in statutory damages and an additional $3000 based on the plaintiff's willfulness to break the law.

Joe Hand Promotions, Inc. v. Phillips, No. 06 Civ. 3624 (BSJ) (JCF), 2007 U.S. Dist. LEXIS 50925 (S.D.N.Y. July 16, 2007). The plaintiff purchased the right to sublicense the distribution rights of the fight between Mike Tyson and Kevin McBride on June 11, 2005. The plaintiff sublicensed the right to show the fight to hundreds of establishments throughout New York. In order to help prevent establishments that had not purchased the rights to show the fight, the plaintiff hired a private investigator. The plaintiff's private investigator witnessed the plaintiff showing the fight at his barber shop. The plaintiff claimed that the defendant violated the Cable Communications Policy Act when it showed the fight in his barber shop. The court awarded the plaintiff $3000 in statutory damages and an additional $3000 in enhanced damages based on the defendant's willfulness to show an illegal broadcast.

Joe Hand Promotions, Inc. v. Collins, No. 06-CV-6521, 2007 U.S. Dist. LEXIS 77373 (E.D.N.Y. Sept. 7, 2007). The plaintiff purchased the right to sublicense the distribution rights of the fight between Jeff Lacy and Joe Calzaghe on March 4, 2006. The plaintiff sublicensed the right to show the fight to hundreds of establishments throughout New York. In order to help prevent establishments that had not purchased the rights to show the fight, the plaintiff hired a private investigator. The plaintiff's private investigator witnessed plaintiff showing the fight at the defendant's bar. The plaintiff claimed that the defendant violated the Cable Communications Policy Act when it showed the fight in his bar. The court awarded the plaintiff $1000 in statutory damages based on the amount of people that were present in the bar and an additional $3500 in enhanced damages based on the defendant's willfulness to show an illegal broadcast.

Messer v. Ho Sports Co., No. CV 06-826-PK, 2007 U.S. Dist. LEXIS 78812 (D. Or. Oct. 22, 2007). Jason Messer patented a device that permitted wakeboards to be used without bindings. This new technology allowed wakeboarders to use friction alone to control and remain upright on the wakeboard. Messer claimed that the defendants infringed his patent. The defendants moved for summary judgment on some of the claims because of prior art. The court granted summary judgment on five of the nine claims that the defendants had claimed were anticipated by prior art.

Sports Imaging Photography of Utah, Inc. v. Utah Sch. & Sports Imaging, No. 2:07CV517DAK, 2007 U.S. Dist. LEXIS 88589 (D. Utah Nov. 1, 2007). The plaintiff, Sports Imaging Photography of Utah, has been providing photography services to recreational sports leagues, scholastic sports leagues and other athletic associations in the greater Salt Lake City area for over twenty years. In 2005, defendant Chris Zullinger moved to Utah to start a company with his two brothers called Z3 Creative. In April, 2007, both the plaintiff and the defendants submitted bids to Salt Lake County for team and individual sports photography. The plaintiffs submitted a bid using its name, Sports Imaging Photography of Utah and the defendant used the name Utah School & Sports Imaging. Plaintiff sued the defendants for trademark infringement and sought a preliminary injunction, which would prevent the defendants from using the terms Utah School & Sports Imaging and Sports Imaging. The court declined to enjoin the defendants from using the marks because the marks were descriptive, but the plaintiff could not show that they had a secondary meaning, which is necessary for common law trademark protection without having a registered trademark.

World Triathlon Corp. v. Dawn Syndicated Productions, 8:05-CV-983-T-27EAJ, 2007 U.S. Dist. LEXIS 72544 (M.D. Fla., Sept. 28, 2007). World Triathlon Corporation (WTC) owns the mark Ironman Triathlon. Defendant Warner Brothers distributed a show called ElimiDATE. During five shows of ElimiDATE that aired in May of 2005, the show featured an on screen logo with the words elimiDATE Ironman Challenge. WTC sued the defendants for trademark infringement. The court granted summary judgment for the defendants because the mark is a common English word that is used regularly by third parties within the sports industry, and the plaintiff's mark does not have a strong significance outside of triathlon competitions. Further, there was little similarity between the plaintiffs and defendants in regards to the marks, the products and the services, and the advertising methods. Therefore, there was no likelihood of confusion and the plaintiffs could not prove that there was any actual confusion. The court also granted summary judgment for defendants on the dilution claim because the plaintiffs did not provide any evidence consumers would have a different impression of plaintiff's products because of defendant's use of the word Ironman.

PROPERTY LAW

Minn. Sports Fed'n v. Anoka, Nos. CX-05-4138, C5-06-4090, 2007 Minn. Tax. LEXIS 21 (Minn. Tax Ct. Sept. 25, 2007). Minnesota Sports Federation moved for a summary judgment determination as to whether its property is exempt as a public charity or as a baseball field rather than a Class 3(a), which is its current classification. The court denied summary judgment because there was more detail needed about the financial information before a decision could be made.

TORT LAW

Avila v. Newport Grand Jai Alai, LLC, 935 A.2d 91 (R.I. 2007). Avila worked at Newport Grand Jai Alai as a professional jai alai player. At the end of 2001, he was not rehired. Although the players were covered by a collective bargaining agreement, it did not include a grievance procedure and the players were considered at will employees. However, when Avila learned that he was not rehired, he contacted a union representative. The union representative then spoke with the CEO of Newport Grand and the union president. The CEO told the union representative that Avila was not rehired because he had too many inconsistencies as a player and was accused of fixing games. After the union president and representative advocated for Avila's reinstatement, Newport decided it would rehire him. However, when the players' manager threatened to quit because he believed Avila cheated, Newport decided not to rehire him. He then attempted to play jai alai in Florida, but prior to a tryout he was accused of being the player that fixed games in Newport. Avila sued Newport Grand for defamation. The defendants claimed that the statements made between the CEO, union representative and president, and the players' manager were privileged. The trial court granted summary judgment in favor of the defendants and the appellate court affirmed because the CEO had an interest in answering questions to the union representative as to why certain players were not rehired and the plaintiff had not shown there was any malice or ill will on the part of anyone at Newport Grand in making the statements regarding Avila.

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Becker v. Whittier Union High Sch. Dist., No. B191477, 2007 Cal. App. Unpub. LEXIS 7059 (Cal. Ct. App. Aug. 30, 2007). Three members of the Santa Fe High School cross-country team were running when they crossed a busy street in the middle rather than at an intersection. Becker hit one of them while riding his motorcycle and hurt his shoulder as a result of the accident. He sued Whittier Union High School District (WUHSD) claiming that the cross country coach failed to adequately supervise the runner, which was a substantial cause of the accident. The district court dismissed the case because the students were not running during a scheduled practice. Becker appealed, claiming that even if it was an unscheduled practice the students were still under the control of the coach. The court affirmed summary judgment for WUHSD because there was no evidence that the coach knew or should have known that the students had a propensity of engaging in reckless behavior while running on city streets.

Berry V. v. Greater Park City Co., 171 P.3d 442 (Utah 2007). During a skiercross race, the plaintiff fell and fractured his neck, which paralyzed him. The plaintiff sued the defendants for negligence, gross negligence and strict liability because the jump was too steep and the landing area was too small. The district court granted summary judgment on all claims because the plaintiff had signed a Release of Liability and Indemnity Agreement, which precluded the negligence claims, and the strict liability claim was not applicable because he was involved in abnormally dangerous activity. The appellate court affirmed summary judgment on the negligence claim and the strict liability claim, but it reversed and remanded the gross negligence claim. The court concluded that while the defendants could contract out of ordinary negligence claims, they could not contract out of gross negligence, and it had not been determined if the defendants were grossly negligent.

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Chrismon v. Brown, No. 14-05-00822-CV, 2007 Tex. App. LEXIS 7745 (Tex. Ct. App. Sept. 27, 2007). Robin Chrismon was a volunteer assistant softball coach when she was hit in the face by a bat that had slipped out the of head coach's hands. The trial court granted summary judgment for the head coach and the softball association because the injury was a result of an inherent risk in being involved with softball, and there was no evidence of gross negligence or intentional conduct.

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Creely v. Corpus Christi Football Team, Inc., No. 13-06-705-CV, 2007 Tex. App. LEXIS 6769 (Tex. Ct. App. Aug. 23, 2007). Creely owned a gym where she trained kids in tumbling and cheerleading. In exchange for some advertising, she also helped organize various half-time performances by cheerleading and tumbling participants. While getting ready for a half-time show she was standing in the tunnel and a football hit her and injured her thumb. Creely sued the cheerleading squad and football team for failing to exercise reasonable care. The district court granted summary judgment for the defendants because Creely had assumed the risk of being injured. The appellate court affirmed the decision because Creely did not present any evidence to show that the defendants did not use reasonable care in preventing the injury.

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DiPietro v. Farmington Sports Arena, LLC, No. X07CV054025110S, 2007 Conn. Super. LEXIS 2129 (Conn. Super. Ct. July 2, 2007). Michelle DiPietro fell and hurt her ankle while playing soccer at Farmington Indoor Sports Arena. DiPietro claimed that the defendant was negligent because the carpet used in the arena was not a safe playing surface. The court granted summary judgment for the defendants because DiPietro's expert witness did not testify that the defendant knew or should have known that the carpet was a dangerous playing surface.

Eriksson v. Cal. State Univ., No. F051229, 2007 Cal. App. Unpub. LEXIS 7597 (Cal. Ct. App. Sept. 20, 2007). Shana Eriksson was killed after the horse she was riding on the California State University, Fresno (CSUF) campus became startled and lost its footing. Although she was a member of the CSUF equestrian team, she was riding during her own free time during the

accident. Her parents sued CSUF claiming that it did not adequately supervise Shana nor warn her of the dangers of riding near livestock on campus. The trial court granted summary judgment for CSUF. The appellate court affirmed summary judgment because the cause of the accident (a horse getting startled and losing its footing) was an inherent risk in riding a horse, and CSUF had no duty to supervise Shana while she was riding during her own free time.

Feagins v. Waddy, No. 1051349, 2007 Ala. LEXIS 156 (Ala. Aug. 3, 2007). Tamesha Feagins was a member of the Center Street Middle School track and field team. During a track meet, the head coach informed her that she would be competing in the high jump. Tamesha told her coach that she did know how to do the high jump, and she was apprehensive about attempting it. The coach assured her that she would be able to do it, but he did not instruct her on how to properly complete the high jump. While attempting a practice jump, Tamesha tore her ACL. Tamesha's parents sued the coach, the athletic director and the city of Birmingham school system. Her parents claimed that the defendants were negligent when they failed to adequately train her daughter in the high jump. The trial court granted summary judgment for the coach and the athletic director, and Tamesha's parents appealed. The appellate court affirmed summary judgment for the coach because he was making decisions as a track and field coach, which entitled him to State-agent immunity. Summary judgment was also affirmed for the athletic director because the plaintiffs did not make an argument on appeal as to why he should not be granted summary judgment.

Haymon v. Pettit, No. 151, 2007 N.Y. LEXIS 3281 (N.Y. Nov. 20, 2007). Falcon Park was running a promotion offering free tickets to anyone who returned a ball to the ticket office. Leonard Haymon was chasing foul and home run balls outside of Falcon Park during this promotion and was struck by a car after failing to look both ways while crossing the street. At the time of the incident, the driver had a .11% blood alcohol level. Leonard's mother sued the operator of Falcon Park. She claimed it had a duty to prevent fans from chasing balls into a nearby street while running the promotion. The trial court granted summary judgment for the operator. The appellate court affirmed because chasing foul balls was an inherent risk of the sport, regardless of the promotion, and the duty to warn all people surrounding the park of the inherent risks of chasing balls into the street without paying attention would have been impractical.

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Heilig v. Touchstone Climbing, Inc., No. A113901, 2007 Cal. App. Unpub. LEXIS 8770 (Cal. Ct. App. Oct. 30, 2007). Jason Heilig fell and broke his foot and ankle while competing in a rock climbing competition at one of the defendant's climbing gyms. Prior to competing in the event, he had signed a Release of Liability and Assumption of Risk Agreement, which specified that the climber assumed both known and unknown risks of climbing. Heiling claimed Touchstone did not provide enough crash pads around the rock climbing area and sued. The trial court granted summary judgment for the defendants and the appellate court affirmed because the fall was an inherent risk in the sport of rock climbing, and Heiling had assumed that risk when he entered the competition.

Lewin v. Lutheran W. High Sch., 2007 Ohio 4041 (Ohio Ct. App. 2007). Joan Lewin fell into a hole while in the Lutheran West High School parking lot following a football game. Lewin sued

Lutheran West, claiming negligence. The trial court granted summary judgment for the defendants. The appellate court reversed and remanded because there was a question as to why and how Lewin fell into the hole.

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Mantovani v. Yale Univ., No. 0550000480, 2007 Conn. Super. LEXIS 1908 (Conn. Super. Ct. July 26, 2007). Eugene Mantovani was attending a cookout outside of a New Haven Ravens baseball game when he was hit by a baseball and injured his eye. The plaintiff sued the defendant for negligence because it did not have any safety nets near right field to prevent injuries to bystanders. The defendant moved for summary judgment, but the court denied it. While a limited duty applies to spectators in the stands, it did not apply to a section of the stadium where the defendant encouraged spectators to engage in something other than playing close attention to the game. In addition, there was a question of fact whether the threat of a foul ball in the right field pavilion was an open and obvious danger because the defendant did not provide any evidence that Mantovani knew that a foul ball could come into that area.

McGarry v. Univ. of San Diego, 154 Cal. App. 4th 97 (Cal. Ct. App. 2007). McGarry had been the head football coach at the University of San Diego (USD) for seven years prior to being fired. Shortly before McGarry was fired, a new athletic director was hired and after a tense exchange with her, McGarry filed a complaint against her. The athletic director confronted McGarry about kicking a football towards trainers and towards a player during practice. A day after receiving a written memo memorializing these conversations, McGarry was fired. After he was fired, an article appeared in the San Diego Union-Tribune that stated several incidents had led to the firing of McGarry. The article also included information from university sources speaking on anonymity. After the newspaper article was published, two university officials met with the parents of the players and implied that McGarry had committed immoral acts. McGarry sued USD for defamation. The court denied McGarry's motion to compel depositions of the reporters because the coach was a limited purpose public figure and the statements were a matter of public interest. The court also dismissed the claims because McGarry could not show malice on part of any of the university officials.

Moakley v. Carle Place Union Free Sch. Dist., No. 8543/06, 2007 N.Y. Misc. LEXIS 6878 (N.Y. Sup. Ct. Sept. 6, 2007). Dina Moakley was an eleventh grader and a member of her high school's cheerleading squad. While performing a stunt at practice one day she lost her balance, fell, and injured herself. While attempting to perform the stunt, she was being spotted by several teammates, supervised by the coach, and there was a mat on the floor for protection. However, when Moakley fell she missed the mat and fell on the hardwood floor. Moakley sued the school district for negligence. The school district moved for summary judgment because it claimed Moakley assumed the risk of falling. Moakley claimed that because there was a mat on the floor she did not assume the risk of falling on the hardwood floor. The court granted summary judgment for the defendant because it did not breach any duty by failing to provide additional mats.

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Morales v. Beacon City Sch. Dist., 44 A.D.3d 724 (N.Y. Sup. Ct. 2007). Scott Morales was injured while running hurdles during track practice. Morales had never run hurdles before, but his coach told him to run varsity height hurdles. Morales claimed that his coach did not give him instructions on how to properly run hurdles. Morales also claimed that the hurdle he fell over was not properly set up. The defendant claimed that Morales assumed the risk and moved for summary judgment. The court denied summary judgment because there was a question of fact whether the coach failed to instruct Morales, and whether not instructing him properly unreasonably increased the risk.

Moss v. Pete Suazo Utah Athletic Comm'n, 2007 UT 99 (Utah 2007). Bradley Rone died during a boxing match. Moss had been knocked out in a fight less than two months prior to the fight he died in, but he was not required to undergo a neurological examination, which is required by the Pete Suazo Athletic Commission. The rules also require boxers to be evaluated by a physician not less than eight hours prior to a fight, but Rone was not evaluated prior to the boxing match. Rone's sister sued the Athletic Commission for failing to abide by its rules. The Athletic Commission moved to dismiss the case because it claimed the lawsuit was barred by the Utah Governmental Immunity Act. The court dismissed the case because a governmental entity is immune from negligence claims if it is in regards to a licensing decision and the decision to prevent a boxer from competing is essentially a licensing decision. Further, it did not violate the Utah Constitution because the regulation of boxing is a governmental activity.

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Murphy v. Polytechnic Univ., No. 18645/06, 2007 N.Y. Misc. LEXIS 8547 (N.Y. Sup. Ct. Dec. 31, 2007). The head coach of the Polytechnic University softball team was demonstrating a drill to Murphy when the coach accidentally hit her in the face with a bat. The defendants claimed that Murphy assumed the risk and moved for summary judgment. The court determined that Murphy did not assume the risk because she had experience in being coached and believed that the coach would have made sure that the player was out of swinging range prior to swinging the bat.

Nardiello v. Allen, No. 07-cv-0580 (GLS-RFT), 2007 U.S. Dist. LEXIS 85080 (N.D.N.Y. Nov. 16, 2007). Nardiello was the head coach of the US Olympic Skeleton Team from 2002 to 2006. As the head coach, he was required to report to the Skeleton Programming Committee (SPC). Allen was an athlete representative on the SPC board from 2003 to 2005. Nardiello claimed that Allen made false statements through email correspondence to the SPC on five separate occasions between December 17, 2005 and January 3, 2006, which led to his suspension as head coach and harmed his reputation. Allen moved to dismiss the case for lack of personal jurisdiction. Nardiello claimed that Allen was a member of the SPC, which was run under a New York not-for-profit and occasionally attended meetings in person in New York. However, at the time of the alleged acts, Allen was not a member of the SPC and had not been in New York since November 2005. The court dismissed the case because Allen's contacts with New York had ended at the time of the alleged defamatory statements were made, and the mere fact that he sent emails to persons within the state of New York did not amount to the transaction of business in New York.

Newsom v. Ballinger Indep. Sch. Dist., No. 03-07-00022-CV, 2007 Tex. App. LEXIS 5690 (Tex. Ct. App. July 17, 2007). Cecyle Newsom was a teacher and the head girls' basketball coach at a junior high school within the defendant's school district. On her way to a Saturday practice she was killed in a car accident. Her husband filed a claim for workers' compensation benefits on behalf of himself and his children. The defendants denied the claim because her death did not occur in the course and scope of her employment. The Texas Division of Workers' Compensation held a hearing and determined that Newsom was acting within the scope of her employment when she died. The school district appealed and the Division sought judicial review. The defendants moved for summary judgment. The husband argued that she was within the scope of her employment because the Saturday practice was a special practice, but the school district claimed that it did not direct her to schedule the Saturday practice. The court determined that Newsom was not killed in the course and scope of her employment because she scheduled the Saturday practice, Saturday practices were not unusual, and she was not traveling on a special mission for the school district.

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Noble v. Bronxville Union Free Sch. Dist., 45 A.D.3d 548 (2007). Ashley Noble was hit in the face with a hockey stick by Elizabeth Goodell during a field hockey scrimmage. Noble sued the school district for failure to properly supervise the scrimmage. The school district filed a third party action against Goodell. Goodell moved to dismiss the claim for failure to state a claim. The court denied Goodell's motion because the claim stated a cognizable claim for contribution or indemnification.

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Oakland Raiders v. Nat'l Football League, 161 P.3d 151 (Cal. 2007). After failure to negotiate a stadium in Los Angeles, the Oakland Raiders commenced negotiations with the City of Oakland to renovate Oakland Coliseum and ultimately moved to Oakland. The Raiders sued the NFL claiming that because it left Los Angeles, which allowed the NFL to bring in another team, it should be compensated for allowing the NFL the opportunity to place another team there. The jury ruled in favor of the NFL and the Raiders moved for a new trial due to jury misconduct because one of the jurors was biased against the Raiders and another had difficulty understanding English. The trial court granted a new jury trial, but it did not give reasons for granting a new trial. The court affirmed the jury's decision because the Raiders did not meet their burden of proof showing that there was jury misconduct.

O'Connor v. Burningham, 165 P.3d 1214 (Utah 2007). O'Connor was the girls' basketball coach at Lehi High School. Numerous parents voiced their concerns about his coaching style, his use of money budgeted for the program, and unfair treatment to certain players. The parents complained to the principal, school administrators, and eventually the Alpine School District. When O'Connor refused to promise that he would not retaliate against the girls whose parents complained, the school district dismissed him from his position as the girls' basketball coach. O'Connor sued the parents for defamation. The district court granted summary judgment for the parents because it believed O'Connor was a public official and defamation could not be proven without the showing of actual malice, which could not be shown. The appellate court ruled that

O'Connor was not considered a public official and remanded the case to the district court to determine if the statements were defamatory.

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Parker v. S. Broadway Athletic Club, 230 S.W.3d 642 (Mo. Ct. App. 2007). Curtis Parker was training as a professional wrestler at the South Broadway Athletic Club (Club). On July 16, 2002 he told the person who was training him that his head was hurting. He sat down for a while and then left. When he returned about a week later, he was asked how he was feeling. He said it took him about five days to get rid of the headache, but he was feeling great. After practicing a few moves that day, Curtis went into a seizure and he died nine days later. It was determined that he had suffered a second concussion prior to recovering from the first concussion. Curtis' parents sued the Club for negligence in allowing Anthony to return to the ring prior to recovering from his first concussion. The jury ruled in favor of the Club, and the Parkers appealed. The appellate court affirmed the jury's decision because the Parkers did not provide any evidence that the Club knew or should have known that Curtis suffered a concussion.

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Parsons v. Arrowhead Golf, Inc., 874 N.E.2d 993 (Ind. Ct. App. 2007). Victor Parsons was hurt while playing golf at Arrowhead Golf Course. After driving his golf cart to the 16th hole, he stepped from the cart path onto the green, which was a four to twelve inch drop that he had not noticed. When he stepped down he immediately felt pain in his back. Parsons sued Arrowhead Golf for allowing him to play on a negligently designed golf course. The trial court ruled in favor of the defendant. The appellate court affirmed the decision because Parsons assumed the risk of injuries foreseeable in the game, which included stepping off the cart path into a lower area.

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Porter v. Dartmouth Coll., No. 07-cv-28-PB, 2007 U.S. Dist. LEXIS 81396 (D.N.H. Oct. 24, 2007). Christina Porter, an inexperienced skier, enrolled in an introductory skiing class at Dartmouth College to satisfy the physical education credit, which is required for all undergraduate students. During class one day, Porter was told to ski down a hill by herself while the instructors accompanied all other students in the class down a more difficult hill. As Porter was skiing down the hill she hit a tree and sustained serious injuries that led to her death. Porter's parents sued for negligence and wrongful death. Darmouth moved to dismiss the claims because they were barred by the New Hampshire Skiers, Ski Area, and Passenger Tramway Safety Act (Ski Statute), which bars lawsuits for claims that result from inherent risks in the sport of skiing. The court denied the motion to dismiss because the Ski Statute does not bar claims for negligent instruction.

Rebischke v. Metro. Sports Facilities Comm'n, No. A06-1605, 2007 Minn. App. Unpub. LEXIS 726 (Minn. Ct. App. July 17, 2007). Frieda Rebischke was injured as she was leaving a Minnesota Twins baseball game. As she was walking through a set of open balance doors the wind effect caused her to fall face-first into a turnstile. Frieda had been to games before and was aware of the wind effect, but claimed that the wind was much stronger on the day she was

injured. In addition, there were signs posted near the doors to warn spectators of the wind effect. The Metrodome's roof is largely supported by air pressure and the balance doors are only opened when the air pressure conditions allow for it. The decision to open them is made by a technician based on different factors and the Metrodome's operations manual. Frieda sued the defendant for negligence and failure to warn. The defendant filed a motion to dismiss because it claimed immunity. The trial court denied the defendant's motion to dismiss because the decision to open the doors was a ministerial act rather than a discretionary act. The appellate court remanded the case to the trial court because there was a question of fact whether the technician's decisions constituted a ministerial act or a discretionary act.

Regan v. Mutual of Omaha Ins. Co., 874 N.E.2d 246 (Ill. App. Ct. 2007). Brendan Regan was a member of the St. Ambrose baseball team and traveled with the team to a baseball tournament in Florida in March 2002. During the team's day off, Regan was paralyzed when he dove into a wave and hit the ocean floor at a beach next to the team's hotel. Mutual of Omaha issued a catastrophic athletic insurance policy to St. Ambrose University and a claim was made on Regan's behalf following his injury. Mutual of Omaha denied the claim because the injury occurred during a day off and did not occur during a covered activity or event. Regan claimed that the entire trip to Florida was a covered activity or event. Regan sought a declaratory judgment, and the trial court granted summary judgment for Regan. The appellate court affirmed the trial court's decision because Regan was not violating any team rules while being at the beach.

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Ribaudo v. La Salle Inst., 45 A.D.3d 556 (N.Y. Sup. Ct. 2007). Mark Ribaudo, Jr. was injured during a basketball game at La Salle Institute when he ran into a concrete wall while trying to prevent a ball from going out of bounds. Mark sued the defendants to recover damages for his injuries. The defendants moved for summary judgment, but the trial court denied the motion. The appellate court reversed and granted summary to the defendants because Mark was an experienced player who assumed the risks associated with playing basketball and the risk of running into the wall was readily apparent to Mark and the lack of padding on the wall did not violate any standards related to basketball courts.

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Shin v. Ahn, 165 P.3d 581 (Cal. 2007). Shin and Ahn were golfing in a group together. On the thirteenth hole, Ahn hit his ball before confirming where Shin was standing, and the ball hit Shin. The trial court granted summary judgment in favor of the defendant because Shin assumed the risk of being hit by a golf ball, but then reversed itself saying there was a triable issue of fact. The appellate court affirmed saying that the assumption of risk doctrine did not apply, but there was a question of fact of whether the plaintiff's conduct raised issues of comparative negligence. The California Supreme Court affirmed the decision of the appellate court, but for different reasons. The Supreme Court determined that the primary assumption of risk applied, but it needed to be determined whether Ahn engaged in conduct that was so reckless that it was considered outside the range of ordinary activity involved in golf.

Sports Arena Mgmt, Inc. v. K&K Ins. Group, Inc., No. 06 C 6290, 2007 U.S. Dist. LEXIS 55812 (N.D. Ill. July 31, 2007). American Heartland operated an ice arena and asked K&K Insurance Group to procure an insurance policy on its behalf and to name Cicero, the owner of the arena, as an additional insured. K&K told American Heartland that it had secured the insurance policy. However, when there was a floor heaving on both of the arena's skating surfaces, American Heartland submitted a claim to Great American, but it denied the claim because it excluded coverage for losses caused by earth shifting, settling, cracking and corrosion and it said Cicero was insured only under the liability portion, not the property damage. The plaintiffs sued K&K for breach of fiduciary duty. The court dismissed the claim because an Illinois statute precludes breach of fiduciary duty claims for insurance producers.

Ultimate Creations, Inc. v. McMahon, 515 F. Supp. 2d 1060 (D. Ariz. 2007). Warrior was a professional wrestler and used to work for the defendant. The defendant released a DVD called The Self-Destruction of the Ultimate Warrior, and Warrior claimed that there were several defamatory statements within the video. Warrior, his wife, and their company, Ultimate Creations, sued the defendants for defamation. The defendants filed a motion to dismiss. The court dismissed Ultimate Creations and the Warrior's wife because there were no allegations that there were any false statements made about these two plaintiffs on the DVD. However, the court did not dismiss the defamation and false light claims because the statements are capable of being defamatory, and some of the statements were regarding the Warrior's personal life; therefore, it did not matter that he was a public figure.

Yatsko v. Berezwick, No. 3;06cv2480, 2007 U.S. Dist. LEXIS 88967 (M.D. Pa. Dec. 4, 2007). Tracey Yatsko was a member of the Tamaqua Area High School basketball team. During a game in January 2005, she hit her head with another player's head while attempting to get a rebound, which caused vision problems and a severe headache. She told her coaches that she was in severe pain, but the coaches did not take her to the trainer because they did not want the trainer to say she couldn't play. The following day she continued to have a headache and told her friends that she suffered a concussion. Two days after the incident, Tracey had another basketball game. She told her coaches that she had a concussion, but they still allowed her to play. After collapsing that night, Tracey's mom took her to the hospital and she asked the coaches why they allowed her daughter to play. The head coach said that he had made the wrong decision. Tracey suffered serious brain injuries, missed several months of high school, dropped out of college, and has had large medical expenses. Tracey sued the school district claiming a violation of due process rights by failing to keep her free from state-created dangers. The court dismissed the due process claims because the coaches' behavior did not shock the conscience.

MISCELLANEOUS LAW

Abdallah v. U.S. Ass'n of Taekwondo, No. H-07-2880, 2007 U.S. Dist. LEXIS 68179 (S.D. Tex. Sept. 14, 2007). Abdallah lost to another competitor at the 2007 U.S. Olympic Team Trials for taekwondo. She claimed that she lost because of bias and unfair judging. She asked the court to either declare her the winner of the competition or schedule one or two subsequent competitions to determine the correct winner. The court dismissed the claim because Abdallah had failed to exhaust the internal remedies within the United States Association of Taekwondo and the United States Olympic Committee.

Bryant v. Nat'l Football League, Inc., No. 07-cv-02186-MSK-MJW, 2007 U.S. Dist. LEXIS 77473 (D. Colo. Oct. 18, 2007). Antonio Bryant played for the San Francisco 49ers in the NFL until the 49ers terminated his contract on March 1, 2007. However, the NFL has required Bryant to continue submitting random drug tests and told him that he was going to be disciplined for not complying with the tests in the same manner as if he had failed a test. The NFL also told teams that if they signed Bryant, he would be suspended. Bryant sued for tortious interference with prospective contractual relations and filed a motion for a temporary restraining order (TRO). The court denied the TRO because Bryant failed to show that he is at risk of suffering an immediate injury. Although the NFL has disclosed the results of past tests to prospective NFL teams, there is nothing that shows the NFL will disclose information in the future.

Royster v. Comm'r, T.C. Summary Op. 2007-151 (2007). Royster created the Royster Basketball School in order to give Chicago area basketball players the opportunity to travel around the country to play in basketball tournaments, which provided them more exposure to college and professional scouts. Royster also hoped to gain recognition for his coaching skills, attract attention from one of the major athletic apparel and shoe companies and receive a sponsorship offer from one of them. Royster claimed business expenses from the Royster Basketball School and claimed it was a not-for-profit. The IRS asked for documentation, but he claimed that his house had been broken into and all documentation related to the Royster Basketball School was stolen. The court determined that he was responsible for paying the deficiencies and that he could not claim business expenses because he had not run the basketball school in a manner that generated profit, he did not model his school on a business model, and the basketball school was maintained to meet his personal goals rather than business goals.

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