You Make the Call. . .

Volume 10, Number 1

{Spring/Summer 2008}

ALTERNATIVE DISPUTE RESOLUTION

Adams v. Canadian Centre for Ethics in Sport, CAS 2007/A/1312, award of May 16, 2008. Jeffrey Adams, a Canadian disabled track-and-field athlete, violated the Canadian Anti-Doping Program (CADP) Rules when he tested positive for cocaine at ING Ottawa Marathon Wheelchair Competition. A doping tribunal found him guilty of violating the CADP Rules, banned him for two years, disqualified him from the competition where he tested positive, and permanently disqualified him from receiving financial support through the Canadian government. Adams appealed to CAS. He claimed that he had been at a bar six days earlier, and a woman he did not know put cocaine in his mouth without his consent. When he got home he used a new catheter (which was required because of his paralysis) to urinate and then put it in the emergency pocket of his wheelchair. After finishing first at the ING Ottawa Marathon Wheelchair Competition, he provided a urine sample to doping control. When providing the urine sample he used the catheter that he had used the night of the cocaine incident. Adams claimed that the reason he tested positive was because the catheter was contaminated. CAS found that Adams was not at fault because the catheter was contaminated, and it eliminated his ineligibility period and allowed him to continue receiving financial support from the Canadian government. However, he was still disqualified from the ING Ottawa Marathon Competition.

Apollon Kalamarias FC v. Hellenic Football Federation (FCC) and Olympiacos FC, CAS 2008/A/1525, award of April 21, 2008. Roman Wallner played for the Greek football team Appollon against Olympiacos on February 3, 2008, but Olympiacos claimed he was ineligible because he had played for two other football clubs during the same season. The league's Disciplinary Committee determined that Wallner was ineligible to play, annulled the result, and said the match should be replayed. However, the Appeals Committee determined the result of the match should be 3-0 in favor of the Olympiacos and deducted one point from Apollon's standing. Apollon appealed the decision to CAS, and he asked for provisional measures to annul the decision and to order the disclosure of documents related to the appeal. CAS determined Apollon was not likely to succeed on the merits because it was undisputed that the player had played for three different teams in the same season and dismissed the case.

Asian Handball Federation, Kazakhstan Handball Federation, and Kuwait Handball Association v. International Handball Federation, CAS 2008/O/1483, award of May 20, 2008. The Asian Handball Federation conducted a qualifying tournament for the 2008 Olympic Games for men and women. Kuwait won the men's tournament and Kazakhstan won the women's tournament over South Korea on the basis of its superior goal difference, even though South Korea had beaten Kazakhstan. The Korean Handball Federation (KHF) protested the outcome of the men's tournament because two Jordanian referees officiated the match and it claimed the referees were biased against South Korea. KHF also protested the outcome of the women's tournament because there were only three referee pairs from west Asia, which caused a manipulated result. The IHF cancelled the results of both the men's and women's tournaments and ordered them to be replayed. CAS would not allow Kazakhstan Handball Federation or the Kuwait Handball Federation to participate in the proceedings because they were not bound by arbitration nor did they have an agreement with IHF.

Boxing Australia Incorporated v. Association Internationale de Boxe (AIBA), CAS 2008/O/1455, award of April 16, 2008. In April of 2006, the AIBA, the international governing body for boxing, issued the qualification rules for the 2008 Olympic Games. The document stated that the qualification for the Oceania countries would be completed at the Oceania Championships, which is run by the Oceania Boxing Association (OBA). The OBA Constitution states that each country may enter two boxers in each weight class at the Oceania Championships. On December 11, 2007, the AIBA informed Boxing Australia that it would only be able to enter one boxer in each weight category at the Oceania Championships. On February 12, 2008, the AIBA informed all Oceania national federations that the Oceania Boxing Championships would no longer be held in Australia, another location was being sought, and it would now be called the Oceania Continent Olympic Qualifier. Boxing Australia appealed to CAS asking it to declare the 2008 Oceania Championships to serve as the Olympic qualifier and allow it to enter two athletes per weight class. CAS agreed and ordered the AIBA to comply with its Olympic Qualification System. It also told the AIBA to allow each federation to enter two athletes per weight class, because it was not fair to the athletes to change the qualification standards so close to the Olympics.

D'Arcy v. Australian Olympic Committee Inc (Partial Award), CAS 2008/A/1539, award of May 27, 2008. Nick D'Arcy qualified for the 2008 Australian Olympic Swimming Team on March 29, 2008. The following day he was involved in an altercation at a bar in Sydney while celebrating his selection to the Olympic Team. He hit Simon Cowley, a former swimmer, in the face with his elbow, which caused serious injuries to Cowley. D'Arcy was arrested and charged with assault. After making the Olympic Team, he signed a document agreeing not to engage in conduct that brought himself, his sport, the Australian Olympic Committee, or the Olympic Team into disrepute or censure. After hearing D'Arcy's side of the story, the president of the AOC sent a letter to D'Arcy stating that he had determined that D'Arcy had brought him and his sport into disrepute and censure. In addition, if D'Arcy remained on the team he would likely bring the AOC and the Olympic Team into disrepute and censure. D'Arcy appealed to CAS. It set the decision aside and remitted it to the AOC because the decision to terminate D'Arcy should have been made by the AOC, rather than by the AOC president.

Diethart v. International Olympic Committee, CAS 2007/A/1290, award of January 4, 2008. Roland Diethart was a member of the Austrian cross-country team that competed in the 2006 Turin Olympics. He was staying with fellow teammates in a house when it was searched by the Italian police the night before the 4x10 km relay. The police found various items that are used for blood doping. Most of the items found belonged to his teammates, but the police did find a box labeled Anabol Loges in one of his bags. The IOC investigated, and it determined Diethart had possessed prohibited substances and used prohibited substances. He also aided and abetted other athletes to possess prohibited substances and use prohibited methods. The IOC disqualified Diethart from the Men's 4x10 km Relay and banned him from all future Olympic Games. Diethart appealed to CAS. CAS determined Diethart was guilty because he knew the items were located in the house, which meant he had constructive possession. However, it reduced the ban to four years because it believed that Diethart was pressured by officials from the Austrian Ski Federation.

Eder, Tauber, and Pinter v. International Olympic Committee, CAS 2007/A/1286, 1288, & 1289, award of January 4, 2008. Eder, Tauber, and Pinter competed in cross country skiing at the 2006 Winter Olympic Games for Austria. All three athletes were staying together in a house outside of Torino, Italy during the games. The Italian Police conducted a search on the premises and found needles, devices used to test for hemoglobin levels, infusion device packs and intravenous drips. The Austrian Olympic Committee banned all three athletes from competing at any future Olympic Games because it believed they were all involved in blood doping. They appealed to CAS, and the cases were consolidated. The athletes argued that they were using the device to check their hemoglobin levels because they all had naturally high levels and wanted to prevent suspension from the Games. They also claimed that they did not know what the other athletes had in their possession. However, CAS believed that they each had possessed a prohibited method. CAS upheld the Austrian Olympic Committee's lifetime ban because it believed that the athletes had shown a complete disregard for the Olympic Games by engaging in blood doping and transfusions after the Austrian Olympic team had been in trouble for the same thing following the 2002 Winter Olympic Games.

Federation Internationale de Natation Amateur (FINA) v. Confederacao Brasileira de Desportos Acquaticos (CBDA) and Gusmao, CAS 2007/A/1373, award of May 9, 2008. Rebecca Gusmao was selected for an in-competition drug test at a meet in May of 2007. Three samples were taken, and all three came back with an elevated T/E value and signs of an exogenous origin of testosterone. However, there were also signs of microbial degradation. After the B samples came back with the same finding, FINA, the international governing body for aquatic sports, requested that the Brazilian swimming federation (CBDA) organize a hearing regarding the possible doping violations by Gusmao. CBDA determined that because of the microbial degradation there were doubts that Gusmao had committed a doping violation, and it did not believe she should be sanctioned. FINA appealed to CAS. CAS determined that it did not have jurisdiction in this case because FINA had not exhausted its internal remedies by conducting a hearing of its own.

Ganaha v. Japan Professional Football League, CAS 2008/A/1452, award of May 26, 2008. Ganaha played professional football for the Kawaski Frontale, a member of the Japan Football Association (J League). The J League was subject to the World Anti-Doping Code (WADA) because it was a member of FIFA. On April 23, 2007, Ganaha had an intravenous infusion

performed on him by the Kawaski Frontale doctor because he had been feeling sick, had lost his appetite, and had been having a hard time taking in fluids. However, on May 10, 2007, the Doping Control determined the treatment would not be approved as an acute and legitimate medical treatment of his health condition and suspended him for six games. Ganaha appealed to CAS, seeking a cancellation of the sanction imposed on him. CAS determined that he had acted without fault because the 2007 rules regarding when it was acceptable to use an intravenous infusion were not clear; therefore, the sanction was set aside.

Giuseppe Gibilisco v. Comitato Olimpico Nazionale Italiano - Uffico Procure Antidoping (UPA-CONI), CAS 2007/A/1426, award of May 9, 2008. Gibilisco was a professional pole vaulter from Italy and a member of the Italian military corps. In 2004, a criminal investigation was conducted by the state Public Prosecutor Office in Rome to determine the relationship between Dr. Carlo Santuccione and several athletes because there were suspicions that he was providing prohibited substances to athletes. During the course of the investigation Gibilisco was recorded while having a conversation with the doctor about diets, medicine, and Testovis, which is a product that contains testosterone and growth hormone. A search was conducted at Gibilisco's residence, and a personal agenda and caffeine tablets were found. The personal agenda had the letters A, P, and G on a calendar, which most likely referred to Andriol, Profasi, and Growth Hormone. After the search took place, Gibilisco was interrogated and admitted he had talked to the doctor about doping substances and that the letters on his personal agenda related to training programs. The Italian Athletic Federation (FIDAL) banned Gibilisco for two years for attempting to use prohibited substances, and he appealed to CAS. Gibililisco argued that he had never failed a drug test, no drugs had ever been found in his possession, and he was never charged in relation to the criminal investigation. CAS set aside the two-year ban because there was no evidence that he actually took drugs.

Landis v. United States Anti-Doping Agency (USADA), CAS 2007/A/1394, award of June 30, 2008. Landis won the 2006 Tour de France. During the race, he provided several urine samples to Union Cycliste Internationale (UCI). Most of the samples did not have any adverse findings, but both the A and B samples from Stage 17 tested positive for banned substances. The United States Anti-Doping Agency (USADA) refused to dismiss the results, and the two parties went before the American Arbitration Association (AAA). AAA disqualified his results, banned him for two years, but warned USADA that its testing labs needed to be more careful with its testing methods. Landis appealed to CAS and claimed the testing lab had committed lies, fraud, forgery, and cover-ups. CAS upheld the two-year ban and ordered him to pay $100,000 to USADA because it believed he had made frivolous claims. Although CAS admitted that the lab was not practicing ideal standards, it did not believe that it had lied, committed fraud or forgery, or tried to cover-up anything.

London v. Amateur Athletic Union, 2008 Phila. Ct. Com. Pl. LEXIS 126, No. 002111 (Phila. Ct. Com. Pl. June 3, 2008). Stuart London and Doris Smith sued the Amateur Athletic Union (AAU) claiming they were denied rights as members in good standing in regards to the 2006 Middle Atlantic Association of the AAU's officer election. The AAU claimed that the AAU Code required all disputes to be handled by arbitration, and any disputes that were not handled by arbitration had to be brought in Florida courts. However, the plaintiffs lived in Pennsylvania and claimed the clause was unfair. The court said the clause would unreasonably favor the AAU and

might preclude someone from pursuing a remedy. The court found the enforcement of the provision would have been unconscionable and allowed the plaintiffs to pursue their case in Pennsylvania courts.

Mewing v. Swimming Australia Limited, CAS 2008/A/1540, award of May 9, 2008. Andrew Mewing finished eighth in the 200 meter freestyle at the Telstra Swimming Selection Trials for the Beijing 2008 Australian Olympic Team. Although the first seven finishers in the men's 200 meter freestyle and the first eight finishers in the women's 200 meter freestyle were selected for the 2008 Australian Olympic team, Mewing was not. He filed an appeal with Swimming Australia against his non-nomination to the Olympic Team, but his appeal was dismissed. Mewing appealed to CAS, claiming there was room to add him to the team, and that he had met the relay performance requirements. The Nomination Criteria also stated, meeting the relay performance requirements does not guarantee nomination for selection. In addition, it was unlikely that if Mewing were selected for the team he would actually have an opportunity to swim at the 2008 Beijing Olympics. However, Mewing claimed this was an irrelevant consideration. CAS dismissed the appeal because it believed Alan Thomson, the head coach, gave proper, genuine, and realistic consideration to the overall needs of the team and had not acted in bad faith, dishonestly, or perversely.

Nat'l Football League v. Bonner, WIPO D2008-0605, award of May 29, 2008. Bonner registered the domain name officialsuperbowlparties.com on October 10, 2007. The National Football League (NFL) claimed it owned the trademark Super Bowl and that Bonner's website address was confusingly similar to its mark and was being used in bad faith. Bonner did not reply to the NFL's contentions. The WIPO determined that the domain name should be transferred to the NFL because Bonner had registered it at a time when the term Super Bowl had world wide recognition and he must have been aware of the NFL's mark.

Pistorius v. International Association of Athletics Federations (IAAF), CAS 2008/A/1480, award of May 16, 2008. Oscar Pistorious' legs were amputated when he was eleven months old and has used prosthetic legs since then. While running competitively, Pistorious uses the Cheetah Flex-Foot. In 2004, he qualified for the Athens Paralympics and was the paralympic world-record holder in the 100, 200, and 400 meters. Pistorious also wanted to compete with able bodied athletes at meets sanction by IAAF, the international track and field governing body. However, after competing in several competitions, the IAAF determined that he would no longer be able to compete with able-bodied athletes if there was scientific evidence that proved his prosthesis gave him an advantage. After several tests were conducted, the IAAF determined that the Cheetah Flex-Foot prosthesis provided an advantage over athletes who were not using the prosthesis, which rendered Pistorious ineligible to compete in IAAF-sanctioned events. After listening to scientific evidence presented by both sides, CAS disagreed with the IAAF and determined that he was eligible to compete in IAAF-sanctioned meets because the IAAF had not proven he gained an overall net advantage over runners not using the Cheetah Flex-Foot.

Racing Club de Strasbourg Football v. Ismaily Sporting Club and Ismaily Sporting Club v. Racing Club de Strasbourg Football, CAS 2007/A/1388 and CAS 2007/A/1389, award of May 21, 2008. Ismaily Sporting Club (Ismaily) and Racing Club de Strasbourg Football (RCSF) signed a Transfer Contract to transfer Hosini Ebrahim Abrabu from Ismaily to RCSF for €

1,100,000 on May 30, 2005. He was to play with RCSF for four seasons, but in 2007 RCSF and Ismaily agreed to exercise a transfer option where Abrabu would play for Ismaily for three seasons. Ismaily had the option to make the transfer permanent if it paid € 500,000 by June 15, 2007. It paid the money on June 19, 2007, but RCSF claimed the conditions were not met because the payment was late and said that Abrabu must return to RCSF. However, RCSF cashed the check. Ismaily claimed that the conditions required for the permanent transfer had been made. The FIFA's Player Status Committee determined that Ismaily did not exercise the option in time, and Ismaily appealed. CAS determined that RCSF had to pay Ismaily the € 500,000 that it had paid for the permanent transfer. Ismaily was ordered to pay a € 300,000 penalty fee, but that was offset by the € 300,000 that RCSF owed under the original Transfer Contract. It would not order Abrabu to return to RCSF or order FIFA to issue his International Transfer Certificate because neither were a party to the dispute.

Reebok Int'l Ltd. v. Domain Privacy Services, Hong Kong Names LLC, WIPO D2008-0359, award of May 14, 2008. The domain name reebokhockey.com was registered by Domain Privacy Services in December, 2007. Reebok International first registered the trademark Reebok in 1980 and most recently registered it in 1995. Included in those trademark registrations are trademarks for hockey products. Reebok claims that the domain name is confusingly similar or identical to their trademark. The WIPO found that the domain name was confusingly similar because it combined the well known name Reebok with hockey, and it was used in bad faith because holding the registration of a well-known trademark is a clear indication of bad faith. The WIPO ordered the domain name to be transferred to Reebok.

Wigan Athletic AFC Limited v. Heart of Midlothian PLC, award of January 30, 2008. Andrew Webster signed a contract to play football with Heart of Midlothian (Hearts) in 2001. In 2003, Webster and the Hearts renegotiated the contract and entered a new contract that would expire in June of 2007. In 2005, the Hearts attempted to renegotiate with Webster, but he turned down all offers. In 2006, Webster was not selected to play in several games and he believed he was being punished for not accepting a new employment contract. In addition, the majority shareholder of the Hearts told the media that Webster's commitment was uncertain and that he would be put on the transfer list. Webster was advised by the Scottish Professional Footballer's Association (SPFA) that he could legally terminate his contract if there was a breakdown in mutual trust. Webster advised the Hearts that he was unilaterally terminating the contract and signed a new contract with Wigan Athletic AFC (Wigan). The FIFA Dispute Resolution Chamber determined that Webster had to pay the Hearts £625,000 and was ineligible to compete in any football match for two years. In addition, Wigan was held jointly and severally liable. Both parties appealed to CAS. CAS reduced the award to the Hearts to £150,000, held Wigan jointly and severally liable, and deemed Webster eligible to play football.

AMERICANS WITH DISABILITIES ACT CASES

Bowers v. NCAA, 2008 WL 1757929, No. 97-2600 (JBS) (D.N.J. July 1, 2008). Michael Bowers submitted an application to the NCAA Clearinghouse while he was in high school during the 1995-96 academic year, but the NCAA ruled him as a non-qualifier. Bowers claimed that this was because he was enrolled in many special education classes in high school, and it negatively

impacted his ability to receive an athletic scholarship. Bowers sued the NCAA claiming that it discriminated against him based on his learning ability, which violated the Americans with Disabilities Act and the Rehabilitation Act. The original complaint was filed by Bowers in 1997, and litigation has continued since then. The plaintiffs most recently asked the court to compel the NCAA to provide information about the changes the NCAA made to its eligibility bylaws since the 1995-96 academic year. The plaintiff requested this information to try to prove that the eligibility requirements were not necessary to achieve a legitimate objective because they have since been changed. The court denied the motion because Bowers had ample time to discover the information over the course of the litigation and did so in several depositions and additional information beyond what Bowers already has would be only marginally beneficial.

Hollonbeck v. U.S. Olympic Comm., 513 F.3d 1191 (10th Cir. 2008). The plaintiffs, paralympic wheelchair athletes, claimed the USOC provided them with programming, privileges, and financial support that was inferior to the support provided to non-disabled Olympic level athletes. The plaintiffs also claimed the USOC marketed the paralympics mark at a level below how it promoted the Olympic mark. The plaintiffs sued, claiming violations of the Rehabilitation Act and Title III of the Americans with Disabilities Act (ADA). The District court dismissed the case because the Olympic program and the Paralympic programs are different and require different resource allocations; therefore, the court ruled that the athletes did not have an actionable right under the ADA or the Rehabilitation Act. The Court of Appeals affirmed the District Court's decision because the Paralympic and Olympic programs were two distinct programs, and the athletes were not otherwise qualified to receive benefits under the Olympic program. In order to receive the benefits an athlete has to intend to compete in the next Olympic or Pan American Games, if selected. These athletes were not qualified to compete in either of those events; therefore, the program benefits did not apply to them.

ANTITRUST LAW

Kentucky Speedway, LLC v. Nat'l Ass'n of Stock Car Auto Racing, Inc., 2008 U.S. Dist. LEXIS 1076, Civ. Act. No. 05-138 (WOB) (E.D. Ky. Jan. 7, 2008). The plaintiff claimed that the defendant violated the Sherman Act when it refused to allow the plaintiff to host a NASCAR Nextel race. The plaintiffs relied on evidence from Professor Zimbalist regarding information about the relevant market. Rather than using an accepted means of testing, such as the merger guidelines test, Zimbalist used his own test. However, his test failed the Daubert criteria for accepted expert testimony because it was not a proven test, had not been subjected to peer review, and there was no evidence of general acceptability within the scientific community. In addition, Zimbalist did not compare the race to other forms of entertainment, such as Reds' or Bengals' games, in the area. Because the plaintiffs did not define the relevant market, the court granted summary judgment in favor of the defendants.

Madison Square Garden, L.P. v. Nat'l Hockey League, 2008 U.S. App. LEXIS 5888, No. 07-4927-cv (2d Cir. Mar. 19, 2008). In an effort to strengthen its league brand, the National Hockey League (NHL) 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 moved for a preliminary injunction against the league's effort to ban it from operating an independent website. The district court denied the preliminary injunction, and the Rangers appealed. The court of appeals affirmed the district court's decision because the Rangers were not able to show that the league's website ban had an actual adverse effect on competition in the relevant market.

CONSTITUTIONAL LAW

Borden v. Sch. Dist. of E. Brunswick, 523 F.3d 153 (3d Cir. 2008). Borden was the head football coach at East Brunswick High School, and he wanted to engage in the silent acts of bowing his head during his team's pre-meal grace and taking a knee with his team during a locker-room prayer. He sued the school district and asked for a declaratory judgment that the district's policy prohibiting faculty participation in student-initiated prayer was unconstitutionally overbroad and vague, and violated his right to free speech. The district court said that the policy was unconstitutional and violated the Establishment Clause, but the Third Circuit reversed. The policy was not overbroad because the policy could be interpreted on a case-by-case basis, and the school was doing what it could to prevent Establishment Clause violations. The court also ruled that by using the word participate, the policy was not vague because a reasonable person could have determined that Borden's acts were considered participating in prayer. In addition, his speech was not a matter of public concern and did not trigger his right to freedom of speech as a public employee.

{Webfind}

Brannum v. Overton County Sch. Bd., 516 F.3d 489 (6th Cir. 2008). Thirty-four middle school students sued the school district when they claimed that their right of privacy was violated when the school district installed video surveillance equipment in the locker rooms at the school. The students argued that their Fourth Amendment right against unreasonable searches was violated because the cameras often videotaped areas where the athletes were changing for practice or games. In addition, the images were available on the internet to anyone who had a username and password, which were never changed from the default setting. The court determined that although the school installed the cameras to improve security, it did not have any legitimate reasons to think that the students' safety or security in the locker rooms justified installing the cameras; therefore, the right to privacy was violated. The principal and vice principal were denied qualified immunity because they made the decision and were responsible for installing the cameras. However, qualified immunity was granted to the Director of Schools and the school board members because they did not authorize the installation of the cameras.

{Webfind}

Bryant v. Gardner, 545 F. Supp. 2d (N.D. Ill. 2008). In 2003, Bryant became the boys' basketball coach at John Marshall High School. He consistently took the team to the state championships and significantly improved the team's record during his first year. In 2004, the head women's basketball coach became the athletic director. Bryant claimed that she began giving scholarships

to only girls and forbid the boys to participate in pre-conditioning and open gym, but allowed the girls' team to do those things. Bryant was contacted by several high schools and universities about coaching and teaching positions in 2006 and 2007, but the principal of the school talked him into staying through the 2007-08 season. However, in October 2007, the principal fired Bryant, and the athletic director made statements in the media about how Bryant was operating under his own agenda. Bryant sued the school, the school board, the athletic director, and the principal for violating the Fourteenth Amendment by ruining his reputation in the coaching field. The athletic director moved to dismiss the Fourteenth Amendment claim, but the court did not because Bryant alleged facts that showed the defendants made stigmatizing facts in public that created a loss of employment opportunities.

Cooper v. Killeen Indep. Sch. Dist., 2008 WL 194358, No. A-07-CA-082 LY (W.D. Tex. Jan. 23, 2008). Khandiese Cooper and her sister, Moni, went to watch the Killeen High School basketball game at Ellison High School. Khandiese had a ticket, but Moni did not and by the time they arrived to the game it was already sold out. Khandiese tried negotiating with the ticket-taker to get her sister in the game. While Khandiese was negotiating, Edmiston, a Killeen Independent School District police officer, approached her and asked if she was in or out. She said she was in, but he replied no, you are out. Khandiese tried to walk through the door that Edmiston was standing in. Because Edmiston believed she was trespassing, he tried to arrest her, but she resisted. They eventually ended up on the ground, after hitting a glass window, and Edmiston handcuffed her. Khandiese was charged with criminal trespass and interference with public duties, but those charges were later dropped. Khandiese sued Killeen Independent School District and Edmiston for violating her Fourth and Fourteenth Amendment rights and for assault and battery. The defendants moved to dismiss the case, but the court denied the motion because there was a genuine issue of fact regarding exactly what took place, whether Edmiston used excessive force, whether Khandiese actually trespassed, and whether qualified immunity applied to the assault and battery claims because he may not have acted in good faith. However, the school district was granted summary judgment because Khandiese could not show a specific district policy that resulted in the excessive force and assault and battery; therefore, the district had qualified immunity.

Davis v. Houston County Bd. of Educ., 2008 U.S. Dist. LEXIS 10767, No. 1:06-cv-953-MEF (WO) (M.D. Ala. Feb. 13, 2008). Joshua Davis was playing in a high school football game when he suffered a head injury during the first quarter. He continued to play, but was taken out in the third quarter because the coaches did not think he was playing well. At one point Joshua walked past one of the coaches and hit him with his shoulder pad. The coach told him that hitting a coach would not be tolerated. Joshua then got very upset and started yelling at the coach. Another coach tried to break up the confrontation, but Joshua hit him in the eye. Joshua was eventually escorted off the field by an off-duty police officer. Joshua went to the doctor the next day and was told that he might have suffered a concussion, which could have caused his erratic behavior. At a disciplinary hearing, the doctor and counselor that Joshua had been seeing both testified that the erratic behavior was most likely caused by the concussion. However, Joshua was expelled from school. Joshua claimed that his equal protection rights were violated when the school board expelled him. The court dismissed testimony from both the doctor and the counselor because there was no evidence of their credentials to show they would be qualified as an expert witness. The court also granted summary judgment for the school district because

Joshua did not present any evidence of students similarly situated to him that were treated differently.

Interactive Media Entm't & Gaming Ass'n v. Gonzales, 2008 U.S. Dist. LEXIS 16903 (D.N.J. Mar. 4, 2008). Interactive Media Entertainment & Gaming (Interactive Media) collected and disseminated information on Internet gambling. It claimed the Unlawful Internet Gambling Enforcement Act of 2006 (the Act) violated the First Amendment. The court ruled that the Act doid not burden the group's expressive association freedoms because it did not prevent the group from expressing its views on Internet gambling. The Act only criminalizes the acceptance of money in connection with illegal internet gambling, and the acceptance of money is not speech. Interactive Media also claimed that the Act was both overbroad and vague. The overbroad claim failed because the Act cannot be considered overbroad since it does not deal with constitutionally protected conduct. Similarly, the Act was not void on vagueness grounds because the Act clearly outlines which conduct is considered illegal and what actions businesses need to take to ensure they are not violating the Act. Interactive Media did not establish third-party standing because it was not able to show that as an association it had a close relationship with the individual gamblers; therefore, the privacy claim failed. In addition, Interactive Media also claimed that the Act violated a World Trade Organization ruling based on the Uruguay Round Agreements, but those do not allow for a private cause of action. Finally, Interactive Media claimed the Act violated the Tenth Amendment by taking away the rights of the states to regulate gambling. However, the court dismissed the Tenth Amendment claim for lack of standing because private individuals lack standing to bring Tenth Amendment claims.

Matyas, v. Bd. of Educ., 855 N.Y.S.2d 339 (Supreme Court of New York 2008). Matyas was a baseball coach for the Chenango Forks Central School District when he was involved in an altercation with a parent. The parent approached him and began speaking in a threatening manner. The police were called by some parents who watched the incident, and later that night a police officer came to the petitioner's house to see if he wanted to press charges against the parent. Matyas said yes, and the parent was charged with harassment in the second degree, but the charges were eventually dropped. The parent then sued him. Matyas requested that the school district provide him with a defense and indemnification, but he was denied. The school district argued that the coach filed the complaint at his own home and outside of regular school hours, and the events did not arise out of the coach's employment duties. However, the court determined that because the underlying action had occurred at a baseball game and involved the subject of his coaching, which was directly related to his coaching duties.

Johnston v. Tampa Sports Auth., 2008 U.S. App. LEXIS 12772, No. 06-14666 (11th Cir. June 18, 2008). In 2005, the Tampa Bay Sports Authority (Authority) began requiring pat-down searches of everyone attending Tampa Bay Buccaneers games. Gordon Johnston was a Buccaneers' season ticket holder and sued the Authority, claiming his Fourth Amendment rights were violated. A state court agreed and granted a preliminary injunction that prevented the pat-downs. The Authority removed the case to federal court and asked the court to vacate the preliminary injunction. The court said that Johnston had not consented to the pat-downs and denied the motion. The Authority appealed, and the Eleventh Circuit reversed because it determined Johnston had ample notice of the searches and was not forced to enter the stadium; therefore, Johnston had voluntarily consented to the searches.

{Webfind}

Jones v. Wash. Interscholastic Activities Ass'n, 2008 U.S. Dist. LEXIS 9085, No. C07-711RSL (W.D. Wash. Feb. 6, 2008). The Washington Interscholastic Activities Association (WIAA) rules limited the amount of time that a football coach may coach middle school students to 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 and his waiver should have been granted. The court granted summary judgment for the WIAA because its decision had a reasonable purpose and did not appear arbitrary or capricious.

Pinard v. Clatskanie Sch. Dist. 61, 2008 WL 410097, No. 03-172-HA (D. Or. Feb. 12, 2008). The plaintiffs were former members of the 2000-01 Clatskanie High School varsity boys' basketball team and claimed that the head basketball coach was verbally abusive. During a team meeting, the basketball players signed a petition requesting the head coach to resign because they no longer felt comfortable playing for him as a coach. The athletic director gave the students the choice of participating in a mediation process and boarding the bus for a game that night, or adhering to their petition and not playing in the scheduled game. Subsequently, the high school principal permanently suspended all the players who did not board the bus or play in the game. The players appealed the decision, but the decision was upheld by the school board. The plaintiffs claimed their First Amendment rights were violated. The case had been remanded to the district court to determine whether the petition and complaints against the coach were motivating factors in the decision to suspend the students. The district court denied the defendant's motion for summary judgment because there was a question of fact about whether the school district suspended the students for protected speech, whether it had policies in place for dealing with this type of behavior, and, if so, whether it followed those policies.

Samuelson v. LaPorte Cmty. Sch. Corp., 526 F.3d 1046 (7th Cir. 2008). Gregory Samuelson started working as a teacher at LaPorte Community School Corporation in 1992. He also coached various teams at both the middle school and high school levels. During his tenure as basketball coach, members of the basketball team signed at least two petitions asking him to resign. He was also involved in a physical altercation with the middle school basketball coach following a game. In addition, on several occasions he failed to follow the chain of command procedures in place and went directly to the School Board to voice his concerns about some

issues. In 2003, he sent an email to the Superintendent asking about how to file a Title IX claim and what remedies were available if he was retaliated against for filing a claim. Days after sending the email, he was notified that his contract to coach the high school girls' varsity basketball team would not be renewed, but this did not affect his teaching contract. Samuelson sued the school district claiming that it violated his First Amendment right. The court affirmed the judgment of the district court because it could not find any evidence that any of the instances where he claimed his First Amendment rights had been violated played a part in the board's decision not to renew his coaching contract.

Springer v. Durflinger, 518 F.3d 479 (7th Cir. 2008). The plaintiffs' daughters played on the high school softball team and complained to the school district that their daughters' abilities were being suppressed so the coach's sister's statistics could be inflated. They also claimed that the coach, Whitcomb, was doing a poor job coaching the team, had been abusive to umpires, parents and players, and was not a good role model for the student-athletes. Additionally, the parents claimed they were retaliated against for speaking out against the coach. The parents said the school board failed to respond to two written requests to meet with the school board, one of the parents was no longer permitted to videotape from behind the backstop due to a new policy, they missed an awards ceremony due to miscommunication, and Whitcomb told an Indiana University coach that the parents of a potential student-athlete were overbearing. The court determined that none of this constituted retaliation because the parents could have gone to some of the open board meetings to discuss their concerns, and the Indiana University coach testified that her thoughts about the student-athlete did not change based on the conversation with Whitcomb. Summary judgment was affirmed in favor of the defendants.

United States v. Comprehensive Drug Testing, Inc. 513 F.3d 1085 (9th Cir. 2008). While investigating the Bay Area Lab Cooperative (BALCO), the government sought drug testing information from Major League Baseball (MLB) for eleven players with connections to BALCO. MLB said that it did not have the information. The government then subpoenaed two drug testing companies to turn over the drug testing information for all MLB players. The Central District of California denied a motion of reconsideration after it required the government to return items seized during a search because the government did not file a timely motion. The District of Nevada quashed the subpoenas. The MLB Players Association filed a motion to quash the subpoenas that sought drug testing records from Quest and CDT. The government appealed both decisions and the cases were consolidated. The court affirmed the Central District of California's decision because the government did not file the motion in a timely manner. However, the court reversed the District of Nevada's motion to quash the subpoenas because they were reasonable and did not constitute harassment. Even though the subpoenas may have covered more information than necessary, the government needed to sort through all records to find the information it needed. In addition, the court referred a journalist's motion to unseal court records regarding this case to the district court because it was more familiar with the records and could better determine the privacy interests involved.

Welling v. Owens State Cmty. Coll., 535 F. Supp. 2d 886 (N.D. Ohio 2008). James Welling was the athletic director at Owens Community College (OCC) before he was terminated on November 13, 2006. OCC claimed that he was fired because he accepted $800 in rent from a professional sports team, but he never submitted that fee to OCC. A local TV station and

newspaper later reported that he was fired for embezzlement and accepting a secret payment. Welling was denied unemployment compensation because he was discharged for possible embezzlement. He contested that decision in a formal hearing where he was represented by counsel, but the Unemployment Commission found that he was properly terminated. Welling claimed that his due process rights were violated and requested a name clearing hearing. The court agreed that Welling had a right to a name clearing hearing, but determined that he had already received that opportunity during the Unemployment Commission hearing.

York v. Wahkiakum Sch. Dist. No. 200, 178 P.3d 995 (Wash. 2008). The Wahkiakum School District implemented a drug testing policy where they conducted random suspicionless drug tests on student-athletes within the school district. The plaintiffs' children were members of various sports teams during the 2000-01 academic year and sought an order from the court determining whether the school district's policy was constitutional. The court determined that the suspicionless drug testing of student-athletes violated the Washington Constitution because it violated the student's fundamental right of privacy.

CONTRACT LAW

Brillon v. Walden, 380 B.R. 883 (Bankr. M.D. Fla. 2008). The plaintiffs loaned money to the debtor so that he could open a martial arts studio. The debtor used most of the money to pay for rent and renovate a space he had leased. However, the debtor also used some of the money to purchase about $9000 in fitness equipment. Shortly after opening the martial arts studio, the debtor defaulted on the space he had leased and was forced to close his studio and began working as an independent contractor at Ripped Fitness. The owner of Ripped Fitness loaned the debtor $8000 to relocate to Ripped Fitness, which included moving some of the equipment from his studio to Ripped Fitness. Subsequently, the plaintiffs obtained a judgment against the debtor for just over $5000. Following that judgment, the debtor filed a petition under Chapter 7 of the Bankruptcy Code. The plaintiffs claimed that the fitness equipment was fraudulently transferred to the owner of Ripped Fitness. The court ruled in favor of the debtor because although the equipment was located in Ripped Fitness, it was still in the debtor's possession.

{Webfind}

Gettysburg Sch. Dist. 53-1 v. Helms & Assocs., 2008 SD 35 (S.D. 2008). Bituminous Paving, Inc. entered into an agreement with Gettysburg School District (District) where Bituminous would remove the District's old track, prepare the base of a new track, and lay the asphalt running surface. Bituminous completed the work on the track by the required deadline, but within a few weeks defects had developed. The following spring, Bituminous was provided a list of repairs that needed to be completed. The repair work was finished by the end of the summer, but it did not fix all of the defects. The Board had a meeting with Helms & Associates, who was contracted to engineer and inspect the track, and both parties agreed to allow Bituminous to complete the repairs. However, the Board then met with a certified track builder to inspect the defects. The builder sent a report to the Board that stated some of the structural faults would be nearly impossible to fix or patch. The District's Superintendent contacted Bituminous and told it not to return to the track and rescinded the re-repairs agreement. The District claimed that

Bituminous had breached the agreement by constructing a faulty track. Bituminous appealed, claiming it was not given proper notice of the defaults and the negligence action should be barred because the jury apportioned 70% of fault to it. The court affirmed the jury's verdict and award, which included interest, attorneys' fees, and expert witness costs.

{Webfind}

Gordon v. Vitalis Partners, Inc., 2008 WL 489359, No. 07 C 6807 (N.D. Ill. Feb. 20, 2008). Ben Gordon, a Chicago Bulls basketball player, signed a contract with Larry Harmon and Larry Harmon & Associates (LHA) in 2004. The contract said that Harmon and LHA would provide financial services to Gordon. The fees were $4000/month for the first year, $5000/month for the second year, and $6000/month for the third and fourth year. However, Harmon began charging Gordon 1.5% of his income without getting approval from him. In addition Gordon agreed to invest money in a real estate deal in California, but instead of investing the money, Harmon borrowed the money and invested in for his own benefit. Gordon sued Harmon and LHA for breach of contract and breach of fiduciary duty. The defendants claimed that the court lacked personal jurisdiction because they don't have sufficient contacts with Illinois. However, the court found that there were sufficient contacts because the contract was sufficiently connected with Illinois, and the defendants were transacting business with Gordon in Illinois.

Gotham Boxing Inc. v. Finkel, 2008 WL 104155, No. 601479-2007 (N.Y. Sup. Ct. Jan. 8, 2008). During a meeting on June 16, 2006, plaintiff Kushner and the defendants came to an oral agreement that Shannon Briggs would fight Wladimir Klitschko on November 11, 2006 in a Heavyweight Championship boxing match at Madison Square Garden. During this meeting, Kushner acted on behalf of Briggs, and Shelly Finkel acted on behalf of Klitschko. On June 17, Kushner emailed Finkel to confirm the terms of the fight and stated that a written agreement would be forthcoming. Prior to the written contract being completed, the defendants talked the plaintiffs into canceling another fight. Once the contract arrived, it contained terms that were different from the originally agreed upon terms. Klitschko ended up fighting someone else on November 11, 2006. The plaintiffs sued the defendants for breach of contract, misrepresentation, aiding and abetting, prima facie tort, and promissory estoppel. The court dismissed the breach of contract claim because the New York State Athletic Commission governs all boxing contracts, and it requires a contract to be in writing in order for it to be enforceable; therefore, the contract was not enforceable. The court also dismissed the aiding and abetting, prima facie tort, and promissory estoppel claims for failure to state a claim. However, the court did not dismiss the misrepresentation claim because there was a question of fact whether the defendants engaged in fraudulent conduct.

Hardy v. Trs. of Penn., 2008 Phila. Ct. Com. Pl. LEXIS 42, No. 2178 (Phila. Ct. Com. Pl. Feb. 21, 2008). In 1998, Hardy developed the Business Institute for Continuing Education in Professional Sports, Inc. (BICEPS), which provides direct and customized business education for professional athletes. Hardy then presented the program to the defendants in hopes that they would help launch the program. In 2002, the plaintiff and defendants reached an agreement, and BICEPS was presented at the Wharton School in July, 2002. The parties signed another agreement in 2003, but the defendants repudiated that agreement. The defendants then entered into an agreement with the National Football League (NFL) and the NFLPA (National Football

Players Association) where Wharton was to provide an educational business program. Hardy claimed that the program that the Wharton School provided to NFL players was nearly identical to his program. Hardy sued the defendants under several theories, including breach of contract and misappropriation of trade secrets. The theft of ideas failed because in order for an idea to be protected, it must be novel, but this idea was not considered novel. The conversion claim failed because the defendants had kept a property interest in the program they helped create. The plaintiff's trade secret claims were dismissed because the program was placed in the public domain when it was marketed to various professional sports teams and leagues. However, Hardy was given twenty days to amend his intentional interference with prospective contractual relations claim.

{Webfind}

Ladner v.Hancock County Sch. Dist., 2008 U.S. Dist. LEXIS 30490, No. 1:07CV901 LG-JMR (S.D. Miss. Apr. 8, 2008). Ladner was a teacher and a basketball coach at Hancock County High School during the 2006-07 school year, which required him to sign two separate contracts. The basketball contract stated that it was separate from the teaching contract, could be terminated at any time by either party, and was not within the provisions of the Education Employment Procedures Law of 2001 (EEPL), the Mississippi state law governing teaching contracts. Ladner was notified prior to the start of the 2007-08 school year that he would not be re-employed because he did not have a valid teacher license. He did not request a hearing because he knew that his license was about to be renewed by the Board of Education, and he was told that his teaching contract would be renewed when he finished his license certification requirements. However, he was also warned that his basketball coaching duties might be an issue. After Ladner finished his license requirements, the School District renewed his teaching contract, but not his coaching contract. Ladner sued claiming the School District violated his due process rights by failing to comply with the EEPL. The School Board claimed that the coaching contract was not governed by the EEPL, and the specific terms of the contract did not require due process. The court granted summary judgment for the School District because the coaching contract did not create a property interest in Ladner's continued employment as a coach.

Mitchell v. Ace Am. Ins. Co., 2008 U.S. App. LEXIS 3480, No. 07-10692 (5th Cir. Feb. 19, 2008). After signing a contract with the Dallas Cowboys, Mitchell purchased a $1 million disability income policy with Ace American Insurance (Ace). Mitchell subsequently hurt his ankle while playing for the Dallas Cowboys in August 2003 and did not play for the remainder of the season due to his injured ankle. He was released from the Cowboys' rehabilitation program in 2004 after the injury had healed. However, after three pre-season games in 2004, Mitchell was cut from the Dallas Cowboys roster and signed a medical waiver stating that he was not suffering from any disability at the time he was cut. After being cut, Mitchell went to see a foot and ankle specialist who told him he could not keep playing professional football because of the injury to his ankle. Mitchell then filed an application for disability benefits with Ace, but it denied the claim. Mitchell sued for breach of contract, but it was dismissed with prejudice. He appealed, but the court upheld the dismissal because Mitchell was not totally disabled during the 12-month elimination period.

{Webfind}

NASC Servs., Inc. v. Jervis, 2008 U.S. Dist. LEXIS 40502, No. 07-CV-5793 (DMC) (D.N.J. May 19, 2008). The plaintiffs operated soccer camps throughout the United States. The defendants were from the United Kingdom and were hired by the defendants to work at the soccer camps in the New York and New Jersey area. Some of the defendants began working with the New York Red Bull association. When the defendants signed an employment contract with the plaintiffs, they also signed a covenant not to compete, a covenant not to solicit the plaintiffs' customers, and a covenant not to disclose the plaintiffs' confidential information. Ultimately, the defendants quit working for the plaintiffs and began working for New York Red Bull because there was alleged mistreatment, deception, bullying, and abuse. The plaintiffs sued the defendants for violating the noncompetition, non-solicitation, and nondisclosure agreements. The defendants claim that their continued employment with New York Red Bull was necessary because it assumed sponsorship of their visas, the clauses were overbroad, and they did not take any of the plaintiffs' proprietary information. The court dismissed the case because when balancing the harms to the parties, it weighed in favor of the defendants. The plaintiffs provided little facts that showed they would be significantly harmed, but the defendants showed they would have been barred from working for any comparable business in any capacity in any part of the world, and five of the six defendants would be forced to leave the United States because their visas depended upon their employment.

NFL Enter. v. Comcast Cable Commc'ns, LLC, 51 A.D.3d 52 (N.Y. App. Div. 2008). NFL Enterprises and Comcast engaged in negotiations about Comcast distributing NFL Network on its cable network and entered into two agreements. Comcast said it would distribute NFL Network on their sports tier, but NFL Enterprises claimed that it could not do that based on the agreements. The trial court granted summary judgment for Comcast, but the appellate court said that the documents when read together were ambiguous; therefore, summary judgment was not permissible, and the case was remanded.

Parrish v. Nat'l Football League Players Ass'n, 2008 WL 1925208, No. C 0700943 WHA (N.D. Cal. Apr. 29, 2008). Parish and Adderley are two former National Football League (NFL) players and are suing the NFL Player's Association (NFLPA) for breach of contract and breach of fiduciary duty. The claims relate to group licensing agreements that retired players may sign. The plaintiffs claimed that the NFLPA withheld information from members about benefits that they could have been entitled to and failed to pursue certain licensing opportunities on the members' behalf. The plaintiffs sought to certify two classes. Adderley wanted to represent a class that consisted of all retired NFL players who signed group licensing agreements that were in effect during the statute of limitations period. Parrish wanted to represent a class that consisted of all retired NFL players who became members of the NFLPA and whose membership was in effect during the statute of limitations period. The court certified the class that had signed the group licensing agreements, but not the other class because evidence suggested Parrish would not have been an appropriate representative. Parrish had a personal vendetta against the NFLPA's representative, which would have most likely prevented a favorable settlement agreement for the class. He also had a bad track record of representing retired NFL players in the past.

{Webfind}

Phillips v. Daktronics, Inc., 2008 WL 324248, No. 07-CV-14662 (E.D. Mich. Feb. 5, 2008). The plaintiff claimed that in the early 1990s he invented a device that would light up on the back of a basketball backboard when the shot clock expired. In 1997, he entered into negotiations with the defendant where the plaintiff would provide documents related to the invention, and the defendant would pay the plaintiff a lump sum of money and employ the plaintiff as a consultant. However, after the plaintiff handed over the documents, the defendant did not respond to him. In 2004, he noticed that the arena where the Detroit Pistons played used something similar to what he had designed. The plaintiff sued for breach of oral and implied contract, breach of fiduciary duty, unjust enrichment, fraud, and negligent misrepresentation. The defendant claimed the suit should be dismissed all claims because the events that led up to the claims happened in 1997, which was beyond the three year and six year statute of limitations that applied to the claims.

PSG Poker, LLC v. DeRosa-Grund, 2008 U.S. Dist. LEXIS 4225, 06 Civ. 1104 (DLC) (S.D.N.Y. Jan. 22, 2008). PSG Poker entered into a contract with Projo Poker. Projo Poker was planning to produce a poker television show on CBS where plaintiff Gordon would be a co-host and analyst. The contract was signed in December 2005 by Gordon on behalf of PSG Poker and by DeRosa-Grund on behalf of Projo Poker. However, prior to signing the contract, Gordon had to initiate litigation with Bravo because he was under contract with it to co-host a show on that station, and according to DeRosa-Grund, he had to be free of his Bravo obligations to sign the contract. Gordon believed this was in his best interest because it gave him an opportunity to go from a cable show to a show on a major network. After executing the contract, Projo had fifteen days to make an initial payment to Gordon, but failed to do so. Gordon sued both Projo and DeRosa-Grund as an individual for breach of contract and fraudulent misrepresentation. The court granted summary judgment on the breach of contract claim against both Projo and DeRosa-Grund because the corporate veil was pierced when Projo acted as an alter ego for its owner. The court also granted summary judgment for the plaintiffs on the fraudulent misrepresentation claim because DeRosa-Grund assured Gordon that he should break ties with Bravo even when he knew it was possible the deal in question may not proceed with CBS as expected.

Rennell v. Through the Green, Inc., 2008 Tenn. App. LEXIS 151, No. M2006-01429-COA-R3-CV (Tenn. Ct. App. Mar. 14, 2008). Rennell interviewed with the President and Vice President of Through the Green for a golf professional/instructor position. The President offered him $30,000/year and 50% of the revenues he generated from golf lessons. After a term of five years, he could elect to have a 20% equity in the company or a lump sum cash buyout of $100,000. The offer was never put in writing. Rennell began working there in 1994, and in 1997 the President asked him to change the terms of his agreement to a $60,000 salary, and Rennell agreed. In 2004, he decided he wanted to cash out, but the president told him he could not because the other golf course he had owned had lost too much money. When Rennell brought in his attorney to speak with the President, he denied ever making an oral agreement with Rennell. The jury found that Through the Green breached the contract and the president was liable for intentional procurement of breach of contract, which caused the damages to be trebeled. The defendants appealed, and the case was remanded. The court found that there was no intentional procurement of breach of contract; therefore, the damages should not have been trebeled.

{Webfind}

Scheidemann v. Qatar Football Ass'n, 2008 U.S. Dist. LEXIS 2852, 04 Civ. 3432 (LAP) (S.D.N.Y. Jan. 15, 2008). The plaintiff was hired by the defendants to arrange an exhibition match between AC Milan and the Qatari National Team, but after doing so she was not paid her commission fee. The parties agreed that all disputes would be governed by New York law in the New York federal courts. Although the parties cannot agree to federal jurisdiction, the federal courts may have jurisdiction under the Federal Sovereign Immunities Act. However, these parties do not fall under this Act because neither one of the defendants are organs of a foreign state.

Vortex Sports and Entertainment, Inc. v. Ware, 662 S.E.2d 444 (S.C. Ct. App. 2008). David Ware and Bralyn Bennett each owned one-third of Vortex, and two additional people each owned one-sixth of it. Vortex was a sports agency that negotiated Standard Representation Agreements for its clients, which were mainly NFL players. It also provided the players financial, legal, and marketing assistance. Bennett and Ware were Vortex's two sports agents. After a slow start with only a few clients, Ware began negotiating on behalf of Vortex with CSMG, which was considering acquiring Vortex. However, this did not result in a deal, and instead Ware began working for CSMG while he was still an officer, shareholder, and attorney for Vortex. Vortex sued CSMG for aiding and abetting a breach of fiduciary duty and tortious interference with a contract. The jury ruled in favor of Vortex, and CSMG appealed. The court affirmed the jury's decision because there was evidence that CSMG had knowingly encouraged Ware to breach his fiduciary duty to Vortex and encouraged him to not pay Vortex its share of money he received on contracts he had signed with players prior to leaving Vortex.

{Webfind}

W. Va. Univ. Bd. of Governors v. Rodriguez, 543 F. Supp. 2d 526 (N.D.W. Va. 2008). Rodriguez resigned as the head football coach at West Virginia University (WVU) in December 2007. WVU sued him for breach of contract, asking for liquidated damages arising out of the employment contract he had signed with West Virginia University. Rodriguez moved the case to federal court on basis of diversity jurisdiction. WVU claimed that there was no diversity jurisdiction because WVU is an arm of the state and cannot be considered a citizen for purposes of jurisdiction, and, even if it was, Rodriguez was a citizen of West Virginia on the day the suit was filed. The court determined it did not have jurisdiction because there was no diversity. WVU was considered an arm of the state because it was involved in a statewide concern, educating the youth of the state of West Virginia. Therefore, it was not considered a citizen of West Virginia, there was no diversity jurisdiction, and the case was remanded to the Circuit Court of Monongalia County.

White v. Nat'l Football League, 533 F. Supp. 2d 929 (D. Minn. 2008). Michael Vick renegotiated and extended his contract in 2004. The new contract included roster, reporting, and playing bonuses. However, once Vick pleaded guilty to several federal charges related to dog fighting activities in 2007, the NFL suspended him for violating the NFL's Personal Conduct Policy. The Falcons sought repayment of portions of his bonus from the years 2004-2007. The NFL Management Council (NFLMC) initiated a non-injury grievance on behalf of the Falcons in order to seek enforcement of the default provisions in the contract as well as any other relief the arbitrator could order. The arbitrator ordered Vick to return $19.97 million to the Falcons

because the skills bonus became a signing bonus allocation. However, the NFL Player's Association (NFLPA) challenged the decision, claiming that the roster bonuses are not signing bonus allocations. The court agreed with the NFLPA and said the roster bonuses were conditioned upon Vick making the roster each year, and once he made the roster, he earned the bonus. However, the court said that the Falcons could recover $3.75 million from a 2006 signing bonus.

CRIMINAL LAW

United States v. Wroclawski, 2008 U.S. Dist. LEXIS 44334, No. 07-00302M (D. Ariz. June 5, 2008). In 2007, Wroclawski was arrested after a Complaint for Extradition was filed in relation to charges of embezzlement and credit fraud committed in 1993 and 1994. He filed a request for release pending the extradition proceedings. Prior to being arrested, Wroclawski was coaching Olympic wrestlers. Several former Olympians testified that he was crucial to their past success and was needed in the United States to help the American athletes to compete with Eastern Europe, who had typically dominated wrestling at the Olympics, at the 2008 Beijing Olympics. The court decided to release him because he was a relatively low flight risk, the Polish government waited eleven years to seek extradition after charges were filed, and he had provided a significant contribution to the sport of wrestling in the United States.

Wisconsin v. Schaefer, 746 N.W.2d 457 (Wis. 2008). Schaefer was a teacher and a basketball coach at a private school. Kerry was a student and a member of the basketball team when she was in seventh and eighth grade. Toward the end of Kerry's eighth grade year, she and Schaefer began having a sexual relationship, but because Kerry was under the age of sixteen, she could not consent to it. Prior to Kerry entering her ninth grade year, Schaefer ended the relationship. Schaefer was then charged with two counts of second-degree sexual assault of a child. The trial court granted the State's motion to quash a subpoena that sought to obtain police investigation reports in Schaefer's case. The appellate court certified a question to the Wisconsin Supreme Court asking, does a criminal defendant have a subpoena right to obtain and copy police investigation reports and non-privileged materials by subpoena duces tecum prior to the preliminary hearing? The Wisconsin Supreme Court ruled that a criminal defendant does not have a right to compel production of non-privileged materials, including police investigation reports, by subpoena duces tecum prior to the preliminary examination.

DISCRIMINATION LAW

Dent v. United States Tennis Ass'n, 2008 U.S. Dist. LEXIS 46971, No. CV-08-1533 (RJD)(VVP) (E.D.N.Y. June 17, 2008). Marvin Dent, an African-American, began working for the United States Tennis Association (USTA) as the Director of its Tournament Training Program in 1999. In 2007, he applied for the Director of Tennis at the National Tennis Center in New York. However, he was not hired and claimed that the USTA discriminated against him when they hired a less qualified white person. In the plaintiff's complaint, he referenced some of the USTA's lawsuits and made allegations related to historical discrimination within the USTA. The

USTA sought to strike a portion of Dent's complaint. The court granted USTA's motion because some of the allegations made by Dent could not be proven with admissible evidence.

Duck v. Port Jefferson Sch. Dist., 2008 U.S. Dist. LEXIS 39695, No. 07CV2224 (E.D.N.Y. May 14, 2008). Joyce Duck worked for the Port Jefferson School District from 1971 to 2002. She was mainly responsible for the development of the intramural and interscholastic girls' athletic programs, but she also coached. In 2004, she received a call from an assistant to the field hockey coach, notifying her that the coaching position of the middle school field hockey team was open. Duck alleged she agreed to take the position, but it was not given to her because the superintendant refused to recommend her based on her age and gender. The district claimed it did not hire her because she did not formally apply, and they had to give preference to teachers currently employed by the district. Duck also sought the personnel files of the coaches that were currently employed by the district. She claimed they were discoverable because the individuals held or applied for the coaching position in question, were retired male coaches who were allowed to coach and/or are out of district male personnel who were offered coaching positions. The district claimed the only class of people that would be similarly situated would be coaches who did not formally apply for the position and obtained the position after retiring. The court ordered the district to provide the magistrate judge the files, for an in camera review, of individuals who were retired from the district and then obtained new coaching positions and those individuals who were hired from outside the district.

Fay v. Muhlenberg Coll., 2008 U.S. Dist. LEXIS 5063, Civ. Act. No. 07-4516 (E.D. Pa. Jan. 23, 2008). Fay worked as an administrative assistant in the Department of Athletics at Muhlenberg College. She had always received satisfactory job performance ratings, but beginning in 2003 a new athletic director, Sam Beidelman, began creating a hostile work environment for Fay. She filed complaints with the Vice President of Human Resources and the Dean of the College, but neither complaint was investigated. Two years later, she was fired without prior warning. Fay claimed there was gender discrimination, retaliation, and a hostile work environment. She claimed Muhlenberg College violated Title VII, The Pennsylvania Human Relations Act, and the Pennsylvania Constitution. The court dismissed the claim under the Pennsylvania Constitution because there is no private right of action under the Pennsylvania Constitution when there is an opportunity to sue under the Pennsylvania Human Relations Act and Title VII.

Harrison v. Bd of Governors, 2008 U.S. Dist. LEXIS 36146, No. 2:08-00078 (S.D.W. Va. May 2, 2008). Two members of the women's softball team at West Virginia University Institute of Technology (WVUIT) claimed that WVUIT violated Title IX because they were required to play on inadequate fields compared to the men's baseball team, were provided inadequate equipment and funding compared to the men's team, and they were awarded scholarship money that didn't exist. The defendants moved to dismiss the case because the plaintiffs failed to comply with West Virginia's pre-suit notification requirement. However, the court denied the motion because that requirement does not apply to lawsuits initiated in federal court and based on federal question jurisdiction.

Hei v. Holzer, 181 P.3d 489 (Idaho 2008). Hei was an eighteen year old junior when she began having a consensual sexual relationship with her basketball coach. A teacher found out about the relationship and reported it to the principal and superintendent. Shortly thereafter, the basketball

coach resigned. Hei sued the coach, the school district, the superintendant, and the principal. The trial court granted summary judgment for the defendants on all claims. Hei appealed, and the court remanded the negligent supervision and Title IX claims against the school district. The jury returned a verdict against the school district, but it did not award any damages. Hei appealed and the court affirmed the jury's decision because Hei had failed to prove her damages because she did not provide specific documentation about costs related to her damages.

{Webfind}

Holcomb v. Iona Coll., 521 F.3d 130 (2d Cir. 2008). Craig Holcomb was an assistant basketball coach at Iona College from 1995 to 2004. During the early 2000s, the athletic and academic performance of the men's basketball program declined significantly. As a result, the athletic director fired Holcomb. However, before Holcomb was fired, he was told that he could no longer bring his wife, who is African American, to alumni functions. Another assistant coach was also told that he could not bring his girlfriend, who was also African American. Further, the Vice President for Advancement and External Affairs, Pettriccione, used derogatory language when talking about African American players. Holcomb sued Iona College, claiming his marriage was a factor in Iona's decision to fire him. The court granted summary judgment for the defendants. However, the Second Circuit held for the first time that an employer could violate Title IX if it takes action against an employee based on the employee's association with a person of another race. The court remanded the case because it found that a reasonable jury could have determined that Holcomb was fired in part because he was married to a black woman.

{Webfind}

Laudadio v. Se. Pa. Youth Lacrosse Ass'n, 2008 U.S. Dist. LEXIS 33224, No. 08-1525 (E.D. Pa. Apr. 23, 2008). The plaintiff's son, Matthew, played for the Wissahickon Club (WC), which is a member of Southeastern Pennsylvania Youth Lacrosse Association (SEPYLA), for four years. Matthew had a falling out with the coach and wanted to switch teams, but the SEPYLA required Matthew to obtain a waiver from WC prior to switching teams. WC denied Mathew's request for a waiver. The plaintiff claimed that other local players have been permitted to join non-local clubs in the absence of obtaining a waiver from their former team. The plaintiff sued claiming violations of the Equal Protection Clause, and asked for a preliminary injunction that would allow his son to play for another team. The court granted the defendant's motion to dismiss because, despite the fact that SEPYLA used public fields, it was not a state actor and could not be sued on constitutional grounds.

{Webfind}

Mansourian v. Bd. of Regents, 2008 U.S. Dist. LEXIS 33395, No. Civ. S 03-2591 FCD EFB (E.D. Cal. Apr. 23, 2008). The plaintiffs were 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, and then UCD filed a motion for summary judgment on that claim

because it was not put on notice that it had failed to effectively accommodate women within its athletic program. The court dismissed the case because plaintiffs did not provide UCD with notice or an opportunity to fix the situation. Although the plaintiffs filed complaints with the Office of Civil Rights, those complaints only related to the wrestling program, not the entire athletic program.

Miller v. Univ. of Cincinnati, 2008 U.S. Dist. LEXIS 4339, No. 1:05-cv-764 (S.D. Ohio Jan. 22, 2008). Several members of the University of Cincinnati rowing team sued the University for violating Title IX after it dropped the women's rowing team and added women's lacrosse. The plaintiffs claimed that the University should not count student-athletes more than once if they participate in more than one sport, should not count indoor track and field, outdoor track and field, and cross country as separate sports, and should count the students who are attending Raymond Walters College and Clermont College with the University of Cincinnati students. The University is associated with those two colleges, but those students are not admitted to the University of Cincinnati. The court dismissed the Title IX claim because the number of female student-athletes is more than proportionate to the percentage of women in the undergraduate student body (47.5% female students and 48.9% female student-athletes). The University was correct in counting student-athletes more than once who competed in more than one sport and correct in counting indoor and outdoor track and field and cross country as three different sports because the Department of Education has determined that format. In addition, it was correct to not include the students from the associated Colleges because the NCAA had already determined that they should not be included because they are not enrolled in the University.

Moore v. Tangipahoa Parish Sch. Bd., 2008 U.S. Dist. LEXIS 35238, No. 65-15556 Sec. B(1) (E.D. La. Apr. 30, 2008). The Tagipahoa Parish School Board (Board) has been involved with a desegregation case since the 1960s. The Board was required to meet a 40-60 ratio for faculty and staff, 40% African-Americans to 60% Caucasians. This required the Board to appoint African-Americans to positions as vacancies came up so that the ratio could be met. In 1977, the court assigned a compliance officer to ensure all court orders were met regarding desegregation. Alden Foster, an African-American, applied for a coaching position in 2007, but it was awarded to a Caucasian instead. The assigned compliance officer informed the superintendent that the school district had not yet met the 40-60 ratio and recommended that Foster be hired. The plaintiff claimed that the Board discriminated against him. The court ordered that Foster be hired as the head football coach at Amite High School because the school board had still not created a unitary school system forty-three years after a court order instructed them to do so, and the court would continue to instruct it on how to handle its hiring until that happened .

Nakashima v. Oregon State Bd. of Educ., 185 P.3d 429 (Or. 2008). Students at Portland Adventist Academy (PAA) asked the Oregon School Activities Association (OSAA) to change the schedule of the Class 2A Boys' Basketball Tournament so that they would not have to play games on Saturday, which is their Sabbath. The Oregon State Board of Education (Board) determined that it was unreasonable to change the schedule. The Board and the OSAA petitioned the court to review the decision. The Oregon Supreme Court affirmed the Court of Appeals decision to remand the case back the Board because it had applied the wrong legal test in regard to what is reasonably necessary to a program's successful operation or the achievement of its essential objectives.

{Webfind}

Phillips v. Anderson County. Bd. of Educ., 2008 U.S. App. LEXIS 1128, No. 07-5103 (6th Cir. Jan. 15, 2008 . Ambrea Phillips was enrolled in a weightlifting class at Anderson County High School. Thirty boys, Phillips, and one other female were enrolled in the class. However, Phillips and the other girl were dropped from the class because the school was concerned about possible sexual assault. After the school was threatened by a state attorney about possible Title IX violations, Phillips was reinstated, after missing the first three days of the class. Phillips sued the Anderson County Board of Education for violating Title IX. She claimed $1,000,000 in damages because the stress of the situation caused her to get mononucleosis. The district court granted summary judgment in favor of the defendants, and the plaintiff appealed. The plaintiff claimed she needed more time for discovery to prove that there had been past allegations of sexual misconduct by school employees. The court affirmed the district court's summary judgment because the allegations of sexual misconduct had no relation to the plaintiff's sexual discrimination claims.

{Webfind}

Sabol v. Montclair State Univ., 2008 U.S. Dist. LEXIS 43682, No. 06-3214(DMC) (D.N.J. June 3, 2008). Joseph Sabol was an assistant wrestling coach at Montclair State University (MSU) during the 2001-02 season. He was hired as the acting head coach during the 2002-03 season because the head coach had been suspended by the NCAA, but once the suspension was lifted, Sabol went back to being an assistant coach in 2003. In 2004, the head coach resigned, and Sabol was promoted to head coach. While Sabol was acting as head coach, the team's GPA was the second highest of all men's athletic teams, and he was named the Metropolitan Coach of the Year for the 2004-05 season. Sabol also made several formal complaints to the athletic director about health and safety issues of the wrestlers. In 2005, MSU announced the opening for Head Wrestling Coach/Coordinator of Student Staffing for the athletic department, and Sabol applied. The position was given to someone else with no head coaching experience. Sabol claimed that he was retaliated against for making complaints to the athletic department about health and safety concerns. MSU moved for summary judgment, but it was denied because there were issues of material fact as to why Sabol was not hired when he had been a successful head coach in the past for MSU.

Scott v. NASCAR, Inc., 2008 U.S. Dist. LEXIS 5039, 06 Civ. 6029 (DAB) (S.D.N.Y. Jan. 17, 2008). David Scott worked as a motor coach driver for defendant Penske Racing. He was the only African-American employed by Penske racing and often suffered racial discrimination while he was at NASCAR events, including being called a nigger on several occasions. In addition, on one occasion while he was in the motor coach working, two other white men who were motor coach drivers on the NASCAR tour knocked on the door and pretended to be members of the Ku Klux Klan. The two drivers were suspended by NASCAR. Following the suspension, Scott received several threats and eventually took the rest of the season off. He was then told by NASCAR that they would have a job for him if the job with Penske did not work out. He was not re-hired by Penske the following season and signed a release form that said he would not sue Penske in exchange for a severance package of two years salary. NASCAR did not follow through with a job opportunity, and Scott sued the defendants for racial discrimination and breach of contract. The racial discrimination claims were dismissed because he was fired in 2000, and the three year statute of limitations had expired. The breach of contract claim against NASCAR was also dismissed because North Carolina's three year statute of limitations applied, and the breach of contract claim stemmed from events occurring in 1998 and 2000.

S.S. v. Alexander, 177 P.3d 724 (Wash. Ct. App. 2008). S.S. began attending the University of Washington in 2000 and worked as the assistant equipment manager for the varsity football team. In late 2000, she began a consensual sexual relationship with a member of the football team, Roc Alexander. The relationship ended in 2001 when he began treating her in a demeaning manner. Shortly after S.S. ended the relationship, Alexander forced himself into her dorm room and had sex with her. During the summer of 2001, S.S. had discussions with several people involved with the football program and the athletic department about the incident. She was told that it would be best if she transferred from her position with the football team because football players might start harassing her. S.S. eventually participated in a voluntary mediation process; however, she expressed that she was not happy with the outcome of the mediation, but nothing further was done. S.S. sued the university for violating Title IX. The trial court granted summary judgment for the University of Washington, and S.S. appealed. The court remanded the case to the trial court because S.S. had presented enough evidence showing that the university's response to the alleged rape constituted a deliberate indifference, and it is up to a jury to determine whether she was denied equality of access to education.

EDUCATION LAW

Bailey v. Clovis Unified Sch. Dist., 2008 U.S. Dist. LEXIS 10347, No. 08-CV-0146-AWI-GSA (E.D. Cal. Feb. 12, 2008). Kevin Bailey's father, Vincent, was transferred from New York to California for his job. Prior to moving, he flew to California to look at schools in the Central San Joaquin Valley and met school officials from various schools, including the principal at Clovis East High School (CEHS). About a month later, the principal at Clovis East was in New York to attend a conference and had dinner with Vincent. In August of 2007, Kevin enrolled in CEHS as a freshman and began playing on the varsity basketball team. In November, 2007, the Clovis Unified School District notified Kevin that he was ineligible to play on the varsity team because his father had dinner with the principal while he was in New York, which violated a California Interscholastic Federation rule. However, the school district allowed Kevin to play on the

freshmen team. The Baileys appealed the decision to the school district, but the school district upheld the decision. The Baileys claimed the school district violated the Equal Protection Clause by treating Kevin differently than other similarly situated students and asked for a preliminary injunction that would allow him to compete on the varsity team. The court denied the preliminary injunction because Bailey could not show that there was an irreparable injury since he would have a chance to compete at the varsity level for the next three years.

Bassett v. NCAA, 528 F.3d 426 (6th Cir. 2008). The University of Kentucky's athletic director, Larry Ivy, told Bassett that if he resigned from his head coaching position there would be no further inquiry into his alleged impropriety. Bassett resigned, but the day after he resigned, the University of Kentucky decided to conduct an internal investigation of its football program for possible NCAA rules violations. Bassett alleged antitrust violations, fraud, civil conspiracy, and tortuous interference with prospective contractual relations against the NCAA, SEC, and the University of Kentucky Athletic Association (UKAA). The court dismissed all claims against the SEC and held that only the fraud claim against the UKAA and the tortuous interference with prospective contractual relations claim against the NCAA survived the motion to dismiss. UKAA moved for summary judgment on the remaining two claims, and Bassett moved for additional discovery. The NCAA also moved for summary judgment. The district court granted the summary judgment in favor of UKAA, and the NCAA denied the plaintiff's motion for additional discovery. Bassett appealed because he claimed the NCAA's enforcement of its rules affects interstate commerce. The court agreed with the district court because the NCAA's rules were enforced for the purpose of creating fair competition, rather than being enforced to provide the NCAA or a member school with a commercial advantage.

{Webfind}

Edwards v. Riverdale Sch. Dist., 2008 Ore. App. LEXIS 845, No. A134931 (Or. Ct. App. June 18, 2008). From 2002-05, Steven Edwards held various teaching positions in the Riverdale School District. In 2005, he was named the athletic director, but he still taught one class per semester. He was classified as working 75% as an athletic director and 25% as a teacher. In June of 2006, Edwards was dismissed. He appealed to the Fair Dismissal Appeals Board (FDAB), claiming he was entitled to the dismissal procedures that apply to teachers. However, the school board believed that he was considered an administrator, and therefore, not entitled to those procedures. The FDAB determined that Edwards was not an administrator because he was not a supervisor, principal, vice principal, or director. The court believed the FDAB had interpreted the term director to apply only to an individual who possessed the highest rank or degree of authority to make decisions about the department. Therefore, it remanded the case to the FDAB for reconsideration under a correct interpretation of the meaning of director.

{Webfind}

Gates v. Bd. of Directors of the Florida High Sch. Athletic Ass'n, 2008 U.S. Dist. LEXIS 38086, No. 4:07cv231-RH/WCS (N.D. Fla. May 9, 2008). Mary Gates filed a lawsuit on behalf of her daughter who was a high school basketball player. Her daughter had applied for a hardship waiver with the defendant, which would have allowed her to play basketball her senior year. However, two coaches on an opposing team voted to deny the application. The plaintiff claimed

this was a conflict of interest, and sued for violating her due process rights and Title IX. The court dismissed the case because a student's right to participate in athletics is not protected by the Due Process clause, and the plaintiff did not provide any facts that would lead to a Title IX violation.

Ky. High Sch. Athletic Ass'n v. Edwards, 2008 Ky. LEXIS 158, Np. 2007-SC-000927-I (Ky. June 19, 2008). James Edwards was a student-athlete at Barren County High School during his ninth to eleventh grade years. After violating the school's alcohol policy at the end of his junior year, the school declared him ineligible to compete in high school athletics during his senior year. Edwards then moved with his family to a new house in the Glasgow High School area. Edwards requested that the Kentucky High School Athletic Association (KHSAA) declare him eligible for interscholastic athletics, but he was denied. Edwards appealed, and two hearings occurred in August and September of 2007. The hearing officer affirmed the KHSAA's decision because the bona-fide-change-in-residence exception to the Transfer Rule does not apply when a student-athlete would have been ineligible at the first school. Edwards filed for a temporary injunction, which was granted by the trial court, and KHSAA appealed. The court determined that the trial court had actually granted a restraining order because there was not a hearing, and dismissed the appeal because it did not have jurisdiction to review restraining orders.

{Webfind}

Roman v. Liberty Univ., Inc., 162 Cal. App. 4th 670 (Cal. Ct. App. 2008). Roman played football at Liberty University in Virginia. While attending Liberty, Roman's roommate and fellow teammate physically assaulted him. Roman attempted to sue the school in California, but the trial court dismissed the case because there was no personal jurisdiction. Roman claimed that Liberty was subject to jurisdiction because a university official had come to California to recruit him, and he had signed his athletic scholarship agreement in California. However, the court agreed with the trial court and quashed service of summons on grounds of lack of personal jurisdiction because Liberty did not purposely avail itself of the benefits of doing business in California.

{Webfind}

Watkins v. New York City Dept. Educ., 48 A.D.3d 339 (N.Y. App. Div. 2008). Edward Watkins worked as a volunteer for the girls' basketball team at a New York City high school. After rumors were voiced about him possibly engaging in inappropriate relationships with female students, the Special Commissioner of Investigation for the New York City School District conducted an investigation and determined that Watkins should be placed on the Ineligible/Inquiry List. The investigation revealed phone records showing that Watkins had extensive phone contact with the students. Watkins sued, claiming that he should not be placed on that list because the decision was made illegally, arbitrarily, and capriciously, and he should have had an opportunity to be heard prior to the decision being made. The court allowed the decision to stand because the phone records provided adequate evidence of the relationship, and he did not have a legitimate claim of entitlement to continue as a volunteer coach.

{Webfind}

EMPLOYMENT LAW

Bd. of Dirs. v. Cullinan, 745 N.W.2d 487 (Iowa 2008). Dennis Cullinan worked for the Ames Community School District as the head boys' basketball coach and a social studies teacher beginning in 1997. Throughout the 1997-98 school year there were several complaints that he was treating the members of the boys' basketball team in a threatening manner. As a result, his probationary period with the school was extended an extra year. Cullinan continued to have problems, and was put on probation, which required him to have an assistant coach, counselor, or parent nearby when speaking with any individual player. However, in late 2003, he met with a student-athlete one-on-one and was terminated in April, 2004 for failing to make changes in his behavior. Cullinan appealed and the decision was reversed. The Iowa Court of Appeals affirmed, and the school board appealed to the Iowa Supreme Court. The Supreme Court reversed the decision finding that the school board had made its decision based on the coach's actions throughout his entire career and the fact that he broke a term of his probation created just cause for firing him.

{Webfind}

Brocail v. Detroit Tigers, Inc., 2008 Tex. App. LEXIS 2392, No. 14-06-00557-CV (Tex. Ct. App. Apr. 3, 2008). Brocail was a relief pitcher for the Detroit Tigers during the 2000 season when he developed bone spurs on his pitching arm. A team physician performed arthroscopic surgery and removed a spur formation. After being traded to the Houston Astros, he tore the medial collateral ligament, and the Astros did not renew his contract at the end of the 2001 season. Brocail sued the Detroit Tigers, claiming that the Tigers failed to provide reasonable care, failed to provide a second opinion, and fraudulent inducement. The Tigers claimed that the Labor-Management Relations Act (LMRA) barred his claims. The court ruled that the LMRA did not preempt the alleged breach of duty to provide reasonable care because the Michigan Workers' Compensation Disability Act imposes that obligation. However, the fraudulent inducement claims and the failure to provide a proper second opinion are preempted by the LMRA because MLB Collective Bargaining Agreement governs those issues.

{Webfind}

Crutchfield v. Carolina Football Enters., 2008 N.C. App. LEXIS 592, No. COA07-748 (N.C. Ct. App. Apr. 1, 2008). Wellington Crutchfield was playing football for the Carolina Cobras, which is part of the Arena Football League, in 2003 when he was tore his lateral meniscus. The injury required surgery to repair the tear. He began playing again after the surgery, but within two months he was hit again on the same knee. Surgery was performed to repair an ACL tear and a lateral tibia plateau flap tear. Crutchfield did not play football again after the second injury, but was able to find jobs as an assistant football coach and a recruiter for Tech Systems. In addition, he was awarded workers' compensation benefits, but he appealed because he claimed the North Carolina Industrial Commission had incorrectly calculated his average weekly wages. He argued that his average weekly wage should have been calculated by dividing his yearly salary by the number of weeks in the contract rather than fifty-two. The court affirmed the decision because the evidence demonstrated that his salary encompassed a full year's worth of performance.

{Webfind}

Gary Cmty. Sch. Corp. v. Powell, 881 N.E.2d 57 (Ind. Ct. App. 2008). Powell was a full-time teacher, the head football coach, and the assistant basketball coach at Lew Wallace High School. On July 31, 2001, Powell developed a blood clot in his leg and had to miss three weeks of work. A few days after returning to work, Powell injured himself while breaking up a fight on the football field and missed another four weeks of work. When he returned, he was given his teaching position back, but neither of his coaching positions. Powell sued the school district, claiming that it was a violation of the Family and Medical Leave Act (FMLA) to not restore him to his part-time job as a football coach. The trial court determined that the school district violated the FMLA, and a jury awarded Powell attorneys' fees and damages. The Indiana Court of Appeals reversed because the coaching positions were separate jobs from the teaching position, both of the coaching positions were considered part-time, and the FMLA does not cover part-time positions.

{Webfind}

Gulf Ins. Co. v. Hennings, 2008 WL 256828, No. 10-06-00192-CV (Tex. Ct. App. Jan. 30, 2008). Hennings suffered a neck injury while playing for the Dallas Cowboys in October 2000. The Cowboys continued paying his salary while he was placed on the injured reserve list until March, 2001. Although doctors did not prohibit him from playing football in the NFL, Hennings retired in June, 2001. He then filed an application for workers' compensation benefits with the Cowboys' workers' compensation insurance carrier, Gulf Insurance. The administrative judge determined Hennings would be entitled to reasonable medical benefits. Gulf Insurance appealed, claiming that his income and medical benefits exceeded what he would have received under the Texas Workers' Compensation Act, which would have precluded him from recovering anything under the Act. Hennings claimed that medical and income benefits should be considered separately. In addition, he should have been entitled to medical benefits under the Act because he lost his medical benefits when the Cowboys released him. The court concluded that a reasonable jury could have inferred that the medical benefits he received from his employment contract were less than what he could have received under the Act; therefore, he was not precluded from workers' compensation benefits in addition to his employment benefits. The court also determined that

Hennings' disability period ran from March 7, 2001 (when the Cowboys released him) to June 21, 2001 (when he admitted he could have played football again).

{Webfind}

Hayes v. New Orleans Voodoo Football, Inc., 2008 La. App. LEXIS 627, No. 2007-CA-1037 (La. Ct. App. Apr. 29, 2008). In 2004, Hayes signed a contract to play for the New Orleans Voodoo Arena Football Team. His salary was $15,220, which was paid weekly over a period of ten weeks. During the 2004 season, he injured his groin and could not continue playing football. The team continued to pay his weekly salary of $1,522.00 through June 5, 2004, when his contract ended. Hayes was then paid weekly unemployment compensation benefits in the amount of $429.00, until those ended in November, 2004. In November, 2005, Hayes filed an unemployment claim against the New Orleans Voodoo, claiming that he was entitled to continued supplemental earnings benefits because of his work-related injury. The workers' compensation judge ruled that Hayes was eligible for temporary total disability benefits from March, 2004 until December, 2004 and supplemental earnings benefits from January, 2005 until July, 2005. Hayes appealed, claiming he was entitled to supplemental earnings benefits until he was earning 90% of his pre-injury weekly wage. The court determined that the appropriate average weekly salary prior to the injury should have been his salary divided by fifty-two weeks rather than what he was paid per week while playing for the Voodoo. The court affirmed the workers' compensation judgment, but it reduced the weekly payments based on the new weekly average salary.

{Webfind}

Kiser v. Clark Coll., 2008 Wash. App. LEXIS 703, No. 35597-3-II (Wash. Ct. App. Mar. 25, 2008). Kiser was the head women's basketball coach at Clark College from 1997 to 2002, until he was terminated. Kiser and a player's parent complained about possible Title IX violations because of the disparity between the men's and women's programs in regards to things such as the quality of officials and hotel accommodations. Clark College claimed that Kiser had misappropriated player per diem money and misused gas card privileges. Kiser claimed that Clark College fired him in retaliation for complaining about Title IX, but Clark College appealed, claiming that he was fired due to the misappropriation of funds and moved for summary judgment. The court denied summary judgment for the defendant because the evidence had shown a reasonable inference that Clark College had a retaliatory motive against Kiser.

Witherspoon v. Univ. of Indianapolis, 2008 U.S. Dist. LEXIS 30254, No. 1:06-cv-1423-LJM-WTL (S.D. Ind. Apr. 9, 2008). Witherspoon was a part-time assistant football coach in 1996, and in 2001 he was promoted to a full-time assistant football coach at the University of Indianapolis. Witherspoon had a history of making various complaints against the university, both as a football coach and a student, for racial discrimination, including a time when he was not selected for an assistant coaching position that had opened up. However, all of the complaints were dismissed because there was never enough evidence to justify the complaints. In 2004, Witherspoon was suspended following an arrest for felony battery and carrying a firearm without a permit. The university suspended him pending the outcome of his criminal case because it did not believe that he could carry out his assigned duties without causing concern for the well being of the

people he interacted with. In addition, this was his second arrest during his time as an assistant coach for the university. Witherspoon claimed that the university discriminated against him based on his race and retaliated against him for filing discrimination complaints. The court granted summary judgment for the defendant because the university offered a legitimate reason for suspending Witherspoon, and he was not able to provide any evidence that the university's reason for firing him was pretext.

INTELLECTUAL PROPERTY LAW

adidas America, Inc. v. Payless Shoesource, Inc., 546 F. Supp. 2d 1029 (D. Or. 2008). adidas has used a three-stripe trademark on its shoes since 1952. In 1994, adidas sued Payless claiming it infringed on adidas' trademarks. The parties negotiated a settlement where Payless agreed not to sell athletic shoes with three substantially straight parallel stripes on the side of the shoe or two or four parallel double-serrated stripes of contrasting color running diagonally. adidas claimed that Payless violated the settlement agreement because it was selling athletic shoes with two and four striped designs. Payless moved for summary judgment on adidas' claims of willfulness, trademark, trade dress infringement, and dilution. Payless' move for summary judgment on the state dilution claims was granted because it was preempted by the federal claims, but the remainder of Payless' summary judgment motions were denied. Both parties moved for summary judgment on Payless' affirmative defenses and counterclaims. adidas was granted summary judgment regarding Payless' laches, waiver, estoppel, acquiescence, abandonment, unclean hands, breach of contract, and aesthetic functionality defenses and counterclaims. However, the court denied adidas' motion for summary judgment on Payless' protectability of adidas' Superstar Trade Dress defense.

Baden Sports, Inc. v. Kabushiki, 541 F. Supp. 2d 1151 (W.D. Wash. 2008). Both the plaintiff and defendant were in the business of selling various sports balls. The plaintiff designed and patented a new game ball that was cushioned. The plaintiff claimed that the defendant sold and marketed a basketball that infringed on their patent and engaged in false advertising. The jury returned a verdict in favor of the plaintiffs, and the defendants appealed asking for judgment as a matter of law or a new trial. The defendants claimed that the jury instructions were incorrect. The court determined that the jury instructions were correct and that the evidence supported the jury's decision

Bd. of Reg. v. KST Electric, Ltd., 550 F. Supp. 2d 657 (W.D. Tex. Feb. 5, 2008). KST Electric designed a logo that included a longhorn silhouette and a lightening bolt. The University of Texas (UT) also uses the longhorn silhouette and registered a trademark that depicts the longhorn in silhouette. UT first sent a cease and desist letter to KST asking it to stop using the logo in March 2002. In 2006, after KST failed to stop using the logo, UT sued KST, claiming that it violated state and federal trademark laws. KST claimed that it should be granted summary judgment based on the defenses of laches and the statute of limitations. The court denied summary judgment on the laches defense because UT did not delay in enforcing its trademark rights. Summary judgment was also denied on the statute of limitations defense because there was evidence that KST was still using the logo. KST also moved for summary judgment on the trademark infringement, unfair competition, and dilution claims. The court denied summary

judgment on the trademark infringement and unfair competition claims because there was a question of fact about likelihood of confusion and KST's intent in using the mark. However, the court granted summary judgment for KST on the dilution claim because dilution claims have been reserved for those truly famous marks, and the court did not believe that UT had shown the longhorn silhouette was a household name.

Intersport v. NCAA, 885 N.E.2d 532 (Ill. Ct. App. 2008). Intersport has been using the term March Madness in connection with its sports-related programming since 1986 and registered the mark with the United States Patent and Trademark Office. In 1990, the Illinois High School Association (IHSA) attempted to register the March Madness mark, claiming it had used the term in connection with its high school basketball tournament since the 1940s. Intersport and the IHSA created a new entity, March Madness, LLC in order to pool their trademark rights. However, when the IHSA became involved in a dispute with the NCAA, Intersport assigned its rights to the mark to the IHSA in exchange for royalties and an exclusive perpetual license to use the mark in connection with its coach's shows. The NCAA and IHSA eventually agreed to form the March Madness Athletic Association (MMAA), which assigned the Intersport license agreement to the MMAA. In 2006, Intersport entered into an agreement with Sprint where Sprint would disseminate some of the coaches shows over its wireless sports network. The NCAA claimed that this would violate the agreement with MMAA because it did not grant the right to disseminate the programs to mobile communications providers. The court determined that because the license was perpetual and did not specifically exclude later-developed technology it should be interpreted broadly, and therefore, it affirmed the circuit court's decision that Intersport's agreement with Sprint should be allowed.

{Webfind}

Paradise Canyon, LLC v. Integra Invs., LLC, 2008 U.S. Dist. LEXIS 37494, No. 2:07-cv-1701-RLH-GWF (D. Nev. Mar. 18, 2008). Pardise Canyon owns and operates the Wolf Creek Golf Club and owns four federal trademark registration related to the Wolf Creek Golf Club, including the term Wolf Creek. Integra owns thirty-three acres of land next to the Wolf Creek Golf Club. The previous owners of this land attempted to develop a residential community called Wolf Creek Estates, but stopped after they agreed to a permanent injunction that enjoined them from using the Wolf Creek mark or anything that implied association between Wolf Creek Golf Club and the residential development. However, Integra is now attempting to develop a residential community called Hidden Wolf and has used pictures of the Wolf Creek Golf Course in its advertisements. Paradise Canyon sued Integra for false advertising and moved for a preliminary injunction. The court enjoined Integra from using a mark containing the word wolf in conjunction with its land development, from using pictures of the Wolf Creek Golf Club, and using language in promotional materials that implies an association with Wolf Creek Golf Club. The court granted the injunction because Paradise Canyon was likely to succeed on its false advertising and trademark infringement claims.

Pino v. Viacom, Inc., 2008 U.S. Dist. LEXIS 24453 (D.N.J. Mar. 4, 2008). After Pino received a copyright on his fourteen-page screenplay entitled Under Pressure, which was meant to be a sports reality show featuring competitions between amateur and professional athletes, he began shopping the show to various networks, including MTV and Spike TV. Pino claimed that the

show Pros v. Joes, which aired on Spike TV, violated the copyright on Under Pressure. In Pros v. Joes, professional athletes compete against average people in different sporting events. The court granted the defendants motion to dismiss because the elements that were similar were stock elements and were not legally protectable, and the elements that were legally protectable were not substantially similar to those in Pros v. Joes.

Univ. of Kansas v. Sinks, 2008 U.S. Dist. LEXIS 23763, No. 06-2341-JAR (D. Kan. Mar. 19, 2008). The University of Kansas sued Larry Sinks and Sinks Enterprises for copyright infringement because the defendants were selling t-shirts that violated the plaintiffs' copyright. Both parties filed motions for summary judgment to include expert testimony. The defendants moved to exclude testimony from the plaintiff's expert, who was a member of the Kansas faculty, but the court would not allow that testimony to be admitted because his opinions did not have a reliable basis in the knowledge and experience of his discipline. The plaintiffs moved to exclude a survey and report by the defendants' expert. Although the survey has significant flaws in the methodology, the court allowed it to be used because it went to the weight and not the admissibility of the survey, and it could be brought to the jury's attention through cross-examination.

Univ. of Kansas v. Sinks, 2008 U.S. Dist. LEXIS 23761, No. 06-2341-JAR (D. Kan. Mar. 19, 2008). The University of Kansas sued Larry Sinks and Sinks Enterprises for copyright infringement because the defendants were selling t-shirts that violated the plaintiffs' copyright. Sinks had filed counterclaims and eventually moved to dismiss them three days after the defendants response was due to the plaintiffs' motion for summary judgment. The plaintiffs asked the court to award them attorneys' fees because they believed that the defendant withdrew his claims because he knew he could not survive summary judgment and had a history of litigating meritless claims. The court did not award the plaintiffs attorneys' fees because the plaintiffs could not show that it constituted slothful prosecution.

Univ. of Kansas v. Sinks, 2008 U.S. Dist. LEXIS 23765, No. 06-2341-JAR (D. Kan. Mar. 19, 2008). Larry Sinks had previously worked for Midwest Graphics, a licensee of the University of Kansas (KU). However, in 2001 he became the sole owner of Victory Sportswear and sought a license from KU. However, KU denied his request. In January 2006, Victory Sportswear opened a subsidiary called Joe-College.com, which sold various products related to various KU athletic teams, players, and coaches. On May 30, 2006, the KU Athletic Director sent a letter to Sinks requesting him to stop selling products that infringed on KU's trademarks because many of the items were offensive to KU and disparaged the athletic program. KU then sued Sinks, his businesses, and Orth, the person responsible for printing the products, for trademark infringement and dilution. The plaintiffs and defendants moved for summary judgment. The court granted the plaintiffs summary judgment on the T-shirts that were overwhelmingly similar to KU's marks, but denied it summary judgment on most of the T-shirts. The court denied Orth summary judgment because there was evidence that Orth had knowledge that Victory Sportswear was not a KU licensee. Sinks argued that he could not be held liable because Varsity Sportswear was a limited liability company, but the court denied summary judgment because there was evidence that he actively and knowingly caused the alleged trademark infringement.

Vail Associates, Inc. v. Vend-Tel-Co., 516 F.3d 853 (10th Cir. 2008). The plaintiff owned the Vail Ski Resort and registered the trademark, Vail, describing it as encompassing commercial and recreational activities, and accompanying amenities available in and around the Town of Vail. The defendant has a registered service mark on the telephone number 1-800-SKI-VAIL. The plaintiff claimed that the defendant's use of the phone number created confusion among customers about whether the plaintiff was the source of the phone service. The court determined that the plaintiff failed to prove a likelihood of confusion because it offered no evidence of actual confusion, and Vail was geographically descriptive in nature, which led the court to believe that the Vail mark was not particularly strong. In addition, the manner in which the marks were used and marketed were not the same.

{Webfind}

World Triathlon Corp. v. Dunbar, 539 F. Supp. 2d 1270 (D. Haw. 2008). The defendants were part of Hawaiian Ironman Triathlon Organizing Committee (HITOC), which started and sponsored the original Ironman triathlon in 1978. In 1980, Valerie Silk and Henry Grundman took over the race, incorporated Hawaiian Triathlon Corporation (HTC), and secured trademarks for the word Ironman in 1983. In 1989, World Triathlon Corporation (WTC) purchased HTC. In 1989, several members of HITOC sued HTC and Silk to prevent WTC from purchasing HTC, but summary judgment was granted for HTC and Silk. However, Dunbar organized an Ironman-length triathlon on Maui from 1994 to 1998 and registered two trademarks and a service mark for Ironman Triathlon with the Hawaii Department of Commerce and Consumer Affairs. WTC sued the defendants for trademark infringement, unfair competition, tortious interference with business relations, and slander of title. Summary judgment was granted for the plaintiffs, and the court awarded them attorneys' fees. The defendants appealed. The court affirmed the Magistrate Judge's award of attorneys' fees because there was evidence that the defendants deliberately infringed on the plaintiff's Ironman marks.

TORT LAW

Clemens v. McNamee, 2008 U.S. Dist. LEXIS 36916, No. 4:08-cv-00471 (S.D. Tex. May 6, 2008). In relation to a private investigation commissioned by Major League Baseball, Brian McNamee alleged that Roger Clemens and Andy Pettitte had used performance enhancing drugs. Clemens' and Pettitte's sports agent contacted attorney Rusty Hardin to let him know that both players might be interested in retaining him. Hardin interviewed both Clemens and Pettitte separately. Eventually, only Clemens decided to have Hardin represent him, and he sued McNamee for defamation. McNamee filed a motion arguing that Hardin's prior representation of both Clemens and Pettitte created a conflict of interest because Pettitte had admitted that he used performance enhancing drugs and his testimony could be central to the case. The court denied McNamee's motion because Pettitte could make a motion to disqualify Hardin if he wanted to in the future.

Craig v. Amateur Softball Association, 2008 PA Super 123 (Pa. Super. Ct. 2008). Matthew Krushinski Craig was hit in the head by a softball while playing in a slow-pitch softball league that was organized under the Amateur Softball Association (ASA) rules. He was not wearing a

helmet at the time and sued the ASA claiming that it had a duty to recommend or mandate that players in the league wear a helmet. The ASA argued that it did not owe a duty of care to Craig, and he had assumed the risk of being struck in the head by failing to wear a helmet. The court dismissed the case because Craig did not provide any facts that suggested the ASA owed him a duty, nor did he provide any direct evidence that the ASA had deviated from custom by not recommending or mandating players should wear helmets.

{Webfind}

Demelio v. Playmakers, Inc., 855 N.Y.S.2d 878 (N.Y. Sup. Ct. Apr. 8, 2008). John Demelio was at John Franco's Indoor Sports when he was hit by a baseball in the eye, which caused his retina to detach from his eye. Someone in the batting cages had hit the ball, and it ricocheted off a pole and hit John. John claimed that the defendant was negligent because it created an unreasonable and enhanced risk to batters by failing to properly and adequately pad the metal pole, failing to hang netting in the proper place, and failing to warn batters of the risks. The defendant moved for summary judgment because it claimed the plaintiff assumed the risks associated with being in a batting cage. The court denied summary judgment because the defendant did not provide any evidence that it was common place for balls to ricochet off of poles in its facility or any other batting cage facilities.

DePalmer v. Borough of Naugatuck, 2008 Conn. Super. LEXIS 1503, No. CV055000343S (Conn. Super. Ct. June 13, 2008). Amanda DePalmer was practicing relay starts while at swim practice, and as she was swimming into the wall, another swimmer dove on top of her. As a result both swimmers were injured. Amanda sued the Borough of Naugatuck, the Naugatuck Board of Education, and James McKee, the swim coach, for negligence because the coach had too many people involved in the drill and did not properly instruct the swimmers about when to dive in. The defendants moved for summary judgment, but the court denied it. The defendants then made a motion to reargue the decision to deny summary judgment because the decision was in direct contradiction with a recent Connecticut Supreme Court decision. The plaintiff claimed that reargument was improper because the decision was published over two months before the defendants filed their original motion. The court denied the motion to reargue because the defendants had the opportunity to make the same argument in their original motion for summary judgment.

DiGiose v. Belmore-Merrick Central High Sch. Dist., 855 N.Y.S.2d 199 (N.Y. App. Div. Apr. 1, 2008). Nicole DiGiose was injured during cheerleading practice when another cheerleader fell on her and knocked her to the floor. Nicole claimed that the defendants were negligent because they allowed her to practice stunts on a gym floor that was not covered by a protective mat and because she was not instructed properly during the activity. The court granted summary judgment for the defendants because they did not unreasonably increase the risks associated with cheerleading.

Felice v. Eastport/South Manor Cent. Sch. Dist., 50 A.D.3d 138 (N.Y. App. Div. 2008). Rebecca Felice, a tenth grader at Eastport/South Manor Central Junior/Senior High School, was injured during varsity cheerleading practice on December 14, 2005. She was immediately taken to the hospital where she was told she had fractured the talus bone in her right foot, and it would

require surgery. On July 19, 2006, Rebecca was informed by her doctor that she needed to be careful about how much pressure she put on her foot and that she may need future surgeries. On July 26, 2006, Rebecca and her mom filed an action for leave to serve a late notice of a claim against the school district. The plaintiffs claimed that the school district did not suffer any prejudice by the late notice because they had actual notice of the accident and how it occurred. The school district claimed it would be prejudiced because it did not realize that Rebecca would claim she was not comfortable with her stunt team and had voiced these concerns to her coach several times prior to being hurt. The court denied the motion for leave to serve a late notice of claim because the plaintiffs deliberately delayed the presentation of their claims since Rebecca did not want to involve her coach and her friends because she thought she would return to the team.

{Webfind}

Gerry v. Commack Union Sch. Dist., 2008 NY Slip Op. 5041, No. 2007-05763 (N.Y. App. Div. June 3, 2008). Russell Gerry was a member of the track team at Commack High School. While competing in a track meet, he was hit in the head by a shot put thrown by Robert Dantone, a member of the Centerearch High School. Gerry sued the Commack Union Free School District, Dantone, and Middle Country School District, the school district where Dantone attended school, for negligence. The court dismissed the case because getting hit in the head with a shot put was an inherent risk in the sport, and Gerry had assumed that risk.

{Webfind}

Gillen v. Nassau Semi-Fast Softball League, 49 A.D.3d 500 (N.Y. App. Div. 2008). The plaintiff was playing catcher during a softball game sponsored by the Nassau Semi-Fast Softball League (League) when he collided with a player from another team and was injured. The plaintiff sued the League, claiming it was negligent. The court ruled in favor of the defendant because the collision was an inherent risk in the sport of softball.

Gill v. Tamalpais Union High School District, 2008 Cal. App. Unpub. LEXIS 3928, Nos. A112705, A112830, A113358 (Cal. Ct. App. May 14, 2008). Jennifer Gill, a sophomore at Redwood High School, attended open-gym because she was trying to make the basketball team and wanted to impress the coaches. During one of the open-gyms, she collided with a metal pole that was supporting a basketball backboard and suffered a cut above her eye. Normally rubber pads covered the poles, but they were not used on the day Gill was injured. While she was waiting for first aid treatment in the training room, she fell off a counter and knocked out a tooth. A jury found in favor of Gill and awarded her $336,932. The school district appealed, claiming that Gill's lawsuit should have been barred by the primary assumption of risk. The court affirmed the jury's decision because the school increased the risk by allowing students to play basketball around poles that they knew to be dangerous.

Karas v. Strevell, 884 N.E.2d 122 (Ill. 2008). Benjamin Karas was injured during an ice hockey game when he was bodychecked from behind by two players from the opposite team. Benjamin's father claimed that the other players' conduct was willful and wanton, and the hockey league and the officials' association had conspired to not enforce a rule against bodychecking players from

behind. The trial court dismissed all claims, but the appellate court reinstated the claims against the hockey players. However, the Illinois Supreme Court dismissed all claims because hockey is a contact sport and willful and wanton conduct is often an inherent and fundamental part of the sport.

{Webfind}

Maciasz v. Fireman's Fund Ins. Co., 2008 Ala. LEXIS 11, No. 1061133 (Ala. Jan. 18, 2008). Tina Maciasz was killed in a car accident when she was riding in a van that was transporting members of the Christian Cheerleaders of America, Inc. (CCA) staff from Texas to North Carolina. Tina's parents sued CCA for negligence, and the trial court entered a consent judgment against CCA in the amount of $1,500,000. CCA maintained a Sports General Liability Policy-Occurrence with Fireman's Insurance. However, the policy had an automobile exclusion. Tina's parents argued that the automobile exclusion is in direct conflict with an extension of declarations, which says coverage applies directly prior to and following approved sports activities. However, the court determined the automobile exclusion was not ambiguous, and it did in fact preclude coverage for damages from the car accident that Tina died in.

Marmon v. Town of Mansfield, 2008 Conn. Super. LEXIS 1193, No. TTDCV075001424S (Conn Super. Ct. May 9, 2008). Shayna Marmon was injured while practicing sliding into bases with her softball team at Mansfield Middle School. She sued the Town of Mansfield alleging that its employees, the softball coaches, were negligent. Mansfield filed a motion for summary judgment because it claimed the suit was barred by governmental immunity. The court dismissed the suit because the coaches were not employees of Mansfield, but rather employees of the school district.

Mason v. Brigham Young Univ., 2008 U.S. Dist. LEXIS 7766, No. 2:06-CV-826 TS (D. Utah Feb. 14, 2008). Rachael Mason was injured while she was lifting weights with the Brigham Young University (BYU) swimming team. She claimed that the University and the coaches were negligent in instructing her how to correctly lift weights. BYU claimed she failed to mitigate damages by not seeking employment and failed to use ordinary care to promote her recovery. Mason claimed she was entitled to summary judgment on this defense. The court granted summary judgment for Mason in regards to BYU's failing to find employment defense because it had not provided any information showing that Mason had not sought employment. Summary judgment was granted for Mason regarding the defense of failing to use reasonable care because BYU did not produce enough evidence to show that continuing to swim affected her recovery. However, summary judgment was not granted on the assumption of risk, negligence, and laches defenses.

Mason v. Brigham Young Univ., 2008 LEXIS 7842, No. 2:06-CV-826 TS (D. Utah Feb. 1, 2008). Rachael Mason was injured while she was lifting weights with the Brigham Young University (BYU) swimming team. BYU claimed that Mason's injuries were caused by third persons, and any damages should be determined with the comparative fault statutes. However, BYU filed its Notice of Allocation of Fault late. The court denied the request for a late filing because it would have required the trial to be rescheduled, which would have prejudiced Mason.

Mason v. Brigham Young Univ., 2008 LEXIS 7771, No. 2:06-CV-826 TS (D. Utah Feb. 1, 2008). Mason was injured while she was lifting weights with the Brigham Young University (BYU) swimming team. BYU claimed that it did not owe a duty of care to exercise ordinary care in protecting from risks inherent in college athletics, there was no evidence a standard of care was breached, Mason agreed to limit BYU's financial responsibility for her injuries by signing a release, and Mason's claims for future medical and insurance expenses were covered by a BYU insurance policy. BYU moved for summary judgment on all defenses. The court denied summary judgment on all defenses. It determined there was a genuine issue of material fact of whether Mason's injury was a risk inherent in swimming or lifting weights. In addition, Mason was able to identify enough facts that a jury could determine the standard of care was breached. There was a question of fact regarding the release form because it did not include a required BYU representative signature, it is not titled as a release, and BYU had told Mason that they would cover her injuries without any time limit. Finally, there was a question of fact about the insurance policy because it had just been disclosed, and the BYU representative that gave a deposition about the policy did not have all of the information he needed about the policy. Therefore, the court dismissed BYU's motion for summary judgment.

McElroy v. Walsh, 2008 Cal. App. Unpub. LEXIS 3965, No. G038211 (Cal. Ct. App. May 14, 2008). John McElroy was playing golf with a foursome when he was hit in the mouth by a golf ball that was hit by Thomas Walsh. McElroy had hit his ball on the 17th hole and driven with Robert Vickery to where his ball was hit when the accident occurred. McElroy sued Walsh claiming he played golf in an unsafe manner by not looking to see where other players were located. He sued Vickery for operating the golf cart in an unsafe manner. The court granted summary judgment for both defendants because the primary assumption of risk applied, and McElroy was unable to produce any evidence that the defendants had acted recklessly.

McGarry v. Sax, 158 Cal. App. 4th 983 (Cal. Ct. App. 2008). The plaintiff was attending a professional skateboarding event in a parking lot in front of a skateboard store. After the performance, one of the skateboarders flung a skateboard deck into the crowd of spectators who were trying to retrieve it. The plaintiff was injured and sued the skateboard store. The trial court granted summary judgment for the skateboard store, and the appeals court affirmed. The court said that the activity had elements of a competitive sporting event, and the plaintiff was a willing participant in the event. The fact that the plaintiff might fall while trying to secure the skateboard was an inherent risk of the competition.

McLeod v. Blase, 659 S.E.2d 727 (Ga. Ct. App. 2008). While Roshown McLeod was playing basketball for the Atlanta Hawks in 2000, he was injured. He was treated by Blase, the Atlanta Hawks athletic trainer, following the injury. However, his injury became permanent, and he was unable to continue to play professional basketball. Roshown claimed the injury became permanent because he was negligently treated by Blasé, and he sued him for professional malpractice. The court affirmed the trial court's decision to grant summary judgment to Blase because there was no case law showing that the exception allowing employees to sue a co-employee who is a physician for medical malpractice also applies to professionals such as athletic trainers.

Mendoza v. Vill. of Greenport, 2008 N.Y. Slip Op. 5895, No. 2007-04101 (N.Y. App. Div. June 24, 2008). German Mendoza was playing basketball on an outdoor basketball court when he tripped on a hole and injured himself. He had noticed the hole before tripping, but continued to play. He sued the Village of Greenport, which owned the park where the basketball court was located, for negligence. The court dismissed the case because he assumed the risks associated with any open and obvious conditions on the court.

{Webfind}

Milligan v. Sharman, 2008 N.Y. Slip Op. 5165, No. 735 CA 07-02076 (N.Y. App. Div. June 6, 2008). Milligan was waiting on the eighth hole of a golf course when he was hit by a golf ball that was hit by someone on the ninth hole. Milligan sued the owner of the golf course and the player that hit the golf ball for negligence. The court dismissed the case because being hit by an errant golf ball is an inherent risk in playing golf, and Milligan had assumed that risk.

{Webfind}

Mondelli v. County of Nassau, 49 A.D.3d 826 (N.Y. App. Div. 2008). The plaintiff was playing baseball at Eisenhower Park in Nassau County when he fell and injured himself while trying to catch a fly ball. He sued the County for negligently maintaining the baseball field. The court ruled in favor of the County because the plaintiff was aware of the lip of dirt that had accumulated by the infield/outfield border, a risk inherent in the sport of baseball.

Noffke v. Bakke, 748 N.W.2d 195 (Wisc. Ct. App. 2008). Brittany Noffke was a cheerleader at Holmen High School. She fell and injured herself during a pre-game warm-up session. Noffke sued the student responsible for spotting her during the stunt, the school district, and the school district's insurance company. The student moved for summary judgment, claiming he was immune from liability based on a Wisconsin statute that governs liability for co-participants of contact team sports. The school district also moved for summary judgment, claiming that it had governmental immunity. The court granted summary judgment for the school and school district. The student was denied summary judgment because the court determined that cheerleading was not considered a contact sport.

{Webfind}

Palestine Herald-Press Co. v. Zimmer, 2008 Tex. App. LEXIS 4690, No. 12-07-00139-CV (Tex. Ct. App. June 25, 2008). Mark Zimmer was an assistant coach for the Jacksonville High School football team. Following a win over arch rival, Palestine High School, Zimmer ran out to the field and began celebrating with his team. Some people believed that he was taunting the Palestine High School players and coaches because he was facing their sidelines while yelling and thrusting his arms up and down. Two days later a reporter wrote an article in the Palestine Herald about the importance of sportsmanship in high school football games. The article said Zimmer was making obscene gestures with his arms, it was the worst behavior he had seen from a coach, and it was uncalled for. Zimmer sued the newspaper and the author of the article for defamation. The defendants moved for summary judgment, but were denied. After the defendants appealed, the court reversed and granted summary judgment for the newspaper and

the author of the article because all of the comments made in the article were his subjective opinions, rather than verifiable facts.

Pecoraro v. Balkonis, 2008 Ill. App. LEXIS 605, Nos. 1-05-3721, 1-06-2967 (Ill. Ct. App. June 19, 2008). Joseph Pecoraro was the head coach of the Fremd High School Hockey Club in 1998. One of the hockey players was told he could not play in a hockey game because he had missed two practices that week, which was a violation of team rules. The player, Thomas Olsak, threw a hockey stick at Pecoraro, and then hit him in the temple, causing him to fall and hit his head on the concrete floor. Pecoraro was in a coma for several days and sustained permanent brain damage. He claimed the hockey club and individual board members were negligent. Pecoraro agreed on a settlement with Olsak, where Olsak would pay Pecoraro $5,000 and assign him all of his rights under two insurance policies. The trial court found that the settlement was made in good faith, but the board appealed. The court determined that the settlement was in good faith. Although, $5,000 seemed like a small amount, considering the major injuries Pecoraro sustained, Olsak did not have any assets; therefore, if a significant amount had been rendered against him there was a good chance he would have never been able to satisfy it.

{Webfind}

Reyes v. City of New York, 51 A.D.3d 996 (N.Y. App. Div. 2008). James Reyes was standing in the dugout while coaching a baseball team on one of the defendant's parks when he was hit by a foul ball. The dugout he was standing in did not have a fence in front of the bench side facing home plate, causing a ball to come through and hit him. The court dismissed the case because Reyes was aware that foul balls had come through that area before, and he had not shown any evidence that he was subjected to a concealed or unreasonable risk.

{Webfind}

Roberts v. Boys and Girls Republic, Inc., 51 A.D.3d 246 (N.Y. App. Div. 2008). Linda Roberts was attending her son's baseball practice when she was hit in the face with a bat by a player taking practice swings. The court determined that she had assumed the risk of her injury. The danger of people swinging bats while warming up was inherent in baseball. Furthermore, it was obvious and did not require a thorough knowledge of the sport.

{Webfind}

Sallinen v. Upper Lake Union High Sch. Dist., 2008 Cal. App. Unpub. LEXIS 1553, No. A116155 (Cal. Ct. App. Feb. 26, 2008). Justin Sallinen was hit simultaneously from the left side and from the front during football practice at Upper Lake High School, resulting in a fractured femur, a torn ACL, and torn meniscus in the knee. Following practice, the coaches left Justin alone in the locker room without making sure he had a ride home. While attempting to walk to a pay phone to call for a ride home, Justin fell again. Justin had three surgeries to try to repair everything, but still needed one more to repair the torn ACL. At trial there was a question of whether Justin tore his ACL during the original injury or whether he tore it when he fell as he was walking to the pay phone. The jury determined the injury occurred when Justin was walking to the pay phone and awarded him $250,000. The defendants asked for a new trial because it did not realize that

one of its witnesses had given disputing evidence to the plaintiff. The court did not award a new trial because the defendants could have asked the witness if he had given any statements to the plaintiffs at any time during discovery.

Sciarrotta v. Global Spectrum, 944 A.2d 630 (N.J. 2008). Denise Sciarrotta attended a hockey game at Sovereign Bank Arena in Trenton, New Jersey between the Trenton Titans and the Jonestown Chiefs. During the warm-up period, a puck flew over the Plexigas protective barrier and hit Sciarrotta. She sued the operators of the arena and the owners of the teams playing for negligence. The trial court granted summary judgment for the defendants because they had satisfied their limited duty to Sciarotta. She appealed, and the appellate court reversed. The Supreme Court of New Jersey ruled in favor of the defendants because they had provided a protected area for spectators who did not want to be exposed to the risk, and they screened the high-risk seating area. Sciarrotta could have requested to sit in an area behind protective netting but chose not to do so.

Turner v. Mandalay Sports Entm't, LLC, 180 P.3d 1172 (Nevada 2008). Kathleen Turner owned season tickets to the Las Vegas 51s, a minor league baseball team, from 2000 to 2002. Kathleen was hit in the face with a foul ball while sitting at a picnic table eating a sandwich. The 51s had a disclaimer on the tickets, signs warning visitors about the risks of foul balls, and the announcer warned spectators before each game about the risks of foul balls. Turner sued Mandalay Sports Entertainment, the owners of the Las Vegas 51s, for negligence, loss of consortium, and negligent infliction of emotional distress. The court affirmed the district court's summary judgment ruling in favor of the defendants. The defendants had a limited duty to protect spectators by providing a protected seating area and protecting the areas that were the most dangerous. However, Turner chose not to sit in a protected area, and the area she was in did not pose an unduly high risk of injury; therefore, the baseball park was not required to provide additional protection.

Williams v. Conn. Sportsplex, LLC, 2008 Conn. Super. LEXIS 1403, No. CV075013413 (Conn. Super. Ct. June 4, 2008). Mark Williams attended a football game at Sportsplex, which is owned by defendant Connecticut Sportsplex. He was standing behind a protective barrier when a football player ran into it and injured Williams. Sportsplex claimed the injuries resulted from his own negligence, and he had signed a release form. Williams claimed that he signed the release form, but he did so as the parent or guardian of his son. Williams made a motion to strike this defense, but did not include the release with any of the pleadings; therefore, the court denied the request.

Wilson v. O'Gorman High Sch., 2008 U.S. Dist. LEXIS 49454, No. 05-4158-KES (D.S.D. June 26, 2008). Andrea Wilson was a member of the O'Gorman High School gymnastics team. During her senior year of high school, she fell while practicing her high bar routine and lost the use of her legs. She sued the high school and the coaches for negligence. The school had purchased catastrophic injury policy for all student-athletes and claimed that any amount Wilson received from that policy should offset the amount they may owe to her. Wilson claimed that she essentially purchased the policy because she paid tuition and a $100 fee to participate in gymnastics. The school claimed that the fee was used to offset expenses that were unique to gymnastics, rather than to purchase the insurance policy. Further, not all sports were required to

pay the fee, but all student-athletes were covered by the policy. The court determined that the school could use the policy to offset the judgment against them. If tuition had been considered, that would have meant that the school could never purchase insurance policies in its own right because it would always be traced to the tuition, and the gymnastics fee was not used to purchase the policy.

Yatsko v. Berezwick, 2008 U.S. Dist. LEXIS 47280, No. 3:06cv2480 (M.D. Pa. June 13, 2008). 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 could not 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 coaches and the school district for negligence and violation of due process rights because she had a right to adequate medical treatment, there was a failure to institute and enforce safety standards, and there was improper supervision of the coaches. After Tracey amended the complaint, the court found that the behavior of the coaches and the school board still did not shock the conscience and dismissed the due process claims. Because it dismissed the federal claims, it lacked jurisdiction to hear the negligence claims and dismissed the case.

MISCELLANEOUS

Carson Harbor Vill., Ltd. v. Bd. of Trs., 2008 Cal. App. Unpub. LEXIS 3098, No. B193879 and B193880 (Cal. Ct. App. Apr. 14, 2008). California State University - Dominguez Hills (CSUDH) completed a full environmental impact report (EIR) in 2001, prior to building the Home Depot Center. However, after the EIR was completed some changes were made to the project including reducing the amount of permanent seats and including permanent lights. A local neighborhood complained about the spillover effect of using the lights during evening soccer games, and the President of CSUDH made the decision to turn off the lights. Following a decline in attendance at soccer games occurred after they were moved from the evening to afternoon, CSUDH decided to prepare a supplemental EIR to evaluate the environmental impact of permanent lights compared to the temporary lights that were used in the full EIR in 2001. A draft of the initial supplemental EIR was made available to the public in October of 2005, but Carson Harbor Village (CHV) never commented on it. CHV then filed a mandate petition challenging approval of the supplemental EIR and alleging that it did not have to exhaust its administrative remedies because CSU had failed to give proper notice. The court determined that CHV did not exhaust its administrative remedies because it did not comment on the supplemental EIR, and it did not attend a public meeting to comment about the impact of the supplemental EIR, both of which CSUDH had given proper notice to people possibly affected, including CHV.

Davis v. The N. N.Y. Sports Officials' Council, 856 N.Y.S.2d 497 (N.Y. Sup. Ct. Feb. 11, 2008). Jude Davis was suspended by the Northern New York Soccer Officials Association (NNYSOA) for over a year. Davis informed the NNYSOA in writing that she wanted to appeal the decision. She was told that the executive board would hold an e-mail conference to consider her appeal, but in the same letter was told that the executive board already concurred with the recommendation to suspend her. However, the NNYSOA Constitution stated that an appeal would be addressed at the next scheduled Executive Board meeting. Davis sought a declaration from the court that the actions of the NNYSOA were arbitrary and capricious, and an abuse of discretion. The defendants sought to dismiss it because the petition failed to state a cause and because she failed to exhaust her internal remedies. The court did not dismiss the case because she attempted to exhaust her internal remedies, but the NNYSOA failed to follow their Constitution in regards to the internal remedies process. In addition, judicial review was appropriate because there was evidence that the board acted in an arbitrary and capricious manner.

M'Baye v. N.J. Sports Production, Inc., 2008 U.S. Dist. LEXIS 33422, No. 06 Civ. 3439 (DC) and 05 Civ. 9581 (DC) (S.D.N.Y. Apr. 21, 2008). M'Baye is a professional boxer who was represented by Bernard Roos. The defendants requested information from M'Baye regarding his income and expenses because it related to his alleged damages. M'Baye was able to produce some documents, but Roos had some of the documents as well. M'Baye attempted to get the remaining documents from Roos, but he did not cooperate because he had a falling out with some of M'Baye's other representatives. The court then signed an order requiring the plaintiff to produce documents. M'Baye and his attorney continued to try to get the documents from Roos, but were not successful. The defendants moved to dismiss the case because he failed to comply with the discovery order. The court did not dismiss the case because it found that M'Baye had made an effort to get the documents and had not acted willfully or in bad faith.

Mo. State USBC Ass'n v. Director Of Revenue, 250 S.W.3d 362 (Mo. 2008). The Missouri State United States Bowling Congress Association (MSUSBCA) sought tax-exempt status, but the director of revenue claimed it was not a charitable, civic, or service organization. The MSUSBCA was formed in 2006 when three Missouri bowling associations merged. It has 75,000 members that are required to pay a nominal fee for a membership card. It also hosts bowling tournaments throughout the year and a yearly awards banquet. MSUSBCA only gave $1000 in charitable donations during its 2006-07 budget year, but it said it planned to do more once it has raised more money. The court determined that MSUSBCA was a not-for-profit civic organization with tax-exempt status because its activities were recreational and available to the public at large, making it a civic organization.

{Webfind}

Nedvidek v. Kuipers, 747 N.W.2d 527 (Wisc. Ct. App. Feb. 28, 2008). The University of Wisconsin-La Crosse renamed Veteran's Memorial Stadium to Roger Harring Stadium. The plaintiffs claimed that this did not sufficiently honor war victims, and the renaming violated the university's procedures for naming university property. The trial court dismissed the case because the defendants lacked standing. The appeals court affirmed the decision because the plaintiffs failed to allege any direct personal injury or personal stake in the controversy.

{Webfind}

"You Make The Call..." *is a newsletter published twice a year (spring, fall) by the National Sports Law Institute of Marquette University Law School, PO Box 1881, Milwaukee, Wisconsin, 53201-1881. (414) 288-5815, fax (414) 288-5818, email. This publication is distributed via email to individuals in the sports field upon request.*

Matthew J. Mitten, Editor, Professor of Law and Director, National Sports Law Institute

Paul M. Anderson, Editor & Designer, Adjunct Associate Professor of Law and Associate Director, National Sports Law Institute

Megan Ryther (L'07), Contributing Author. Editorial Assistance provided by Sean Light (L'09), Jessica Schaak (L'09), and Alex Porteshawver (L'10).

