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Administrative Law

Burneson v. Ohio State Racing Comm'n, 2009 Ohio App. LEXIS 875 (Mar. 12, 2009). Race horse trainer Charles Burneson appealed a trial court's judgment affirming the decision of the Ohio State Racing Commission (OSRC) to sanction him after he was found guilty of a fourth-degree felony for stealing horses and selling them to a slaughterhouse. Under a provision in the state administrative code, the OSRC had the right to revoke, suspend, or refuse to grant a license to any person convicted of a felony in the previous ten years. However, it did not have a mechanism in place to keep track of felony convictions against its licensees, and offered to stipulate that there were trainers with convictions on their records who were granted or maintained licenses over the previous year.

The appellate court affirmed, holding the trial court did not abuse its discretion in affirming the OSRC's sanctions because the agency's failure to issue subpoenas giving Burneson access to its records and forcing its executive director to testify at the hearing did not prejudice the plaintiff, and the provision in the state administrative code was not an unconstitutional delegation of legislative authority. In assessing whether Burneson was prejudiced, the court noted his attorney declined to review the OSRC's records prior to the hearing or enter into the agency's proposed stipulation, and found the information sought would be marginally relevant because the state administrative code gave the OSRC broad discretion in enforcing its rules. It concluded Burneson could not establish that the OSRC treated him differently than similarly situated trainers. In dismissing the constitutional claim, the court noted that the OSRC did not establish guidelines for the provision's application, but determined that deficiency was permissible because the provision concerned the state's exercise of its police powers, and the legislature could not be expected to anticipate all the practices that should be guarded against in order to protect the public.

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Kuna Boxing Club, Inc. v. Idaho Lottery Comm'n, 2009 Ida. LEXIS 2 (Jan. 21, 2009). The Kuna Boxing Club (KBC) appealed a trial court's decision to uphold the Idaho Lottery Commission's emergency suspension of its bingo license. The commission originally denied the club's application for a license because its president was also the president of the Snake River Association of USA Boxing, which had its bingo license revoked after the commission

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determined it had violated state law by failing to keep and account for all of its checks. A hearing officer concluded the commission could not deny KBC's application for a license just because the president was affiliated with both entities. However, the commission was allowed to immediately suspend a license if the licensee or any person connected with the licensee had previously committed checking violations.

The Idaho Supreme Court affirmed, holding the commission's failure to comply with the APA and Fourteenth Amendment due process requirements by not providing a post-deprivation hearing did not prejudice KBC, and the commission's decision to suspend the license was warranted based on the immediate danger to the public welfare. In assessing whether KBC was prejudiced, the Court noted the club was able to present evidence concerning its connection with USA Boxing prior to the suspension, and did not identify any additional evidence it would have presented. In determining whether the suspension was warranted, the Court noted the state's public policy supported the strict regulation of bingo gaming to guard against fraud and other dangers, and concluded that the connection between KBC and USA Boxing created a threatening situation.

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Alternative Dispute Resolution

Bennett v. USA Water Polo, Inc., 2009 U.S. Dist. LEXIS 37753 (S.D. Fla. Apr. 21, 2009). Water polo coach Alex Bennett moved to remand his suit against USA Water Polo to state court after it was removed when the national governing body claimed there was a federal question about whether the plaintiff's tort claims were pre-empted by the Amateur Sports Act. The District Court held it did not have federal question jurisdiction, but granted leave to USA Water Polo to conduct discovery about whether the amount-in-controversy requirement was satisfied in order to determine if it had diversity jurisdiction. The court emphasized that federal question jurisdiction does not exist if removal is based on a law that creates an internal mechanism to resolve disputes arising under it. It found the Amateur Sports Act provided that type of mechanism to USA Water Polo, and even allowed for possible appeals through arbitration.

Grant v. Philadelphia Eagles LLC, 2009 U.S. Dist. LEXIS 53075 (E.D. Pa. June 24, 2009). The Philadelphia Eagles moved to compel arbitration of claims brought against the team by former employee Bonnie Grant. Team employees did not mention or discuss arbitrating disputes with the club when she interviewed for a position, or at any other time prior to the point she agreed to become the Eagles' new Director of Communications. But on her first day of work, she was handed several routine forms to fill out and sign, including an arbitration agreement. Grant signed it without complaint. The District Court granted the motion, holding Grant's federal and state law discrimination claims and her state law tort claims had to be settled out of court because she signed the arbitration agreement. The court found the agreement was valid because she received, read, understood, and signed it, the terms were clear and unambiguous, and both parties agreed to be bound by arbitration. The court noted that agreements do not have to be executed prior to employment in order to be enforceable, and that the Federal Arbitration Act

does not require the drafting party to sign them. The court also determined that the agreement was not unconscionable on a procedural or substantive level. There was no evidence of inequity in bargaining power, both parties were given an opportunity to enforce their rights in a neutral forum, and none of the provisions were unreasonably favorable to the Eagles. Grant did not show she would be burdened by costs or the choice of forum, and the arbitration guidelines provide for all of the privileges a litigant has in court.

Grillier v. CSMG Sports, Ltd., 2009 U.S. Dist. LEXIS 2168 (E.D. Mich. Jan. 12, 2009); Grillier v. CSMG Sports, Ltd., 2009 U.S. Dist. LEXIS 50476 (E.D. Mich. June 16, 2009). After losing its motion for a separate trial on the issue of arbitrability, CSMG Sports moved to compel arbitration of breach of contract claims brought against it by sports agent Kim Grillier after he failed to receive a percentage of the fees generated by NBA clients that he recruited for the agency. The parties executed a written consulting agreement when Grillier originally joined the agency as an independent contractor. It stated that any dispute over its provisions had to be settled in arbitration. But three years later, Grillier became an official employee under an alleged oral contract. He claimed that contract was consistent with the agency's prior promise to pay him a percentage of generated fees, but did not provide for arbitration. Fees were allegedly generated from ten different players, five who signed after Grillier became an employee.

The District Court granted the motion as to the claims for compensation for players that Grillier recruited as an independent contractor, but denied it as to the claims premised on the alleged oral contract. The court found the arbitration clause in the written agreement contemplated any dispute related to compensation, so it was broad enough to encompass claims related to the alleged promise. It also noted that any doubt over whether the arbitration clause continued to apply once Grillier became an employee had to be resolved in favor of arbitration under the Federal Arbitration Act. However, the court concluded that the language of the written agreement did not contemplate any dispute related to compensation earned by Grillier if he became an employee.

Perry v. GRP Fin. Services Corp., 674 S.E.2d 780 (N.C. Ct. App. 2009). Professional football player Chris Perry appealed a trial court's decision to enter sanctions against him and two other plaintiffs for their absence at a court-ordered mediation of a lawsuit filed after the defendants removed personal property from the house of Perry's mother in the midst of foreclosure and eviction proceedings. Perry, his mother Irene, his sister, and two family friends claimed defendants JWB Properties, LLC, and Triad Residential, LLC committed conversion and unfair and deceptive trade practices in removing their property, some of which was taken to landfills. JWB Properties refused to consent to allow Perry to participate in the mediation by telephone. The mediation was scheduled when Perry was in training camp with the Cincinnati Bengals. On the day of the mediation, Perry called to say he could not get a flight out of Ohio that would get him to the site of the conference earlier than late afternoon. However, he participated by telephone throughout the mediation, and gave his mother permission to settle the case on his behalf. After the defendants filed their motion for sanctions, all of the plaintiffs voluntarily dismissed their claims. The appellate court reversed, holding the trial court had failed to adequately address why the explanations proffered by Perry and the other plaintiffs for their absence did not amount to good cause, which is required by state law to avoid sanctions. The court emphasized that the decision did not indicate why Perry's alleged flight problem was not a

valid excuse, even if he possessed the financial means to ensure his presence at the conference. However, the court upheld the award of costs related to the plaintiffs' voluntary dismissal of their claims.

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American Arbitration Association Decisions

Crowell / Radio Flyer v. U.S. Equestrian Fed'n, AAA 77 190 E 00193 09 (May 3, 2009). Former Olympian Dorothy Crowell appealed a U.S. Equestrian Federation hearing panel's decision to disqualify her from being able to participate in an upcoming event. The governing body's rules provide that riders and horses must meet qualifying requirements in order to participate at certain levels of competition. One of the rules stipulates that any rider who falls from the same horse twice in a twelve-month period will cause the horse to lose its qualification to compete at the level of the second event. In September 2008, Crowell's horse, Radio Flyer, became entangled in a fence at an event, forcing her to dismount. The governing body labeled the incident a fall. Eight months later, Crowell fell from Radio Flyer in another event, causing the horse to lose its qualification. Crowell argued the rule was being applied retroactively because it did not become effective until December 2008. The AAA panel upheld the decision, determining that the rule was not applied retroactively to her September 2008 fall, but following her second fall, which occurred after the rule was enacted. Examining relevant cases under New York law, which was used to interpret the rules, the panel noted courts have consistently held a rule is not retroactive simply because its application is based - in part - on events that occur prior to its effective date.

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Hunter v. USA Boxing, Inc., AAA No. 77 190 E 00279 09 (June 16, 2009). Michael Hunter appealed a USA Boxing committee's decision to disqualify him for using an illegal hand wrap following his victory against Lenroy Thompson in a tournament. A USA Boxing technical rule dictates hand wraps can be no longer than fifteen yards in length, and one of Hunter's wraps admittedly exceeded the standard. However, the rule does not prescribe any consequences for violating the standard. The AAA panel reinstated the decision of the referee because the governing body did not have authority to disqualify him. It emphasized Hunter was entitled to know the consequences for violating a rule before sanctions could be imposed. The panel also found that USA Boxing violated its own rules by failing to supervise the wrapping, failing to provide an appeals mechanism, and failing to provide due process to either of the affected athletes. It noted that if the first rule had been followed, the violation would not have occurred, and if the other rules had been followed, the referee's decision would not have been overturned.

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Hennefer v. U.S. Sailing, AAA 77 190 00252 09 (June 25, 2009). James Hennefer appealed a U.S. Sailing protest committee's decision not to modify the results of a race in the 2009 World Championship Qualifying Series for the International One Design after he claimed three other

boats sailed the wrong course on San Francisco Bay. In addition to a change in the scores, Hennefer sought a Racing Rules of Sailing (RRS) report of bad sportsmanship because the other boats failed to withdraw after learning of their mistake. After conducting a hearing, the protest committee upheld the decision of the Principal Race Officer (PRO) not to change the results because all but one boat sailed off-course, and their errors were not prejudicial. In that situation, race officials are taught to let the results stand.

The AAA panel determined it could not modify the results because the USOC Bylaws prevent overturning field of play decisions. It emphasized that the PRO's ruling on whether to disqualify the three boats was a judgment call based on his subjective assessment of the conditions, and that there was no evidence he acted inappropriately in making a decision. The panel also found the requested change in scores would not be sufficient to remedy the error committed. It noted the confusion caused by the race committee's instructions caused all but one boat to sail the wrong course, and the RRS require any protest committee changes to be as fair as possible for all boats affected. The panel concluded no boat could be found guilty of violating the sportsmanship rule because none of them believed they had made a mistake.

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Antitrust Law

Behrend v. Comcast Corp., 626 F. Supp. 2d 495 (E.D. Pa. 2009). Comcast Corporation (Comcast) moved to strike expert testimony assessing the antitrust impact of its alleged refusal to allow satellite providers to carry its affiliated regional sports channels that was submitted by the class of individuals who brought an antitrust suit against the cable provider for entering into agreements with competitors that allocated the country's regional markets amongst themselves. Comcast claimed the expert testimony created a new theory of liability that had not been pled in the complaint. In the complaint, the class alleged that the presence of satellite providers could not adequately restrain the price of cable services provided by large companies like Comcast. Although it pointed out Comcast denied a potential cable provider long-term access to its regional sports channel, at no point did the class contend that denial was itself anti-competitive conduct. However, in subsequent discovery, the class specifically asked questions relating to Comcast's alleged refusal to provide that channel to satellite providers, placing the company on notice that the class believed those providers could restrain prices and that the company's refusal violated section 2 of the Sherman Act.

The U.S. District Court denied the motion, holding that the expert testimony did not prejudice Comcast because it did not attempt to assert a new antitrust claim, but elicit a manner in which the class of individuals proposed to prove their antitrust claims. The court emphasized that one of the specific results of Comcast's alleged anticompetitive conduct was its ability to foreclose potential cable providers from accessing regional sports programming, and that the class had alleged the foreclosure of that programming would give Comcast a significant competitive edge against satellite providers. The court also held that the class' inconsistent assertions as to whether competition from the satellite providers could actually constrain prices were not made in bad

faith or intentional misrepresentations to the court. Therefore, the remedy of judicial estoppel could not be applied to prevent it from relying on the expert testimony.

Churchill Downs, Inc. v. Thoroughbred Horsemen's Group, LLC, 605 F. Supp. 2d 870 (W.D. Ky. 2009). Race horse owners and trainers moved to dismiss horse racetracks' claims that they violated the Sherman Act and breached the parties' contractual agreements when they formed the Thoroughbred Horsemen's Group (THG), designated that group as their agent, and then withheld consent for the tracks to sell racing signals to certain advanced deposit wagering (ADW) operations unless those ADWs entered into a separate licensing agreement with the THG. That licensing agreement would guarantee that the owners and trainers received a specified percentage of the takeout from race purses. Under the Interstate Horseracing Act (IHA), a host racetrack that wishes to contract with an ADW operation for the right to receive a simulcast of its races must first get the consent of its authorized horsemen's group, which is made up of the race horse owners and trainers who make their home at the track. Some of those groups continued to withhold consent even after their host racetrack negotiated contracts that provided for higher fees than ADWs paid in previous years.

The District Court granted the motion in part and denied it in part. In assessing the antitrust claims, the court held the IHA could not be interpreted to give the horsemen's groups implied immunity from Sherman Act liability because it does not provide an alternative method of supervising the facilitation of interstate horse race wagering, and does not conflict directly or indirectly with antitrust principles. It noted that the IHA does not provide a method of regulating the horsemen's groups vetoes, and that those groups did not have a public purpose or a federal charter. The court concluded the racetracks' allegations were sufficient to support a finding that the horsemen's groups were actual participants in the alleged market, and engaged in a commercially-motivated group boycott. However, the court dismissed the antitrust claims against certain individual defendants because their involvement in the alleged conspiracy appeared to be merely speculative. In dismissing the breach of contract claim, the court held no provision in the agreements between the horsemen's groups and racetracks prohibited the groups from appointing an agent to negotiate on their behalf, and the THG was only acting as an agent because it did not have the power to exercise a veto on its own. It also noted that the THG's negotiations for a licensing fee were outside the purview of the contracts between the horsemen's groups and the racetracks.

Pecover v. Elec. Arts Inc., 2009 U.S. Dist. LEXIS 49140 (N.D. Cal. June 5, 2009). Electronic Arts (EA) moved to dismiss state and federal law claims that two individuals brought against the company after it allegedly cut-off competition in the market to produce interactive football software by acquiring the exclusive rights to create video games using the intellectual property of the NFL, NCAA, and Arena Football League (AFL). The U.S. District Court granted the motion in part and denied it in part. The court held the individuals had no standing to bring claims under the laws of states other than the states in which they purchased EA's Madden NFL games. However, it held the individuals' allegations were sufficient to support their claims that EA violated the Sherman Act, as well as state antitrust, unfair competition, and unjust enrichment laws. In assessing the individuals' claim under section 2 of the Sherman Act, the court noted that the indirect purchaser doctrine only bars antitrust claims for damages, not injunctive relief, and that the alleged product market was plausible if there is no market for software in a fictitious

setting. The court also found that EA could not rely on the Seventh Circuit's holding in American Needle because the exclusive contract in that case involved only one provider, while this case allegedly involved a number of providers. In assessing the individuals' state antitrust claim, the court noted state courts had previously determined that vertical restraints of trade - like exclusive licensing agreements - could be found to violate the law under a rule of reason analysis.

Warrior Sports, Inc. v. Nat'l Collegiate Athletic Ass'n, 2009 U.S. Dist. LEXIS 7717 (E.D. Mich. Jan. 30, 2009); Warrior Sports, Inc. v. Nat'l Collegiate Athletic Ass'n, 2009 U.S. Dist. LEXIS 25700 (E.D. Mich. Mar. 11, 2009). After prevailing on the plaintiff's earlier motion for a preliminary injunction, the NCAA moved for summary judgment on antitrust and tortious interference claims that Warrior Sports (Warrior) brought against the association after it decided to change the rule concerning the size of lacrosse sticks that may be used in intercollegiate competition. The NCAA first changed the rule in 2007. Under that regulation, all of Warrior's sticks were rendered illegal to use in competition. However, a stick made under the new rule's minimum dimensions would have violated a patent on a head design owned by Warrior. The NCAA asked Warrior if it was willing to provide other manufacturers with a license to use the patent. When Warrior said it would not agree to license its patent in the abstract, the NCAA decided to change the rule again, reducing the minimum dimensions for the front of the stick head.

The District Court granted the motion, holding that the Sherman Act claim failed because the rule was not commercial in nature, and the tortious interference claim failed because the change was not made for an unlawful purpose. In assessing the antitrust claim, the court found the rule did not relate to the NCAA's business activities; instead, it was directed towards increasing the quality of play on the field. The court also found the change between the old rule and new rule did not restrict commerce because all sticks permitted under the old rule were permitted under the new rule, and some sticks not previously permitted were made legal. It dismissed the tortious interference claim on a similar note, finding the latest rule change was made to increase the number of sticks that would be allowed.

Bankruptcy Law

In re Dewey Ranch Hockey, LLC, 406 B.R. 30 (Bankr. D. Ariz. 2009). The owners of the Phoenix Coyotes moved for an order under the Bankruptcy Code allowing them to sell the club to a Canadian entity free and clear of all liens and encumbrances, and allowing that entity to move to club to Southern Ontario without the consent of the NHL. After the team filed for bankruptcy, the NHL told the owners it wanted to keep the franchise in Glendale and that the league owned all opportunities to expand into new markets. In fact, the league prohibits the transfer of ownership or relocation without the consent and approval of the rest of the owners, but neither the Coyotes owners nor the prospective buyer sought approval for either change in this case. The Coyotes were also parties to a lease agreement with the City of Glendale that locked them into playing in the city through 2035. The agreement provided that the city would be able to seek specific performance to ensure the team's home games were played in its new arena, which was built in exchange for the team's commitment to stay in Arizona.

The Bankruptcy Court denied the motion. The court noted that the change in ownership provision in the owners' executory contract with the NHL could not prevent the agreement from being assumed by or assigned to a prospective buyer because enforcing the provision would violate the Bankruptcy Code by preventing the owners from realizing the full value of their assets. However, the court emphasized that neither the owners nor the prospective buyer could establish that contract's relocation provision was unenforceable, so the NHL was entitled to require adequate assurance of future performance before the contract could be assigned. The court also held it could not authorize the sale and relocation free and clear of the relocation provision because it was uncertain about whether non-bankruptcy law allowed for it. Although the court recognized that the provision might violate antitrust laws, it pointed out that the NHL had not yet applied the provision because neither the owners nor the prospective buyer had asked the league for approval to move the team. The court noted that antitrust claims are inherently driven by the facts, and that it is not a violation for leagues to adopt terms and conditions on relocation.

HSBC Bank USA, N.A. v. Adelphia Communications Corp., 2009 U.S. Dist. LEXIS 10675 (W.D.N.Y. Feb. 12, 2009); Adelphia Recovery Trust v. Bank of America, N.A., 2009 U.S. Dist. LEXIS 39373 (S.D.N.Y. Mar. 5, 2009). Two national banks that provided loans to the Buffalo Sabres appealed a Bankruptcy Court's decision to deny their motion for summary judgment on their cross-claims against the Adelphia Communications Corporation (Adelphia) and its recovery trust in a declaratory judgment action brought by the team's debtors in an attempt to get the banks' proofs of claim in the team's bankruptcy case subordinated to the claims of unsecured creditors. The team's debtors also appealed the Bankruptcy Court's decision to grant summary judgment to a third bank on the same cross-claim. The banks filed the proofs of claim in response to a complaint filed against them and other lending and investment institutions by Adephia and its trust in the Adelphia bankruptcy case in the Southern District of New York. The complaint alleged that the appealing banks fraudulently conveyed their team loans to an Adelphia subsidiary that was the team's largest creditor, and all three banks fraudulently obtained $14 million from Adelphia as payment for the principal and interest on their loans. The cross-claims alleged Adelphia and its trust should be prevented from pursuing their claims in the Southern District due to the corporation's earlier actions as a creditor in the team's bankruptcy case.

The District Court for the Western District of New York reversed the decision to deny summary judgment to the two banks that conveyed their loans, and affirmed the decision to grant summary judgment to the third bank. The court held Adelphia ratified the transactions that it sought to avoid as fraudulent transfers because it did not give the Bankruptcy Court or the banks notice of its avoidance claims prior to consenting to the sale of the team's assets and agreeing the proceeds of the sale could be used to pay off the loan provided by the third bank. Citing the principles of res judicata, judicial estoppel, and quasi-estoppel, the court concluded the ratification prevented Adelphia and its trust from pursuing their claims in the Southern District. Subsequently, the Southern District severed and transferred all of Adelphia's claims against the three banks to the Western District.

In re Dowdell, 406 B.R. 106 (Bankr. M.D. Fla. 2009). A company that runs adult fantasy baseball camps moved for summary judgment on its claim that Robert and Diane Dowdell could

not discharge the debt they owed to the company because it arose from willful and malicious conduct. Major Sports Fantasy, Ltd. claimed that the Dowdells breached a non-compete agreement and their fiduciary duties when they began directly competing with the company after selling it. A Texas state court previously found the Dowdells liable for $241,000 in damages for their actions. The Bankruptcy Court granted the motion as to the Dowdells' liability. It noted they could not discharge the debt under the Bankruptcy Code if they had a subjective intent to cause the injuries or were aware injuries were substantially certain to occur, and if they were without just cause for committing the acts which led to the injuries. The court gave the parties thirty days to submit an agreement detailing the precise amount of damages attributable to the willful and malicious conduct, and the amount attributable to the Dowdells' breach of the non-compete agreement. In the event they could not agree, the court would conduct a future evidentiary hearing on the issue.

In re Ortiz, 400 B.R. 755 (C.D. Cal. 2009). Top Rank, Inc. appealed a bankruptcy court's decision to grant summary judgment to Victor Ortiz on his claims for declaratory and injunctive relief from the promoter's attempt to enforce an executory contract with an exclusivity clause because the agreement was allegedly rejected by law when the trustee failed to assume the boxer's obligations under it. Ortiz claimed Top Rank interfered with his efforts to enter into a contract with Golden Boy Productions, another boxing promoter, by asserting that its agreement was still valid. The District Court reversed, holding the bankruptcy court erred in concluding the trustee's decision terminated the agreement under state law and the exclusivity provision was unenforceable as an unreasonable restraint of trade. It determined the trustee's decision had no effect on the agreement's continued existence, so Top Rank could seek damages against his estate and any number of equitable remedies, as long as monetary payments were not a viable alternative. The court concluded the reasonableness of the exclusivity provision should not have been addressed because Top Rank had no notice it was at issue, and there was not enough evidence to make a reasoned determination.

Constitutional Law

Cornerstone Christian Sch. v. Univ. Interscholastic League, 563 F.3d 127 (5th Cir. 2009). Cornerstone Christian Schools (CCS), one of its high school athletes, and his parents appealed a district court's decision to grant the University Interscholastic League's (UIL) motion to dismiss their claims that the athletic association violated the First and Fourteenth Amendment when it denied the parochial school an opportunity to become a member. CCS had previously been a member of the Texas Association of Private and Parochial Schools, but that organization voted not to renew its annual contract with the school after discovering it had committed various recruiting infractions. The UIL rules prohibited nonpublic schools from applying for membership unless they could establish that they do not qualify for membership in any similar organization and they have not had their right to participate revoked by a similar organization for violating the rules.

The Court of Appeals affirmed, holding the UIL rule did not infringe the plaintiffs' First or Fourteenth Amendment rights because it was a neutral regulation that just happened to place an

incidental burden on the free exercise of religion. In assessing the First Amendment claim, the court found the rule did not distinguish between different types of nonpublic schools and did not deny any students the right to practice their faith. In assessing the Fourteenth Amendment claims, the court found the rule did not unduly restrict the parents' substantive due process right to control the education of their child because it did not prohibit them from enrolling the child at CCS or place any restriction on the exercise of that choice. In addition, the rule did not violate equal protection mandates because its distinction between public and nonpublic schools was not based on a suspect classification and was rationally related to a legitimate state interest.

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Dziewa v. Pa. Interscholastic Athletic Ass'n, 2009 U.S. Dist. LEXIS 3062 (E.D. Pa. Jan. 16, 2009). The parents of a high school wrestler moved for a preliminary injunction in their lawsuit alleging that the Pennsylvania Interscholastic Athletic Association (PIAA) violated both the federal constitution and the law of private associations when it ruled the wrestler was ineligible to participate in varsity athletics following his transfer to a new school. The PIAA determined he had transferred due to problems with his previous coach and the desire to compete for a higher-profile program, and the association's rules dictate that any student-athlete who transfers for athletic reasons must sit out for one year. The wrestler's parents claimed that the ruling was arbitrary and capricious because the transfer was only made after they separated and he decided to move into a new home purchased by his father. They also claimed the PIAA violated their privacy rights by punishing the wrestler for their failure to disclose the separation in their waiver request, and interfered with their decision to select a school best suited for him. Finally, they claimed the PIAA violated the wrestler's equal protection rights because it treated students who transferred due to separations differently than students who transferred for other reasons.

The District Court denied the motion, holding the PIAA did not likely violate the plaintiffs' constitutional rights, and ineligibility for participation in interscholastic athletic competitions alone does not constitute irreparable harm. In assessing the privacy claim, the court noted that protection from disclosing personal matters only extends to particularly sensitive information, and the PIAA did not prevent the plaintiffs from choosing a particular school. In assessing the equal protection claim, the court found rational basis review was appropriate, and concluded that there were facially legitimate reasons for the alleged classification. In assessing the state law claims, the court noted that the ruling may have been arbitrary and capricious, but found the wrestler had other means of receiving exposure that could lead to a college scholarship.

Esposito-Cogan v. East Haven Bd. of Educ., 2009 U.S. Dist. LEXIS 28994 (D. Conn. Mar. 30, 2009). The East Haven Board of Education moved for summary judgment on Eva Esposito-Cogan's claim that the Board violated the Fourteenth Amendment when it voted not to renew her contract to coach the EHHS girls volleyball team during a June 2005 meeting. A state law required any board that declined to renew the contract of a coach who had served in that same position for at least three consecutive years to inform that coach of the decision within ninety days of end of the sports season covered by the contract. The high school girls volleyball season had ended the previous November. Esposito-Cogan appealed the Board's decision, and her contract was renewed two weeks later. However, she was placed on probationary status due to the complaints about her performance.

The District Court granted the motion, holding Esposito-Cogan could not establish that her procedural due process rights had been violated. First, it determined she did not have a protected property interest in the renewal of her coaching contract. Although the Board clearly violated the notice requirement, its actions did not guarantee Esposito-Cogan a right to continued employment as the volleyball coach. Second, it concluded that she was not actually deprived of any tangible benefits in the two-week period before her contract was renewed, and that the state law implied that coaches could be given any number of designations following their yearly evaluations. The court also determined that she was not deprived of a protected liberty interest, even if the Board chairman and another Board member made false and malicious public statements about her during the June meeting. Although they may have hurt her feelings, she did not suffer any loss in benefits when they were made.

In re Governor for an Advisory Opinion, 2009 Del. LEXIS 255 (May 27, 2009). The Governor of Delaware asked the state's high court for its interpretation of a provision in the state constitution to determine if he could legally implement a sports lottery that was approved by the state legislature. The Delaware Supreme Court concluded that the proposed legislation was constitutional, noting the lottery was placed under state control, and that the dominant factor of its parlay games was chance, not skill. The Court emphasized that the lottery could involve an element of skill because the legislature construed the term lottery broadly and contemplated that some games would be based on sporting events when the constitution was amended to authorize them. It also determined that the legislature did not impermissibly delegate power to the lottery director because there were adequate standards to guide his discretion in implementing the games, and his authority was no greater than his authority over other lotteries. However, the Court refused to pass judgment on whether the lottery could involve bets on single games.

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Jewish Acad. of Metro. Detroit v. Mich. High Sch. Athletic Ass'n, 2009 Mich. App. LEXIS 1348 (June 16, 2009). The Michigan High School Athletic Association (MHSAA) appealed a trial court's decision to grant an injunction and attorney fees to the Jewish Academy of Metropolitan Detroit on the school's claim that the MHSAA violated both the state's civil rights legislation and the state and federal constitution when it scheduled athletic tournaments on the Jewish Sabbath and on Jewish holidays. The appellate court affirmed, holding the trial court had subject matter jurisdiction to grant the injunction under both the state constitution and state statutory code, and had subject matter jurisdiction to grant the requested attorney fees under the provisions in the state's civil rights legislation.

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Jones v. Wash. Interscholastic Activities Ass'n, 2009 U.S. App. LEXIS 13240 (9th Cir. June 3, 2009). A public high school football coach appealed a district court's decision to grant summary judgment to the Washington Interscholastic Activities Association (WIAA) on the coach's claim that the WIAA's out-of-season coaching rule violates the Equal Protection Clause of the Fourteenth Amendment to the federal constitution. The Court of Appeals affirmed, holding the rule was subject to rational basis review and passed muster under that standard because it was rationally related to the WIAA's legitimate state interest of creating equitable competition for

student-athletes. In assessing the type of scrutiny to apply to the rule, the court emphasized that the plaintiff's contractual right to coach football did not equate to a fundamental right, and that football coaches were not a suspect class subject to extra protection. It noted that any disparity between the treatment of public and private school coaches under the rule was permissible because parallel regulatory schemes do not have to be identical. As long as the schemes were both rationally related to legitimate state interests, public school coaches could be held subject to smaller geographic boundaries.

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Kim v. City of Federal Way, 2009 U.S. Dist. LEXIS 38500 (W.D. Wash. May 6, 2009). The City of Federal Way moved for summary judgment on Cyrus Kim's claim that two city ordinances violated his substantive due process right to exercise by hitting golf balls in a public park. The city's director of parks expelled Kim from a local park after employees had twice stopped him from engaging in the activity. The ordinances at issue prohibited individuals from playing golf in city parks and gave the City authority to expel individuals from those venues. The District Court granted the motion, holding Kim did not have a fundamental right to be present in a public park, let alone exercise in that manner, and the ordinances were rationally related to the City's objective of keeping its parks safe for residents.

Mancuso v. Mass. Interscholastic Athletic Ass'n, 900 N.E.2d 518 (Mass. 2009). Elizabeth Mancuso appealed a trial court's judgment affirming the Massachusetts Interscholastic Athletic Association's (MIAA) decision to deny her a waiver to compete on the Andover High School swimming team as a senior because she had repeated her freshman year after transferring from Austin Preparatory School. The Massachusetts Supreme Court affirmed, holding the MIAA did not deny Mancuso due process in declaring her ineligible, or violate her right to equal protection in applying its fifth year student rule. In dismissing the due process claim, the Court noted Mancuso had no property interest in participating in interscholastic athletics. In dismissing the equal protection claim, it found she was not treated differently from similarly situated high school swimmers because there was no evidence the swimmers that were granted waivers attended high school for five years. The court also determined that - even if she was treated differently - she was not subject to invidious discrimination because there was no evidence the MIAA denied the waiver solely because she had competed for a private swim club during her first freshman year. Finally, the court held the MIAA restitution and seeding rules did not violate Mancuso's rights under the state's civil rights legislation because they did not constitute unlawful means of discouraging her from litigating the eligibility dispute.

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Parker v. Albemarle County Pub. Sch., 2009 U.S. Dist. LEXIS 150 (W.D. Va. Jan. 5, 2009). The Albemarle County Public School (ACPS) system, its employees, school board members, and school administrators moved to dismiss a lawsuit brought against them by African-American teacher Fatima Parker after she was disciplined for allegedly calling an African-American referee a racist name at a high school basketball game. Her claims arose out of the district's investigation of that incident and the denial of her subsequent grievances. Following the game, a school administrator informed Parker that the referee and the NAACP had filed a complaint over the

incident, and required her to submit a statement. Based on that statement, ACPS charged her with using obscene and abusive language, and punished her in a variety of ways, including a five-day suspension. Later, Parker discovered that neither the referee nor the NAACP had filed a complaint. She filed a grievance, which was denied, as were her subsequent appeals up to the school board.

The District Court granted the motion, holding Parker's constitutional rights were not violated during the investigation or the grievance process. In assessing Parker's due process claims, the court found that her allegations were not sufficient to support findings that (1) she had a property interest in continued employment under state law; (2) she was actually deprived of that alleged property interest; (3) she was deprived of a liberty interest in future employment opportunities; or (4) she was not given notice or a fair hearing. The court noted that she continued to be paid while suspended, she failed to allege false statements made public by the ACPS that damaged her reputation, and she was afforded multiple levels of review on her grievance. It emphasized that the school board's failure to follow its own guidelines in processing her appeal did not violate the Fourteenth Amendment because she was given an opportunity to be heard.

Parker v. City of Commerce City, 2009 U.S. Dist. LEXIS 31684 (D. Colo. Apr. 15, 2009). The former city manager of Commerce City moved for summary judgment on the Fourteenth Amendment claims brought against him by Theodore Parker after Parker was terminated from his position as the head golf professional at a golf course run by the city. Commerce City had received a complaint about Parker's conduct as the head golf professional, and he was placed on administrative leave while the city investigated the matter. The city manager eventually met with Parker, and gave him three options: termination, resignation, or continued employment pursuant to an approved action plan. Parker submitted a plan, and a city employee informed him it was approved with modification. But before Parker was reinstated, the city manager informed him he had received an email indicating the golf pro had made inappropriate statements about the entire investigation. As a result, Parker was not reinstated, and the manager gave him the choice to either quit or be fired. When Parker failed to respond, he was terminated. Parker claimed the city and the city manager violated his right to substantive due process by arbitrarily depriving him of a property interest in continued employment, and a liberty interest in his reputation and integrity. The city manager asserted that he was entitled to qualified immunity.

The District Court granted the motion, holding Parker did not establish that his substantive due process rights had been violated. It determined that state law did not provide him with a property interest in continued employment, and concluded that even if he had an interest, his termination was not arbitrary, but based on documented inappropriate behavior. The court also found statements that had been made by the city manager did not demonstrate a deprivation of Parker's liberty interest. Not only could none of them be reasonably read as an attack on his reputation, none of them were even made public, which is required under a test articulated by the Tenth Circuit.

Pennington v. Lake Local Sch. Bd. of Educ., 2009 U.S. Dist. LEXIS 49803 (N.D. Ohio June 15, 2009). The father of a student-athlete on the Lake Local High School baseball team moved to dismiss his Americans with Disabilities Act (ADA) and federal constitutional claims against the Lake Local Schools Board of Education (Board) without prejudice, and the Board moved for

summary judgment on those claims. The claims arose out of the Board's decision to suspend the plaintiff from all Lake Local Schools athletic events for one year after he got into an altercation with his son's coach following a game. The District Court denied his motion for a temporary restraining order based on those claims because there was not a likelihood of success on the merits.

The District Court granted the plaintiff's motion and denied the Board's motion as moot. Although the plaintiff filed his motion after the defendant had already filed an answer, the court held it would use its discretion under the Federal Rules of Civil Procedure to dismiss the case, noting the defendant had repeatedly urged the plaintiff to voluntarily dismiss the action up until he made the motion. The court recognized the defendant's change in position came after the defendant learned that the plaintiff had filed a complaint with the state's civil rights commission, but emphasized that voluntarily dismissals are always without prejudice; therefore, it found the defendants was on notice a new action could be filed even if the plaintiff agreed with their prior request. The court also noted that there was no evidence that the defendant's expenditures had been excessive or unexpected, and that they could transfer all of their work to a new forum if necessary. Finally, it emphasized that there was no indication that the plaintiff's motion was an attempt to avoid a judgment on the merits.

Sharon City Sch. Dist. v. Pa. Interscholastic Athletic Ass'n, 2009 U.S. Dist. LEXIS 13037 (W.D. Pa. Feb. 20, 2009). A high school girls basketball player and the Sharon City School District moved for a preliminary injunction in their lawsuit alleging that the Pennsylvania Interscholastic Athletic Association (PIAA) violated the federal and state constitution when it suspended the player for her school's first playoff game. The player had been ejected from the previous contest for her role in an altercation with an opposing player, and the PIAA rules dictate that any player tossed from a game for unsportsmanlike conduct is disqualified from participating in her team's next competition. The player claimed the penalty was arbitrary and capricious because she was only acting in self-defense, and she was not given due process because the rules did not provide an opportunity to appeal. The District Court denied the motion, holding ineligibility for participation in interscholastic athletics alone does not constitute the irreparable harm. It noted the school district had no underlying property interest in its reputation for winning games, and the player's reputation could be restored during trial if she was actually acting in self-defense.

Sheehan v. San Francisco 49ers, Ltd., 201 P.3d 472 (Cal. 2009). Two San Francisco 49ers season-ticket holders appealed an appellate court's judgment affirming a decision to dismiss their claim that the team violated their state constitutional right to privacy by implementing an NFL policy requiring all fans to submit to a pat-down prior to entering a stadium. The California Supreme Court reversed, holding there were not enough facts in the complaint to establish that the plaintiffs failed to state a cause of action. The Court noted the policy was likely implemented to enhance spectator safety, but found it could not rule on whether there was a significant intrusion on the plaintiffs' privacy interests because it had to determine if they had a reasonable expectation of privacy under the circumstances. The Court also concluded that the record lacked enough facts to find that the plaintiffs consented to the search policy when they purchased the season tickets because a person can only consent to intrusions that are reasonable, which requires a court to balance the intrusion against the team's proffered justifications, considering factors

such as the type of entity involved, the availability of competing entities in obtaining access to the commodity, and the existence of less-restrictive alternatives.

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Vorum v. Canton Twp., 308 Fed. App'x 651 (3d Cir. 2009). Elizabeth Vorum appealed a district court's decision to grant summary judgment to Canton Township and two members of its board of supervisors on her claim that they violated the Fourteenth Amendment when they denied Vorum and her late husband's petition for a license to use their property for regular horse racing. The Vorums had previously received authorization to hold a one-day charity event on the property, but they angered board members who believed some of the structures built for the race violated the city's zoning laws. Prior to the petition, a board member sent an email to another member that complained about Vorum's late husband. After the petition, the second board member replied by suggesting a way in which they could thwart the Vorums' efforts. The second board member did not participate in the decision because he owned land next to the Vorums' property. The Court of Appeals affirmed, holding the zoning decision did not implicate Vorum's substantive due process rights because it did not shock the conscience, even if the board members had an improper motive. It noted the decision was backed by legitimate governmental concerns about how regular use of the track would interfere with nearby traffic flow. The court also emphasized that the Vorums failed to challenge the board's conclusion that it could consider traffic-flow concerns regardless of the validity of a zoning ordinance that they had questioned.

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Contract Law

Balyszak v. Siena Coll., 882 N.Y.S.2d (App. Div. 2009). The United States Volleyball Association (USVBA) and its insurers appealed a trial court's decision to partially grant Siena College's (Siena) motion for summary judgment on its cross claim for indemnification in a negligence lawsuit brought by an individual who suffered injuries when a referee's platform collapsed during a volleyball tournament being held at the school. Prior to the tournament, the USVBA entered into a contract to rent the tournament facility from Siena. The contract stated the USVBA would indemnify the school for any claims of injury arising out of the rental period, and provide Siena with a certificate of insurance naming the school as an additional insured entity on its liability policy. The certificate issued stated that Siena was insured, but only against claims arising out of the USVBA's negligence. There were genuine issues of fact as to whether negligence by the school or the USVBA was the cause of the injuries. The appellate court affirmed, holding the agreement between the parties required the USVBA to indemnify Siena for either party's negligence. The court noted that language in similar agreements had been interpreted to extend indemnification, even if the party being indemnified was negligent. It also found that the contractual liability provision in the USVBA's insurance policy gave rise to a duty to indemnify Siena. The provision provided coverage for contractual duties to indemnify that were later assumed by the USVBA.

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Bill A. Duffy, Inc. v. Scott, 2009 U.S. Dist. LEXIS 35667 (N.D. Cal. Apr. 27, 2009). Sports agent Merle Scott moved for partial summary judgment in a lawsuit brought against him by the Bill A. Duffy sports agency. The agency also moved for partial summary judgment on Scott's counterclaims for tortious interference with alleged contractual relationships he entered into with NBA player Leandro Barbosa while he worked for the agency, and tortious interference with a prospective economic relationship he entered into with NBA player Brandon Wright after he had left the agency. Scott had induced Barbosa to enter into a standard representation agreement and negotiated an endorsement deal on his behalf. The agency's claims arose out of Scott's decision to keep all the payments provided for under those contracts even though his understanding of his oral agreement with the agency was that they would split the payments down the middle. In the event of a dispute, the NBA Players (NBAP) Union rules dictate that all payments under player contracts should be made to the agent of record. Scott was the agent of record in the standard representation agreement, but not in the endorsement deal.

The District Court granted Scott's motion as to the agency's conversion claim, but denied it as to the agency's claims for money had and received and constructive trust. In dismissing the conversion claim, the court noted the agency only had a contractual right of payment, not a property interest. But in upholding the agency's remaining claims, the court determined that the NBAP rules do not establish that the agent of record is entitled to keep all payments under player contracts, and noted that the endorsement deal actually stipulated that the commission was to be paid to the agency. The court also granted the agency's motion on Scott's counterclaims. In assessing whether the agency tortiously interfered with his alleged contractual relationships with Barbosa, it concluded that the agency did not disrupt the standard representation agreement because Scott continued to receive his payments from the player, and could not have disrupted the endorsement deal because he was never a party to it. In assessing whether the agency tortiously interfered with the prospective economic relationship with Wright, the court noted the alleged conduct had to be independently wrongful for a claim to be actionable, and found Scott had failed to establish the acts of agency employees during a meeting with Wright, his mother, and his college coach violated any law.

Bloodstock Research Info. Services, Inc. v. Edbain.com, LLC, 622 F. Supp. 2d 504 (E.D. Ky. 2009). John Johnson moved for summary judgment on Bloodstock Research Information Services' (BRIS) claim that he violated the RICO Act and breached an online agreement with the horse racing statistics service by giving professional handicapper Ed Bain access to his BRIS customer account so Bain could use its database to download information for use in his own reports, which were sold on a different website. Johnson was aware a statistics service similar to BRIS had offered Bain the opportunity to resell its data online for $60,000-$70,000 per year, and later found out other individuals had also provided Bain with access to the BRIS database after Bain's wife devised a way to conceal IP addresses.

The District Court denied the motion. It held there was enough evidence that a reasonable jury could find Johnson was associated with a RICO enterprise, participated in its operation, and had a specific intent to defraud BRIS. It also found there was enough evidence to establish that there was a pattern of racketeering activity because the acts were related and there was a threat of continued activity. It noted the defendants had a constant need for the BRIS information in order for their own online business to survive, and only stopped their accessing the database after

being sued. In assessing the breach of contract claim, the court held a jury could find the value of the misappropriated data was similar to Bloodstock's claim of $4,000 per month because Bain would have had to pay at least $5,000 a month to resell the data offered by the competing service.

Brotherson v. Prof'l Basketball Club, L.L.C., 604 F. Supp. 2d 1276 (W.D. Wash. 2009). Former season ticket holders of the Seattle Supersonics moved for summary judgment on their claim that the team breached contracts giving them the right to renew their tickets for future seasons and violated the state's consumer protection law when it moved to Oklahoma City following the 2007-2008 season. The team also moved for summary judgment on those claims. The contracts were allegedly formed in the spring of 2007, although there were doubts about whether the team would remain in Seattle. The state legislature had denied a proposal to finance a new venue, and there were reports that the team was considering relocating to another city. Nevertheless, the Sonics sent out brochures to current season ticket holders with an offer to join its newly-created Emerald Club. By renewing their tickets for the 2007-2008 season, those ticket holders would lock in 2006-2007 ticket prices for the next three years and receive a number of fringe benefits. The brochure acknowledged that there was uncertainty about whether the team would remain in Seattle beyond the 2009-2010 season, but did not suggest the Sonics might relocate prior to the expiration of their lease with Key Arena.

The District Court granted the ticket holders' motion on contract liability in part. It held the ticket holders had entered into valid contracts that gave them the option of renewing their tickets for future seasons at 2006-2007 ticket prices. The court emphasized that the brochure failed to mention if the tickets were revocable, and that the license printed on them only allowed the team to revoke access on a per-game, post-entry basis. It also concluded that uncertainty over the team's future did not create a condition precedent to the holders' right to exercise their options, and that the holders' doubts did not affect the validity of the contracts. The court could not determine whether the team breached those contracts because the ticket holders may have waived or forfeited their options by not indicating that they intended to exercise them. However, it denied the team's motion on contract damages, noting that the ticket holders could have sold the tickets for games they did not want to see. Finally, the court granted the team's motion on the ticket holders' prayer for specific performance and claim under the consumer protection law. It noted that the ticket holders only wanted the ability to purchase tickets in order to resell them to Thunder fans, so damages were an adequate remedy. In assessing the state law claim, the court determined the ticket holders were not entitled to a refund of the purchase price for their 2007-2008 tickets because they were able to attend the games and take advantage of the Emerald Club benefits.

Cayo v. Valor Fighting & Mgmt. LLC, 2009 U.S. Dist. LEXIS 48201 (N.D. Cal. June 8, 2009). AIG Domestic Claims (AIG) and Gagliardi Insurance Services (GIS) moved to dismiss claims asserted against them in a lawsuit brought by mixed martial arts fighter Richard Cayo after he suffered injuries in a match at a casino resort and the organizer and its owner failed to assume liability for those injuries as required under their alleged contractual agreement. In the alternative, GIS moved to strike certain allegations in Cayo's complaint. As a condition to the holding the event, the organizer and its owner had allegedly entered into a separate contract with the resort that forced them to obtain insurance coverage for any liabilities associated with the

fights. Cayo alleged he was an intended beneficiary of that agreement. Following the injury, he was advised that the organizer and its owner had procured an insurance policy through AIG. However, his claim was denied without clarification. GIS, the insurance broker, allegedly told Cayo that the organizer and its owner had failed to pay the policy premiums. But the owner denied that allegation, and AIG refused to confirm or deny it. Due to doubt about the facts, Cayo made several contradictory claims. Among them, he alleged either AIG or National Union breached their insurance agreement with the organizer and its owner, and that GIS's negligence in failing to procure the insurance policy caused him emotional distress. The District Court denied the motions. In turning down the motions to dismiss, it held Cayo's allegations were sufficient to support a finding that AIG may have been the insurer, but failed to indemnify him under the alleged policy, and that Cayo could seek damages for emotional distress as the direct victim of GIS's alleged actions. In turning down the motion to strike, the court noted Cayo's assertions related to his claim that GIS negligently failed to procure an insurance policy, and to duties that GIS alleged owed to him as an intended beneficiary under that policy.

Charlotte Motor Speedway, Inc. v. Tindall Corp., 672 S.E.2d 691 (N.C. 2009). The Charlotte Motor Speedway (CMS) appealed a trial court's decision to grant the Tindall Corporation's (Tindall) motion to dismiss indemnification claims brought by the CMS after it was found liable for injuries suffered by pedestrians when a walkway attaching the race track to a parking area collapsed during a NASCAR race in May 2000. The construction contract entered into by CMS and Tindall included an indemnification clause requiring the contractor to indemnify the CMS for personal injury claims, but only during the performance of the work. The appellate court affirmed, holding that the express indemnification provision in the parties' construction contract barred the CMS from bringing a claim based on an implied-in-law theory of indemnification. The court also emphasized that the CMS was found liable to the pedestrians on purely contractual bases; trial courts had held that the CMS was responsible for their injuries for breaching a nondelegable duty and its agreement with the state department of transportation. The latter agreement required the CMS to construct the walkway in accordance with state standards, and the pedestrians were considered third party beneficiaries of that agreement.

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Ex parte Hale County Bd. of Educ., 2009 Ala. LEXIS 15 (Jan. 16, 2009). The Hale County Board of Education moved for a writ of mandamus that would direct the trial court to grant its motion for summary judgment on the breach of implied contract claim in a lawsuit filed by a spectator who suffered injuries after falling from the bleachers following a high school basketball game. The trial court had granted the Board's motion for summary judgment on the spectator's related tort claims. The Alabama Supreme Court reversed, holding the Board was entitled to a writ because county boards of education are immune from suit under the provisions of the state constitution. The Court overruled prior cases to the extent they suggested those boards had an implied right to be sued under state law. It noted that those cases had incorrectly extended a county's liability to the boards, who were not agencies of the counties, but local agencies of the state.

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Foley & Lewis Racing, Inc. v. Torco Racing Fuels, Inc., 2009 U.S. Dist. LEXIS 156 (E.D. Mich. Jan. 5, 2009). NHRA drag racing team Foley and Lewis Racing moved for a preliminary injunction to halt the auction of the assets of one of the racing fuel manufacturers that the team sued to recover for the alleged breach of a performance-based sponsorship agreement. The manufacturer had entered into a contract with the team for the 2008 season, then defaulted on a security agreement it had with a bank that financed its business. Foley and Lewis Racing was given a $600,000 advance payment on the agreement, but only earned $300,000 during the season. The District Court denied the motion, holding the team could not demonstrate a likelihood of success on the merits of its claim because the sponsorship agreement conditioned the entity's payment obligations on the team's performance. The court also found the team could not demonstrate irreparable injury because the bank had priority over the entity's assets as a secured creditor. It noted the bank would suffer if the injunction was granted because it would be prevented from immediately auctioning off assets likely to depreciate in value.

Frolow v. Wilson Sporting Goods, Co., 2009 U.S. Dist. LEXIS 28453 (D.N.J. Apr. 1, 2009). Jack Frolow moved for leave to file an amended complaint asserting five additional claims in a lawsuit he filed against the Wilson Sporting Goods Company after it allegedly breached a license agreement that allowed it to manufacture and sell tennis rackets covered by Frolow's patents. The company had already obtained partial summary judgment on Frolow's claims for breach of contract and patent infringement, and his patent mismarking claim was dismissed. The District Court denied the motion, holding the company would be unfairly prejudiced by granting the leave because the court would have to re-open discovery following a two-year lull, further delaying the resolution of the dispute and forcing even more resources to be devoted to preparing for trial. The court emphasized that dispositive motions had already been convened, and Frolow had failed to raise the proposed claims despite his knowledge of the facts supporting them.

Front-Line Promotions & Mktg., Inc. v. Mayweather Promotions, LLC, 2009 U.S. Dist. LEXIS 27136 (E.D. La. Apr. 1, 2009); *Front-Line Promotions & Mktg., Inc. v. Mayweather Promotions, LLC, 2009 U.S. Dist. LEXIS 34809 (E.D. La. Apr. 24, 2009).* Mayweather Promotions and six-time world boxing champion Floyd Mayweather, Jr. moved for partial summary judgment on (1) breach of contract claims brought against both of them and (2) negligence claims brought against Mayweather by two marketing companies after the parties allegedly entered into a deal requiring Mayweather to appear at an event during NBA All-Star Weekend in New Orleans in 2008 and Mayweather failed to show. The marketing companies had previously entered into an agreement to produce the event, and each of them was required to procure the attendance of certain celebrities. Front-Line Promotions & Marketing (Front-Line) agreed to secure Mayweather, and signed a deal with a woman who worked for Mayweather Promotions and purported to be the boxer's talent representative.

The District Court denied the motion as to the breach of contract claim brought by Front-Line against Mayweather, but granted the motion as to the breach of contract claims brought by the second marketing company. The court found the second marketing company did not have standing to bring its claims because there was no indication that the defendants knew they were contracting with a partnership. In assessing the claim brought by Front-Line against Mayweather, the court concluded that there was a genuine issue as to whether the woman who purported to be Mayweather's talent representative had the authority to book appearances on his behalf.

Therefore, summary judgment was inappropriate. Subsequently, the court granted the motion as to the negligence claims brought against Mayweather. It emphasized that Mayweather could not be held liable in tort unless he owed a legal duty which was independent from any duty created by the alleged contract, and held that Front-Line's claim was merely coextensive with its breach of contract claim. The court also found that Mayweather did not owe a duty to the second marketing company.

German v. Ford, 2009 Tenn. App. LEXIS 94 (Mar. 10, 2009). William Lents appealed a trial court's decision to grant summary judgment to Dyer Investment Company on claims he brought against the investment firm after it decided not to honor an alleged agreement to pay him a percentage of the profits from ticket sales above a minimum threshold set by a promoter for a boxing match between then-heavyweight champion Lennox Lewis and former heavyweight champion Mike Tyson. The agreement required Lents to obtain a standby letter of credit in case the ticket sales fell below the minimum threshold. Lents was unable to get the letter issued because the investment firm failed to provide him with information required by the bank. Ticket sales eventually exceeded the minimum threshold by approximately $3 million. The appellate court reversed, holding the trial court erred in determining there was no enforceable contract between the parties. Assessing the language in the written document and the surrounding circumstances, the court found that posting a letter of credit was not a condition to creating the agreement, but a requirement of the agreement itself. Because there was an enforceable contract, the court also held the investment firm breached its implied duty of good faith and fair dealing because it failed to cooperate with Lents in his efforts to perform.

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Giuliani v. Duke Univ., 2009 U.S. Dist. LEXIS 44412 (M.D.N.C. May 19, 2009). Duke University and its men's golf coach moved to dismiss claims brought against them by Andrew Giuliani after he was dismissed from the golf team and barred from the program's practice facilities. Giuliani committed to Duke while its program was still being run by Rod Myers. He allegedly promised Giuliani lifetime access to those facilities and the opportunity to compete for an NCAA championship. However, Giuliani never signed a letter of intent or received an athletic scholarship. The District Court granted the motion, holding Giuliani did not have a valid contract to play on the team or use the facilities. It emphasized that he was relying on the provisions of non-binding student policy manuals, which cannot create a legally binding agreement under state law. The court noted that those manuals could be unilaterally altered by the university at any time.

Hunter v. TBDC, LLC, 72 Fed. R. Serv. 3d (Callaghan) 798 (N.D. Cal. 2009). Dennis Hunter moved for a default judgment on his claim that TBDC, LLC failed to re-pay the balance of a $100,000 loan he allegedly provided to the corporation so it could make tire balls for off-road race cars either owned or co-owned by his affiliated motorsports entity. TBDC also moved to set aside the entry of default. Hunter made the loan check out to TBDC co-owner Wade Summers, and one of the corporation's financial statements reflected that he had provided the money. TBDC was attempting to settle Hunter's lawsuit when he sought entry of default. He had previously denied TBDC's request for an extension to answer the complaint. The lawsuit was filed two weeks after the answer was due.

The District Court granted TBDC's motion, concluding the corporation did not engage in culpable conduct when it failed to answer the complaint, and presented evidence suggesting it had a meritorious defense to Hunter's claim. It also found setting aside the default would not prejudice Hunter. The court noted TBDC wasn't attempting to gain a strategic advantage by not answering the complaint, and some facts suggested the $100,000 was not a loan, but a payment designed to persuade the corporation to allow Hunter to become an equity investor. However, the court conditioned setting aside the default on TBDC allowing Hunter to amend his complaint to include Summers as an individual defendant.

Matter of Delgado v. Lader, 23 Misc. 3d 1114A (N.Y. Sup. Ct. 2009). Professional baseball player Carlos Delgado petitioned for an order under state law that would allow him to depose Spencer Lader and Mark Gelfand to determine what individuals and entities he should sue for breach of an agreement that he had signed with Authentic Memorabilia, LLC. The agreement noted Lader was an employee of Authentic Memorabilia, and both he and Gelfand signed it. However, Gelfand executed the agreement as the executive vice-president, which ran contrary to the corporation's status as a limited liability entity. Authentic Memorabilia was eventually dissolved by Gelfand because it did not have any members. But a few weeks later, Gelfand formed another LLC with the exact same name. The court granted the petition, holding Delgado demonstrated a viable claim for breach of contract, but could not properly frame his complaint until he could untangle the relationship among the two Authentic Memorabilia entities, Lader, and Gelfand.

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Lane v. Jacobs, 2009 U.S. Dist. LEXIS 32754 (N.D.N.Y. Apr. 16, 2009). Richard Lane moved for the attachment of a race car and an injunction barring Michael Jacobs and his motorsports company from selling it in a lawsuit he brought against the defendants for fraudulently obtaining possession of the vehicle prior to paying for it in full. The defendants had entered into a contract to purchase the car from Lane, but it prohibited them from taking possession until the last payment was made. However, they allegedly made false representations to take possession from a third party, and then stopped making payments under the deal. Lane attempted to repossess the car on two occasions, but both times it was removed to an undisclosed location. He was also unsuccessful in attempting to communicate with the defendants, but his last attempt took place in late 2003. The District Court denied the motions, holding Lane was unlikely to succeed on the merits because there was a five-year statute of limitations, and the lawsuit was commenced more than five years after he knew or reasonably should have known the facts giving rise to his claims. The court noted he could not invoke the doctrine of equitable estoppel because the defendants' alleged fraud did not induce him to refrain from filing the action.

Levy v. World Wrestling Entm't, Inc., 2009 U.S. Dist. LEXIS 13538 (D. Conn. Feb. 23, 2009). World Wrestling Entertainment (WWE) moved to dismiss breach of contract and unjust enrichment claims brought by three of its former wrestlers after the corporation failed to withhold federal income taxes from their paychecks. The wrestlers had entered into booking contracts with the WWE that stated they were independent contractors and had the responsibility for paying their own taxes. The District Court granted the motion, holding the wrestlers failed to specify any losses resulting from the WWE's alleged breach, and that the existence of express

contracts barred their unjust enrichment claims. Even if the wrestlers were entitled to be treated as employees, the court found that they would not stand to benefit from the WWE's additional duty. It also emphasized that the complaint failed to set forth a specific time when the alleged breach or unjust enrichment occurred, so their claims were deemed to arise when they entered into the agreements, and were thus barred by the state's six-year statute of limitations.

Luchs v. Pro Tect Mgmt. Corp., 2009 Cal. App. Unpub. LEXIS 3893 (May 18, 2009). Sports agent Joshua Luchs appealed a trial court's decision to enter judgment on a verdict in favor of now-defunct sports agency Pro Tect Management and its sole shareholder, sports agent Gary Wichard, in Luchs' lawsuit against them for breach of contract. Under the deal, Luchs recruited NFL players to the agency, and agency paid him a percentage of the commissions on contracts they signed, minus any stipulated expenses. A non-compete provision barred Luchs from retaining the players he recruited if he left the agency, unless he received written approval from the shareholder. The commission arrangement was to remain in place for the players he recruited as long as either party continued to represent them. When Luchs left the agency, two players he had recruited fired Pro Tect and retained him; however, he had not received approval to sign them. Soon after, Pro Tect terminated its agreement with Luchs, claiming he forfeited his right to future commissions because he breached the non-compete provision and failed to forward a payment that was due from one of the two players that had later retained him.

The appellate court affirmed, holding the trial court did not err in refusing to enter a default judgment against Pro Tect, instructing the jury regarding the legal relationship between the corporation and its shareholder, and finding the verdict was supported by substantial evidence. In assessing whether default judgment should have been entered or the jury was incorrectly instructed, the court noted Pro Tect was the Wichard's alter ego, so its liability was dependent upon his liability. It also emphasized Luchs proceeded to trial only against Wichard, and Wichard agreed to be personally responsible for any judgment against Pro Tect. In assessing whether the verdict was supported, the court found ample evidence to back the conclusion that Pro Tect was entitled to terminate the agreement for cause.

Mayer v. Belichick, 2009 U.S. Dist. LEXIS 23052 (D.N.J. Mar. 23, 2009). The New England Patriots, head coach Bill Belichick, and the NFL moved to dismiss claims brought against them by a New York Jets season ticketholder after the Patriots were caught videotaping the Jets' signals and visual coaching instructions during a game. Recording another team's signals is a violation of NFL rules. The District Court granted the motion, holding the ticketholder got what he contracted for: a license to enter the stadium and view the game. The court noted previous cases recognized ticket purchases do not create an obligation to satisfy spectators' subjective expectations about how a game will be played, even if it involves cheating.

Meccon, Inc. v. Univ. of Akron, 911 N.E.2d 933 (Ohio Ct. App. 2009). Meccon, Inc. appealed a trial court's decision to dismiss its lawsuit against the University of Akron on jurisdictional grounds because the Ohio Supreme Court had previously stated companies could not recover money damages in claims arising out of the state's public bidding laws. The university violated the laws by failing to award Meccon the HVAC contract for its football stadium project after a competitor improperly withdrew a combined bid for the entire package of individual contracts when it discovered it had won both the HVAC and fire protection deals. The appellate court

reversed, holding the trial court had subject matter jurisdiction because Meccon could bring a claim for bid preparation damages with its petition for injunctive relief. The court found the Ohio Supreme Court's prior statement only addressed lost profits, not bid preparation damages, and there were strong public policy reasons for allowing that type of recovery.

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Nat'l Indoor Football League, L.L.C. v. R.P.C. Employer Services, Inc., 2009 U.S. Dist. LEXIS 38380 (W.D. Pa. May 6, 2009). R.P.C. Employer Services petitioned to enforce a settlement agreement with the National Indoor Football League (NIFL) after the NIFL allegedly failed to pay medical providers with proceeds it obtained in a judgment against the workers' compensation insurer. The District Court denied the petition, holding R.P.C. had to institute a new lawsuit on the settlement agreement because the court lost its jurisdiction to act on all matters involved when the insurer appealed the judgment and when the court granted the NIFL's praecipe to mark the case settled and discontinued.

Provoncha v. Vt. Motocross Ass'n, 974 A.2d 1261 (Vt. 2009). Motocross athlete Clint Provoncha and his wife appealed a trial court's decision to grant summary judgment to the Vermont Motocross Association (VMA) and the owner of a local racetrack on the Provonchas' negligence claims arising out of injuries he suffered when he was struck by another rider while warming up for a race. The collision took place after a race official failed to display a caution flag to warn other riders of the dangerous condition created when Provoncha fell off his bike. The day before the accident, Provoncha had signed an entry form that purported to exculpate the VMA and the owner of the racetrack from any claims arising out of their negligence in conducting the race day activities. Provoncha was also aware that the VMA used young people as flaggers and that they were often incompetent. However, he ignored any increased risk of injury and continued to race at the track. The Vermont Supreme Court affirmed, holding the entry form released the VMA and the owner of the racetrack from liability because it was sufficiently clear to put Provoncha on notice of the risks he assumed and it did not violate public policy. Although the entry form did not specifically include the word negligence, the court found it clearly described that the defendants were immune from all types of injury claims in any way connected with the event. In assessing the form's public policy implications, the court noted the races were not of great importance to the public or open to all persons. In fact, only the 300-plus members of the VMA could participate.

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PTR, Inc. v. Forsythe Racing, Inc., 2009 U.S. Dist. LEXIS 48090 (N.D. Ill. June 9, 2009). Forsythe Racing and its controlling owner moved to dismiss claims for breach of contract and tortious interference with contract brought against them by Paul Tracy Racing (PTR) after they joined other Champ Car series owners in selling the organization's assets to the Indy Racing League and filed for bankruptcy protection, then refused to pay PTR the termination fee stipulated in their driver services agreement. In the alternative, the defendants moved to strike certain allegations made in PTR's complaint that referred to contract negotiations between the parties. The District Court denied both motions. In turning down the motion to dismiss, it held PTR's allegations were sufficient to support findings that a second extension of the driver

services agreement was executed by the defendants, and that the corporation's controlling owner was acting solely for his own gain when he chose not to pay the termination fee. The court noted unsigned agreements may be barred by the state's statute of frauds, but determined the mere fact that PTR had attached an unsigned copy of the second extension to the complaint did not mean it had not been signed by the defendants. In turning down the motion to strike, the court noted the Federal Rules of Evidence prohibit using evidence of settlement negotiations to determine the validity of a claim, but also noted the impact of evidentiary rules should be addressed when considering admissibility at trial.

Rentz v. Dynasty Apparel Indus., Inc., 556 F.3d 389 (6th Cir. 2009). Former professional football player Paul Warfield and his apparel company appealed a district court's decision to not to impose monetary sanctions on Richard Rentz or his attorneys' law firm, and to reduce the amount of monetary sanctions awarded for the attorneys' misconduct in continuing to prosecute meritless claims against them. Rentz had entered into an agreement to help Dynasty Apparel Industries (DAI) obtain a license to produce NFL apparel in exchange for a one-percent commission on the company's gross sales of those goods. He put the company's owners in touch with Warfield, who eventually formed his own apparel company, entered into a joint venture with DAI, and then obtained two licenses on their behalf. However, Rentz never received his promised commission. He sued DAI, as well as Warfield and his company, even though he had not entered into a separate contract with either of the latter two entities. Warfield and his company sought $70,000 in sanctions to compensate them for attorneys' fees incurred during the litigation, but were awarded only $33,000 for the attorneys' misconduct. Subsequently, that figure was reduced to just $2,750.

The Court of Appeals affirmed in part and reversed in part. It held the district court did not abuse its discretion in refusing to sanction Rentz and the attorneys' law firm. However, the court found there was an abuse of discretion in reducing the damages awarded for the attorneys' misconduct by over $30,000. In choosing not to penalize the attorneys' firm, the court noted that the attorneys had joined with others to create the firm well after they started working on the case, and there was a general understanding that they would be solely responsible for managing it. None of the firm's other attorneys became involved with the case until after the sanctionable conduct occurred. In choosing not to penalize Rentz, the court noted that he never made any false factual allegations about his relationship with Warfield, and that it was not unreasonable for him to trust his attorneys' professional judgment, even if they incorrectly concluded that Warfield had also promised to make sure he received a commission. But in assessing whether sanctions against the attorneys should have been reduced, the court found the amount awarded was insufficient to serve a deterrent purpose, especially when it was less than half the amount spent by Warfield and his company in bringing the motion. The court noted victims of meritless claims would have no incentive to seek sanctions if the awards were not only insignificant, but less than the amount necessary to compensate them for their litigation expenses. The court awarded Warfield and the company attorneys' fees in the amount of the original reduced award: $33,000.

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Southshore Baseball, LLC v. Aramark Sports & Entm't Services, LLC, 2009 U.S. Dist. LEXIS 17561 (N.D. Ind. Mar. 6, 2009). Southshore Baseball, LLC, moved for summary judgment on a petition for declaratory relief that would allow it to unilaterally terminate an agreement with Aramark Sports and Entertainment Services (Aramark) in exchange for a stipulated termination payment. The contract gave Aramark the right to provide concession services for the Gary Southshore RailCats, a minor league baseball team operated by the plaintiff. Southshore Baseball made its decision to terminate the deal just one day after the start of a new season. The District Court denied the motion, holding the language of the contract could not be construed to show the parties intended that Southshore Baseball could terminate the deal for any reason in exchange for a termination payment. The court found two provisions in the agreement provided termination rights, but the plaintiff was relying on a third provision. That provision limited Aramark's remedies to a termination payment only if Southshore Baseball terminated the agreement under one of the contract's stipulated reasons. The court also noted it was improbable that Aramark would give Southshore Baseball the right to immediately terminate the agreement without cause in the midst of the season, while retaining the right to receive notice and the opportunity to cure had it actually been in breach.

Team Gordon, Inc. v. Fruit of the Loom, Inc., 2009 U.S. Dist. LEXIS 16197 (W.D.N.C. Feb. 19, 2009). The NASCAR team formed by driver Robby Gordon and Fruit of the Loom (FOL) filed cross motions for summary judgment on claims and counter-claims asserted in a lawsuit brought by the team after FOL chose to sever their three-year sponsorship agreement with one year remaining. The agreement was the product of a plan hatched by the team's CEO and motorsports marketer Larry Camp in order to find an sponsor. Camp contacted Speedway Motorsports (SMI), a NASCAR-apparel distributor, which was seeking to enter into an exclusive arrangement with an apparel manufacturer, provided that manufacturer also sponsored a NASCAR team. Subsequently, Camp contacted FOL about becoming a team sponsor and SMI's exclusive apparel provider. In the summer of 2003, Camp entered into a confidential agreement with Gordon's team. The agreement stipulated that if Camp helped the team secure the FOL sponsorship, the team would pay him a percentage of the fees received during the first three years of the deal. Two weeks later, Camp entered into a separate commission arrangement with FOL, guaranteeing him approximately $700,000 over three years in exchange for helping to develop FOL's motorsports marketing program. It also required him to negotiate the terms of a sponsorship on the company's behalf. In early fall, FOL entered into an agreement to sponsor Gordon's team in the Busch Series. Although the agreement stipulated it could last up to three years, FOL was given the opportunity to evaluate the deal each year and could decline to extend it to subsequent seasons if the entire program failed to substantially meet its reasonable expectations. Another provision in the contract required Gordon's team to return $50,000 every time it failed to qualify for a race that FOL sponsored. Finally, the agreement included a morals clause that would allow FOL to terminate the sponsorship if the team's conduct failed reflected unfavorably upon the company.

Following the first season under the agreement, Gordon's team chose to move up to the Nextel Cup Series. As a result, the parties transformed their 24-race sponsorship into a 10-race sponsorship. However, Gordon's team struggled the next season, failing to qualify for seven races and finishing thirty-seventh in the points standings. Although the sponsorship agreement was never amended, FOL sought to increase the $50,000 non-qualifying penalty into the

standard $150,000 penalty used at the Nextel Cup level. But it took months of negotiating before Gordon's team agreed to pay the standard refund for failing to qualify for a race in early 2005. During that time, FOL informed the team it would not renew its sponsorship for the final year of the deal. The parties were still negotiating the refund penalty in September when FOL declined to make a required payment under the sponsorship agreement. The company sought to split up the payment to ensure that Gordon's team qualified for the four remaining FOL-sponsored races. Later that month, Gordon wrecked his car in a collision with Michael Waltrip at a race in New Hampshire. He became so incensed that he threw his helmet at Waltrip's car and called him a curse word on live national television. Subsequently, NASCAR fined his team and placed Gordon on probation to the remainder of the season. The next day, FOL informed the team that it was terminating its sponsorship immediately under the morals clause in their agreement.

The District Court granted the team's motion in part, but denied FOL's motion on all of its counterclaims. In assessing the team's motion on its 2005 breach of contract claim, the court concluded FOL's failure to make its required payment under the sponsorship arrangement was a material breach, even though the team's subsequent breach of the morals clause discharged FOL's later payment obligations. However, the court refused to award the team the requested $600,000 in damages at the summary judgment stage because there was a genuine issue as to whether the team's mitigation efforts were reasonable. The court also granted the team's motion on FOL's breach of contract counterclaim related to the 2005 season because the contract did not guarantee that FOL would be entitled to a refund of part of its sponsorship fees when it unilaterally terminated the agreement under the morals clause. In denying FOL's motion on the team's 2006 breach of contract claim, the court found there was a genuine issue as to whether FOL's NASCAR program failed to substantially meet its reasonable expectations under the sponsorship agreement, which was required before FOL could choose not to renew the deal. Finally, the court granted the team's motion - and denied FOL's motion - on FOL's state law claim for unfair and deceptive trade practices, which was based on the team's undisclosed confidential relationship with Camp. The court noted that Camp did not have the authority to enter into the sponsorship agreement on FOL's behalf, and did not have any fiduciary relationship with FOL at the time he entered into his arrangement with the team. It also emphasized that Camp touted two other NASCAR teams over Gordon's team during sponsorship negotiations, indicating he did not give Gordon's team an unfair advantage.

Theodore v. Horenstein, 2009 Mich. App. LEXIS 1186 (May 26, 2009). Raceway volunteer Teresa Theodore appealed a trial court's decision to grant summary judgment to Raymond Horenstein on her negligence claim arising out of injuries she suffered when she was struck by a trailer being pulled by Horenstein while preparing for a race event to resume. Theodore had signed a comprehensive release that purported to shield all race participants from negligence liability for injuries arising out of or related to the event. The appellate court affirmed, holding the release shielded Horenstein from liability for all activities arising out of the event, not just the actual races. But regardless of its interpretation, the court found that Theodore's injuries resulted from activities directly associated with the races. It emphasized that Theodore failed to address why Horenstein should not qualify as a third-party beneficiary of the release.

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Walker v. City of San Diego, 2009 U.S. Dist. LEXIS 32351 (S.D. Cal. Apr. 15, 2009). Individuals moved for attorneys' fees based on their rights in a settlement agreement reached with the City of San Diego after they alleged that the accommodations provided at Qualcomm Stadium violated the Americans with Disabilities Act. The agreement dictated how long the city had to complete modifications to the stadium, which is the home of the San Diego Chargers. However, the deadlines were not met, and the individuals spent over seven years monitoring and sometimes fighting the city to assure they were made in the manner prescribed by the agreement. The District Court granted the motion, holding the language of the agreement provided that the plaintiffs could collect additional fees if those fees were related to a dispute about whether the City was complying with the agreement's terms and if the dispute led to a court proceeding in which plaintiffs prevailed. The court noted the individuals had alleged several violations of the agreement through the years that required the court to intervene, and on virtually every occasion the City was forced to undertake remediation efforts. It reduced the requested amount because not all of the attorneys' efforts resulted in court proceedings, but still awarded nearly $363,000.

Wolff v. Zip.ca, Inc., 2009 U.S. Dist. LEXIS 48570 (M.D.N.C. June 10, 2009); Canadian Am. Ass'n of Prof'l Baseball, Ltd. v. Ottawa Rapidz, 2009 U.S. Dist. LEXIS 49410 (M.D.N.C. June 11, 2009). In companion cases, the District Court assessed motions in lawsuits involving parties associated with the Canadian American Association of Professional Baseball (CAAPB). In the first case, Canadian corporation Zip.ca moved to dismiss a breach of contract claim brought against it by the owner of Ottawa Professional Baseball, Inc. (OPBI) on jurisdictional grounds. The owner was also the commissioner of the CAAPB, which was based in North Carolina. OPBI had leased the right to field a CAAPB team in Ottawa, and the owner entered into an agreement that gave Zip.ca the right to manage that membership. In exchange, Zip.ca was required to indemnify the owner for up to $216,000 in costs that he might accrue in satisfying a personal guarantee that he had made to the Canadian city. The cause of action arose when Zip.ca failed to reimburse him for the cost of the annual rent to use the city-owned baseball stadium. However, the court granted the motion, holding the doctrine of forum non conveniens required the dispute to be heard in Ottawa. It found the public interests strongly favored the alternative forum because (1) the indemnity clause in the agreement applied to costs the plaintiff might accrue as the owner of a league membership, not as the league commissioner; (2) all the events leading up to the dispute took place in Ottawa; and (3) Zip.ca had a lawsuit pending against the plaintiff in an Ontario court. More importantly, the agreement stipulated that Canadian law would govern its terms and that both parties would submit to jurisdiction in an Ottawa court with respect to any matter arising out of them. In sum, the court found a Canadian forum was far more appropriate to litigate the dispute.

In the second case, the CAAPB and the OPBI moved to remand the CAAPB's petition to confirm an arbitration award that denied the Ottawa Rapidz's request to voluntarily withdraw from the league for financial reasons and found the club had violated its affiliation agreement by failing to field a team in 2009. The violation automatically terminated the Rapidz's membership in the league, and - more importantly - allowed the league to draw upon its letter of credit. The OPBI was a named defendant in the petition, but had not consented to removal. The Rapidz and its individual directors claimed the OPBI was fraudulently joined in order to prevent the court from asserting diversity jurisdiction. They argued that the interests of the CAAPB and the OPBI were not adverse because the owner of the OPBI was also the league's commissioner, and that subject

to realignment the court could assert jurisdiction. The OPBI claimed it was adverse because the result of the arbitration cost the organization its leased membership rights in the league. The court granted the motion, holding that the defendants had failed demonstrate that the OPBI was fraudulent joined or that one of the exceptions to complete diversity applied. Contrary to their arguments, the court found the CAAPB was able to assert a cause of action against the OPBI because that organization retained a property interest in the Rapidz. Although it had previously sold its management rights to Zip.ca, which effectively owned the club, the OPBI still controlled the lease on the league membership, and the Rapidz knew that when they volunteered the letter of credit. Only by terminating the lease was the CAAPB able to draw on that letter.

Court of Arbitration for Sport Decisions (Part 1)

Montcourt v. Ass'n of Tennis Professionals, CAS 2008/A/1630. French tennis player Mathieu Montcourt appealed the ATP Tour Anti-Corruption Hearing Officer's decision to fine him and suspend him for gambling on the sport. The Tour's rules prohibit players who compete in any ATP event from wagering on the outcome of any tennis match, amateur or professional. The rules are found in the ATP Official Rules Book, and Montcourt signed a document agreeing to be bound by them in both February 2003 and February 2005. But between June 2005 and September 2005, he bet on several matches through an online organization. The CAS panel upheld the fine, but reduced the length of the suspension by three weeks. It emphasized Montcourt had been de facto suspended for one week prior to the appeal, which forced him to miss a tournament, and forced the French Tennis Federation to award a wildcard spot at the U.S. Open to another player. Accordingly, the panel gave that week triple weight. In addition, it delayed the imposition of the suspension until July because Montcourt was ready to have his appeal heard in 2008, and it would not be just for organizational delays to cause him to miss Grand Slam events.

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Volandri v. Int'l Tennis Fed'n, CAS 2009/A/1782. Italian tennis player Filippo Volandri tested positive for a high concentration of salbutamol, which is a banned substance under ITF rules. It was his first anti-doping violation. Volandri has a Therapeutic Use Exemption (TUE) to use a salbutamol-based medicine to treat his asthma, but the presence of the substance in excess of 1,000 ng/ML is considered a violation unless an athlete proves the high concentration is the consequence of a necessary therapeutic dose. On his application form for the TUE, Volandri indicated he would inhale two 100 mcg puffs of the medicine twice daily, but also stated he may need two additional puffs in an emergency situation. In March 2008, Volandri was awakened by a serious asthma attack just hours prior to his first match at a tournament in California. He summoned his trainer to his room, but did not follow the trainer's suggestion to go to the hospital, believing he could regain control of his breathing on his own. Volandri took between 10-20 puffs of the medicine over a two-hour period before his breathing finally stabilized. Later that day, he lost his first-round singles match, and was subjected to a doping test. The results indicated he had a concentration of salbutamol in excess of 1,000 ng/ML. The ITF Independent Anti-Doping Tribunal held the high concentration was not intended to enhance his performance,

and chose not to disturb the match results that Volandri obtained prior to the date that he became aware of a possible violation. Nevertheless, it disqualified his results from the California tournament and the other tournaments in which he participated after July 2008. The Tribunal also imposed a three-month suspension from competition.

The CAS panel modified the penalty imposed by the Tribunal. It determined the Tribunal's decision was arbitrary because the TUE and Global Initiative for Asthma (GIA) guidelines should have been interpreted to allow Volandri to take up to thirty-two puffs between the evening prior to the attack and his first-round match. The panel also disagreed with the Tribunal's conclusion that Volandri had a life-threatening attack and should have sought medical assistance. It emphasized that he was alone and far from home when the attack occurred; therefore, he was in the best position to determine what was right for him. Combining that conclusion with the fact Volandri barely exceeded the concentration threshold and could not be faulted for playing after traveling to California, the panel used its discretion to eliminate the suspension. In addition, it found the ITF committed unacceptable mistakes during the process of bringing the doping charge. The panel emphasized Volandri was not notified of a possible violation until five months after the California tournament, and he was not adequately informed of the consequences of continuing to compete. Therefore, it decided the results from all tournaments except the March event in California should be reinstated. However, it upheld the doping violation, finding Volandri failed to meet his burden to produce evidence showing how the concentration of the banned substance found in the doping test could be the result of his therapeutic use.

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FC Shakhtar Donetsk v. Francelino da Silva, CAS 2008/A/1519; Francelino da Silva v. FC Shakhtar Donetsk, CAS 2008/A/1520. Both FC Shakhtar Donetsk and Matuzalem Francelino da Silva appealed the FIFA Dispute Resolution Chamber's decision that ordered the Brazilian soccer player to pay the Ukrainian soccer club six-point-eight million Euros for breaching an employment contract. Shakhtar Donetsk acquired Francelino da Silva from an Italian club in June 2004 for $8 million. In addition to the transfer fee, it paid $3.75 million in agent fees and over $221,000 to two Brazilian clubs to comply with the solidarity mechanism. Later that month, the club signed the player to a five-year, $8 million contract, which included a clause stating it was required to transfer him to another team if it received an offer of at least $25 million. The contract was slightly amended on several occasions prior to July 2007, when another Italian club offered Shakhtar Donetsk $7 million for him. Just days after Shakhtar Donetsk turned down the offer, Francelino da Silva informed the club he was unilaterally terminating the contract according to his rights under FIFA rules. The club responded by informing him it would initiate disciplinary sanctions if he signed with another club, unless he paid a buyout of $25 million as stipulated in the contract. A couple weeks later, Francelino da Silva signed a contract with Spanish club Real Zaragova, which subsequently loaned him to another Italian club - SS Lazio - after Shakhtar Donetsk brought its claim. The loan was free, but SS Lazio had an option to pay a $13 million or $15 million fee to make the transfer permanent, depending on whether Real Zaragova was found jointly and severally liable for Francelino da Silva breach. The FIFA Dispute Resolution Chamber concluded that Real Zaragova was liable, but not at the amount requested. It held the provision that required the Shakhtar Donetsk to transfer Francelino da Silva

if it received an offer of at least $25 million could not be interpreted as a buyout clause. However, the Chamber still ordered Francelino da Silva and Real Zaragova to pay $6.8 million in compensation for the breach.

The CAS panel modified the penalty imposed by the Chamber, raising the amount of compensation owed to more than $11.8 million. The panel made its calculation after considering a series of factors under FIFA rules. For that reason, it did not need to consider the offer made to Shakhtar Donetsk prior to the breach. The panel concluded Francelino da Silva's services were worth just over $11.2 million over the final two years of his contract. That total was the average sum of his worth to Real Zaragova and SS Lazio over the two-year period - taking into account his salary and the option clause in their loan contract - minus the remaining amount on his contract with Shakhtar Donetsk. The total did not take into account the non-amortized transfer fee paid by Shakhtar Donetsk. The panel noted that fee was incorporated into the value of Francelino da Silva's services to Real Zaragova and SS Lazio, and all other transfer payments were a cost of doing business. Although it had the option, the panel also decided not to attach any liability for the cost of acquiring a replacement player. However, it did hand out a sporting sanction of $600,000, penalizing Francelino da Silva for breaching the contract: (1) with two years remaining, (2) just after receiving an increase in his salary, (3) without previously indicating he wished to look for other opportunities, and (4) just before Shakhtar Donetsk began the qualifying rounds for the UEFA Champions League.

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Al-Hilal Al-Saudi Club v. FIFA, CAS 2008/A/1674. Al-Hilal Al-Saudi Club appealed the date when a suspension imposed on Tareq Eltaib by the FIFA Dispute Resolution Chamber could take effect. The Libyan soccer player entered into a contract to play for the Saudi Arabian club in July 2006 after a previous CAS panel stayed the execution of the Chamber's decision finding him in breach of his employment agreement with a team in Turkey. The CAS panel eventually upheld the decision, and remanded the matter back to the Chamber to determine the compensation owed to the former club and whether any sporting sanctions should be handed down against Eltaib or Al-Hilal Al-Saudi. In November 2007, the Chamber decided to suspend Eltaib for four months. Al-Hilal Al-Saudi argued the suspension should not take effect in September 2008 - at the beginning of the Saudi Arabian Football Association (SAFA) soccer season - because the team was not notified of the Chamber's decision until November, and FIFA rules prevent sporting sanctions from taking effect until the start of the following season. The CAS panel held the suspension could not take effect until the beginning of the next soccer season in the SAFA or another league in which Eltaib might play. It determined Al-Hilal Al-Saudi's interpretation of FIFA rules was correct, and had to be considered in conjunction with the delayed communication of the Chamber's decision. That decision stated the sanctions would not take effect until it was communicated, so the rules could only be applied when Al-Hilal Al-Saudi received the news.

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Court of Arbitration for Sport Decisions (Part Two)

World Anti-Doping Agency v. CONI, CAS 2008/A/1551. The WADA challenged a CONI appeals panel's decision that found the Federal Court of Justice (FCJ) of the FIGC erred in determining professional soccer player Nicolo Cherubin could not be sanctioned for violating the Operating Instructions of the Anti-Doping Commission prior to a drug test, but did not address the national governing body's failure to charge him with violating an anti-doping rule. Cherubin was selected to take a drug test following a soccer match between his team, Reggina Calcio S.p.A., and Livorno in Serie A, the top professional Italian league. After arriving at the anti-doping control station, he left to go to the locker room without providing a sample. He participated in a team meeting resulting in the termination of the Reggina coach, and then showered. Approximately thirty minutes later, he returned to the control station and provided a sample. The test turned out negative. The CONI Anti-Doping Prosecutor investigated the incident, and charged Cherubin with violating the Operating Instructions for showing a lack of co-operation in the completion of the anti-doping procedures. He sought a one-month suspension from competition. The FCJ dismissed the charges, holding the Operating Instructions did not provide an explicit sanction that could be imposed. It failed to address the Prosecutor's decision not to charge Cherubin with violating the CONI Anti-Doping Rules, which penalize athletes for refusing or failing to submit to a doping test without compelling justification. The appeals panel reversed, suspending the player for one month. It noted the Operating Instructions included a specific provision allowing Cherubin to be sanctioned. But like the FCJ, it failed to consider whether he violated the CONI Anti-Doping Rules. The CAS panel upheld the decision, determining the testimony of FIGC officials did not establish Cherubin was actually told not to leave the anti-doping control station. It noted he was at the location for less than a minute. In that time, officials took two players from the opposing team to go take a shower before submitting to a test, and the remaining officials were all busy with one of his teammates. Based on those facts, the panel found he was not on notice that leaving could result in being sanctioned, so he did not actually refuse or fail to submit to a drug test in the manner proscribed by the CONI Anti-Doping Rules.

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Int'l Ass'n of Athletics Federations v. Athletic Fed'n of Slovn., CAS 2008/A/1608. Slovenian long-distance runner Helena Javornik tested positive for a banned substance under the rules of the IAAF. However, the Antidoping Commission of the Athletic Federation of Slovenia (AFS) concluded she did not violate any anti-doping rules because her test results did not meet the criteria required by a WADA technical document to declare them valid. It also emphasized the antibodies used to detect the drug were not meant to be used in diagnostic testing. The CAS panel reversed the decision of the AFS Commission, determining Javornik committed an anti-doping violation and should be suspended from competition for two years. It emphasized the test results met the necessary criteria to make a valid finding under the direct detection method, and the antibodies used were the type required under the WADA document. The panel also concluded the testing procedures did not materially deviate from the IAAF guidelines or the WADA standards, and the alleged conditions could not have tainted the results in the manner claimed by Javornik.

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Varis v. Int'l Biathlon Union, CAS 2008/A/1607. Finnish biathlete Kaisa Varis tested positive for a banned substance under the rules of the IBU. She had previously been suspended for two years for using the same drug, so the IBU Executive Board imposed a lifetime ban from competition. Varis appealed, arguing the test results should be discarded because the IBU did not reasonably attempt to accommodate her request to postpone the analysis of her B sample so she could have her nominated biochemical expert observe the proceedings. Under the international federation's rules, Varis had the right to request the analysis of her B sample and to have a representative observe the analysis after being notified her A sample had tested positive. But the rules also provided the analysis should take place within three weeks of the notification. This requirement conflicted with the new 2008 version of the WADA International Standard for Laboratories (ISL), which stated the analysis should be completed within seven working days. The IBU scheduled the analysis of the B sample seven days after Varis was notified. The Secretary General of the IBU claimed he told Varis the analysis had to be conducted sooner due to the change in the ISL, but did not confirm it in writing. Varis denied the conversation took place. The day before the scheduled analysis, Varis made an official request to postpone the date for at least one week because her designated expert was not yet available. The IBU turned down the request, stating it would appoint an independent party to observe the procedure, although both its rules and the ISL require reasonable attempts to accommodate requests by an athlete when her representative is not free on the scheduled date. The IBU eventually appointed one of its own employees as an independent observer and conducted the analysis on the following day. The B sample also came back positive.

The CAS panel reversed the decision of the Executive Board, determining Varis had not committed an anti-doping violation because the results of the B sample must be thrown out. It held the IBU violated its own rules and the ISL in a fundamental manner by failing to reasonably accommodate Varis's request. The panel emphasized athletes have limited rights in the testing process, and the right to be given a reasonable opportunity to observe the analysis is so important the outcome of the test can be discarded, even if the departure from the rules did not cause the adverse finding. In this situation, the panel concluded that there was not enough evidence to find the IBU was aware of the change in the ISL prior to conducting the analysis; thus, both the federation and the athlete were proceeding on the basis that the three-week window still governed. Pushing back the scheduled date of the analysis within that window was a perfectly reasonable request because Varis's sample would not have been compromised by the delay. Even if the IBU was aware of the change, the panel found its accommodations lacking because it did not schedule the analysis seven working days after notifying Varis, and it failed to recognize those standards allow for later testing due to technical or logistical problems.

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Neth. Antilles Olympic Comm. v. Int'l Ass'n of Athletics Federations, CAS 2008/A/1641. The Netherlands Antilles Olympic Committee (NAOC) challenged an IAAF Jury of Appeal's decision that Netherlands Antilles sprinter Churandy Martina committed a lane violation during the 200-meter final at the 2008 Olympics, causing him to lose his silver medal. As a result, U.S. sprinter Shawn Crawford received the silver medal, and teammate Walter Dix was bumped up to the bronze. The NAOC argued Martina should not have been disqualified because the USOC failed to file its protest within 30 minutes of the final announcement of the results of the race,

which was required under the IAAF rules. In addition, it claimed the USOC did not have Crawford's authorization to file the protest. Both the IAAF and the USOC argued the CAS did not have jurisdiction to hear the appeal.

The CAS arbitrator determined he could hear the appeal under the Olympic Charter, which provides the CAS with jurisdiction over any dispute that arises out of the Olympic Games, and cannot be inhibited by the rules of an international federation. However, the arbitrator concluded both the IAAF rule and the field of play doctrine barred him from overturning the decision of a Jury of Appeals. After examining other CAS cases, he determined the scope of the IAAF rule and the doctrine could be expanded to include decisions related to the timely filing of a protest or the authority of a committee to lodge the appeal. The arbitrator noted the IAAF rule provides no grounds for challenging the decision of a Jury of Appeals, which not only rules on the merits of a protest, but whether the organization filing it complied with all procedural requirements. Both of those evaluations make up a field of play decision about the game and its results.

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FC Midtjylland A/S v. FIFA, CAS 2008/A/1485. FC Midtjylland A/S appealed the FIFA Players Status Committee's decision to reprimand the Danish soccer club for violating a FIFA rule by systematically transferring minor players to Denmark under an agreement with a Nigerian club. The agreement gave Midtjylland a purchase option on some of the Nigerian club's best talent, and it also allowed Midtjylland to enroll players under the age of 18 in its soccer academy. Midtjylland registered six minor players from the Nigerian club as amateurs under the definition provided by the Danish Football Association. The players were also granted residence permits, but they did not include the right to work. FIFA charged Midtjylland with violating its rule, which prohibits the international transfer of minor players. The Players Committee eventually found the club guilty. Midtjylland argued the rule did not apply to these players. In the alternative, it claimed the players were workers under European Union (EU) law, and FIFA violated that law by discriminating against Nigerian citizens living legally in Denmark.

The CAS panel upheld the decision of the Players Status Committee. It determined the FIFA rule applied to the amateur players, and held none of its exceptions could be used in this case. Although FIFA has previously allowed international transfers when the players could establish they were attempting to further their education, the evidence here indicated the main reason for the transfers was to help Midtjylland find the next soccer star. The panel also concluded EU law was not binding on the CAS because the arbitration agreement between the parties provided the dispute would be governed by the FIFA statutes. And even if the CAS had to apply EU law, it found the FIFA rule perfectly legal. The panel emphasized the EU's agreement with Nigeria only protects citizens against discrimination in working conditions, not actual access to employment, and the players in this case were not employed.

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World Anti-Doping Agency v. CONI, CAS 2008/A/1557. The WADA challenged a CONI appeals panel's decision that found the Federal Court of Justice of the FIGC (FCJ) erred in determining professional soccer players Daniele Mannini and Davide Possanzini could not be sanctioned for

violating the Operating Instructions of the Anti-Doping Commission prior to a drug test, but did not address the national governing body's failure to charge them with violating an anti-doping rule. Both Mannini and Possanzini were selected to take a drug test following a soccer match involving their team, Brescia, in Serie B. But before the players were able to report to the anti-doping control station, the Brescia coach and the Brescia president ordered them into the locker room for an important team meeting. The anti-doping control officer was invited to join them, but the door was blocked from the inside. The meeting lasted between 10-25 minutes, after which the players proceeded to the control station and provided samples. Both tests turned out negative. The CONI Anti-Doping Prosecutor investigated the incident, and charged both players with violating the Operating Instructions for showing a lack of co-operation in the completion of the anti-doping procedures. The Federal Court of Justice dismissed the charges, holding the Operating Instructions did not provide an explicit sanction that could be imposed. It failed to address the Prosecutor's decision not to charge the players with violating the CONI Anti-Doping Rules which penalize athletes for refusing or failing to submit to a doping test without compelling justification. The appeals panel reversed, suspending the players for fifteen days. It noted the Operating Instructions included a specific provision allowing them to be sanctioned. But like the Federal Court of Justice, it failed to consider whether he violated the CONI Anti-Doping Rules.

The CAS panel reversed the decision of the appeals panel, suspending the players for one year for violating the CONI Anti-Doping Rules. Taking into account the provisions of the Operating Instructions and the WADA International Standard for Testing, the panel determined athletes may violate the CONI Anti-Doping Rules if they do not promptly report to the control station and fail to remain within sight of their chaperone during the delay. It noted any other interpretation of the rules would give athletes an easy excuse to show up late and ample time to cheat. The panel concluded Mannini and Possanzini violated the rules because the control officer did not agree to allow them to attend the team meeting without supervision. It also concluded the players' dilemma could not constitute a compelling justification for the delay, noting it would have been illegal to punish them for skipping the team meeting to comply with the rules. Finally, the panel emphasized the CONI appeals panel failed to apply the proper provision when determining sanctions, noting any violation of anti-doping rules - including those found in the Operating Instructions - is punishable under Article 10 of the WADA Code. Under that provision, first-time violators face a two-year suspension, depending on their degree of fault. However, the panel found Mannini and Possanzini only deserved the minimum ban because they showed no significant fault in these circumstances. It noted they were under considerable pressure to attend the meeting, and could have believed they would still comply with the rules by proceeding to the control station as soon as it ended.

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Hoch v. FIS, CAS 2008/A/1513. Cross-country ski coach Emil Hoch appealed the International Ski Federation (FIS) Doping Panel's decision to declare him ineligible to participate in any FIS-sanctioned event for life for helping Austrian athletes commit anti-doping violations during the 2006 Winter Olympics. Hoch was the coach of the Austrian team at that time, and was staying at a private apartment situated a short distance from the athletes' quarters in Italy. One evening during the Games, the Italian police raided both locations and seized a variety of items used to

commit blood doping. Some of the items were found in a bag in Hoch's room, and others were found in a dustbin at the entrance to the apartment. Hoch admitted collecting the items found in his bag from the athletes' quarters in order to dispose of them. Immediately following the raid, Hoch drove home to Austria. The FIS instituted disciplinary proceedings, bringing charges against the athletes and the team's support personnel, including Hoch. The Doping Panel convicted him of violating two different anti-doping rules. One of those rules prohibits assisting others commit or cover up anti-doping violations. Because those conspiracies are considered far more serious than individual violations, they carry the possibility of a lifetime ban.

The CAS panel partially upheld the decision of the Doping Panel, concluding Hoch participated in a doping conspiracy but his the ban should be reduced to fifteen years - roughly two-thirds of the number of years he had remaining before retirement. After noting Hoch could only be charged with one anti-doping violation under FIS rules, the panel determined he knew about the athletes' doping practices and acted with the intent to cover them up. It noted some of the medical items found in his bag could not be used for permitted purposes, and he failed to explain how the other items were needed under these circumstances. The presence of similar medical items in the dustbin and Hoch's rush to return to Austria following the police raid were other facts to support this conclusion. However, the panel reduced his penalty after determining a lifetime ban would violate the principle of proportionality, especially when there were doubts about his role in the conspiracy. The panel noted the Austrian team had a history of doping issues prior to his arrival as coach, which suggested other high-ranked officials may have been involved.

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Deutsche Reiterliche Vereinigung e.V. v. FEI, CAS 2008/A/1700; Ahlmann v. FEI, CAS 2008/A/1710. Both the German national governing body for equestrian sports and show-jumping rider Christian Ahlmann appealed the FEI Tribunal's decision to suspend Ahlman for four months after finding he broke medication control rules but did not commit an anti-doping violation when he used an ointment containing a hyper-sensitizing agent on his horse prior to an event in the 2008 Summer Olympics. Ahlmann had previously competed on the German team in the 2004 Summer Olympics, when it won the gold. However, their medals were revoked after another rider tested positive for a banned substance. During the '08 Games, Ahlmann filled out forms to receive authorization to use medication on his horse, but failed to mention he was treating the animal with the hyper-sensitizing agent. Following the Team Jumping Final, the horse was given a doping test, and the results confirmed its presence. The FEI Tribunal concluded the agent could qualify as both an illegal doping substance and a banned medication under the national governing body's rules. However, it held the international federation had to prove a horse's legs were actually hyper-sensitized to find an athlete guilty of a doping violation. Because that fact was not proved, the Tribunal determined Ahlmann only breached the medication rules.

The CAS panel reversed the decision of the Tribunal, suspending Ahlmann for eight months for violating the national governing body's anti-doping rules. The panel determined the rules created a system in which the mere presence of a banned substance constitutes an infraction. In assessing the appropriate sanction, the panel noted Ahlmann could be suspended for up to two years, and

emphasized he should have exerted more care under the circumstances, especially after his medal was revoked at the previous Olympics. However, it could only sanction him for an additional four months because the CAS was prohibited from imposing a larger penalty than the one requested.

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Kurten v. FEI, CAS 2008/A/1569. Show-jumping rider Jessica Kurten appealed the FEI Tribunal's decision to suspend her for two months after finding she broke medication control rules when her horse tested positive for an anti-inflammatory drug following an event in France. Following the analysis of the A sample, Kurten requested the B analysis to be conducted in the presence of her appointed witness at one of the WADA-accredited European Laboratories. When informed not all WADA laboratories test equine samples and the other three FEI-approved laboratories were located outside Europe, she chose to have the sample analyzed in the U.S. However, the U.S. laboratory notified the FEI it was not yet prepared to carry out the type of analysis requested. Therefore, the analysis took place at the same French lab that examined sample A. Her appointed witness was not allowed to view the actual analysis of the sample because he did not satisfy the requirements promulgated by the FEI under the WADA Code. The analysis confirmed the presence of the anti-inflammatory drug. Rather than accept administrative sanctions that did not include a suspension, Kurten appealed.

The CAS panel upheld the decision of the Tribunal, and concluded a two-month suspension was not disproportionate when compared to the offense. It noted the WADA Code partially delegated the implementation of the rules for horse doping to international federations like the FEI. As a result, the FEI could not only require both sample analyses to take place at FEI-accredited laboratories, it could insist both analyses be conducted by the exact same laboratory. The panel also determined the FEI had a good reason for why the U.S. laboratory could not conduct the analysis of the B sample, and found no problem with the test method or validation procedures used by the French lab. Finally, it held Kurten's right to be heard was not violated because she had plenty of time to find another expert who could follow the whole analysis, and she did not have a convincing reason for refusing to sign a confidentiality agreement required to gain access to her requested documents. It found the sanction appropriate because the FEI rules stipulate she could have been suspended for up to a year, and she was unable to establish any basis for reducing or eliminating that penalty.

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NOC of Swed. v. Int'l Olympic Comm., CAS 2008/A/1647. The Swedish Olympic Committee (SOC) and Swedish Greco-Roman wrestler Ara Abrahamian appealed the IOC Executive Board's decision to accept the recommendation of a disciplinary commission to strip him of the bronze medal after he engaged in a symbolic protest during a medal ceremony at the 2008 Beijing Olympics. During the second period of a semifinal bout, the referee indicated he wanted to give a warning to Abrahamian, the silver medalist at the 2004 Games. That decision would have cost him a point and given a point to his Italian opponent. However, the ringside judge opposed the award by lighting a white lamp. This action requires the mat chairman to make a deciding vote on whether a warning should be issued. But the mat chairman failed to intervene,

and the period continued. Under FILA rules, a chairman's failure to intervene should be interpreted as agreeing with judge, so no warning was given. Abrahamian finished the period leading 2-1, tying the bout at one period apiece and forcing a third and deciding period. But before the match resumed, a bout official determined Abrahamian should have been given a warning. The second-period score was re-adjusted, and as a result, his Italian opponent was declared the winner. SOC officials immediately protested the decision, requesting a video check under FILA rules. The federation's officials did not comply with the request. The SOC appealed to the CAS Ad Hoc Division, complaining the actions of the bout officials and its lack of an appeals mechanism violated FILA rules and Abrahamian's right to know the standing of the bout at all times. The two-time world champion went on to win the bronze medal. However, he protested FILA's actions during the awards ceremony by stepping off the podium, placing his medal on the floor, and walking away. An IOC disciplinary commission investigated the ceremony incident and set up a hearing, allowing Abrahamian to explain his actions. He told the commission he was not disrespecting his fellow competitors or the Olympic Movement, but reacting to the way FILA broke its own rules during and after his semifinal match. The commission concluded an alleged judging mistake could not justify his behavior. The IOC Executive Board accepted the recommended sanction. One week later, the CAS Ad Hoc Division ruled on the SOC appeal, finding FILA failed to follow its own rules by not providing Abrahamian with an appropriate appeals mechanism. That decision prompted the SOC to ask the IOC to reconsider the penalty assessed against him, and return the bronze medal. The IOC denied the request.

The CAS panelist upheld the decision of the IOC, noting the Olympic Charter bifurcates the jurisdiction of the IOC and the international federations, so the IOC was only required to focus on the events at the medal ceremony when assessing the sanction. Although the allegations of rules violations by FILA could be used to evaluate Abrahamian's conduct, the panelist emphasized the IOC did not have to determine whether FILA actually violated the rules. More importantly, he found that the IOC actually took an expanded view of the circumstances by recognizing the allegations that were made in its decision. Finally, the panelist concluded that the IOC's sanction was not disproportionate because Abrahamian's conduct was inappropriate, regardless of his motivation. Although it was easy to empathize with him due to the errors committed in the bout, those errors did not justify usurping the medal ceremony. Plus, his conduct included a decision to reject his medal by placing it on the floor, so he should be forced to live with the consequences.

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World Anti-Doping Agency v. Int'l Ice Hockey Fed'n, CAS 2008/A/1564; World Anti-Doping Agency v. Deutscher Eishockey Bund e.V., CAS 2008/A/1738. The WADA appealed the International Ice Hockey Federation's (IIHF) decision to decline to initiate a disciplinary proceeding against German hockey player Florian Busch on procedural grounds after Germany's national governing body (DEB) chose not to suspend him for refusing to take an unannounced out-of-competition doping test. In a related action, the WADA appealed the decision of the ad-hoc-Court of Arbitration of the German Olympic Sports Confederation (GOSC) to decline to suspend Busch from competition after it held there was no legal basis to sanction him. Busch refused to take an unannounced doping test after a doping control officer showed up at his home.

The officer warned him refusing a test could result in disciplinary sanctions, and offered to conduct the test in another location. Busch declined this proposal, and the officer left the apartment after getting him to secure his position in writing. Less than five minutes later, Busch called the German National Anti-Doping Agency (NADA) and explained what had happened. An hour later, he contacted the NADA again, announcing he had changed his mind and would go ahead with the test. The NADA informed him a later test was not possible because it would defeat the purpose of unannounced visits. Busch then called the DEB, which quickly arranged a doping test later that afternoon. It was conducted by the same doping control officer who had shown up at his home four-and-a-half hours earlier. The results did not reveal the presence of any banned substance. The NADA informed the DEB that Busch had violated the NADA Code for refusing a doping test, and was subject to a two-year suspension. But the DEB Missed Test Policy Committee only sanctioned him with a public warning, a fine, and community service. The NADA informed the WADA, which asked the IIHF to initiate a disciplinary proceeding and sanction him with a two-year suspension for violating the federation's rules. The IIHF claimed it could not initiate a proceeding because the appeals process laid out in the NADA Code had not been exhausted. The WADA treated the IIHF's response as a decision under the federation's rules that it could appeal to the CAS. It also submitted a list of questions to the NADA to determine if it had the right to appeal the DEB decision to the CAS under the NADA Code. The NADA forwarded the list of questions to the DEB, which claimed its decisions could only be appealed to the German National Court of Arbitration for Sports (GNCAS). However, that court had not yet been established. Therefore, it claimed any appeal had to be made to GOSC's ad-hoc court.

The CAS panel dismissed the appeal against the decision of the ad-hoc-Court of Arbitration, noting the NADA Code only provided the WADA with the right to appeal the DEB's decision to the GNCAS, not the GOSC's ad-hoc court. Therefore, it treated the response of the DEB to the list of questions as an offer to enter into a special arbitration agreement, and nowhere in that agreement was the WADA given the right to appeal to the CAS. The panel held the WADA accepted that agreement by filing the appeal with the GOSC's ad-hoc court, which issued an order prior to the case that confirmed its award would be final and binding. However, the same panel set aside the IIHF's decision, suspending Busch for two years for violating the WADA Code by refusing to submit to the unannounced out-of-competition test. It concluded the CAS had jurisdiction to hear the dispute because the WADA had timely submitted its request to initiate disciplinary proceedings, and the IIHF's response constituted a final decision on the matter. Although that response did not address the merits of the dispute, the panel determined it was a unilateral act intended to produce legal effects, and left the WADA without further internal remedies. It emphasized the IIHF rules did not require the WADA to appeal to the GOSC's ad-hoc court, regardless of whether the DEB adopted a national anti-doping code with alternative appeals procedures. Finally, the panel noted the question of whether Busch could effectively mask a prohibited substance during the period of time before he finally submitted to sample collection had no legal relevance under these circumstances. It refused to give Busch full credit for not participating in DEB or IIHF events since the incident because he was still playing in the German professional league, and the WADA Code prohibits an individual declared ineligible due to doping violation from playing his sport altogether. However, Busch was given credit for two months of service because he had been prevented from engaging in international competitions and sanctioned in other manners by the DEB.

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Criminal Law

In re Kennedy, 2009 U.S. Dist. LEXIS 7341 (E.D. Cal. Feb. 3, 2009). AAU girls basketball coach Alan Kennedy moved to dismiss several of the claims brought against him by one of his former players after he allegedly induced her into an illicit sexual relationship over a four-month period in 2002. The player also moved to strike Kennedy's consent defense to all of her claims. The District Court granted both motions in part and denied both motions in part. In assessing Kennedy's motion, it held three of the criminal statutes asserted by the player included an implied private right of action for civil damages. However, she was barred from bringing a claim under a fourth statute because it did not address the sexual exploitation of a minor. In assessing the player's motion, the court held consent was not a defense to her criminal claims because those statutes were designed to protect a particular class of people. However, the court noted that consent could be an issue with respect to the remaining claims, so it refused to make any more conclusions until the litigants addressed the applicability of the defense with more particularity.

In re J.S.I., Child, 2009 Minn. App. Unpub. LEXIS 140 (Feb. 3, 2009). A high school wrestler appealed a trial court's decision to adjudicate him to be a delinquent after the state charged him with fifth-degree assault for striking his opponent with a closed fist during a match. The appellate court affirmed, holding the evidence was sufficient to support the decision because the testimony of witnesses, the referee's report to the state high school athletic association, and a video recording of the match indicated the defendant was not attempting a wrestling move, but deliberately trying to inflict bodily harm on his opponent.

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King v. Adams, 2009 U.S. Dist. LEXIS 20036 (N.D. Cal. Feb. 25, 2009). Assistant high school basketball coach Alton King petitioned for a writ of habeas corpus after he was sentenced to over fourteen years in jail for committing sex offenses against several of his players. King had waived his right to jury trial prior to the state court proceedings that led to his conviction. The District Court denied the petition, holding the state did not violate King's due process rights in assessing the evidence or the U.S. Supreme Court's Apprendi rule in determining the sentence. In dismissing his due process claim, the court concluded the evidence was sufficient for a reasonable jury to conclude he was guilty beyond a reasonable doubt on the disputed claims. In assessing the Apprendi claims, the court dismissed his argument related to the imposition of upper term sentences because the rule only applies in jury trials, and it dismissed his argument related to the imposition of consecutive sentences because the Sixth Amendment does not require a trial judge to make additional findings before choosing that form of penalty.

People v. Phillips, 2009 Cal. App. Unpub. LEXIS 1845 (Mar. 5, 2009). Former professional football player Lawrence Phillips appealed a trial court's decision to deny his motion to vacate a judgment that confirmed his agreement to plead guilty to two criminal charges filed against him and his petition for a writ of habeas corpus. Phillips was charged with committing seven state

crimes after he pushed, slapped, and strangled his girlfriend during an argument, then threatened to kill her. After posting bail, Phillips missed his original trial date because his attorney advised him it was not set for another six days. But after learning that evening that a warrant had been issued for his arrest, Phillips flew to Los Angeles and surrendered to the court the next morning. Although Phillips was not at fault, the court indicated it would remand him into custody. Phillips lacked the financial resources to post bail again, and going to jail would have cost him the ability to play for the XFL team in Las Vegas in the spring. Therefore, he agreed to plead no contest to two of the charges, including one that carried a strike penalty. He was sentenced to 180 days in jail, but the sentence was suspended until the end of the XFL season.

The appellate court affirmed, holding the trial court did not abuse its discretion in finding Phillips's plea was valid and his attorney's actions were based on an informed tactical choice. In assessing the plea agreement, the court found Phillips knowingly and voluntarily entered into it, and was aware of the fact that it included a strike. It also noted that Phillips had never previously indicated he wished to withdraw his plea, and the failure to disclose evidence relating to the victim did not prejudice him. In fact, that evidence could have been discovered by Phillips prior to the time that he moved to vacate. Finally, the court emphasized that relief could have been denied based solely on the fact in took Phillips seven years to make the motion, during which he made forty-five court appearances without indicating his plea was made under duress. In denying the petition for a writ of habeas corpus, the court emphasized that Phillips had been charged with seven crimes, but was only punished for two. Moreover, the state had allowed him to postpone his jail sentence, even though a strike was involved.

People v. Tokio, 2009 Cal. App. Unpub. LEXIS 4396 (June 1, 2009). The People of the State of California appealed a trial court's decision to grant a new trial to community college football player Agaititi Timothy Tokio after a jury convicted him of assault and battery for striking an individual outside a house party without hearing the testimony of Tokio's coach, even though one of Tokio's teammates had confessed to the coach that he had committed the crime. The teammate admitted he had confessed at trial, but subsequently recanted that confession. The appellate court affirmed, holding the trial court did not abuse its discretion in determining a jury may have evaluated the teammate's confession and recant differently if it had heard from the person to whom the confession was made. The court noted that Tokio's attorney considered trying to admit the coach's testimony as a prior inconsistent statement, but it had pressured her into keeping the trial moving after efforts to get the testimony admitted as a statement against penal interest failed. It also noted one of the jurors indicated he may have viewed the teammate's confession differently if he had heard the coach testify, especially because just one witness testified he saw Tokio strike the individual, but was unable to identify him at trial.

United States v. Bonds, 78 Fed. R. Serv. (Callaghan) 1117 (N.D. Cal. 2009). Former professional baseball player Barry Bonds moved in limine to exclude several categories of evidence from his trial, in which he is charged with making false statements to a grand jury and obstruction of justice during the BALCO investigations. Federal agents seized the evidence from BALCO and residence of Bonds' personal trainer, who refused to testify at trial. The District Court granted the motion with respect to all evidence except a note allegedly written by Bonds' trainer that was seized from BALCO, part of a tape-recorded conversation between the trainer and Bonds' childhood friend/personal assistant in the San Francisco Giants locker room, and the expert

testimony of a government witness on the side effects of HGH and anabolic steroid use. The court also directed the government to file a declaration containing an offer of proof of adequate factual foundation from its lay witness, Bonds' former girlfriend Kimberly Bell, before assessing whether she could testify about changes in the player's physical or mental condition. The court excluded the majority of the evidence because it could not be authenticated, noting there was a serious gap in the chain of custody because his trainer refused to testify, and there was no hearsay exception through which it could be admitted. In excluding part of the tape-recorded conversation that detailed a strategy for evading Major League Baseball's drug testing procedures, the court held the government could not establish it was a criminal or civil offense to help athletes avoid detection at that time, so the statements were not admissible as statements against interest.

Discrimination - Race

Robinson v. Hicks, 2009 U.S. Dist. LEXIS 1421 (M.D. Pa. Jan. 9, 2009). The Central Pennsylvania Youth Soccer League and its president moved to dismiss Title VI race discrimination claims brought against them by a player and her parents after the player's coach made allegedly offensive comments, and the president allegedly responded to the parents' complaints about them by kicking the player off the team, barring the parents from attending the team's games, and denying them the opportunity to appeal those sanctions through the league's grievance process. The District Court denied the motion, holding the allegations were sufficient to support the three elements of a Title VI claim. The court found all the plaintiffs had standing because the father and the player were members of a racial minority, and the mother was allegedly injured in attempting to defend their rights. It also noted that the alleged discrimination concerned one of the activities enumerated in the federal statute; namely, the right to enforce contract rights, which were secured through the league's registration process.

Scott v. Haw. Dep't of Educ., 2009 U.S. Dist. LEXIS 16884 (D. Haw. Mar. 5, 2009). The Hawaii Department of Education and the principal, vice principal, and football coach at one of the state's public high schools moved for summary judgment on claims brought against them by one of school's former football players after he was kicked off the team for his role in a lunch-room brawl on campus and allegedly forced to complete the remainder of his fall school work from home. Dontae Scott was scheduled to graduate from high school at the end of that semester. At a meeting following the brawl, the participants, including the principal and vice principal, determined Scott had committed a Class B offense under the state's administrative rules because he engaged in disorderly conduct by attempting to re-start the fight after it was broken up. Under the school's parent-student athletic handbook, all student-athletes who commit a Class B offense are suspended from all school athletic activities for the duration of the applicable sport season. Although all football players involved in the brawl were told to stay home from a game the following night, one accessory did play. However, the school did not have knowledge that player was involved in the brawl until the following week. All three members of the football team involved with the brawl were eventually kicked off the team for the remainder of the season. Three of the seven students suspended from school for their roles in the incident were in special education, including Scott.

The District Court granted the motion on all of Scott's claims. It held Scott's race discrimination claims were either unsubstantiated or barred by the Eleventh Amendment, noting both states and state officials serving in their official capacities have constitutional immunity from lawsuits for money damages. The court also held that both his Rehabilitation Act and Individuals with Disabilities in Education Act (IDEA) claims were unsubstantiated, noting that he failed to exhaust his administrative remedies before bringing his IDEA claim. In assessing the merits of the IDEA claim, the court emphasized that Scott's request to review his punishment failed to describe the problem with the proposed discipline, and that he was never actually barred from appealing his punishment under the state's administrative rules. Finally, the court held his claim for intentional infliction of emotional distress failed because he could not prove the behavior of the principal, vice principal, or football coach was outrageous or that they acted with the malice required to bring suit against a non-judicial governmental official. It noted that the behavior of the individual defendants could only be outrageous if it was discriminatory and it was clear Scott was not punished because of his race or disability.

Discrimination - Sex

Doe v. Hinsdale Twp. High Sch. Dist. 86, 905 N.E.2d 343 (Ill. App. Ct. 2009). A former student-manager of a high school boys basketball team who was sexually abused by the coach appealed a trial court's decision to dismiss her claims against the Hinsdale Township High School District, its superintendent, and its principal after determining that they were barred by the statute of limitations in the state's tort immunity legislation. The appellate court reversed, holding the statute of limitations in the state's sexual abuse legislation was the appropriate provision to apply to the student-manager's claims, and it gave her five years to file them. In assessing whether the latter statute could apply to her claims, the court found its plain language covered defendants who had a duty to protect a child from sexual abuse. In determining which statute to apply, the court noted that the language in the sexual abuse legislation indicated it would have control over all other provisions of law.

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Doe v. Merrill Cmty. Sch. Dist., 2009 U.S. Dist. LEXIS 24514 (E.D. Mich. Mar. 26, 2009). The Merrill Community School District, its superintendent, its high school principal, and its school board members moved to dismiss claims that they violated Title IX and the substantive due process rights of a middle school girls basketball player by failing to take reasonable measures to protect her from being raped by a high school student on school grounds. Prior to the rape, the high school student had verbally harassed her, made a lewd gesture in her direction during a game, and even thrown her against a locker. After the incident at the game, the defendants told her parents that the high school student would only be allowed to attend after-school activities under supervision, but there was no plan to place them on notice when he was on school grounds.

The District Court granted the motion to dismiss all the claims against the individual defendants, but only the substantive due process claim against the school district. In assessing the Title IX

claim against the school district, the court held the allegations were sufficient to demonstrate that it had knowledge of the prior incidents in which the high school student sexually harassed the plaintiff, and there was a genuine issue about whether its response showed deliberate indifference to those events. In addition, there was a genuine issue about whether the school district had knowledge of several other instances of sexual misconduct by the high school student over the previous three years that could contribute to the deliberate indifference analysis. The Title IX claim against the school district employees was dismissed because the statute does not provide for suit against individuals. In assessing the substantive due process claims, the court held the all of the defendants were entitled to qualified immunity because they did not have a constitutional duty to supervise the high school student based solely on the statement made to the plaintiff's parents, and it was not apparent that merely re-enrolling the high school student constituted deliberate indifference to the plaintiff's rights.

Elborough v. Evansville Cmty. Sch. Dist., 2009 U.S. Dist. LEXIS 52803 (W.D. Wis. June 23, 2009). The Evansville Community School District and its high school football coach moved for summary judgment on a female football player's claims that they violated Title IX, the federal constitution, and state law by discriminating against her on the basis of sex. Ivyanne Elborough alleged that they failed to ensure the girls' locker room was unlocked prior to practice, kept all snacks and the team's practice schedule in the boys' locker room, and allowed her to participate in a contact drill without any pads. She also claimed the coach told her to get her hair cut like a boy. The practice incident happened after Elborough's mother complained about the way her daughter was being treated, and resulted in serious injuries.

The District Court granted the motion in part and denied it in part. The court held that Elborough failed to support her Title IX and due process claims because she could not show that the School District had adequate notice of the alleged discriminatory acts, or that either defendant created the dangerous situation that resulted in her injury. However, the court found that a reasonable jury could conclude that the coach violated her right to equal protection by allowing her to play without pads because of her sex, and that both defendants were also liable for that decision under state law based on either the known danger exception to discretionary immunity or a theory of recklessness. In dismissing the Title IX claim, the court noted the school district did not have notice that the coach would allow Elborough to play at practice without pads, only that she had previously had trouble getting access to those pads in the locker room. And even if it had notice that the she might get hurt, the court found it was not sufficient to show the district was deliberately indifferent to the risk that she might be hurt as a result of intentional sex discrimination. It also found that none of the other alleged acts could give rise to a cause of action because her mother's complaints did not give the district reason to believe that Elborough was the victim of intentional discrimination. In fact, the acts themselves were not sufficiently severe or pervasive to prevent her from engaging in meaningful participation. In dismissing the substantive due process claim, the court noted that public officials only have a duty to protect individuals who are not in custody if they create a danger that poses a harm, and found that the coach did not engage in an any affirmative act or omission which led to Elborough showing up at practice without pads or forced her to participate in the contact drill. In upholding the equal protection claim, the court noted there was a genuine issue as to whether the coach acted with discriminatory intent in allowing her to participate in the contact drill, especially in light of his

normal response when a player appeared at practice without pads, and his attitude toward her mother when she complained about the way her daughter was being treated.

Hemmer v. Gayville-Volin Sch. Dist., 2009 U.S. Dist. LEXIS 14379 (D.S.D. Feb. 20, 2009). Gayville-Volin School District (GVSD) and its superintendent moved for summary judgment on federal and state law claims brought against them by former high school golfer Brook Hemmer after her coach induced her into a sexual relationship as a sixteen-year-old sophomore. Hemmer had intercourse with the coach for the first time in a hotel room at the site of the state golf tournament in 2006. Hemmer had not qualified for the event, but got permission to accompany a friend on the trip from the district superintendent. Over the next two weeks, Hemmer and her coach had intercourse on two more occasions at his home in Gayville. When the district finally learned of their relationship, it reported the abuse to the Department of Social Services, and forced the coach to resign. Four years earlier, the coach was accused of other inappropriate sexual behavior when he touched a teacher on the buttocks during a conference. Although the incident was not reported to the school district, the superintendent heard the news and asked the teacher if she would accept an apology for his conduct. The teacher also claimed she had observed the coach get too close to female students and received complaints about his conduct. However, those events were never reported. A second teacher claimed she observed the coach flirt with another female student and overheard him talking with Hemmer about meeting after school. Those events were also never reported. In 2003, a school district board member publicly stated that the coach should not be placed near high school girls because another board member noticed he was spending his free time with them. Finally, a third teacher held a secret meeting at her house to discuss the coach's alleged flirting with eighth-grade girls. Two board members were in attendance at that meeting, but did not follow up on the complaints or even document that it took place. Hemmer brought § 1983 claims against the GVSD and the superintendent for acting with deliberate indifference to the known risk that her substantive due process rights could be violated by engaging in a custom of ignoring signs of the coach's misconduct and failing to provide employees with adequate sexual harassment training. She also alleged both defendants engaged in negligent supervision under state law.

The District Court granted the motion on all of Hemmer's claims. It concluded the coach's conduct towards the teacher at the conference and the other alleged misconduct did not show the existence of a persistent pattern of unconstitutional misconduct, which is required to establish a § 1983 claim for failure to investigate and act upon complaints of violations of constitutional rights. It also determined that any alleged inadequate training could not be considered the cause of Hemmer's injuries, because the coach was clearly abusing his position of authority. Therefore, she could not establish a § 1983 claim for failure to train. The court found Hemmer's state law claims lacking for similar reasons. She could not prove it was reasonably foreseeable to the GVSD or the superintendent that the coach would engage in an inappropriate sexual relationship with a student because there was no evidence he touched, attempted to touch, or even desired to touch a student in that manner. In addition, the superintendent could not be found liable in his individual capacity because none of the policies that he allegedly violated imposed a ministerial duty to respond in a specific manner.

J.A. v. Vill. of Ridgewood Bd. of Educ., 2009 U.S. Dist. LEXIS 41100 (D.N.J. May 13, 2009). The father of a sixth-grade girl who was denied the opportunity to play on a boys basketball team in a recreational league sponsored by a private organization moved for summary judgment on his claim that the Village of Ridgewood Board of Education and its superintendent violated his daughter's rights under the state's anti-discrimination law. Both defendants also moved for summary judgment on that claim. The plaintiff's daughter wanted to play on a boys team because the boys used standard ten-foot high hoops, while the girls were forced to use baskets a foot-and-a-half shorter. The Board allowed the private organization to lease its gymnasiums to hold practices and games, although the law prohibited discrimination in places of public accommodation. The District Court granted summary judgment to the Board and the superintendent, holding neither defendant engaged in indirect discrimination or aided and abetted the private organization in its discriminatory practices. It noted the superintendent would have allowed the girl to play on the boys team, but did not control the organization or its basketball program. The court also found the defendants did not substantially assist the organization in its practices because they did not encourage it to prevent the girl from playing on the boys team. In fact, both the superintendent and members of the Board warned the organization against engaging in unlawful discrimination on multiple occasions, and were consistently attempting to resolve the dispute between the organization and the girl's family.

Miles v. Washington, 2009 U.S. Dist. LEXIS 7300 (E.D. Okla. Feb. 2, 2009). The State of Oklahoma and three individuals employed by Carl Albert State College (CASC) moved to dismiss several claims in a lawsuit brought against them by a former CASC women's basketball player for their actions after she was allegedly raped by an assistant coach following a party. The player claimed the head coach told her not to report the incident, and that she was harassed and threatened by teammates when they learned that the assistant had been fired for drinking alcohol with her at the party. The player obtained a protective order against three of her teammates, including the assistant's stepdaughter, but was forced to sit through a hearing at which both the head coach and the athletic director allegedly expressed their disgust with her. Both the head coach and others at the school allegedly knew that the assistant had been partying with female students and inappropriately interacting with them prior to the rape.

The District Court granted the motion in part and denied it in part, holding the player had sufficiently alleged causes of action for Title IX sexual harassment, Title IX retaliation, negligent supervision, and intentional infliction of emotional distress, as well as claims against the individual defendants in their individual capacities for violating her Fourteenth Amendment right to equal protection and her First Amendment right to freedom of speech. In assessing the sexual harassment and negligent supervision claims, the court concluded the allegations supported a finding that the school had actual notice of the assistant's behavior, allowing the player to establish that the defendants acted with deliberate indifference to the risk he posed. In assessing the retaliation claim, the court found the allegations supported a finding that the defendants knew about the teammates' harassment but responded in a manner suggesting they condoned it. In assessing the equal protection claim, the court determined the allegations supported a finding that the defendants were deliberately indifferent to the harassment she suffered and then allowed a hostile environment to develop after she reported the rape. In assessing the free speech claim, the court noted reporting a rape is speech protected by the federal constitution, so any retaliation against a report would be unlawful. Finally, the court found the allegations supported a finding

that the defendants' behavior was outrageous enough to bring a claim for intentional infliction of emotional distress.

Roe v. St. Louis Univ., 2009 U.S. Dist. LEXIS 27716 (E.D. Mo. Apr. 2, 2009). St. Louis University moved to dismiss a lawsuit brought against it by a former university women's field hockey player and her parents. The claims arose out of the school's alleged response to reports that she suffered a debilitating back injury during practice, and, later, that she was the victim of a sexual assault. Included in the claims was one count of intentional infliction of emotional distress for the psychological injuries that the player suffered when the university allegedly engaged in a variety of inappropriate acts after learning she had been raped. The plaintiffs brought the lawsuit under pseudonyms without previously seeking permission from the court.

The District Court granted the motion as to the claim for intentional infliction of emotional distress (IIED), but denied the motion as to the remaining claims. In dismissing the IIED claim, the court concluded that the player did not suffer extreme distress resulting in bodily harm, and the university's conduct was not intended solely to cause her injury. It also granted the motion as to all claims alleged against fifty unnamed individual defendants because they were not specific enough to conclude the identities would be revealed through discovery. However, the court held the player could bring her remaining claims because the she was a rape victim, and victims of sexual assaults are entitled to use pseudonyms if their status is not publicly known.

Drug Testing Issues

Case v. N.Y. State Racing & Wagering Bd., 877 N.Y.S.2d 526 (App. Div. 2009). Horse racing trainer Timothy Case appealed the New York State Racing & Wagering Board's decision to revoke his license after one of his horses tested positive for an excess level of carbon dioxide, the latest in a string of doping violations committed by the trainer. In addition to the penalties prescribed by the doping rules, the Board's regulations included a provision allowing it to sanction trainers in any manner for activities inconsistent with the best interests of racing. The appellate court affirmed, holding there was substantial evidence to support the Board's determination that the test results were properly obtained, and the revocation was not a shockingly disproportionate penalty based on his history of violations.

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In re Spano, 23 Misc. 3d 1108A (N.Y. Sup. Ct. 2009). Harness racing driver-trainer Alessandro Spano appealed the New York State Racing & Wagering Board's decision to sanction him for violating the Board's rules after private security officers employed by a state racetrack found syringes, a needle, and horse doping drugs in his trailer at the track. The rules governing possession of hypodermic equipment and controlled substances at racetracks give tracks permission to enter into buildings on its grounds and to inspect the personal property of any licensed person within those places. The trial court affirmed the validity of the search and transferred Spano's remaining claims to the appellate division because they related to whether the Board's decision was supported by substantial evidence. In assessing the validity of the search,

the court concluded both of the security officers were entitled to inspect Spano's trailer because the first officer had a receipt that gave him required licensing privileges pending review of his application, and neither officer was required to be a peace officer.

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Thomas v. Ohio State Racing Comm'n, 2009 Ohio App. LEXIS 1395 (Mar. 31, 2009). Terry Thomas appealed a trial court's judgment affirming the decision of the Ohio State Racing Commission (OSRC) to sanction him after finding that he violated the organization's medication rules when one of his horses tested positive for an excess level of carbon dioxide prior to a race. The appellate court affirmed, holding the trial court did not abuse its discretion in concluding the OSRC's decision was supported by reliable, probative, and substantial evidence, and the OSRC did not violate Thomas' right to equal protection by unilaterally modifying the procedures from post-race testing to pre-race testing. In assessing whether there was an abuse of discretion, the court noted Thomas was subject to strict liability under the state's absolute insurer rule, and found the OSRC did not exceed its rule-making authority in enacting the medication regulations. In dismissing the equal protection claim, the court found Thomas was treated the same as all other trainers similarly situated when the testing occurred, and the penalty imposed was not too severe because it was within the range of the sanctions permitted under the rules.

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Education Law

Cape Henlopen Sch. Dist. v. Del. Interscholastic Athletic Ass'n, 2009 Del. Super. LEXIS 35 (Jan. 28, 2009). The Delaware Board of Education and the Delaware Interscholastic Athletic Association (DIAA) moved to dismiss Cape Henlopen School District's appeal of the Board's decision to uphold the DIAA's denial of a request to waive penalties associated with the use of an ineligible basketball player. The court granted the motion, holding the Board's decision was not subject to appeal under state law. The court noted the Administrative Procedures Act appeared to provide for an appeal, but it conflicted with a new state law that specifically sets up a process for dealing with disputes over the rules and regulations promulgated by the Board. The law gave individuals the ability to appeal a DIAA decision to the Board, but stated that the Board's decision was final. The trial court also granted the motion to dismiss the school district's petition for a writ of certiorari because it was filed more than thirty days after it received notice of the Board's decision and the district did not have a valid excuse for the delay.

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Mather v. Loveland City Sch. Dist. Bd. of Educ., 908 N.E.2d 1039 (Ohio Ct. App. 2009). The Loveland City School District Board of Education appealed a trial court's decision to grant Susan Mather's request for an injunction to prevent the Board from suspending her son for part of the high school football season after he was arrested for underage drinking and possession of alcohol. Both the boy and his father had signed his high school's athletic code, which prohibited use or possession of alcohol and specified penalties for violating the rule. The appellate court reversed, holding the trial court erred in exercising jurisdiction over the case and determining the

school illegally acquired the information used to suspend the student. The court found the student had no statutory right to an appeal because the suspension related to only extracurricular activities, and no constitutional right to an appeal because he had no property interest in participating in interscholastic athletics. In assessing whether the school illegally acquired the information used to suspend the athlete, the court concluded state law did not make juvenile arrest records confidential, so an in-school law enforcement officer was allowed to tell the school's athletic director about the incident.

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Morgan v. Oklahoma Secondary Sch. Activities Ass'n, 207 P.3d 362 (Ok. 2009). The Oklahoma Secondary School Activities Association (OSSAA) appealed a trial court's decision to grant Shelby Jo Morgan and her parents' request for an injunction to prevent the OSSAA from enforcing its transfer rule and declaring her ineligible to compete in interscholastic athletics for one year. The transfer occurred after Morgan's parents were barred from attending athletic contests at her former high school when her father got into an altercation with a school board member following a basketball game. Morgan sought a hardship exception in order to become immediately eligible at her new high school, but the OSSAA denied her application. The Oklahoma Supreme Court reversed, holding the trial court erred in granting the injunction because participation in interscholastic athletics was a privilege subject to the OSSAA eligibility rules, and there was no evidence they were applied in an arbitrary or capricious manner.

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Oliver v. Nat'l Collegiate Athletic Ass'n, No. 2008-CV-0762 (Ohio Ct. Com. Pl. Feb. 12, 2009). Oklahoma State University baseball player Andrew Oliver moved for a judgment declaring that two of the NCAA's bylaws violated state law and for a permanent injunction preventing the association from enforcing them. The NCAA suspended him from playing in May 2008 after discovering that he allowed his former attorneys to help him attempt to negotiate a professional contract when he was drafted out of high school. The first bylaw at issue prohibited current and prospective student-athletes from hiring agents to directly negotiate with professional teams. The second bylaw was the NCAA's Restitution Rule, which allowed the association to strip its member schools of its records if they allowed a student-athlete to compete under a court order and that person was later deemed to be ineligible.

The court granted the motions. It held the first bylaw was arbitrary and capricious and violated the public policy of the state because it was virtually impossible to enforce in an even manner and attempted to dictate where, when, and how legal counsel could represent their clients. The court pointed out that NCAA rules allowed student-athletes to hire attorneys, and that it would be difficult for those athletes to assess when those attorneys were acting in an agent's role. It also emphasized that no entity other than the state itself could regulate attorney conduct. But most importantly, it found the bylaw failed to serve its intended purpose: preserving the line of demarcation between amateurism and professionalism. The court held the Restitution Rule was arbitrary and capricious because it interfered with the power of the judicial system by forcing member schools to disregard court orders and sit student-athletes who had been permitted to

play. The court noted that the rule was discouraging student-athletes from using the judicial system to vindicate their rights.

Employment Law

Baldwin v. Bd. of Supervisors for the Univ. of La. Sys., 11 So. 3d 1247 (La. Ct. App. 2009). The Board of Supervisors for the University of Louisiana System (Board) and the athletic director at the University of Louisiana-Lafayette (ULL) appealed a trial court's judgment on a jury verdict in favor of former ULL head football coach Jerry Baldwin on a several claims that he brought against the defendants after he was terminated in the fall of 2001 following three straight losing seasons. The defendants claimed they fired him due to his poor record and the team's low attendance numbers at home games, which allegedly combined to create a budget crisis. They also argued that the low attendance numbers posed a threat to ULL's Division I-A status under NCAA rules. However, the jury awarded two million dollars in damages to Baldwin after finding the defendants liable for race discrimination, abuse of rights, tortious interference with contract, and negligent infliction of emotional distress. When a poll was conducted following the verdict, there were inconsistencies with the verdict form on the claims for tortious interference and negligent infliction of emotional distress.

The appellate court reversed and remanded for further proceedings. First, it held the trial court committed manifest error that created the possibility of impermissible prejudice when it denied one of the defendants' peremptory challenges and admitted testimony from one of Baldwin's expert witnesses. Second, it found the trial court committed reversible error when it entered judgment on the jury's finding of race discrimination under state law and determined there were enough affirmative votes to support the findings of tortious interference and negligent infliction of emotional distress. In assessing the denial of peremptory challenge, the court concluded the challenge was not based on race discrimination, but the possibility of bias based on the prospective juror's discrimination experience. It noted that race can play a role in juror selection, as long as a challenge is not made solely on that basis. In assessing the qualification of Baldwin's witnesses, the court found that the former chancellor of a state university should not have been allowed to testify about potential termination methods and their consequences because his opinions had not been researched, tested, or analyzed in a manner sufficient to satisfy the Daubert standard. The court noted the witness had participated in the termination of only three football coaches over the course of his career, and had never determined if his opinions were shared by other administrators. In assessing the race discrimination claim, the court held that the interrogatories on the verdict form were insufficient to find the defendants liable under state law. It noted that the jury's conclusion that Baldwin's race was a determining factor in his termination could only support a finding of discrimination under federal law. Finally, the court found that the inconsistencies revealed on the verdict form following the poll of the jurors should have prevented the trial court from finding the required number of affirmative votes on Baldwin's claims for tortious interference and negligent infliction of emotional distress.

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Cookson v. Brewer Sch. Dep't, 974 A.2d 276 (Me. 2009). Former Brewer High School softball coach Kelly Jo Cookson appealed a trial court's decision to grant summary judgment to the Brewer School Department and its superintendent on her claims of employment discrimination in violation of the state's human rights act and slander per se, arising out of allegedly false statements made by the superintendent to the parents of some of her players, and the subsequent failure to renew her coaching contract due to her sexual orientation. The mother of one of Cookson's former players had previously made a complaint about the coach after her daughter quit the team because Cookson subjected the players to verbal abuse and hazing. The school department's former superintendent investigated the allegation in her complaint, and issued a letter of reprimand after discovering at least one similar hazing incident had occurred the prior season. After the current superintendent took over, the mother brought a tort claim against the school department based on many of the same allegations in her complaint. The superintendent met with Cookson after receiving notice of the claim, but told her he was not thinking about firing her. However, he subsequently learned about the earlier complaint and letter of reprimand, then found out Cookson was a lesbian. When he met with the parents of the players, he made a number of specific comments about Cookson and implied that her situation was similar to the situation of a staff member at another school where he had worked who had engaged in questionable behavior by getting involved with a nudist colony.

The Maine Supreme Court affirmed the decision in part and vacated it in part, finding Cookson had failed to offer evidence disputing the truth of the superintendent's statements, but had generated an issue of fact about whether the school department's proffered rationale for failing to renew her contract was a pretext for discrimination. The Court noted the timing of the superintendent's decision not to recommend rehiring her, relative to when he became aware of her sexual orientation, was a disputed fact. It also emphasized he had initially indicated he would not request Cookson's resignation, and had relied on hazing incidents for which she had already been punished.

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Cummings v. Moore, 2009 U.S. Dist. LEXIS 5093 (E.D. Va. Jan. 26, 2009), aff'd by 326 Fed. App'x 162 (4th Cir. 2009). The Virginia State University (VSU) president, the VSU police chief, and three VSU police officers moved to dismiss claims brought against them by former VSU women's basketball coach Bertha Cummings for their actions following her arrest for violating a ban letter that prevented her from visiting the campus. The ban letter was issued in response to harassment complaints brought against Cummings by a VSU professor. She was also ordered to make no more contact with VSU by a judge following an incident that occurred in 2001, more than four years after the university elected not to renew her coaching contract. Cummings filed a complaint with the Equal Employment Opportunity Commission (EEOC) after being fired, but the dispute was resolved in mediation. The District Court granted the motion. In dismissing the Title VII claim, the court emphasized that the EEOC had already dismissed her retaliation charge. In dismissing the discrimination claim, it found that the police chief did not make false statements about Cummings in a letter he sent to the judge. The court dismissed her harassment claim because she did not provide any authority to support it.

Davis v. Atlantic League of Prof'l Baseball Clubs, Inc., 2009 U.S. Dist. LEXIS 46084 (D.N.J. June 2, 2009). The Atlantic League moved for summary judgment on federal and state age discrimination claims brought against it by former League umpire Clark Davis after the League chose not to assign him to umpire playoff games in 2006 and then chose not to renew his contract for the following year. The League's executive director allegedly told Davis that he was not assigned to the playoffs because it wanted to give some younger umpires some experience. However, the League justified both its employment decisions as legitimate responses to its assessment of Davis' performance that season, complaints about his role in an ugly incident involving one of the League's playoff teams and its owner, and his decision to take approved leave in the middle of the season to enter a poker tournament in Las Vegas.

The District Court denied the motion, holding a rational jury could doubt the League's articulated reasons for its decisions. In assessing the decision not to assign Davis to playoff games, the court emphasized that the League did not maintain written performance evaluations of its umpires, and found conflicting evidence related to the executive director's impression of the umpire's performance in previous years. It also noted that Davis was permitted to umpire six games involving the playoff team following the incident, and that it could have assigned him to another playoff series as it had in the past. Moreover, the League had ignored complaints about another umpire twenty years younger than Davis and given him a playoff assignment. Finally, the court noted that none of the articulated reasons for the League's decision were ever actually communicated to Davis.. In assessing the decision not to renew his contract, the court found that the executive director's alleged statement to Davis related to his continued employment and constituted direct evidence of discrimination. It determined there was a close temporal relationship between the statement and the contract decision, and that the statement could relate to his ability to do his job. The court noted that the League's supervisor of umpires had never disciplined him or recommended his termination, and was unaware of the reason for the executive director's decision.

Ellis v. N.D. State Univ., 764 N.W.2d 192 (N.D. 2009). North Dakota State University (NDSU) appealed a trial court's decision to enter judgment for former NDSU sports information director George Ellis on his age discrimination claim under the state's human rights legislation after the university decided to terminate him for failing to meet deadlines, then re-organized the department to cut salary costs and make it easier for employees to do their jobs. Ellis alleged he had previously suggested to the athletic director that the department be structured in that manner. More than two years prior to his termination, Ellis had met with an interim athletic director who inquired about his age and retirement plans, and allegedly told him to begin looking for another job because he was not part of the department's future plans. Ellis appealed his dismissal to a designated university board, but it concluded his termination was supported by the preponderance of the evidence.

The North Dakota Supreme Court reversed, holding the trial court properly determined that Ellis's claim was not barred by the statute of limitations, but erred by conducting a de novo review under the human rights statute instead of deferring to the administrative findings of the university board. In assessing the appropriate standard of review, the Court noted that any judicial body considering an appeal of a decision made under the constitutional authority of the State Board of Education should use the same standard of review used in appeals from decisions

of administrative agencies because it avoids a separation of powers issue. It found the university board's decision to terminate Ellis was made under the constitutional authority of the State Board of Education because the Board had the power to delegate its authority to dismiss an employee to the employees running its institutions. Therefore, the deferential standard of review should have been applied, and the trial court was not entitled to substitute its own judgment for that of the university board.

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Farquhar v. New Orleans Saints, 2009 La. App. LEXIS 973 (May 26, 2009). Former professional football player John Farquhar appealed a workers' compensation court's decision to award him only $43,000 plus interest in back supplemental earnings benefits after he suffered a career-ending knee injury with the New Orleans Saints prior to the 1999 NFL season. Farquhar had signed a one-year deal that May, and the Saints chose to pay him his entire contract amount despite his failure to make the active roster. State law provides that employees are entitled to supplemental earnings benefits for up to ten years as long as their subsequent earnings do not exceed ninety percent of their average weekly wage prior to the accident. Farquhar's subsequent earnings did not exceed the ninety percent threshold until July 2002, 144 weeks after the team released him.

The appellate court affirmed, holding the trial court did not err in determining the amount of the award. It found Farquhar's average weekly wage was correctly calculated, and the team was entitled to a twenty-five-week credit against paying the benefits under the NFL Collective Bargaining Agreement (CBA). In assessing Farquhar's average weekly wage, the court emphasized it had to be based on his actual earnings during the preseason, not his contract amount. Therefore, he was only entitled to approximately $53,000 in back benefits, based on the 144-week period. In addition, he was only entitled to a shorter interest period because his claim was stayed while he challenged the constitutionality of one of the state's workers' compensation laws, which was subsequently repealed. The court subtracted $9,000 because the CBA allowed a team to take a credit if it paid a player's full salary even though he did not make the active roster.

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Green v. East Aurora Sch. Dist. No. 131, U.S. Dist. LEXIS 9162 (N.D. Ill. Feb. 5, 2009). The East Aurora School District moved for summary judgment on the age discrimination, race discrimination, and retaliation claims brought by middle school track and field coach Robert Green after the school district failed to appoint him to a coaching position for the 2007-2008 school year and reprimanded him when it received complaints that he engaged in inappropriate conduct. Green had coached a variety of sports at the elementary, middle, and high school levels after joining the school district as a certified teacher, and earned as much as $2,000 per year for each of those additional jobs. He had also completed courses in sports first aid and coaching principles. But prior to the 2005 track and field season, he was asked to resign from his position because of alleged complaints about his behavior. Following that request, Green filed a charge of unlawful discrimination with the Equal Employment Opportunity Commission (EEOC). He was allowed to remain as coach for that season, but was not appointed to any positions the following year, despite school district policies that allegedly prohibited teachers who had not completed

courses in sports first aid and coaching principles from obtaining positions and gave certified teachers a preference over non-certified teachers in the hiring process. In January 2006, Green filed another charge of unlawful discrimination with the EEOC. Later that year, he was formally disciplined for four separate incidents of inappropriate conduct and transferred to the position of in-school suspension teacher.

The District Court granted the motion on one of Green's two Title VII retaliation claims, but denied the motion as to all other claims. In assessing the Title VII age and race discrimination claims, the court held there was a dispute about Green's record of misconduct that needed to be sorted out in order to determine why he was asked to resign from his position as track and field coach, why younger, white, non-certified individuals who had not taken required courses were appointed to positions over him for the following school year, and why he wasn't considered for an open wrestling position when it opened up in the fall. In assessing his Title VII retaliation claims, the court held Green had engaged in protected activity when he filed his first complaint with the EEOC, and again emphasized that the dispute about his prior behavior needed to be ironed out. However, the court held Green could not support his retaliation claim based on the discipline he received for his allegedly inappropriate conduct because he could not establish a similarly-situated employee was treated more favorably.

Ledford v. New Orleans Saints, 10 So. 3d 866 (La. Ct. App. 2009). Former professional football player Dwayne Ledford appealed a workers' compensation court's decision to deny him supplemental earnings benefits and reimbursement for his medical expenses after he was released by the New Orleans Saints prior to the 2006 NFL season and he subsequently chose to remove hardware that was placed in his one of his fingers to stabilize a fracture he suffered during spring workouts. Ledford had signed a two-year deal that March, but failed to make the team's active roster. The finger fracture had completely healed by the time he was released. State law provides that employees are entitled to supplemental earnings benefits for up to ten years as long as their subsequent earnings do not exceed ninety percent of their average weekly wage prior to the accident. After being released, Ledford was offered positions with two other teams at a salary of up to $100,000, but he chose to decline those offers without ever trying out. He began a career as a coach six months later.

The appellate court affirmed, holding the trial court did not err in determining Ledford was not entitled to benefits or reimbursement for his medical expenses because he was almost immediately able to earn ninety percent of his average weekly wage prior to the accident, and it was not medically necessary to remove the hardware from his finger. In assessing his average weekly wage, the court emphasized it had to be based on his actual earnings during the preseason, not his contract amount. Therefore, he made only $527 per week with the Saints, which was less than the offers he later received from other teams. The court also noted that his coaching salary started at $2,000 per month and had escalated to $5,000 per month in 2008.

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Matter of Lynch v. Buffalo Bills, Inc., 878 N.Y.S.2d 505 (App. Div. 2009). A special fund for reopened workers' compensation cases appealed a workers' compensation board's decision that liability related to a claim made by former professional football player Thomas Lynch shifted to

the special fund under state law. Lynch was classified with a permanent partial disability in 1984, but all workers' compensation benefits that he earned were suspended in 2001 because he was earning in excess of his former average weekly wages with the Buffalo Bills. However, Lynch sought benefits again after his earnings dropped back below his average football wages in subsequent years. State law dictates that awards of benefits are made against the special fund if seven years have passed since the date of the injury and three years have passed since the date of the last payment of compensation. The appellate court affirmed, holding the board's decision that Lynch's case had been closed since July 2002 was supported by substantial evidence, notwithstanding a subsequent claim that he made for reduced earning benefits.

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Matyas v. Bd. of Educ., 880 N.Y.S.2d 378 (App. Div. 2009). The board of education of a state school district appealed a trial court's decision to overturn a board ruling rejecting the petition of school district baseball coach John Matyas for a defense and indemnification in a malicious prosecution suit brought by a parent who was acquitted of a criminal charge that was filed against him after Matyas gave a statement to police following an altercation with that parent during a game. Although Matyas admitted he made the statement without first consulting the board, there was a dispute about whether he had been informed that the board did not want him to press charges against the parent. Matyas also claimed he would have withdrawn the charge if he had been told not to pursue it. The appellate court reversed, holding the trial court failed to apply the proper standard of review to the board's determination when it found Matyas was acting within the scope of his duties when he made the statement. The court emphasized that the board's ruling had to be upheld unless it was arbitrary and capricious, but remanded because there were material questions of fact about whether the ruling had a rational basis.

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Meier v. New Orleans Saints, 6 So. 3d 944 (La. Ct. App. 2009). Former professional football player Shadley Meier appealed a workers' compensation court's decision to deny him supplemental earnings benefits after he suffered a serious knee injury while in training camp with the New Orleans Saints prior to the 2005-2006 NFL season and was subsequently released in the spring of 2006. Maier signed a two-year contract with the team in the spring of 2005. He earned approximately $554,000 under the first year of the deal, and just over $66,000 under the second year prior to being released. State law provides that employees are entitled to supplemental earnings benefits for up to ten years as long as their subsequent earnings do not exceed ninety percent of their average weekly wage prior to the accident. Maier's subsequent earnings had not exceeded the ninety percent threshold.

The appellate court reversed, holding the trial court erred in determining that Maier re-injured his knee in 2006 and only the wages he earned in mini-camp prior to being released that spring could be used to calculate his benefits. It noted that Meier's knee problems could be traced back to the previous summer; thus, his earnings under the first year of the contract should have been used to calculate his benefits. The court also emphasized that his contract covered more than just the football season; therefore, his average weekly wage had to be based on the amount he earned over the entire first year, not just his prorated earnings prior to the injury. After assessing Meier's

average weekly wage, the court found he was entitled to over $34,000 in back benefits, based on a 75-week period. It noted the Saints was entitled to a twenty-five-week credit against paying the benefits under the NFL Collective Bargaining Agreement because the team paid Meier's full salary for the 2005 season even though he did not make the active roster.

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Pettigrew v. Cherry County, Neb. Sch. Dist. No. 6, 2009 U.S. Dist. LEXIS 49186 (D. Neb. June 11, 2009). A Nebraska school district moved to dismiss an Age Discrimination in Employment Act (ADEA) claim brought against it by Bud Pettigrew after the school district failed to hire him as the head football coach and instead hired an individual who was fifteen years younger. The school district claimed Pettigrew's poor interview was the biggest factor in the decision not to hire him. The District Court denied the motion, holding that there was direct evidence to support a prima facie violation of the ADEA and evidence that the district's stated reason for not hiring Pettigrew was a mere pretext for discrimination. In finding that Pettigrew had established a prima facie violation, the court noted that two of the three members of the hiring committee made discriminatory comments that were directly related to the hiring decision. In assessing whether the district's stated reason was a pretext for discrimination, the court noted that the hiring committee members told a state entity investigating Pettigrew's charge that his interview went okay. It emphasized that a jury could infer the district's stated reason was pretextual due to the arguably inconsistent explanations about the quality of the interview.

Reed v. Town of Williston, 2009 U.S. Dist. LEXIS 30835 (D.S.C. Jan. 27, 2009) ; *Reed v. Town of Williston, 2009 U.S. Dist. LEXIS 25297 (D.S.C. Mar. 27, 2009).* Seven individuals employed by the Town of Williston and two town residents moved to dismiss a civil conspiracy claim brought against them in a lawsuit filed by the city's former recreation director after he was allegedly terminated because of his race. Jimmy Reed alleged the individuals worked together to force his removal because he provided equal opportunity to all children after revitalizing the city's youth athletic programs. A magistrate judge recommended the motion be denied, finding that an employee could bring a civil conspiracy claim against other employees of a public entity in their individual capacities. He also held that Reed's status as an at-will employee did not bar his claim, noting the at-will employment doctrine provided immunity to employers, but did not extend to protect third parties.

The District Court adopted the recommendation in part. It granted the motion as to the individuals employed by the town, holding that the magistrate judge erred in finding that an earlier district court case allowed the claim. The court noted the earlier case did not address a state court's prior determination that public officials could not be sued for civil conspiracy for terminating an at-will employee when the termination was within the scope of their authority. The court denied the motion as to the town residents. It noted that the South Carolina Supreme Court previously held that members of the public are not third parties to an at-will employment agreement between a public official and his employer, and thus cannot be sued for civil conspiracy by an official. However, the record was insufficient to determine whether the recreation director was a public official when the motion was made.

Solkey v. Federal Way Sch. Dist., 2009 U.S. Dist. LEXIS 43989 (W.D. Wash. May 26, 2009). Federal Way School District (FWSD), three FWSD employees, and three FWSD high school employees moved for summary judgment on claims brought against them by Terra Solkey after the FWSD failed to rehire her as the high school girls basketball coach and allegedly retaliated against her for complaining about gender inequity. The high school principal claimed that he decided to re-open the hiring for all coaching positions to draw a larger pool of potential coaches. In the past, Solkey had complained about gender inequity in the treatment of student-athletes. After the decision to hire another candidate, she continued to complain, but received negative comments in her performance evaluations, and the high school recommended placing her in an alternative learning space for the upcoming school year.

The District Court granted the motion as to all of Solkey's claims. In assessing her federal due process claim, the court held Solkey did not have a property interest in the renewal of her one-year coaching contract under state law. In assessing her Title VII gender discrimination/retaliation and Title IX retaliation claims, the court held she did not present evidence to show the stated reasons for re-opening her position and hiring another candidate were mere pretexts for discrimination. In addition, she failed to show why the defendants were not entitled to qualified immunity on the Title VII claim. In assessing her First Amendment claim, the court held there was no evidence suggesting her complaints were the motivating factor behind the decision to re-open her position or hire a different coach, and her continued complaints did not result in an adverse employment action because her performance evaluations were still solid and the high school's recommended plan never materialized. In addition, she failed to show why the defendants were not entitled to qualified immunity. The court noted her state law discrimination and retaliation claims fell with her federal claims, and found there was no evidence to support her state law hostile work environment claim or her common law claim for wrongful termination in violation of public policy.

Family Law

Brind'Amour v. Brind'Amour, 674 S.E.2d 448 (N.C. Ct. App. 2009). The ex-wife of Rod Brind'Amour appealed a trial court's decision to order the former NHL player to pay only $9,147 a month in child support after finding the support established by their separation agreement was not entitled to a presumption of reasonableness and some of the claimed expenses were not necessary to address the needs of their children. The appellate court affirmed, holding the trial court did not abuse its discretion in refusing to establish support in the amount provided for in the separation agreement because the father wanted to instill the value of frugality in his children, and some of the listed expenses were exorbitant or unneeded to ensure that they would continue to enjoy their advantageous lifestyle.

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In re Swanson, 200 P.3d 1205 (Kan. 2009). J. Gregory Swanson challenged the recommendation of a hearing panel for the Kansas Board of Discipline for Attorneys to indefinitely suspend him from the practice of law for violating several provisions in the Kansas Rules of Professional Conduct (KRPC) and Supreme Court Rules. Swanson was accused of misconduct in three separate complaints, including one filed by former professional football player Lamar Chapman after Swanson failed to file a motion to modify a child support obligation. Swanson had filed motions to modify Chapman's obligation on two previous occasions before the Cleveland Browns released Chapman in August 2002. Chapman immediately asked Swanson to file another motion, and his wife forwarded a copy of his release upon request. However, Swanson failed to file the motion to modify his monthly obligation, and repeatedly lied to Chapman and his family about the status of the case. In April 2004, Chapman received an order to appear in court and show cause for failure to pay child support. When he appeared for the hearing, he examined the court file and did not find a copy of a motion to modify. Swanson told him that he filed it, and did not know why it was not in the court records. In August, a court determined Chapman was nearly $70,000 in arrears, and all his assets were liquidated. That fall, Swanson finally filed to the motion to modify, but he failed to introduce evidence of Chapman's income at the first hearing in January; therefore, child support continued to accrue at over $3,100 per month. The case had to be extended again in December when Swanson failed to exchange financial information with the Kansas Department of Social and Rehabilitation Services. Thereafter, Chapman terminated Swanson's legal representation. It wasn't until February 2007, with the help of a new attorney, that Chapman managed to get his obligation lowered to $181 a month, applied retroactively to November 2004, thirty days after the motion was originally filed.

The Kansas Supreme Court affirmed, holding the Disciplinary Administrator presented clear and convincing evidence Swanson violated the KRPC provisions because his representation was not competent or diligent, he failed to keep Chapman reasonably informed about the status of the matter, and he engaged in dishonest conduct by lying in front of the district court and panel in trying to save face. It also agreed with sanction recommended by the panel, which relied on the factors outlined by the American Bar Association in the Standards for Imposing Lawyer Sanctions. Based on the duties that Swanson violated, the injuries that he caused, and several aggravating factors, the hearing panel concluded that he should be punished in the same manner as another attorney who knowingly failed to perform services for a client and lied about that conduct. The court suspended Swanson for two years.

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Gender Equity (Title IX)

Barrett v. West Chester Univ. of Pa., 2009 U.S. Dist. LEXIS 35410 (E.D. Pa. Apr. 24, 2009). Members of the West Chester University (WCU) women's gymnastics team moved for reconsideration of the attorneys' fees awarded to them in their Title IX lawsuit against WCU. The plaintiffs had successfully persuaded the District Court to grant a preliminary injunction that prevented WCU from eliminating the program. Later, the parties settled the suit, and the plaintiffs petitioned for over $220,000 in fees and costs. After calculating the lodestar, the court

reduced it by fifteen percent, and the final award was only two-thirds of the amount originally requested. Two law firms engaged as co-counsel for the plaintiffs in the case. The first was a public interest firm that does not charge clients for its services. The second agreed to help out based on its belief that there is an important social value in enforcing gender equity laws. It viewed its risk of loss as a pro bono contribution. The District Court denied the motion, holding it did not commit a clear error of law or create a manifest injustice when it decided to reduce the lodestar because both state taxpayers and the university's students would ultimately feel the brunt of those fees. The court noted WCU was a public institution that was facing budgetary problems, and that it would have to cut back on programs in order to pay off a large amount. The court found that the amount awarded reasonably balanced the parties' competing interests and accomplished the goal of deterring future Title IX violations.

Biediger v. Quinnipiac Univ., 616 F. Supp. 2d 277 (D. Conn. 2009). Current and future Quinnipiac University women's volleyball players and their coach moved for a preliminary injunction to prevent the school from eliminating its women's volleyball team before the District Court could consider the merits of their claim that the school's athletic program did not comply with Title IX. The athletic department elected to cut the volleyball program and two men's teams after being informed its budget was being cut by five-to-ten percent in the upcoming school year. At the same time, it decided to elevate the competitive cheerleading program to varsity status. The department had previously implemented a roster management policy with roster floors for each sport in order to ensure participation opportunities for men and women were substantially proportionate to their respective enrollments. However, there was substantial evidence indicating that coaches were permitted to artificially inflate or deflate the number of student-athletes on their rosters prior to beginning of the school year, when universities are required to submit their annual Equity in Athletics Disclosure Act (EADA) report.

The District Court granted the motion, holding the players and the coach had sufficiently demonstrated that the athletic department's decision would cause them irreparable harm, and that they were likely to succeed on the merits of their Title IX claim. In assessing irreparable harm, the court noted that the school agreed to honor the players' scholarships, but found the decision to eliminate the team at the end of the previous school year limited their chances of transferring. It also emphasized that they would be required to sit out a season, which would affect their skills and their marketability in the recruiting process. The court noted that college athletes have a brief period of time in which they are eligible to participate, and any movement between schools will necessarily stunt their development. In assessing the merits of the Title IX claim, the court found the decision to cut the volleyball program prevented the school from complying with the safe harbor for universities that provide substantially proportionate participation opportunities. The court emphasized that the school's roster management policy was not providing genuine participation opportunities to women because coaches were adding players who did not truly qualify for the teams based on their interests or abilities, and cutting those players after the EADA reports were submitted. It also noted that the budgets for those sports were not increased as spots were added. When coupled with the fact men were added to teams after the reports were submitted, the court found the participation gap for the upcoming school year would throw off gender proportionality to such a degree that retaining the women's volleyball team was the only immediate way to restore it. It refused to allow the university to rely on the projected number of participants in its competitive cheerleading program to comply with the law because its estimate

of the number of student-athletes it would be able to offer genuine opportunities appeared to be overly optimistic.

Cruz v. Alhambra Sch. Dist., 601 F. Supp. 2d 1183 (C.D. Cal. 2009). High school athletes who settled their Title IX gender equity lawsuit against the City of Alhambra and its school district sought attorneys' fees in a sum totaling (1) the amount requested in their initial fee motion, plus a twenty-five percent enhancement; (2) the post-judgment interest on the fees awarded in connection with that request; (3) the fees and costs for work done following their initial fee motion; and (4) the cost of their remand fee motion. The Ninth Circuit had vacated the initial fee order, which reduced the amount of attorneys' fees awarded by fifty percent after determining the hours claimed and the rates charged were unreasonable. On remand, the District Court granted attorneys' fees for ninety-five percent of the hours claimed in the initial fee motion, and for all other requested amounts. The court noted the claimed lodestar of just less than $768,000 appeared reasonable based on the three-year litigation period, the number of draft settlement agreements, the skill and expertise demonstrated by the athletes' counsel, and the results obtained. It made a five-percent reduction after determining the claimed number of billable hours and the rate charged for paralegal work were slightly excessive. The court denied the athletes request for an enhancement on the lodestar amount because their blanket assertion that the results of their settlement were better than settlements obtained in other Title IX cases did not amount to specific evidence showing the same results could not have been achieved by similarly-paid attorneys.

Ollier v. Sweetwater Union High Sch. Dist., 2009 U.S. Dist. LEXIS 32683 (S.D. Cal. Mar. 30, 2009). Female students who attend or will attend Castle Park High School and participate or will participate in high school athletics moved for partial summary judgment in their Title IX gender equity lawsuit against the Sweetwater Union High School District. In one of their claims, the plaintiffs alleged the school district did not provide equal athletic participation opportunities for female students. The District Court granted the motion on that claim, holding the school district failed to satisfy any of the three options for establishing compliance that are laid out in the Title IX Policy Interpretation. In assessing the first option, the court determined the district did not provide female students with athletic participation opportunities that were substantially proportionate to their enrollment at the high school because the 6.7 percent difference reflected forty-seven additional female students who could have played sports. In assessing the second option, the court determined the district did not show a history and continuing practice of expanding athletic participation opportunities for female students because there was no steady increase in the percentage of females participating. In assessing the third option, the court found the district did not demonstrate the interests and abilities of female students were fully and effectively accommodated because it eliminated girls field hockey twice in the previous ten years without evidence that interest in the sport had waned, and did not offer girls tennis or girls water polo in previous years despite evidence that enough female students expressed interest to field teams.

Immigration Law

Braga v. Poulos, 317 Fed. App'x 680 (9th Cir. 2009). Brazilian Jiu-Jitsu athlete and instructor Wander Correa Da Costa Braga appealed a district court's decision to grant summary judgment to U.S. Citizenship and Immigration Services on his claim that the agency's decision to deny his petition for a visa as an alien with extraordinary ability was arbitrary and capricious. The Court of Appeals affirmed, holding Braga did not qualify as an alien with extraordinary ability under federal law because he failed to introduce evidence that his silver medal at the 2003 Pan-American Jiu-Jitsu Championship qualified as a major, internationally recognized award under the applicable federal regulations.

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Sands v. U.S. Dep't of Homeland Sec., 308 Fed. App'x 418 (11th Cir. 2009). Leevan Sands and other foreign amateur athletes appealed a district court's decision to dismiss their class action lawsuit against the U.S. Department of Homeland Security for lack of subject matter jurisdiction. The plaintiffs sought special visas as aliens of extraordinary ability in the field of athletics under federal law. They claimed the government denied, revoked, or threatened to revoke their I-140 applications without justification. The Court of Appeals affirmed, holding the jurisdiction-stripping provisions of the Immigration and Nationality Act bar judicial review of certain discretionary decisions under the law. Therefore, none of the bases for jurisdiction alleged by the athletes allowed the court to review the government's decisions related to their visa applications.

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Intellectual Property Law

AFL Philadelphia LLC v. Krause, 2009 U.S. Dist. LEXIS 46965 (E.D. Pa. June 4, 2009). A football team in the now-defunct Arena Football League and the team's owner moved to dismiss counterclaims asserted by one of the team's former employees in the lawsuit filed against him for copyright infringement. The team's former director of sales brought claims for false designation of origin under the Lanham Act and common law misappropriation of name after the team announced to fans that the 2009 season had been cancelled by sending an email through his account. The employee had been terminated from his position before the announcement was sent, and had not authorized the team to use his name or email address. The District Court denied the motion. After assessing the Lanham Act claim, the court held the employee's allegations were sufficient to support findings that his name had a secondary meaning and that the team created a likelihood of confusion as to his association with the season's cancellation. After finding that he had prudential standing to bring the claim, the court determined his name was legally protectable because (1) the team hired him based on his reputation in the sports industry, (2) his sales numbers led to fans associating his name with the industry, and (3) the team actually decided to use his name in the email. The court noted he did not have to specifically establish secondary meaning between his name and the team. After assessing the common law claim, the court held the employee's allegations were sufficient to support a finding that the team sought to appropriate the value of his name because it benefitted from his name's reputation in the sports industry. The court emphasized that the employee did not have to allege his name was

appropriated for a commercial purpose because his claim was not based on the right of publicity, but an invasion of privacy. Nevertheless, he alleged the team commercially benefited from the goodwill he engendered with the team's fan base.

Baden Sports, Inc. v. Molten USA, Inc., 556 F.3d 1300 (Fed. Cir. 2009). Basketball manufacturer Molten USA appealed a district court's decision to deny its motion for judgment as a matter of law following a jury verdict in favor of fellow basketball manufacturer Baden Sports on its claim that Molten USA engaged in false advertising when it declared that its basketballs containing a dual-cushion technology were innovative. The Court of Appeals reversed, holding Baden Sports' Lanham Act claim was barred because entities are only liable for misrepresenting the producer of goods, not the author of any idea embodied in those goods. The court concluded that Baden Sports' claim did not relate to the origin of the basketballs, but rather to the creator of the technology embodied in them. The court also held that Molten USA could not be found liable for misrepresenting the nature or qualities of its basketballs because those terms only cover the characteristics of the goods themselves. It found no physical or functional attributes of the basketballs were implicated by Molten USA's advertisements because the term innovative only indicated authorship.

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CBS Interactive, Inc. v. Nat'l Football League Players Ass'n, 2009 U.S. Dist. LEXIS 36800 (D. Minn. Apr. 28, 2009). Fantasy football provider CBS Interactive moved for partial summary judgment in its lawsuit against the National Football League Players Association (NFLPA) and one of its for-profit subsidiaries, arguing it did not have to enter into a licensing agreement in order to use information about NFL players in its game. It sought a declaratory judgment extending the Eighth Circuit's decision in a similar case which held a fantasy baseball provider violated Major League Baseball players' rights of publicity by using a similar package of information, but those rights had to give way to First Amendment considerations because the information was already in the public domain.

The District Court granted the motion, holding the decision in the fantasy baseball litigation was controlling because the only distinction between the cases was the sport involved. It dismissed the NFLPA's argument that the package of information used by CBS Interactive implicated more publicity rights than the package used by the fantasy baseball provider, and the NFLPA's assertion that the manner in which CBS Interactive used the information amounted to a greater exploitation of publicity rights. The court also determined that CBS Interactive's use of the information could not cause fantasy football consumers to believe any players endorsed its game, and refused to speculate on whether the public had a lesser interest in football statistics than in baseball statistics.

Cummings v. ESPN Classic, Inc., 2009 U.S. Dist. LEXIS 17764 (S.D. Ill. Mar. 9, 2009). ESPN Classic moved to dismiss former professional boxer Floyd Cummings's claim that the network violated the state's right of publicity law when it re-broadcast a 1981 match between Cummings and former heavyweight champion Joe Frazier. The publicity law protects an individual's right to control how his identity may be exploited for commercial purposes, and Cummings claimed ESPN Classic did not get his permission to re-air the bout. The District Court granted the motion,

holding the re-broadcast did not violate the law because the law exempts the use of an individual's identity for non-commercial purposes, and specifically mentions sports broadcasts as a non-commercial purpose.

Dallas Cowboys Football Club, Ltd. v. America's Team Properties, Inc., 616 F. Supp. 2d 622 (N.D. Tex. 2009). The Dallas Cowboys moved for summary judgment on claims brought against the defendant corporation after it allegedly infringed the team's trademarks associated with the term America's Team. The defendant was assigned a federal trademark registration for the term by the owner of another corporation, which applied for it in 1990. The registration was finally granted in 1995, and the mark had been continually used in commerce since that year. The Cowboys were granted a state trademark registration for the term in 1992, but had been using it in commerce since 1978. The District Court granted the motion, holding the Cowboys had trademark priority over the term, and the defendant's use created a likelihood of confusion over the source, affiliation, or sponsorship of the merchandise it sold. It also held that the Cowboys had provided sufficient evidence to establish violations of both federal and state anti-dilution laws because the mark is famous and the defendant's use blurred its uniqueness and tarnished its reputation. Based on its decision, the court cancelled the defendant's federal registration and enjoined it from using the mark.

Farrago v. Rawlings Sporting Goods Co., 2009 U.S. Dist. LEXIS 5785 (E.D. Mo. Jan. 28, 2009). Rawlings Sporting Goods moved for attorneys' fees and costs in a lawsuit brought against the company by Douglas Farrago after the District Court held its Knee Reliever product did not infringe Farrago's patent on a pad structure that reduces stress due to squatting. Farrago conducted a pre-filing investigation to evaluate the validity of his claim, and found experts willing to side with him. The District Court denied the motion, holding the infringement claim was not baseless and that Farrago's conduct was not severe enough to sanction him. It found the terms in Farrago's patent provided some leeway as to its scope, so it was not unreasonable for him to believe that the company committed infringing acts. In addition, he had legitimately investigated his claim before bringing it. Although the court did not condone some of his actions during the litigation, it could not conclude that he had committed exceptional misconduct that would warrant sanctions.

Frayne v. Chicago 2016, 2009 U.S. Dist. LEXIS 1267 (N.D. Ill. Jan. 8, 2009). Chicago 2016 and the USOC moved to dismiss Stephen Frayne's claims that they engaged in attempted reverse domain name hijacking by initiating proceedings before the World Intellectual Property Organization (WIPO) in an attempt to get the domain name chicago2016.com transferred to them. The Illinois corporation also moved to dismiss Frayne's claims that its conduct violated his free speech and equal protection rights under both the federal and state constitutions. The District Court granted the motion as to the claim for attempted reverse domain name hijacking but denied the motion as to the constitutional claims. It held Frayne could not maintain an action for attempted reverse domain name hijacking because no language in the federal statute that creates a cause of action for reverse domain name hijacking also creates a separate cause against parties that attempt to suspend, disable, or transfer a domain name. However, the court held Frayne's allegations were sufficient to support a finding that Chicago 2016 was a state actor not entitled to immunity and was enforcing its trademark rights in a discriminatory manner.

Golf Tech, LLC v. Edens Technologies, LLC, 592 F. Supp. 2d 167 (D. Me. 2009). Both Golf Tech and Edens Technologies moved for summary judgment on multiple patent infringement claims and a patent validity claim in a lawsuit brought against Edens by Golf Tech for producing a device used to analyze a golfer's club swing that allegedly infringed the company's patents. Golf Tech had a patent on a method of analyzing golf swings that relies on a strip of reflective tape attached to the head of a club. When the club is swung over a base unit emitting light signals, photodetectors signal when reflected light begins - based on the tape's leading edge - and stops - based on the tape's trailing edge. Those signals are sent to a processor that calculates the swing's speed, height, and angle. The defendant acquired Golf Tech's golf shot-making simulator, which uses the patented method, and developed a similar product that did not use reflective tape. But when customers complained that the simulator was not as accurate with certain clubs, the defendant began selling it with reflective tape. The trailing edge of its tape was serrated, so the simulator could only analyze data from the leading edge. However, it still detected signals from both edges.

The District Court granted summary judgment to Golf Tech on all but one of the infringement claims, holding the patented method did not involve the analysis of the signals, only their creation, and that the defendant's simulator indisputably copied Golf Tech's method of generating signals from both the leading and trailing edges of the reflective tape. However, the court denied summary judgment on one of the infringement claims because neither party adequately articulated the meaning and significance of language within the claim that referred to data analysis. The court also granted summary judgment to Golf Tech on the defendant's validity claim, holding the patent specification satisfied the description and definiteness requirements under federal law. It found the specification sufficiently articulated the method employed to analyze the swings, and sufficiently notified the public of the scope of the Golf Tech's right to exclude, which only extended to devices that used the same method of generating signals. The court noted that an older patented method that relies on a uniform reflective surface did not make the method described by Golf Tech's patent obvious or anticipated, because using tape to cover an entire club head so it could be detected at excessive heights would not suggest to a layperson that the tape could also be used to create a non-uniform head to generate signals for other purposes.

J4 Promotions, Inc., LLC v. Splash Dogs, LLC, 2009 U.S. Dist. LEXIS 11023 (N.D. Ohio Feb. 13, 2009). Splash Dogs and three individuals associated with the company moved to dismiss claims brought against them by Ohio-based J4 Promotions on jurisdictional grounds. In the alternative, the defendants sought to have the lawsuit transferred to the Central District of California. The claims arose out of the defendants' decision to organize and promote dog dock-jumping events similar to those held by the plaintiff. J4 Promotions began holding and promoting dog dock jumping events in 2000, and is credited for developing an organized version of the sport. The company also developed and copyrighted original rules and policies for the events, and obtained five federal trademark registrations on terms related to the sport. In 2003, defendant Tony Reed became interested in the sport after watching an event hosted by J4 Promotions on national television. When Reed realized that company would not be hosting any more West Coast events for a significant period of time, he founded Splash Dogs and began organizing and promoting his own dog dock jumping events in the area. In 2007, Splash Dogs left the West Coast and hosted an event in Columbus, Ohio. Defendant Randy Woods, an Indiana

native, was a Splash Dogs employee who helped run that show. J4 Promotions sued the defendants in the Northern District of Ohio, arguing that they engaged in copyright infringement, defamation, deceptive trade practices, tortious interference with business relations, and unfair competition.

The District Court denied the motion with respect to the claims asserted against Splash Dogs, Reed, and Woods, but transferred the case sua sponte to the Southern District of Ohio because the core contact for purposes of exercising personal jurisdiction over the defendants and claims was the Columbus event, which was located in that district. In assessing personal jurisdiction, the court found those defendants were subject to liability for each claim under the state's long-arm statute because the claims arose out of their business transactions in the state, and/or their acts outside the state that they reasonably should have expected to injure the plaintiff. The court also found exercising jurisdiction over those claims comported with due process, primarily because the defendants purposely availed themselves of the privilege of acting in the state, the claims arose from their activities there, and their acts had a substantial enough connections with the state to make personal jurisdiction reasonable. When tackling the tortious interference claims, the court relied on the Calder effects test because the defendants knew J4 Promotions had contracts with corporate sponsors that originated in the state, and that their conduct would impact those contracts. The court determined it could exercise pendent personal jurisdiction over the defamation and deceptive trade practices claims because they arose out of the same nucleus of operative facts. In assessing venue, the court found both case-specific factors and public-interest factors weighed strongly against transferring the case to California, and that the Southern District could also exercise pendent venue over the claims that did not arise out of the defendants' core contact with the state. The court granted the motion with respect to the claims asserted against the third individual defendant, Thanh Nguyen, due to lack of personal jurisdiction. It refused to exercise pendent personal jurisdiction over him because he never set foot in Ohio and his alleged defamatory statements were made to out-of-state individuals who had no connection with the state.

New World Music Co. v. Tampa Bay Downs, Inc., 2009 U.S. Dist. LEXIS 1221 (M.D. Fla. Jan. 6, 2009). Music composers moved for summary judgment on the copyright infringement claims they brought against Tampa Bay Downs (TBD) and two of its employees after the horse racing facility publicly performed their songs without a license. The two employees moved for summary judgment on the issue of vicarious liability. The American Society of Composers, Authors, and Publishers (ASCAP) contacted TBD after learning of its potentially infringing activity. It invited the facility to enter into a licensing agreement, and later warned the facility it was at risk of liability if it continued unauthorized performances. But TBD ignored the warnings, claiming it was in full compliance with copyright laws. Thereafter, ASCAP hired a private investigator, who made a visit to TBD and prepared a report detailing six different performances of copyrighted songs; four of the six songs were played in a picnic pavilion by employees of Radio Disney, while the remaining two were played in a clubhouse television carrel.

The District Court granted the composers' motion against TBD and one of the employees. In assessing the live performances staged by Radio Disney, the court noted that liability could only be imposed on TBD and its employees if the disc jockeys were not authorized to perform the works on music CDs. However, the composers demonstrated their agreement with Radio Disney

only authorized performances in over-the-air broadcasts or simulcasts. The court held the remaining performances could be characterized as public under the Copyright Act because anyone could enter the TBD clubhouse and rent a carrel, and the televisions can be heard by patrons outside the carrels if the volume is turned up loud enough. In the alternative, it held the performances could be considered public because they were being transmitted through the facility's network. The court found only one of the employees vicariously liable because the other did not have the authority to prevent the Radio Disney employees from playing the copyrighted works or restrict access to all the televisions in the carrels.

Pro Football, Inc. v. Harjo, 565 F.3d 880 (D.C. Cir. 2009). Native Americans appealed a district court's decision to reverse the Trademark Trial and Appeal Board's order cancelling the federal trademark registrations of the Washington Redskins and grant summary judgment to the team on the Native Americans' petition under the defense of laches. The Native Americans claimed the registrations disparaged members of their ethnic group under the meaning of the Lanham Act. The Court of Appeals affirmed, holding the district court did not improperly assess evidence of prejudice in applying the laches defense to the facts of the case. First, it resolved a conflict over the standard for reviewing a laches determination by concluding that it could only overturn a district court's decision on how to apply the defense to the facts if there was an abuse of discretion. In assessing that decision, the court agreed that the Redskins could suffer trial and economic prejudice based on the delay in bringing the petition. In tackling trial prejudice, the court found the Redskins would have difficulty gathering evidence to support its mark because the team employee who met with Native Americans to discuss their views prior to the time the trademarks were registered had died, and it took eight years after the youngest petitioner reached the age of majority before the claim was made. In tackling economic prejudice, the court found the team had engaged in a significant expansion of its merchandising efforts and invested heavily in its mark during the eight-year delay, and that period could be viewed as unreasonable when the youngest petitioner was exposed to the team's trademarks prior to reaching the age of majority. Finally, the court held a claim relating to the trademark associated with the team's cheerleaders was also barred by the laches defense, even though the mark was not registered until 1990. It found the two-year delay in bringing that claim could be viewed as unreasonable in light of the mark's similarity to the other trademarks at stake.

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Saso Golf, Inc. v. Nike, Inc., 2009 U.S. Dist. LEXIS 28633 (N.D. Ill. Apr. 6, 2009). Nike moved for leave to file an amended answer, defenses, and counterclaims in a lawsuit brought against the company by Saso Golf (Saso) for producing two golf clubs that allegedly infringed two of Saso's patents. During discovery, Saso withdrew one of its claims because it believed the patents were so related that it only needed to prove infringement under one of them. But Nike's motion for leave sought to add the defense of inequitable conduct against the remaining patent after it discovered that Saso's inventor failed to disclose that the remaining patent had potential conflicts with several foreign patents. The District Court granted the motion, holding Nike showed due diligence in uncovering evidence related to the defense and in moving for leave. It noted Nike did not object to Saso reinstating its infringement claim related to the second patent, so there was little chance it had deliberately waited to file the defense. The court gave Saso one day to inform Nike if it would renew its allegations on the previously dropped claim.

Steele v. Turner Broad. Sys., Inc., 607 F. Supp. 2d 258 (D. Mass. 2009). Turner Broadcasting System (TBS) and other media defendants moved to dismiss a copyright infringement lawsuit brought against them by Samuel Steele after a song he wrote about the Boston Red Sox during their 2004 World Series championship season was used to create an advertisement promoting Major League Baseball post-season telecasts in 2007. Steele's song was well-known around Boston's Fenway Park, and he received a federal copyright to protect it in 2006. He also created a derivative version of the song that removed specific references to the Red Sox and allowed the names of other team and cities to be filled in. A TBS promo featuring a song by Bon Jovi allegedly infringed his copyright because the visuals were derived from Steele's song, and the Bon Jovi song was based on those visuals, Steele's song, or both. Some media defendants asserted they were not implicated by the allegations in the complaint. The District Court granted the motion of the non-implicated defendants and denied the motion of the remaining defendants, including TBS. It noted the issue of substantial similarity could be decided by courts in motions for summary judgment, but held it could not make a determination as a matter of law during a motion to dismiss. The court found Steele was at least entitled to gather and present evidence of substantial similarity, so it permitted limited discovery, and stated it would entertain motions for summary judgment afterwards.

Heisman Trophy Trust v. Smack Apparel Co., 595 F. Supp. 2d 320 (S.D.N.Y. 2009). The Heisman Trophy Trust moved for a preliminary injunction in its lawsuit alleging the Smack Apparel Company infringed its registered trademarks and breached a settlement agreement arising out of a similar claim when it continued to manufacture t-shirts that used a derivative of the word Heisman in referring to specific college football players. The District Court granted the motion, holding Smack Apparel's use of the trust's marks created a likelihood of confusion as to the product's origin or endorsement, which automatically established both a likelihood of success on the merits and irreparable harm. In weighing the factors used to assess the likelihood of confusion, the court noted the strength of the Heisman marks in connection with promoting college football, and the strong similarity between those marks and Smack Apparel's mark, including the use of the same type of font. The court also recognized the close competitive proximity between the parties' products, which are both available on websites and in retail stores that cater to college football fans. Finally, the court emphasized that Smack Apparel appeared to have acted in bad faith by breaching the settlement agreement, which it signed only after realizing it was vulnerable for previous trademark infringements. In dismissing Smack Apparel's fair use defense, the court recognized companies may not be able to produce shirts promoting Heisman candidates without using the trust's marks, but found Smack Apparel used more of the marks' features than was reasonably necessary to identify the product.

U.S. Olympic Comm. v. Xclusive Leisure & Hospitality Ltd., 2009 U.S. Dist. LEXIS 12698 (N.D. Cal. Feb. 19, 2009). The United States Olympic Committee (USOC) and the International Olympic Committee (IOC) moved for a preliminary injunction in a lawsuit they brought against the operators of seven websites who allegedly incorporated the committees' trademarks into the names and pages of those sites in order to mislead consumers into believing the products offered for sale were official tickets to events at the Beijing Olympics. Both the USOC and the IOC have been using the words and symbols that make up those marks since the nineteenth century, and own several U.S. trademark registrations incorporating them. The marks represent the goodwill that both the USOC and IOC have earned through the years, and are used to generate revenue

through the sale of broadcast rights and marketing, licensing, and sponsorship programs. They are also protected under the Amateur Sports Act (ASA), which gives the USOC the exclusive right to use and exploit them in the United States. Using its power under the ASA, the USOC entered into an exclusive licensing agreement with a third party, making it the sole provider of official Olympic tickets in the United States. However, at least one major media company incorrectly reported that one of the defendants' websites also offered official tickets. More importantly, the consumers who bought tickets off any of those sites never received them.

The District Court granted the motion, holding the USOC and IOC established a likelihood of success on the merits of all their claims, and they would suffer irreparable harm in the absence of an injunction. In assessing the trademark infringement claims, the court found the defendants' actions would create a likelihood of confusion as to the source of the tickets because they used the same, well-known, heavily-protected trademarks in the same service offered by the plaintiffs. Because they established a likelihood of success on the merits of those claims, the plaintiffs were entitled to a presumption of irreparable harm. Regardless of that presumption, the court found irreparable harm, noting the defendants had crippled the value of the marks because they used them to defraud the public and harmed the plaintiffs' relationships with their sponsors. The court concluded that the public interest militated against allowing the defendants to continue to confuse consumers and place them at risk of being defrauded.

Warrior Sports, Inc., LLC, v. STX, L.L.C., 596 F. Supp. 2d 1070 (E.D. Mich. 2009). Lacrosse glove manufacturer STX sought to prevent a patent infringement suit brought against it by hockey glove manufacturer Warrior Sports (Warrior) from being dismissed due to lack of subject matter jurisdiction after the two companies entered into a settlement agreement. STX had asserted a counterclaim for a declaratory judgment and did not intend to comply with the agreement after its grace period had expired. The agreement stated that Warrior would not seek damages for sales of STX goods that allegedly violated its design patents prior to the end of July 2009. The District Court dismissed the suit, holding it did not have subject-matter jurisdiction to issue a declaratory judgment. The court noted it could not issue relief under the Declaratory Judgment Act (DJA) unless there was an actual controversy that was justiciable under Article III of the federal constitution. After analyzing relevant case law, the court noted STX did not have to possess a reasonable apprehension of suit before bringing its claim, but found totality of the circumstances did not suggest the existence of an actual controversy. It emphasized that STX's planned activity was not of sufficient immediacy because it would not be subject to liability before August, and that the company had acknowledged it may not continue to sell the allegedly infringing products.

Young v. Vannerson, 612 F. Supp. 2d 829 (S.D. Tex. 2009). Three individuals and the joint venture they formed after one of them filed applications for registered trademarks on the terms VY and Invinceable moved to dismiss professional football player Vince Young's lawsuit for declaratory and injunctive relief that would prevent them from exploiting the marks. Young alleged the defendants' use would infringe his common law trademark rights in his initials and nickname. He had applied for similar registered trademarks on those terms, and has an endorsement contract with a shoe company that sells products with a VY logo. The defendants had already engaged in substantial preparations to commercially exploit the marks, including the development of a marketing logo that is similar to the VY logo used by the shoe company. The

defendants also created sample products using those terms that they hoped to license directly to Young.

The District Court denied the motion, holding it had subject-matter jurisdiction to issue a declaratory judgment and Young had adequately alleged a cause of action for trademark infringement. The court noted it could not issue relief under the Declaratory Judgment Act (DJA) unless there was an actual controversy that was justiciable under Article III of the federal constitution. But after analyzing relevant case law, the court concluded Young did not have to possess a reasonable apprehension of suit before bringing his claim, and the totality of the circumstances suggested the existence of an actual controversy. It emphasized that Young was in the position of pursuing arguably illegal behavior or abandoning activities that he believed he had a right to do, and that the defendants had engaged in meaningful preparation to conduct potentially infringing activities. In assessing the motion to dismiss, the court found Young's allegations sufficiently addressed whether he was the owner of protectable trademarks, and whether the defendants were attempting to use those marks in a manner creating a likelihood of confusion as to the source, endorsement, or sponsorship of their products.

Labor Law

Ariz. Cardinals Football Club, Inc. v. Bryant, 2009 U.S. Dist. LEXIS 35524 (D. Ariz. Feb. 24, 2009); Ariz. Cardinals Football Club, Inc. v. Bryant, 2009 U.S. Dist. LEXIS 35524 (D. Ariz. Apr. 7, 2009). After their initial motion was denied without prejudice, the Arizona Cardinals and the NFL Management Council again moved for a default judgment in a lawsuit they filed against former Cardinals player Wendell Bryant to confirm an arbitration award that denied Bryant's non-injury grievance against the club and awarded the club over $2.7 million in its grievance against him. The complaint alleged Bryant violated the NFL Collective Bargaining Agreement's grievance and arbitration procedures by failing to comply with the terms of the arbitration award. The District Court granted the motion, holding the factors it was required to assess pursuant to Ninth Circuit precedent weighted heavily in favor of entering the judgment. The court noted the plaintiffs would be without other recourse for recovery, and Bryant failed to explain why he did not pay the award or respond to the complaint.

Desmond v. PNGI Charles Town Gaming, L.L.C., 564 F.3d 688 (4th Cir. 2009). Former employees of PNGI Charles Town Gaming (CTG) appealed a district court's decision to grant summary judgment to the horse racing facility on their claim that CTG violated the Fair Labor Standards Act (FLSA) when it refused to pay them overtime in their roles as racing officials. The district court concluded the employees were barred from bringing their claims under the administrative exemption to the FLSA because state law required and regulated their positions, making them indispensable to the general business operations of CTG. The Court of Appeals reversed, emphasizing that whether the administrative exemption applies depends on the type of work being performed, not whether the position is indispensable to the employer's business or required under state law. It held the former employees' positions were not directly related to the general business operations of CTG because they were production-side roles that did not involve supervisory responsibility and did not involve running the actual business.

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Nat'l Football League Players Ass'n v. Nat'l Football League, 2009 U.S. Dist. LEXIS 43576 (D. Minn. May 22, 2009). The NFL Players Association (NFLPA) and two current NFL players moved for summary judgment on their claims that the league, one of its vice presidents, and its drug policy administrator breached their fiduciary duties to the players by not warning them that an over-the-counter weight-loss supplement called StarCaps contained a banned substance, and that arbitration awards upholding the league's decision to suspend players for using that supplement were contrary to public policy, contrary to the essence of the drug policy, and rendered by a biased arbitrator. The defendants also moved for summary judgment on those claims. Both the league and the drug policy administrator knew some of the StarCaps contained the banned substance. In 2006, several players tested positive after using the supplement, but the administrator chose not to discipline them. However, the vice president subsequently informed the administrator that he did not have the discretion to determine whom to discipline under the drug policy. Nobody warned the players that StarCaps contained a banned substance, even though the policy includes a strict liability standard. Instead, the vice president told the NFLPA that it would no longer allow players to provide endorsements for the supplement's distributor. The NFLPA subsequently sent a letter to player agents warning them that the distributor had been added to the league's list of prohibited companies. The NFL commissioner designated the league's chief legal officer to rule on the players' appeals at the arbitration hearing, although he had previously given legal advice to the NFL on its subject matter.

The District Court granted summary judgment to the league, its vice president, and its drug policy administrator, holding the arbitration award was not contrary to public policy, contrary to the essence of the drug policy, or rendered by a biased arbitrator. In assessing whether the award was contrary to the essence of the drug policy, the court noted the provision prohibiting the vice president from influencing the administrator's decision whether to discipline players was added over one year after the alleged influence in this case. Even if it had applied, the court held the award still drew its essence from the policy, emphasizing that the administrator's unofficial policy prior to hearing from the vice president was not an issue. In assessing whether the arbitrator who rendered the award was biased, the court found no evidence in any of the testimony at the hearings or in the arbitrator's rulings that suggested he was one-sided, and determined that the plaintiffs waived their right to object to his appointment because it was eminently foreseeable he would provide legal advice to the league. It also noted that both the NFLPA and the players actually requested him because of his involvement with the case. In assessing whether the award was contrary to public policy, the court concluded that no fiduciary duty was breached because the administrator would have told any player who called him that StarCaps contained the banned substance, and he had the discretion under the policy to send a general warning - rather than a product-specific warning - if he believed that all weight-loss products carried risks.

Nat'l Football League Players Ass'n v. Nat'l Football League Mgmt. Council, 2009 U.S. Dist. LEXIS 24859 (S.D.N.Y. Mar. 26, 2009). The NFL Management Council moved to dismiss the NFL Players Association's (NFLPA) petition to confirm a labor arbitration award that declared the league's collective bargaining agreement (CBA) and standard player contract provided for time offsets - not dollar-for-dollar offsets - when determining the appropriate workers'

compensation payments to make to injured players. The NFLPA had filed grievances on behalf of players on three different teams whose payments were offset on a dollar-for-dollar basis. However, prior to the arbitration award, the parties agreed to settle the claims as part of a broader agreement to modify the CBA. As part of that agreement, the parties stipulated that the award could not be used as precedent until 2010. The District Court denied the motion, holding the Labor Management Relations Act did not require the presence of a new dispute - such as non-compliance - in order to have the arbitration award confirmed. It noted that the NFLPA would be compelled to resort to arbitration again if it waited until 2010 because there is a one-year statute of limitations on the enforcement of arbitration awards.

Miscellaneous

Yousoufian v. Office of Ron Sims, 200 P.3d 232 (Wash. 2009). The Office of the Executive of King County, Washington appealed an appellate court's judgment reversing a trial court's decision to impose a $15 per day fine on the county for its gross negligence in failing to comply with the state's public records law after an individual requested studies dealing with the impact of sports stadiums on the local economy. The request came just weeks prior to a referendum election in which voters would decide whether to publicly finance a new venue for the Seattle Seahawks. However, the county repeatedly deceived and misinformed the individual over a period of four years before he was finally provided access to all the records it either possessed or failed to attempt to locate. The public records law included a penalty provision allowing a court to impose a fine ranging from $5-$100 per day, depending on the agency's actions. The appellate court concluded that the trial court abused its discretion in imposing a fine on the lower end of the range scale. The Washington Supreme Court affirmed, holding the absence of economic loss and the lack of actual public harm did not call for a lower penalty, and the fine imposed must be adequate to deter future violations. It noted that actual economic damages might call for a higher penalty, but emphasized the penalty's main purpose is to promote access to public records. It also emphasized that penalties are not contingent on actual public harm, only whether there is the potential for it.

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North American Court of Arbitration for Sport Decisions

U.S. Anti-Doping Agency v. Brunemann, AAA No. 77 190 E 00447 08 (Jan. 26, 2009). NCAA swimming champion Emily Brunemann tested positive for a banned substance under FINA rules in August 2008. It was her first anti-doping violation. After returning from a trip to Mexico, the University of Michigan senior ingested a pill from a bottle containing her mother's prescription medication. She thought the pill was a laxative, but it was actually medication prescribed to treat a condition that Brunemann was unaware of. The label on the bottle clearly stated that the pills contained the banned substance, and Brunemann did not consult any USADA materials, check the USADA website, or call the USADA drug hotline before taking one. The USADA argued for

a two-year ban under the 2009 World Anti-Doping Code. Brunemann argued the 2003 version of the Code should apply based on when the violation took place. Under the older version, an athlete who tested positive for a substance that was particularly susceptible to anti-doping violations could receive no more than a one-year ban for her first violation if the use of the substance was not intended to enhance performance.

The North American CAS panel determined that Brunemann should receive a six-month ban under the 2003 Code. It noted that the doctrine of lex mitior required it to use the version with the less severe sanction. In determining the period of ineligibility, the panel noted other athletes had received sanctions of less than six months for accidently ingesting banned substances, including the diuretic at issue. However, it found Brunemann failed to take basic steps to avoid ingesting the substance. Comparing her degree of fault to that of the other athletes, the panel determined she should be punished more harshly, but that her inexperience with the USADA testing procedures, her lack of individualized training in anti-doping matters, and her lack of intent to cheat made the maximum ban too severe to impose.

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U.S. Anti-Doping Agency v. Page, AAA No. 77 190 16 09 (Feb. 4, 2009). Cyclo-cross athlete Jonathan Page failed to report for a drug test following a World Cup event, which constitutes a doping violation in the absence of a compelling justification under UCI rules. Prior to the event, Page was chosen as a reserve rider who might have to perform a drug test. That selection required him to report to the anti-doping control station within thirty minutes of the end of the race. His rider number was posted to indicate his selection in accordance with UCI rules. The USADA argued for a two-year ban, even though Page would not have been tested. Page argued that exceptional circumstances should excuse his absence. He also claimed the USADA notified the UCI as early as 2007 that it would only pursue charges against reserve riders who would have actually been tested.

The North American CAS panel determined Page did not commit a doping violation. It noted that Page was obligated to report regardless of whether he would be tested, but held he had demonstrated compelling justifications for his absence. During the race, Page suffered a concussion and other injuries in a crash, which forced him to pull out before finishing. In addition, the two backup individuals he normally designated to look at the number postings failed to check on his status. A number of other personal circumstances leading up to the race also prevented him from being as attentive to the anti-doping requirements. The panel emphasized there was no evidence that Page was aware of his selection or had deliberately avoided a potential test.

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U.S. Anti-Doping Agency v. Hardy, AAA No. 77 190 00288 08 (May 2, 2009). World record-holding swimmer Jessica Hardy tested positive for a banned substance under FINA rules during the U.S. Olympic Trials in July 2008. It was her first anti-doping violation. During the trials, the 21-year-old was tested on three separate occasions. The results from the first test and third test came back negative, but the second test came back positive. After being notified of the result,

Hardy decided to withdraw from the U.S. Olympic team. Subsequently, the USADA was informed that the samples in her other two tests revealed the presence of suspect transitions of the banned substance. Hardy had been taking supplements manufactured by AdvoCare in 2007. The USADA literature warns against taking supplements, and Hardy was aware of the danger that they could be contaminated. However, she diligently researched AdvoCare's products, and received assurances from the company that they were safe. Following the positive test, Hardy sent supplements from the same batch she was taking to two different drug-testing laboratories. Both labs determined that one of the products was contaminated with the banned substance. The USADA argued for a two-year ban. Hardy argued that her sanction should be reduced, and that the International Olympic Committee's recent amendment to Rule 45 of the Olympic Charter should not be applied to her case. The amendment provides that any athlete who receives a ban of more than six months for a doping violation cannot participate in the Olympic Games that follow the expiration of that sanction. If applied, it would make her ineligible for the 2012 Olympic Games.

The North American CAS panel determined that Hardy's ban should be reduced to one year because she showed no significant fault or negligence in taking the banned substance. It noted that Hardy had taken far more precautions than other athletes sanctioned for using contaminated supplements. Not only did she check the label of the bottle, she spent a significant amount of effort determining that the source of the supplements was not connected with banned substances. The panel recognized that there were questions about whether the small amount of the banned substance found in the supplement could have caused the positive result. However, it emphasized that Hardy did not have to prove a correlation between the concentration of the banned substance in her sample and the actual amount found in the supplement. In assessing the impact of Rule 45, the panel claimed its application under these circumstances would violate the doctrine of proportionality. It also noted that the rule unilaterally alters the sanctions imposed on athletes for their doping violations, which contradicts the IOC's obligations under the World Anti-Doping Code. The panel refused to reduce Hardy's ban based solely on the rule's effect. But after noting the IOC could appeal a decision that derogates its rules, it allowed Hardy to apply for a waiver, a remedy not provided by the Charter. The panel gave her until July 31 to make a submission, and claimed that its continued jurisdiction depended on the IOC's response.

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Property Law

Cascott, L.L.C. v. City of Arlington, 278 S.W.3d 523 (Tex. App. 2009). Property owners appealed a trial court's decision to grant summary judgment to the City of Arlington on their claim that the city violated the state constitution by taking land for a purely private purpose when it exercised its eminent domain power to build a new stadium for the Dallas Cowboys and entered into a favorable lease with the team. The appellate court affirmed, holding both the stadium project and the lease served a public purpose. In assessing the stadium project, the court noted voters approved the city's actions, and a state statute dictated any approved venue project was owned, used, and held for a public purpose. In assessing the lease, the court noted the city's agreement

only had to further and promote the established public purpose, regardless of whether a private actor benefited from it.

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Engel v. Crosby Twp. Bd. of Zoning Appeals, 907 N.E.2d 344 (Ohio Ct. App. 2009). A landowner appealed a trial court's judgment that affirmed the Crosby Township Board of Zoning Appeals' decision to deny the landowner and her late husband's request for a variance that would allow them to develop a motorsports park on their property in a heavy industrial district. The Board concluded that the requested use would constitute a nuisance under the township's zoning resolution, even though it wasn't specifically prohibited. Both the landowner and her late husband originally asked the township's zoning inspector for the variance, but he told them they would have to seek authorization from the Board. The appellate court affirmed, holding the trial court did not abuse its discretion in affirming the decision because the section of the zoning resolution on which it was based was not unconstitutionally vague or unconstitutionally discretionary. The court noted zoning resolutions require some general language to allow for flexibility in dealing with potential uses of the land, and found the language in the disputed section made clear what type of uses were prohibited. It also concluded that the resolution clearly laid out when a zoning inspector or the Board could grant a variance, even if there were no specific standards to determine whether a proposed use would constitute a nuisance.

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Goldstein v. N.Y. State Urban Dev. Corp., 879 N.Y.S.2d 524 (App. Div. 2009); Develop Don't Destroy v. Urban Dev. Corp., 874 N.Y.S.2d 414 (App. Div. 2009). In related cases, Brooklyn property owners (1) sought a declaration that the state constitution prevented the New York State Urban Development Corporation (SUDC) from taking their property for a redevelopment project that included a basketball arena to serve as the future home of the New Jersey Nets, and (2) appealed the decision of a trial court to dismiss their claims related to the administrative findings made by the SUDC to green-light the project. The project's co-developer was a company owned by the same man who owned the Nets. Nevertheless, the Second Circuit had previously affirmed a district court's decision to dismiss the property owners' claim that the takings violated the Fifth Amendment, holding the SUDC's determination that the project advanced several public purposes was not a pretext for providing a new publicly-financed arena to the privately-owned team.

The appellate court held that the state constitution did not prevent the corporation from condemning the property, and affirmed the decision related to the administrative findings of the SUDC. In assessing the constitutional claim, the court determined the state's takings clause was no more restrictive than its federal counterpart, refusing to read the public use language in a manner that would allow takings only when the property is held open for use by the entire public. It noted that view had been expressly rejected in a previous court decision and would be at odds with the statutory authority allowing the court to review the SUDC's determination. It followed the federal district court in finding the public benefits of the project were not illusory. In assessing the administrative claim, the court concluded the SUDC's Environmental Impact Statement (EIS) complied with the requirements of the State Environmental Quality Review Act,

and the corporation's decisions to include property outside a designated urban renewal area within the project area and to designate the arena as part of a civil project were permitted under state law. In assessing the EIS, the court found the SUDC was not required to address the risk of terrorism, did not arbitrarily select the project's build years in order to skew the analysis of the environmental effects, and was not irrational in selecting this project over feasible alternatives. In assessing the SUDC's discretionary decisions, the court held it had to defer to the agency's determinations that the project area was blighted and the arena had a public purpose unless those determinations were totally baseless.

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Grasso v. Town of West Seneca, 881 N.Y.S.2d 247 (App. Div. 2009). Landowners appealed a trial court's judgment dismissing their petition to overturn the decision of the Zoning Board of Appeals (ZBA) of the Town of West Seneca that granted a building permit for the construction of athletic facilities to a local high school and its president, and to annul the Town's declaration that the project was environmentally acceptable. The appellate court affirmed, holding the ZBA's determination that the proposed facilities constituted a permissible educational use under the Town Code was not unreasonable or irrational, and the Town complied with the state's environmental conservation law by identifying and assessing areas of environmental concern.

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Myers v. Wild Wilderness Raceway L.L.C., 908 N.E.2d 950 (Ohio Ct. App. 2009). Wild Wilderness Raceway and its owners appealed a trial court's decision to affirm in part and deny in part their motion for a new trial in a lawsuit brought against them by surrounding property owners who claimed the noise, dust, and light emanating from the racetrack constituted a private nuisance and tortiously interfered with their businesses. The raceway owners originally constructed the facility on the family's property so their son, a burgeoning motocross star, could practice the sport. However, the track eventually grew into a prime venue to hold races, which took place several days a week and ran as late as 10:30 p.m. However, the number of races the facility hosted was diminishing annually, and the owners were operating at a significant loss. The trial court permanently enjoined the raceway's owners from using the facility, and awarded damages and attorneys' fees to the surrounding property owners. But following the motion for a new trial, a new judge modified the injunction's scope to only prevent commercial use, and vacated the award of damages and attorneys' fees.

The appellate court affirmed, holding there was some evidence to support the determination that the raceway constituted a nuisance, and the trial court did not abuse its discretion in fashioning the permanent injunction. The court also denied the surrounding property owners' cross-motions arising out of the new judge's decision to modify the injunction and vacate the award of monetary damages and attorneys' fees. In finding a nuisance, the court noted there was substantial testimony indicating the noise came from the Wild Wilderness Raceway and that it rose to a level that prevented the surrounding property owners from enjoying their land, deterred people from patronizing their businesses, and caused their property values to decline. The court determined that the injunction was not overbroad because it did not prevent the raceway's owners from using the facility for its original purpose. It also noted there would be an absence of any

real harm because the raceway's owners were already operating at a loss. In denying the surrounding property owners' cross-motions, the court determined they had not proven their monetary damages with reasonable certainty, and emphasized that the raceway's owners had a right to use their property for personal enjoyment.

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Pasadena Residents for a Healthy Env't v. City of Pasadena, 2009 Cal. App. Unpub. LEXIS 1317 (Feb. 18, 2009). Residents of the City of Pasadena appealed a trial court's decision to deny their petition for a writ of mandate that would vacate the City's choice to approve a conditional use permit so a local high school could install light poles over its athletic field. A hearing officer originally approved the school's application after the City conducted a study and determined the project would not have a significant effect on the environment. The appellate court affirmed, holding the residents did not present substantial evidence to support their argument that the project could cause problems, which would force the City to conduct a full environmental impact report. The court also found the residents' due process rights were not violated because they failed to establish an unacceptable probability that one of the councilmen was biased and should have recused himself from voting on the issue.

United States v. $6,976,934.65, Plus Interest, 554 F.3d 123 (D.C. Cir. 2009). A British Virgin Islands company appealed a district court's decision to grant summary judgment to the U.S. government on the company's claim that it was entitled to funds seized by the government in an in rem action. The funds were allegedly involved in or traceable to an illegal offshore online-gambling enterprise that took hundreds of millions of dollars in bets on sporting events from U.S. residents. The company's majority shareholder is William Scott, who operated the offshore gambling sites from the Caribbean, and has avoided criminal prosecution for money laundering in the U.S. by remaining outside the country. The Court of Appeals reversed, noting the funds could be claimed under the federal fugitive disentitlement statute, but holding the company raised a genuine issue as to whether the statute applied to Scott. The court emphasized that it was unclear if Scott declined to re-enter the U.S. or renounced his U.S. citizenship in order to avoid prosecution. It noted that Scott left the U.S. six years prior to the issue of a 1998 criminal complaint against him, and that the government had failed to show he had notice of a second warrant issued in 2005.

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Woodard v. City of Cottage Grove, 201 P.3d 210 (Or. Ct. App. 2009). Landowners operating a racetrack on their property appealed the Land Use Board of Appeals' decision to remand three ordinances adopted by the City of Cottage Grove that rezoned their property and an adjacent property and applied a zoning overlay district to both properties in order to facilitate the racetrack and parking. After allowing opponents of the ordinances to appeal all three ordinances under a single notice of intent, the Board concluded that the City failed to assess whether the ordinances were consistent with its transportation system plan (TSP), as required under the state's Transportation Planning Rule (TPR). The appellate court affirmed, holding the decision to allow the appeal of all three ordinances under a single notice of intent was consistent with a properly-enacted Board rule, and the definition of land use regulation provided by a state statute

was appropriate to apply to the TPR, which required amendments to all regulations to include an assessment. The definition provided by the state statute included small tract zoning map amendments, which were the type of amendments made under the City's ordinances. The court noted that zoning map amendments consistent with a property's designation under a comprehensive plan still require an assessment because the relevant issue is whether they are consistent with the state standards for transportation facilities, which are part of the TSP.

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Wash. State Major League Baseball Stadium Pub. Facilities Dist. v. Huber, Hunt & Nichols-Kiewit Constr. Co., 202 P.3d 924 (Wash. 2009). The Washington State Major League Baseball Stadium Public Facilities District appealed a trial court's decision to grant summary judgment to Huber, Hunt & Nichols-Kiewit Construction Company on the facility district's breach of contract claims against the company after determining the six-year statute of limitations had expired. The district was created under state law to develop and own Safeco Field, the home of the Seattle Mariners. It sought damages from the company for its alleged failure to construct the stadium in accordance with contractual provisions after the team discovered a construction defect related to fire coating protection and was forced to pay over $2 million in repairs. The Washington Supreme Court reversed, holding the statute of limitations did not bar the claims because suits brought for the benefit of the state are exempt from the law. The Court noted that municipal bodies that initiate actions arising out of the exercise of traditional sovereign functions delegated to them by the state are brought for the benefit of that state, and found that building Safeco Field involved a traditional sovereign function because the state was responsible for providing public recreational benefits.

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Tax Law

Fuentes v. Comm'r, 2009 Tax. Ct. Summary LEXIS 39 (Mar. 23, 2009). Youth soccer coach Freddy Fuentes appealed an IRS decision to disallow a number of his claimed deductions and assess him an accuracy-related penalty for failing to substantiate them. Fuentes claimed the deductions in order to offset his out-of-pocket coaching expenses. The Tax Court affirmed almost all of the decision to disallow the claimed deductions, and the decision to assess a penalty. It emphasized that Fuentes failed to keep a timely log of the mileage he accrued traveling to games and practices, and failed to provide receipts for most of his other claimed expenses. The only deductions allowed were for a projector and screening television, training CDs, and a single equipment purchase. The court refused to vacate the penalty because Fuentes failed to assess whether he could actually make his claimed deductions under the tax code.

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Ruiz v. Comm'r, 2009 Tax. Ct. Summary LEXIS 1 (Jan. 5, 2009). High school girls softball coach Robert Ruiz appealed an IRS decision to disallow certain deductions for program-related expenses from his income taxes. Because the school only provided him with a $1,500 budget, Ruiz used his own money to purchase uniforms, equipment, and food for the team, to transport the team to games when a bus was unavailable, and to give players a lift home when conditions required. He kept a log of all his mileage. The Tax Court held Ruiz had substantiated the employee business purpose for some of the claimed expenditures, allowing him to deduct nearly $4,400 from his income taxes. It found the money spent on uniforms, equipment, and transportation to games was deductible because they were ordinary expenses that were necessary to the basic operation of the program. However, the court held the food was not contemplated as a deductible expense under the tax code, and the money spent to drive players home was not sufficiently substantiated because Ruiz's method for calculating mileage was not exacting.

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Schmuecker v. Comm'r, 2009 Tax Ct. Summary LEXIS 32 (Mar. 9, 2009). Race horse owner Douglas Schmuecker appealed an IRS decision that his horse racing business constituted a passive activity under the tax code, preventing him from claiming deductions for losses associated with it. Schmuecker co-owned roughly half of his horses with his primary horse trainer, who kept all or most of the animals at his ranch and provided all the necessary services for taking care of them. Schmuecker paid him a fee for those services. The Tax Court affirmed, holding Schmuecker's horse racing business constituted a passive activity because he failed to provide evidence to show he materially participated in its day-to-day operations. The court emphasized that he failed to substantiate the amount of time he spent engaged in the horse racing business, and that time could not be considered anyway because his management services did not exceed the management services provided by his trainer. The court also noted that whether the IRS chose to challenge his material participation in previous years did not preclude it from making its current objection.

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United States v. Herrera, 559 F.3d 296 (5th Cir. 2009). The federal government appealed a district court's decision to grant the motion of former professional basketball player Carl Herrera for judgment of acquittal after a jury found him guilty of tax evasion. Herrera failed to file any tax returns from 1994 to 1997. After his NBA career ended in 1999, he left his wife in the U.S. to return home to play in Venezuela. The IRS began collection efforts in 2000 but struggled to secure access to his funds because the money in his bank accounts was being transferred to his wife's accounts, his house in San Antonio was transferred to his wife via quitclaim deed, and his income was significantly understated during a face-to-face meeting in 2006. The Court of Appeals reversed, holding a jury could have reasonably concluded the house transfer or the income statements represented willful attempts to avoid tax payments. Although the government did not sufficiently demonstrate Herrera exercised control over the bank transfers, he was warned a tax lien could be put on his house six months before the quitclaim deed was prepared, and the explanation he provided for giving it did not jive with the circumstances surrounding its execution. Herrera was also aware he was about to be charged with tax evasion prior to the 2006 meeting, but he still reported his income was only $23,000 in 2000, despite evidence indicating

he received over $275,000. The court affirmed the decision to conditionally grant a new trial, finding there was no abuse of discretion in setting aside the jury's verdict.

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Tort Law (Part 1)

Anand v. Kapoor, 877 N.Y.S.2d 425 (App. Div. 2009). Azad Anand appealed a trial court's decision to grant summary judgment to Anoop Kapoor on Anand's negligence claim arising out of injuries he suffered when a golf ball struck by Kapoor hit him in the eye. Anand was standing at least 20 feet in front of Kapoor and anywhere from 50-80 degrees away from the intended line of flight when he was hit. The appellate court affirmed, holding Kapoor did not have a duty to warn Anand before striking the ball because he was not within the foreseeable ambit of danger, as defined by state law. In the alternative, the court held Kapoor did not breach any duty to Anand because the risk of being hit by an errant golf ball is inherent in the sport, and the participants assume all inherent risks. The court found Kapoor's carelessness in failing to warn Anand before striking the ball did not unreasonably increase the risk of injury beyond the inherent danger because it did not constitute a flagrant infraction of the rules of the game.

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Archibald v. Kemble, 971 A.2d 513 (Pa. Super. Ct. 2009). Robert Archibald appealed a trial court's decision to grant summary judgment to Cody Kemble on Archibald's negligence claim arising out of injuries he suffered when Kemble broke a recreational hockey league's rules by checking him into the boards during a game. The appellate court reversed, holding the trial court's determination that Kemble must have engaged in reckless or intentional conduct to be subject to liability did not require Archibald to plead a separate tort in order to avoid having his suit barred by the statute of limitations because he came forward with enough evidence to support each element of a cause of action. The court emphasized that Archibald's complaint would not have to be changed to add any additional facts or parties, and Kemble would not be prejudiced in any manner.

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Baker v. Major League Baseball Properties, Inc., 2009 U.S. Dist. LEXIS 40542 (N.D. Fla. Apr. 22, 2009). The Major League Baseball Players Association moved to transfer Richard Baker's negligence claim against several MLB-related entities to the U.S. District Court for the Southern District of California. The claim arose out of injuries that Baker suffered when he fell in a parking lot at PETCO Park while attending the 2006 World Baseball Classic championship game. The District Court granted the motion, finding the proposed district was a venue in which the claims could have been brought and both trial efficiency and the interests of justice would best be served by transferring them to that district.

Brush v. Jiminy Peak Mountain Resort, Inc., 626 F. Supp. 2d 139 (D. Mass. 2009). A ski area operator, collegiate ski competition organizers, a race referee, and the competition's FIS technical delegate moved for summary judgment on collegiate skier Kelly Brush's negligence and gross negligence claims arising out of injuries she suffered when she lost control during a race and collided with a ski lift stanchion located just off the trail. The competition was held under the auspices of the United States Ski and Snowboard Association (USSA) and the FIS; therefore, all competitors had to be members of the national governing body. Brush's mother had filled out registration forms for both organizations the previous summer, and the USSA form included a clearly-labeled waiver purporting to release it and other entities from negligence liability for injuries suffered in connection with any activities in which the USSA was involved. Both the ski area operator and competition organizers were parties to an agreement with the USSA which required them to assure that the facilities conformed to the applicable rules and the requirements of the competition jury. Under NCAA and USSA rules, the layout of the trail had to be inspected by a jury prior to its use in a race. In this case, the competition jury was comprised of two individual organizers, the race referee, and the technical delegate. The rules also required the trails to meet relevant FIS regulations, set forth in relevant homologation reports. However, netting was not set up according to the diagram included in the homologation report for the trail used in Brush's race. In addition, no nets were installed around the lift tower, and neither the tower nor its supporting stanchion was equipped with padding regularly used in ski events.

The District Court granted the motion, holding Brush's negligence claim against the ski area operator was barred by the state's ski safety statute, and her negligence claims against the competition organizers and officials were barred by the USSA waiver. In addition, the court concluded that no reasonable jury could find the defendants' alleged conduct rose to the level of gross negligence because there was no evidence their actions amounted to anything more than simple advertence. In dismissing the negligence claim against the ski area operator, the court found state law made skiers responsible for any injuries resulting from skiing off the trail, and did not place a duty on operators to provide netting or padding around obstacles in those areas. It also noted that the operator did not contractually obligate itself to provide specific safety measures, only to work with others to ensure the facilities were prepared according to the applicable rules. In dismissing the negligence claims against the organizers and officials, the court found the waiver's language clear and unambiguous, and noted it could not constitute a contract of adhesion because recreational activities are not essential public services.

Capital Promotions, L.L.C. v. King, 208 F. App'x 36 (8th Cir. 2009). Capital Promotions appealed a district court's decision to dismiss its tortious interference claim against boxing promoter Don King on jurisdictional grounds. King allegedly interfered with the company's exclusive contractual relationship with boxer Tyeson Fields. King was a Florida resident, and did not have assets, agents, property, or a physical presence in Iowa. His only contact with the state was through phone calls to the company's representatives. The District Court held King lacked enough contacts with Iowa to assert personal jurisdiction over him under state law and the Fourteenth Amendment. The Court of Appeals affirmed without discussion.

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Carter v. Baldwin, 2009 Cal. App. Unpub. LEXIS 529 (Jan. 22, 2009). Off-road racer Phil Carter appealed a trial court's decision to dismiss the gross negligence claim he brought against the promoters of an event when injuries he suffered in a collision with another car were allegedly exacerbated due to a lack of adequate emergency medical care at the track. The appellate court affirmed, holding the promoters did not breach any duty they owed to Carter because he assumed the risk of injury from the risks inherent in the sport. It noted that the alleged lack of proper medical care may have increased the severity of the injury, but Carter did not claim the promoters increased the risk that a collision would occur. The court did not address whether the promoters had a duty to provide reasonable medical care on the premises.

Clemens v. McNamee, 608 F. Supp. 2d 811 (S.D. Tex. 2009); Clemens v. McNamee, 2009 U.S. Dist. LEXIS 55585 (S.D. Tex. June 30, 2009). The former trainer of professional baseball player Roger Clemens moved to dismiss defamation claims brought against him by Clemens on both procedural and substantive grounds. In the alternative, he sought to transfer the litigation to New York. During conversations that took place in or around Clemens' hometown of Houston, Brian McNamee allegedly told one of Clemens' teammates that Clemens used human growth hormone and steroids. Later, he was summoned to New York by federal authorities investigating illegal steroid use, and allegedly told them that he had injected Clemens with those drugs within the state. Following that meeting, the authorities asked him to speak with the Mitchell Commission, which was investigating the use of performance-enhancing drugs in Major League Baseball (MLB). The Commission's investigation was not associated with the government's investigation, but McNamee repeated his allegedly false statements, which were later published in a report to the MLB commissioner. After that report was released to the public, McNamee also spoke with an online reporter at the trainer's home in New York, where he repeated his statements once more. The reporter's employer published them in an article on its website.

The District Court granted the motion in part and denied it in part. The court held it could not exercise personal jurisdiction over the claims based on McNamee's alleged statements to the Mitchell Commission and the reporter because those remarks did not mention Texas, were not made by an individual based in Texas, and were focused on drug use that took place in New York while Clemens was playing for a New York team. Therefore, they were likely to attract the attention of the plaintiffs' fans both in and outside of Texas. In addition, the court found McNamee was immune from liability for his statements to the Mitchell Commission because he had to make them to avoid being targeted by the government's investigation. However, the court refused to dismiss the claims based on McNamee's alleged statements to the teammate under the statute of limitations because a reasonably jury could find Clemens only recently discovered that McNamee had spoken to the teammate about the alleged drug use. The court noted that Clemens had subsequently participated in or overheard conversations involving the teammate in which drug use came up, but it could not conclude that they put Clemens on notice that the statements had been made. The court allowed Clemens to amend his complaint to provide the exact statements made to the teammate. After determining that McNamee's statements did not rise to the level of defamation per se, the court also allowed Clemens to amend his complaint to present proof of actual damages. Because the only claims remaining were based on statements that occurred in Texas, the court determined it would not be in the interest of justice to transfer the case to New York.

Subsequently, the court denied Clemens' motion to reconsider the decision to dismiss the claims based on McNamee's alleged statements to the Mitchell Commission and its determination that the alleged statements to the teammate did not constitute defamation per se. The court held McNamee should not be forced to explain how his alleged statements to the commission specifically furthered the government's investigation into illegal drug use or the government's specific motive for compelling him to speak in order to obtain immunity. It noted McNamee had submitted an uncontested affidavit from a federal investigator that generally outlined the reasoning behind the government's action. The court also reiterated its view that the alleged statements to the teammate did not clearly articulate that Clemens was committing a crime. Finally, the court refused to exercise pendent personal jurisdiction over the claims based on McNamee's statements to the commission or the reporter because they were made to different audiences at different times and in vastly different contexts.

Cyprien v. Bd. of Supervisors, 5 So. 3d 862 (La. 2009). The Board of Supervisors for the University of Louisiana System, the University of Louisiana-Lafayette (ULL) athletic director, and another ULL employee appealed an appellate court's judgment affirming the decision to deny their motion for summary judgment on claims brought by Glynn Cyprien after ULL revealed he had misrepresented his educational qualifications on his resume and rescinded his contract to coach the ULL men's basketball team. Cyprien alleged he had delivered a correct copy of his resume when he interviewed for the job, but a copy faxed by a student worker at the school that previously employed him indicated that he had received a degree from an accredited university. In reality, Cyprien had not received a degree, one of the prerequisites to coaching at ULL.

The Louisiana Supreme Court reversed, holding the Board of Supervisors, the athletic director, and the ULL employee did not commit defamation or breach Cyprien's coaching contract with the school. The Court noted the defendants did not make any false accusations when they revealed that Cyprien had submitted a false resume, and determined they had good cause to rescind his contract if he did not actually qualify for the position he was hired to fill. It emphasized that there was no reason for Cyprien to have a false resume on file at his previous school, and that ULL would not have entered into the contract had it known he did not possess the required degree.

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Duffy v. Hon. Karen L. Wilson, 2009 Ky. LEXIS 72 (Mar. 19, 2009). Officials with the Henderson County Board of Education and football coaches at one of county's high schools moved for a writ of prohibition that would reverse an appellate court's decision to affirm an order requiring them to disclose witness statements prepared by an investigator working for the Board's liability insurer to the parents of a high school football player who died at practice for use in their wrongful death action. The Kentucky Supreme Court granted the writ, holding the witness statements were protected from disclosure by the work-product privilege because the documents were prepared in anticipation of litigation and the parents did not prove they were unable to obtain the substantial equivalent of those materials without undue hardship. In assessing whether the documents were protectable, the Court noted that the investigator told the witnesses he was not suing or defending anybody, but emphasized that those statements were

made prior to the instant suit. In assessing whether the documents should be protected, the Court noted that the parents did not attempt to take any depositions from the witnesses, and concluded their fears of memory loss were unjustified. It emphasized the witness statements were not contemporaneous accounts of the player's death, so there was no evidence that a deposition could not contain the same information.

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Edwards v. Doug Ruedlinger, Inc., 9 So. 3d 279 (La. Ct. App. 2009). The Orleans Parish School Board (OPSB) appealed a trial court's decision to grant summary judgment to a high school football coach's professional liability insurer on its cross-claim for indemnification on a personal injury claim brought against the coach and others by a player who was rendered a quadriplegic following a collision during a game. State law provides that school boards have to subrogate and indemnify any public school employee sued for damages by a student for his acts or omissions in the proper course of his duties. However, the OPSB relinquished its defense to the insurance company, and the coach entered into a consent judgment with the player for $550,000. The appellate court affirmed, holding the insurance company could be subrogated to the coach's right of indemnification, even through a consent judgment. The court noted the OPSB's legal obligations were not strictly personal, or conditioned upon the absence of personal malpractice coverage. It concluded that the settlement was reasonable under the circumstances.

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Esshaki v. Millman, 2009 Mich. App. LEXIS 582 (Mar. 17, 2009). Basil Esshaki appealed a trial court's decision to grant summary judgment to Scott Millman on Esshaki's tort claims arising out of injuries he suffered when he was struck in the face by Millman while they were competing in a recreational league soccer game. The appellate court affirmed in part and reversed in part, holding there was a genuine issue about whether Millman committed a battery or engaged in reckless conduct, but no question on the claim for intentional infliction of emotional distress. In assessing the battery claim, the court found the testimony of the player and the referee were sufficient to support a finding that Millman intentionally struck Esshaki with his fist or elbow, and that action was not within the scope of assumed risks within the sport. The court also believed the referee's testimony could support a recklessness claim because a jury might find Millman only threw out his elbow in frustration, but in a manner evincing a conscious disregard for the safety of the player next to him. However, the court dismissed the claim for intentional infliction of emotional distress because the problems Esshaki encountered after the incident were not sufficiently severe.

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Farquharson v. City of West Haven, 2009 Conn. Super. LEXIS 923 (Apr. 3, 2009). The City of West Haven and its board of education moved for summary judgment on Kelsey Farquharson's negligence claims arising out of injuries she suffered as a spectator at a high school hockey game when she was struck in the face by an errant puck. The court granted the motion, holding the defendants were immune from negligence liability under state law because the injuries arose out of a discretionary decision made by municipal officials. The court determined statutes that

allegedly required the board of education to adopt policies concerning maintenance and safety at school buildings actually gave the board broad discretion in selecting the best way to protect spectators. Therefore, the lack of netting or warning signs at the facility where Farquharson was injured did not suggest that the board failed to adopt a policy entirely, but exercised its best judgment after weighing all the alternatives.

Gastaldi v. Sunvest Communities USA, LLC, 2009 U.S. Dist. LEXIS 45501 (S.D. Fla. Mar. 25, 2009). Sunvest Communities USA (Sunvest) and IMG Academies (IMG) moved to dismiss state law claims brought against them by individuals who alleged they were victimized by a fraudulent scheme. The individuals purchased pre-converted condominiums from an organization claiming to be the defendants' partner in a real estate development project based on alleged representations that the property would be turned into a resort that included an IMG-managed sports complex and training facility. The individuals leased the condos back to the organization for two years so it could manage them while the property was developed. However, the individuals were never paid under those agreements, and many of the units were subleased by Sunvest to third-party renters. No development ever took place on the property.

The District Court denied the motion, holding the individuals were not barred from asserting claims for unfair trade practices or fraudulent inducement, and both defendants could be found liable for their own conduct and the conduct of their purported partner under state law. In assessing the unfair trade practices and fraudulent inducement claims, the court found the language in the purchase and sale agreements concerning oral representations did not protect either defendant because they were not parties to those contracts and disavowed any connection to them. The court also refused to dismiss the plaintiffs' claims for conversion and civil theft, noting their allegations addressed the elements of each tort under state law. In assessing whether the defendants could be held responsible for the acts of their alleged partner, the court concluded that the plaintiffs' complaint satisfied the requirements of the state statute governing purported partnership liability. It noted their reliance on that organization's representations was not manifestly unreasonable because disclaimer clauses in purchase and sale agreements do not bar fraud claims unless they specifically contradict the representations on which the claims are based.

Godfrey v. Iverson, 559 F.3d 569 (D.C. Cir. 2009). Professional basketball player Allen Iverson appealed a judgment entered on a jury verdict in favor of Marlin Godfrey on his negligent supervision claim arising out of injuries he suffered in a nightclub brawl when Iverson's bodyguard attacked him while Iverson stood by and watched. The Court of Appeals affirmed, holding Godfrey did not have to establish the standard of care that Iverson owed to him through expert testimony because Iverson was present during the attack. Therefore, a jury could find he had the ability to supervise and control his bodyguard's behavior, unlike other cases where supervisors were not present and experts were needed to evaluate if they had properly trained security personnel.

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Godwin v. Russi, 879 N.Y.S.2d 567 (App. Div. 2009). Thomas Godwin appealed a trial court's decision to grant summary judgment to Rudi Russi on Godwin's negligence claim arising out of injuries he suffered when he was hit by a baseball thrown by Russi at their Little League baseball practice. The appellate court affirmed, holding Russi did not breach any duty owed to Godwin because the risk of being hit by a baseball is inherent in the sport, and the participants assumed all inherent risks. In addition, there was no evidence to suggest Russi unreasonably increased Godwin's risk of being injured beyond that inherent danger.

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Goetz v. Indep. Sch. Dist. No. 625, 2009 Minn. App. Unpub. LEXIS 24 (Jan. 6, 2009). The Independent School District No. 625 appealed a trial court's decision to deny its motion for summary judgment on Morgan Goetz's negligence claim arising out of injuries she suffered while participating in a gymnastics program offered by the school district when the staff failed to assist her on a vault and she landed on her head. The appellate court reversed, holding the school district was immune from liability for negligence in the construction, operation, or maintenance of its property under the state's recreational use statute. The court noted the district could be held liable under an exception to that law for conduct that would entitle a trespasser to damages against a private person. However, it concluded that exception only applied to cases involving property marred by a hazard, not cases involving conduct unrelated to the condition of the property. The court also emphasized that the exception only applies to hidden, artificial dangers, and noted that the vaulting horse's dangers were far from obscured.

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Hall v. Guest, 2009 Tex. App. LEXIS 730 (Feb. 5, 2009). Two amateur tennis players, their attorney, and the attorney's law firm appealed a trial court's decision to award monetary sanctions to fellow tennis player Roxanne Guest after the tennis players dropped defamation claims that they brought against Guest and her tennis partner for allegedly accusing them of engaging in unsportsmanlike conduct. Both tennis players were suspended by their local amateur women's tennis league for eight months for their alleged behavior. The appellate court affirmed, holding the trial court had jurisdiction over the sanctions issue, and it did not abuse its discretion in finding the tennis players' attorney failed to make a reasonable inquiry into the whether Guest actually made false comments to the Board of the local league, and the alleged statements could not constitute defamation per se. The court noted that state law allowed it to sanction parties for frivolous lawsuits that have no basis in law or fact, and emphasized that Guest did not actually file a complaint against the tennis players or make statements to the league prior to the time they were suspended for their conduct. The court also noted that the tennis players failed to assert any actionable injury as a result of the alleged comments. In sum, the evidence clearly supported the court's conclusion that the suit was filed for malicious purposes.

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Hansen Beverage Co. v. Innovation Ventures, LLC, 2009 U.S. Dist. LEXIS 46217 (E.D. Mich. June 2, 2009). Professional football player and Innovation Ventures (Innovation) spokesman Braylon Edwards moved to squash a subpoena duces tecum that he was served by the Hansen Beverage Company in its suit against Innovation for false advertising under the Lanham Act. Innovation Ventures produced 5-hour Energy, an energy product that Edwards endorsed in a television commercial. The District Court granted the motion, holding the company had not proven Edwards' deposition or his compensation agreement with Innovation was reasonably calculated to lead to the discovery of admissible evidence that would justify the burden imposed on Edwards if he was compelled to comply. The court noted that Edwards was not subpoenaed because of any special information he had, or to contest the truth of his statements, but only to testify about his experience using the product. The court emphasized Edwards never indicated the feelings he felt using the product would also be felt by other users, so the only information the company could obtain was available by less-intrusive means, namely, expert testimony and extant studies on the effects of the product on its users. The court also noted that Edwards' personal experience was irrelevant because it said little about the product's aggregate effects on all its users.

Jackson v. Balanced Health Products, Inc., 2009 U.S. Dist. LEXIS 48848 (N.D. Cal. June 10, 2009). Dietary supplement retailers and the manufacturer of an over-the-counter weight-loss supplement called StarCaps moved to dismiss claims brought against them by professional football player Grady Jackson and another individual after Jackson was suspended for four games for taking the supplement, which contained a prescription drug that is banned by the NFL. The manufacturer sold and marketed StarCaps as an all natural supplement, but an academic journal later discovered that it contained the banned diuretic. Although the manufacturer stated that it had suspended shipping the supplement to its retailers, those retailers continued to sell StarCaps until a voluntary recall was issued. The retailers also claimed to have quality control procedures to ensure that products received from vendors met certain standards.

The District Court granted the motion in part and denied it in part. Relying on a recent U.S. Supreme Court decision, the court first noted none of the plaintiffs' claims were pre-empted by the federal Food, Drug, and Cosmetic Act. Next, it held the state law claims for false advertisement, unjust enrichment, and breach of warranty were not precluded by the Uniform Single Publication Act because they are not among the traditional torts contemplated by the law, which prevents individuals from bringing more than one cause of action for damages founded on a single communicative act. However, the court held the state law claims for strict product liability and negligence were barred by the economic loss rule, which limits damages to physical harm, and the federal Sherman Act claim was precluded because no private right of action exists to enforce it. Finally, the court found the plaintiffs failed to allege specific facts to show the manufacturer's principal could be liable under the alter ego doctrine.

Jamgotchian v. Slender, 89 Cal. Rptr. 3d 122 (Ct. App. 2009). Race horse owner Jerry Jamgotchian appealed a trial court's decision to grant summary judgment to racing steward George Slender on Jamgotchian's claim that Slender committed a trespass to chattels when he allegedly prevented the owner from removing one of his horses from a racetrack's grounds and the horse subsequently came up lame in a race. Jamgotchian attempted to get permission to remove the horse from the race that morning, but the stewards unanimously voted to turn down

his request because it was made after their previously designated scratch time. Slender did not tell the other stewards that Jamgotchian wanted to scratch the horse so it could run in a stakes race - which an owner can do without permission - or that the racing department would accept the scratch. After the stewards' vote, Slender ordered California Horse Racing Board investigators and racing security staff to prevent Jamgotchian from removing the horse.

The appellate court reversed, holding Slender was not immune from liability under state law, and Jamgotchian had raised genuine issues as to whether Slender intentionally interfered with his right to possess his horse and whether the alleged interference was a proximate cause of the horse's injuries. In assessing whether Slender was automatically entitled to immunity, the court determined he would not be engaging in a proper exercise of discretion if he ordered a horse to race and took steps to prohibit its removal because those actions were not authorized under the disciplinary provisions in the state regulations. It also noted that quasi-judicial immunity was only available for judges acting in their judicial capacity, and Slender's alleged conduct was outside the scope of his authority.

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Ketre v. Auburn Aquatics Swim Program, 2009 U.S. Dist. LEXIS 21039 (M.D. Ala. Mar. 16, 2009). The Auburn Aquatics Swim Program (AASP) and a Auburn University employee moved for summary judgment on Gertrude Ketre's negligence and recklessness claims arising out of injuries she suffered when she tripped on a mat hanging over steps on a stairwell at the school's aquatics center while attending a swim meet. As the meet host, the AASP was required to remove or mark all hazards in areas used by spectators under USA Swimming rules. The employee was in charge of floor maintenance, and knew the mat was not secured to the ground. The District Court denied the motion in part and granted the motion in part. It held Ketre provided sufficient evidence to support her negligence claim but could not establish either defendant recklessly disregarded the safety of the spectators because the mat was not initially placed over the steps. In assessing the negligence claim, the court determined there was a genuine issue about whether either defendant had actual or constructive notice of the hazardous condition that developed when the mat was moved.

LeBoeuf v. LeCompte, 5 So. 3d 312 (La. Ct. App. 2009). A softball player who competed in an adult league run by the city of Terrabonne Parish appealed a trial court's decision to grant partial summary judgment to the city on his negligence claim arising out of injuries he suffered when he collided with a co-participant during a night game on a field owned, operated, maintained, and supervised by the city. The appellate court affirmed, holding the city did not breach its duty to keep the field in a reasonably safe condition and prevent participants from being exposed to unreasonable risks of harm because there was no warning the collision was about to occur and it would have been difficult to prevent regardless of how many umpires were present or how well the players knew the rules.

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Martinez v. P.W. Stevens, Inc., 2009 Cal. App. Unpub. LEXIS 4318 (May 8, 2009). Jose Martinez appealed a trial court's decision to grant summary judgment to golf tournament co-sponsor P.W. Stephens, Inc. on his negligence claim arising out of injuries he suffered when a stake was propelled into his leg after one of the company's guests drove a golf cart over safety ropes attached to it. P.W. Stevens had set up a booth near the first tee box that provided alcohol to the tournament attendees. The company also had access to four golf carts, and gave one to an employee to share with one of its guests. That guest drank several alcoholic beverages while the pair played nine holes of golf. Upon returning to the booth, the employee asked the guest to shuttle bartenders to the bathroom at the course clubhouse. The incident giving rise to the claim occurred while the guest was returning from one of those trips. The appellate court affirmed, holding there was no evidence that P.W. Stephens had a duty to control the area where the injury occurred, and that Martinez could not hold the company vicariously liable for its employee's decision to give the golf cart to the guest because he did not assert a negligent entrustment claim in his complaint and it was not reasonably encompassed in the allegations. The court noted the complaint did not mention the employee, let alone claim he was acting within the scope of his employment when he provided the golf cart to the guest.

Melious v. Besignano, 880 N.Y.S.2d 874 (Sup. Ct. 2009). The Archdiocese of New York City, one of the city's Catholic high schools, the school's principal, and one member of the school's faculty moved to dismiss defamation and prima facie tort claims brought against them by the school's former junior varsity basketball coach after the school publicly disclosed allegations that he had engaged in inappropriate sexual contact with members of the team. The revelation resulted in the termination of Daniel Melious's employment, and he was unable to secure a coaching job at any other school. The court denied the motion, holding the allegations were sufficient to support a finding that the faculty's members statements were defamatory, and that the elements of a prima facie tort were satisfied. In assessing the defamation claim, the court noted the alleged statements were not mere expressions of opinion, and were not made with the good faith required to obtain a qualified privilege. Although they were only made in private meetings, the faculty member had allegedly attempted to secure statements from third parties, including students, to demonstrate Melious's misconduct. The court emphasized that Melious had to assert specific damages in order to support a claim of prima facie tort, but found he had not only alleged lost pay, but that he was unable to obtain a substitute coaching job.

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Midwest Employers Cas. Co. v. Harpole, 2009 Tex. App. LEXIS 4735 (June 24, 2009). The Midwest Employers Casualty Company appealed a trial court's decision to grant summary judgment to five high school football referees on the company's negligence claims arising out of injuries suffered by high school football coach Terry English when one of the referees collided with him in a restricted area during a game. The company paid workers' compensation benefits to English, and filed a lawsuit as his subrogee. School district rules prohibited coaches and players from being in the restricted area while the ball was in play. The appellate court affirmed, holding the referee that collided with English did not breach any duty he owed to the coach because the incident took place in the midst of a play, while the referee was performing his job. The court emphasized that the referee had to focus on the football field and not look for coaches in the restricted area. Relying on the school district's rules, the referee could not have anticipated

the encroachment by English while he was sprinting down the sidelines. The court also held that the referees, as a unit, did not breach any duty they owed to English because there was no evidence to support the company's contention that they allowed coaches to move into the restricted area while the ball was in play. In fact, the referees continually instructed both the coaches and the players to stay clear of the area.

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Molina v. Sacred Heart Univ., 2009 Conn. Super. LEXIS 1033 (Apr. 17, 2009). A student participating in a no-contact flag football league sponsored by Sacred Heart University moved to strike Samuel Molina's claim for intentional infliction of emotional distress in a lawsuit he brought against that student and other defendants after suffering injuries when the student elbowed him in the face during a game. The court granted the motion, holding Molina could not establish that the student engaged in extreme or outrageous conduct. It noted that not all unsportsmanlike conduct will rise to a level where an average citizen will be outraged, and that the sport tolerated some physical contact - even in a no-contact league.

Murphy v. Polytechnic Univ., 872 N.Y.S.2d 505 (App. Div. 2009). Polytechnic University and its softball coach appealed a trial court's decision to deny their motion for summary judgment on a former softball player's claims arising out of injuries she suffered when she was hit in the head by a bat swung by the coach at practice. The appellate court affirmed, holding the player had raised genuine issues as to whether the coach unreasonably increased the risk of her being hit by a swing or whether the circumstances indicated his swing was a reckless act.

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Musante v. Oceanside Union Free Sch. Dist., 881 N.Y.S.2d 446 (App. Div. 2009). Oceanside Union Free School District appealed a trial court's decision to deny its motion for summary judgment on high school wrestler Anthony Musante's negligence claim arising out of injuries he suffered in practice when he stepped on the edge of a mat while engaged in wind sprints and collided with a wall. Musante also cross-appealed the decision to deny his motion for summary judgment on the District's liability. The appellate court reversed, holding the District did not breach any duty it owed to Musante because the risk of colliding with a wall was inherent in the activity, and the participants assume all inherent risks. The court noted the condition of the wall and the height differential between the floor and mat were open and obvious, so the District could not be faulted for unreasonably increasing the inherent risks.

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Noffke v. Bakke, 760 N.W.2d 156 (Wis. 2009). Former high school cheerleaders Brittany Noffke and Kevin Bakke and the Holmen Area School District appealed an appellate court's judgment affirming in part and reversing in part a decision to grant summary judgment to Bakke and the school district on Noffke's negligence claim arising out of injuries she suffered when she fell on a tile floor during a stunt when Bakke failed to spot her. The Wisconsin Supreme Court affirmed in part and reversed in part, holding both Bakke and the school district were immune from negligence liability under state law and Bakke's acts were not reckless as a matter of law. The

Court found Bakke was immune from from negligence liability because both he and Noffke were engaged in a sport involving amateur teams that included physical contact between the participants. It concluded he could not be liable for recklessness because his acts did not evince a conscious disregard for Noffke's safety. In assessing whether vicarious liability could be imposed for the coach's failure to require a second spotter or the use of mats, the court found the school district was immune because those acts arose out of discretionary decisions, and the danger involved in performing the stunt was not so known and compelling as to give rise to a ministerial duty to provide the additional protection.

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NPS, LLC v. StubHub, Inc., 2009 Mass. Super. LEXIS 97 (Jan. 26, 2009). StubHub, Inc. moved for summary judgment on the New England Patriots' claim for tortious interference with advantageous relations in a lawsuit the team brought against the online ticket broker after it allegedly induced Patriots season ticket holders to breach their agreements not to resell the tickets. The consequences for breaching the agreement were printed on the back of the tickets, and included the team's right to revoke the privilege of using them. State law also prohibits the reselling of tickets for more than two dollars above face value. StubHub alludes to that law and other state regulations on its website, and requires any person who wishes to sell tickets to comply with them. The Patriots prevented season ticket holders from using services like StubHub because they have more fans who want to buy season tickets than tickets available, and want to monitor who is sitting in their seats in order to deter unruly behavior. To cater to their prospective buyers, the club established a waiting list. For a $100 deposit, fans can join the list and get access to the team's online ticket exchange forum, which allows them to buy seats to individual games from season ticket holders. Neither the Patriots nor the season ticket holders profit from the exchanges, but StubHub earns a twenty-five percent commission from each sale on its website, fifteen percent of the sale price from the seller, and ten percent added to the sale price from the buyer. In exchange for their loyalty, StubHub offers top sellers extended privileges, including the ability to purchase underpriced tickets with no buy-side fee. It also gives all buyers a guarantee that the tickets will be honored. However, buyers must obtain independent confirmation that the tickets are invalid before they are entitled to a refund.

The District Court denied the motion, holding the Patriots had provided sufficient evidence for a jury to find the team had advantageous relationships with both current and prospective season ticket holders, StubHub's interference with those relationships was improper in means, and the team was harmed by that interference. In assessing whether the team had advantageous relationships, the court found the Patriots may have a reasonable expectancy of financial benefit from the prices that both current ticket holders and wait list members would pay for season tickets. In assessing whether StubHub's interference was improper, the court noted the broker's conduct had to violate a statute or common-law tort, but found StubHub may have induced or encouraged current ticket holders to violate the state's anti-scalping law, or profited from those violations while it was positioned to stop them. Although the language on the broker's website suggested it did not knowingly aid in breaking the law, the court emphasized that its pricing structure allows it to profit more when the sellers exceed the $2 threshold, and it does not require - or even ask - those sellers to reveal the face value of the tickets. It also noted that a jury could infer that StubHub encouraged its top sellers to buy underpriced tickets so they would resell

them at higher prices, and StubHub could profit from a higher commission. In assessing whether the Patriots suffered any economic injuries, the court concluded that a loss of goodwill among current and prospective season ticket holders was merely speculative, because there was no evidence suggesting StubHub buyers were more unruly than other fans, or that more individuals would seek to buy season tickets if more tickets were available through the Patriots online forum. However, the court found the team may have suffered increased administrative costs because the team's personnel had to deal with StubHub buyers whose tickets were declared invalid.

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Parrish v. Nat'l Football League Players Inc., 2009 U.S. Dist. LEXIS 4239 (N.D. Cal. Jan. 13, 2009). The NFL Players Association's fully-integrated marketing company moved for judgment notwithstanding a jury verdict in favor of a class of retired NFL players on its claim that the company breached a fiduciary duty to promote and market members of the class. Class members had signed a group license agreement with the company, hoping to earn royalties for the use of their names and likeness. The District Court denied the motion, holding the evidence presented at trial was sufficient to support the verdict because the jury could have believed the company undertook a fiduciary duty but made no effort to promote or market the retired players. In fact, the jury could have found the company's true motive was to create an illusion of representation so that no other company would attempt to sign them. The court emphasized that not a single cent had been paid to any retired player under the program, despite fourteen years of lobbying efforts to get them to sign the agreements. It also noted that the company kept a larger share of the money generated in marketing active players. In assessing whether the company had a fiduciary duty, the court noted that the retired players were paid nothing to sign the agreements, so they could have reasonably expected efforts to market them in order to receive compensation.

Roe v. Doe, 2009 U.S. Dist. LEXIS 59440 (N.D. Cal. June 30, 2009). The Dallas Mavericks and the team's owner, Mark Cuban, moved to strike a defamation claim in a lawsuit brought against them by former Mavericks coach Don Nelson after they failed to make a severance payment the parties had allegedly orally agreed upon in order to terminate his consulting contract with the team. That contract included a non-compete clause. After the alleged oral agreement, the team sent Nelson a document suggesting that the parties had not voided the contract, but amended the terms of his employment. He refused to sign it, and subsequently signed a contract to coach the Golden State Warriors. The Mavericks withheld the salary owed to him under the consulting contract and other deferred compensation, claiming he violated the non-compete agreement. Nelson filed a claim against the team in arbitration, seeking to recover the compensation he was owed under the contract. But before the hearing, Cuban appeared as a guest on a Bay Area sports radio show and made a number of comments that allegedly falsely described the details of the contract dispute and Nelson's role in it. Cuban also allegedly sent emails with similar comments to newspapers throughout the world.

The District Court granted the motion, holding Nelson's claim should be stricken under the state's anti-SLAPP statute because the comments were made in furtherance of Cuban's free speech rights in connection with a public issue, and Nelson was unable to establish a likelihood of success on the merits of his claim. The court found Cuban's statements concerned an issue of public interest because the contract dispute involved individuals who occupied high-profile

positions and were well-known in the NBA community, and it had already received significant national attention and publicity. The court also noted that broadcasting the statements contributed to the public's discussion of the issue. The court found Nelson was not likely to succeed on the merits of his claim because an average listener would not have considered the comments assertions of objective fact, and - as a limited public figure - Nelson could not show that the comments were more than an inaccurate characterization of the contract dispute. Put succinctly, the comments were not defamatory, and - even if they were - Nelson could not demonstrate they were made with actual malice.

Schnetz v. Ohio Dep't of Rehab. & Corr., 2009 Ohio Misc. LEXIS 13 (Ct. Cl. Mar. 19, 2009). Inmate Eric Schnetz brought a negligence claim against the Ohio Department of Rehabilitation and Correction after he suffered injuries that rendered him a quadriplegic while participating in a game of tackle football at a prison camp. Correctional officers stationed at the facility were not allowed to permit the inmates to play the full-contact version of the sport, and were supposed to patrol the recreational yard where games occurred at roughly half-hour intervals. Schnetz was injured when he violently collided with another player about forty-five minutes after the game escalated from flag football into tackle football. Although the Department was immune from negligence for its discretionary decision to staff just four officers at the camp, the court still found it liable because the officers on duty knew or should have known that a tackle football game was taking place and should have stopped it prior to Schnetz's injury. However, it also determined that Schnetz was negligent in continuing to participate in the game when he had personal knowledge of the type of devastating injuries that could occur, whether it was played with or without safety equipment. The court apportioned fault evenly between the Department and the inmate, and ordered damages to be reduced by fifty percent under the state's comparative negligence statute.

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Sidney v. Sprader, 2009 Conn. Super. LEXIS 1069 (Apr. 21, 2009). Individuals who accused high school girls track and cross country coach Lawrence Sidney of inappropriate behavior while coaching their daughters moved for summary judgment on his claim that they tortiously interfered with his coaching contract, causing the school's athletic director to refuse to renew it. The trial court granted the motion, holding the individuals' speech was protected under the Noerr-Pennington doctrine, which shields citizens exercising their First Amendment right to petition local government officials from tort claims as long as the petition is not a sham. In determining whether the doctrine applied, the court concluded the individuals' complaints to public school officials could not be considered objectively baseless when they resulted in Sidney losing his coaching job.

Special Olympics Fla., Inc. v. Showalter, 6 So. 3d 662 (Fl. Dist. Ct. App. 2009). Special Olympics Florida (SOF) appealed a jury verdict in favor of two developmentally-disabled athletes on their claims against the non-profit corporation for injuries they suffered when a volunteer sexually molested them in a parking lot prior to a practice for a bowling event. Practices for the event were scheduled to begin on Saturdays at 1:30 p.m., and athletes were told not to show up earlier than 1:00 p.m. However, athletes routinely ignored this instruction, so volunteers arrived early because they anticipated the need to provide supervision. On the day of

the molestations, SOF had also scheduled physicals for some athletes at the bowling facility, starting at 10:00 a.m. The plaintiffs were not scheduled for physicals, but arrived early to socialize before practice. The volunteer had been the head bowling coach for fourteen years before quitting in 1994 after being accused of molesting another athlete and her sister. The SOF did not investigate those claims. In the ten years prior to this incident, the current bowling coach was notified that the volunteer had molested one of the plaintiffs on more than one occasion, and that he took developmentally disabled adults to and from his vehicle during organized dances. However, she accepted his denials of any wrongdoing, and did not warn anyone associated with SOF or the athletes' parents about any suspicions.

The appellate court reversed, ordering the trial court to direct a verdict for SOF on the athletes' state statutory and vicarious liability claims, and a new trial on the athletes' negligence claim. In assessing the vicarious liability claim, the court held the volunteer was not acting within the scope of his agency at the time of the incident because the conduct was not in furtherance of the non-profit's mission. Based on that finding, it also concluded there was no statutory violation. However, the court held the negligence claim was viable because it sought to impose direct liability on the organization for breaching its duty to supervise the athletes and/or control the volunteer. The court noted there was a genuine issue about whether the organization had those duties prior to the scheduled events, but refused to affirm the verdict because the jury was incorrectly instructed on the law.

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Spence v. United States, 2009 U.S. Dist. LEXIS 29202 (E.D. Cal. Apr. 8, 2009). The federal government moved for summary judgment on Jeanine Spence's negligence claims arising out of injuries she suffered during a cycling event when she was thrown off her bicycle after striking a gap in the pavement at a military training facility. The race organizers obtained permission from the government to have the event pass through the facility, but did not pay a fee because it was open to the public. The asphalt leading up to gaps on a bridge was marked with bright paint, a typical method employed by cycling event organizers to warn of potential hazards. No participant had ever been injured as a result of those gaps. And Spence had cycled the same route past them during the previous year's event. She was drafting behind a fellow cyclist at the time of the incident. Prior to the race, she completed a registration form that included a release purporting to shield the government from liability for injuries she might suffer during the race.

The District Court granted the motion, holding Spence's claims were barred by the registration release, the state's recreational immunity statute, and her assumption of the inherent risks in the sport. In assessing the purported release, the court noted it was not buried or hidden within the registration form, and found it was broad enough to contemplate all acts of negligence. The court also determined that the release did not have to include language giving Spence knowledge of all road hazards she could encounter during the event because some of those hazards were improbable and others were inherent risks of the sport. In assessing the impact of the recreational immunity statute, the court held the government did not act in a manner that would give rise to liability under any of the law's exceptions. It noted the government had no actual or constructive knowledge that the gaps posed a risk, did not request any consideration in exchange for permission to allow the event, and did not expressly invite any cyclist onto the property. The

court also found the government did not have a duty to protect Spence from the risk of being injured in this manner because road hazards are risks inherent in the sport, and the participants assume all inherent risks.

Strange v. Itawamba County Sch. Dist., 9 So. 3d 1187 (Miss. Ct. App. 2009).

C.J. Strange appealed a trial court's decision to grant summary judgment to the Itawamba County School District on his negligence claims arising out of injuries he suffered when he fell out of the back of a pickup truck on school grounds while being transported to high school football practice by his teammates. The appellate court affirmed, holding the school district was immune from liability for negligence under the state's discretionary function exemption. After noting there was no statutory prohibition against riding in the back of a pickup truck, the court determined the choice to allow students to engage in that activity or ignore that students were engaging in it was a discretionary decision that impacts public policy. It emphasized that the statutory language granted immunity even in situations where discretion was abused. The court also concluded that the district did not violate its duty to prevent disorderly conduct at schools because there was no evidence it knew students were road surfing, and Strange was not engaging in that type of behavior when he fell.

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Suh v. N.Y. City Racing Ass'n, 878 N.Y.S.2d 632 (App. Div. 2009). The New York City Racing Association appealed a trial court's decision to deny its motion for summary judgment on Nung Ja Suh's negligence claim arising out of injuries she suffered when a bench in the grandstand at Aqueduct Racetrack collapsed. The appellate court affirmed, holding the association failed to establish it did not have actual or constructive notice of the alleged defective condition of the bench.

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Sweeney v. City of Bettendorf, 762 N.W.2d 873 (Iowa 2009). Tara Sweeney appealed a trial court's decision to grant summary judgment to the City of Bettendorf and its department of parks and recreation on her negligent supervision claim arising out of injuries she suffered when she was struck with a flying bat while attending a minor league baseball game on a field trip. She was sitting a few rows up from the field in an unscreened portion of the stands when a batter lost control of his bat. It was in the air for two-to-three seconds before hitting Sweeney, who was not paying attention to the game at that moment. Before the trip, her mother had signed a permission slip that purported to release the defendants from liability for their negligent acts at the game. The trial court held the slip constituted an enforceable exculpatory agreement and barred her claim. In the alternative, it found the City did not breach any duty to Sweeney because the risk of being hit by a flying bat in an unscreened portion of a stadium is a risk inherent in attending games, and spectators generally assume inherent risks.

The Iowa Supreme Court affirmed in part and reversed in part. It held the permission slip was not an enforceable exculpatory agreement, and Sweeney had provided sufficient evidence to support a claim for negligent supervision because she was seated in a hazardous location.

However, the Court also concluded that the defendants did not breach their duty to provide direct supervision because the incident took place so quickly that they could not have stopped the bat from hitting the plaintiff. In assessing the legal force of the permission slip, the Court found it lacked clear and unequivocal language that would notify parents that they are waiving all claims related to future acts of negligence by the defendants. In assessing whether the defendants engaged in negligent supervision, the Court found that Sweeney did not assume the risk of being hit because she did not get to choose where to sit, and neither she nor her parents were warned of the danger of flying bats.

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Ward v. Mich. State Univ., 2009 Mich. App. LEXIS 169 (Jan. 27, 2009). Michigan State University appealed a trial court's decision to deny its motion for summary judgment on a negligence claim brought by a minor spectator at one of school's hockey games and her parents under the public building exception to governmental immunity. The spectator and her parents also appealed the court's decision to grant the school's motion for summary judgment on their negligence claim under the proprietary function exception to governmental immunity. The claims arose out of injuries the spectator suffered when she was struck in the head by a hockey puck that flew into the arena stands during a game. The appellate court reversed the decision to deny summary judgment on the claim brought under the public building exception, and affirmed the decision to grant summary judgment on the claim brought under the proprietary function exception. In barring the use of the public building exception, the court held it could not assess liability for failing to install plexiglass to protect the section of the stand where the minor was sitting because the plaintiffs did not serve the school requisite notice of the occurrence of the incident, which is a precondition to bringing the claim under state law. In barring the use of the proprietary function exception, the court noted the operation of an intercollegiate athletics program fits in the broad definition of a governmental function immune from liability, and held the plaintiffs failed to show that the school's primary purpose in operating it was to generate a profit.

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Warga v. Palisades Baseball, 2009 Ohio App. LEXIS 1039 (Mar. 10, 2009). Jennifer Warga appealed a trial court's decision to grant summary judgment to a minor league baseball team, its owner-operator, and individual players on her negligence claim arising out of injuries she suffered when she was struck by a batted baseball while attending a game. The appellate court affirmed, holding the defendants did not breach any duty owed to the plaintiff because the risk of being hit by a batted ball while sitting or standing in an unscreened portion of a stadium is a risk inherent in attending games, and inherent risks are generally assumed by spectators. The court noted special circumstances may create an issue of fact about whether a spectator assumed an inherent risk on a specific occasion, but those circumstances were absent in this case.

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Welch v. Sudbury Youth Soccer Ass'n, 901 N.E.2d 1222 (Mass. 2009). Youth soccer player Dustin Welch appealed a trial court's decision to dismiss the negligence claim he brought against the Sudbury Youth Soccer Association and its parent association after he suffered injuries when a goal post fell on him during a game. The Massachusetts Supreme Court affirmed, holding the nonprofit associations were immune from negligence liability for their acts or failure to act in conducting a sports program under state law. The Court noted those associations were not immune for their acts relating to the care and maintenance of real estate which they controlled and which was used in connection with a sports program. However, it determined the goal posts were not real estate under state law, and the associations were acting in furtherance of the program when setting them up.

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Werne v. Executive Women's Golf Ass'n, 969 A.2d 346 (N.H. 2009). Kirsten Werne appealed a trial court's decision to grant summary judgment to Deb Armfield, a golf course, and the sponsor of a glow golf event on Werne's negligence claims arising out of injuries she suffered when she was struck in the head by a golf ball hit by Armfield while engaging in the unique sport. The New Hampshire Supreme Court affirmed, holding the defendants did not breach any duty to Werne because the risk of being hit by an errant golf ball is inherent in the sport, and all inherent risks are assumed by the participants. It also found the defendants did not unreasonably increase the risk of injury beyond the inherent danger because dark conditions were an integral part of the game, and there was no indication that the course's decision to permit alcohol consumption or Armfield's decision to consume it contributed to the accident in any manner.

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Williams v. Clinton Cent. Sch. Dist., 872 N.Y.S.2d 262 (App. Div. 2009). High school cheerleader Cassandra Williams appealed a trial court's decision to grant summary judgment to the Clinton Central School District on her negligence claim arising out of injuries she suffered when she fell while performing a stunt during practice. The appellate court affirmed, holding the school district did not breach any duty to Williams because the risk of being injured while performing her cheerleading routine on the wooden gym floor was obvious, and there was no evidence to support her claim that the defendant unreasonably increased that risk by not providing mats.

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Williams v. Middletown Bd. of Educ., 2009 Conn. Super. LEXIS 435 (Feb. 20, 2009). The Middletown Board of Education, the Board members, the Amateur Athletic Union (AAU) and the AAU president moved for summary judgment on negligence claims brought against them by the parent of an AAU basketball player after the player suffered injuries when he slipped on a high school gym floor covered with dust during his team's practice. The player's team paid the Board just over $100 to use the gym approximately two weeks before the injury. The Middletown Public School System Policies provided for the rental of the property, but still made school personnel responsible for eliminating any known hazard that could jeopardize the safety of the public. The Policies also emphasized that renters could not waive custodial fees, which

were set at $35 per hour, and accrued a minimum of one-half hour prior to functions to a minimum of one hour after functions.

The court denied the motion, holding the parent's allegations were sufficient to support a finding that the AAU and its president had possession and control of the high school gym at the time the player was injured, and the Board and its members were not entitled to municipal immunity. In rejecting the immunity defense, the court emphasized that the Board and its members could be liable if they were acting in a proprietary capacity in leasing the gym, or violating a mandatory public duty by failing to ensure a custodian was at the practice. It also noted a jury could infer that charging custodial fees prior to the beginning of a function was meant to address any hazard that might be in place.

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World Intellectual Property Organization Decisions

Nat'l Football League v. Bachand, WIPO No. D2009-0121 (Apr. 20, 2009). The National Football League (NFL) sought the transfer of various domain names including the term Super Bowl that were federally registered by Alan Bachand and used in connection with his business. The names resolved to websites displaying the official Super Bowl logo that allowed users to purchase accommodations for the event. The NFL owns a variety of registered trademarks incorporating the term Super Bowl, including the official logo and the domain name superbowl.com. Bachand began registering the disputed domain names in March 2004. In October 2005, the NFL wrote him a letter objecting to his use of one of the names, but it was not yet aware he had registered others incorporating the Super Bowl mark. Two months later, the league sent Bachand an email stating it would not object to the use of alternative domain names, but only on the condition he transferred the registered names and his business no longer entered into agreements to promote gambling services near NFL stadiums.

The WIPO transferred the disputed domain names to the NFL, finding the league satisfied the three elements required under the UDNDRP. First, it found the domain names were confusingly similar to the league's trademark, noting all of them included the term Super Bowl, and that term was their dominant feature. Second, it determined Bachand could not establish any rights or legitimate interests in the names, noting he was not using the names in connection with any bona fide offering of goods or services, and the business was not commonly known by any of the disputed names. Bachand could not assert a fair use because the Super Bowl mark was intended to lure visitors to his websites, which were also making unauthorized use of the Super Bowl logo; and the websites continued to display the Super Bowl logo and other team logos after the NFL had objected to his use of one of the names. Finally, it held the domain names had been registered and used in bad faith, noting Bachand was offering to sell them to the public for a profit, and he was intentionally attempting to attract users to his websites by creating a likelihood of confusion over whether they were affiliated with the NFL.

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Nash v. HOOPology.com, WIPO No. D2009-0225 (Apr. 14, 2009). Professional basketball player Steve Nash sought the transfer of the domain name stevenash.com, which was registered by Luis Zavala in 1999. The name resolved to a website displaying basketball-related pictures and sponsored links to basketball-related topics, including a few with Nash's name. The domain name was offered for sale on another website. Nash owns common-law trademark rights in his name as a famous athlete who uses his persona for promotional and charitable purposes. The WIPO transferred the disputed domain name to Nash, finding the two-time NBA MVP satisfied the three elements required under the UDNDRP. First, it found the domain name was identical to Nash's common-law trademark. Second, it concluded Zavala could not establish any rights or legitimate interests in the name, noting neither he nor his company had ever been commonly known by it, and the website was being used for a commercial purpose. Finally, it held the domain name had been registered and used in bad faith, noting Zavala knew who Nash was when the name was registered, and his use was classic cyber-squatting.

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NB Trademarks, Inc. v. BWI Domains, WIPO No. D2009-0017 (Mar. 4, 2009). NB Trademarks sought the transfer of the domain name aliengolf.com, which was registered by BWI Domains, a company involved in a variety of domain name disputes in the prior six months. The name resolved in a website displaying sponsored links to third-party websites, some of which sold golf products made by the complainant's competitors. NB Trademarks owns a registered trademark in Alien Golf, as well as a variety of other trademarks bearing the Alien name in connection with golf equipment, apparel, and accessories. The WIPO transferred the disputed domain name to NB Trademarks, finding the company satisfied the three elements required under the UDNDRP. First, it found the domain name was identical to the company's registered trademark in Alien Golf, and confusingly similar to its other Alien marks. Second, it concluded BWI Domains could not establish any rights or legitimate interests in the name, noting it had never been commonly known by the name, and its only use was to divert users to third-party commercial competitors. Finally, it held the domain name had been registered and used in bad faith, noting BWI Domains had to know about the trademarks, intentionally attempted to attract users to its website by creating a likelihood of confusion over whether it was sponsored by Alien Golf. In assessing whether BWI knew about the complainant's trademarks, the panelist noted Alien is a popular brand within the golf world, the website included sponsored links related to the sport, and the company had recently been involved in a variety of domain name disputes.

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Eddy Merckx Rijwielen Cycles NV v. Khalil, WIPO No. D2009-0074 (Mar. 12, 2009); Eddy Merckx Rijwielen Cycles NV v. City Cycle, Inc., WIPO No. D2009-0075 (Mar. 20, 2009). Eddy Merckx Rijwielen Cycles NV sought the transfer of the domain name eddymerckx.com, which was registered by Irfan Khalil, and the domain name merckx.com, which was registered by City Cycles. Eddie Merckx is a corporation associated with the famous cyclist of the same name. It owns a registered trademark in Eddie Merckx, and has also registered the domain name eddymerckx.be. The first disputed domain name resolved in a website displaying sponsored links to third-party websites which sold bicycle products made by other companies. Khalil claimed he had no knowledge the domain name was connected to a parking website, and he planned on

using it for a non-commercial website documenting the history of the famous cyclist. The second disputed domain name resolved in a website displaying pictures of bicycles made by the complainant or from the complainant's products that City Cycle had sold in the past. The online shop offered to sell its domain name to the complainant for $25,000.

The WIPO transferred both of the disputed domain names to Eddie Merckx, finding the company satisfied the three elements required under the UDNDRP in each case. In Khalil's case, it first found the domain name was identical to the company's registered trademark in Eddie Merckx. Second, it concluded Khalil failed to establish he had any rights or interests in the name, noting the website was being used as a parking page offering competing goods, and any fair use defense required actual use, not mere claimed potential use. Finally, it held the domain name had been registered and used in bad faith, even if Khalil was unaware the domain name was attached to a parking page. It also noted its previous decisions established that registered owners are responsible for automatically-generated content connected to their domain names, and a lack of active use of a disputed name or the use of a disputed name as a parking page can constitute bad faith when the trademark is well known. In City Cycle's case, the WIPO first found the domain name was identical to the complainant's trademark rights in Merckx, and confusingly similar to the complainant's rights in Eddie Merckx It noted the name incorporated a substantial and distinctive component of the latter mark; in fact, the nature of the use depended on users making a link to the complainant's trademarks. Second, it determined City Cycle failed to establish it had any rights or interests in the name, noting a reseller can make a bona fide offering of goods and services, but it must offer the actual goods or services at issue and disclose its relationship with the trademark owner. In this situation, the online shop used to be a high-profile dealer of Eddy Merckx bicycles, but currently sold just one of the company's products, and users that clicked on pictures of the bicycles on the website were directed to a page listing other brands that City Cycle sells. Finally, it concluded the domain name had been registered and used in bad faith, noting City Cycle was aware of the complainant's trademarks when the disputed name was registered, and failed to address whether it was still dealing Eddy Merckx bicycles at that time.

{Webfind Khalil}

{Webfind City Cycle}

Matrix Investments B.V. v. Dammers, WIPO No. D2009-0230 (Apr. 6, 2009). Three complainants sought the transfer of the domain name tennisplanet.mobi, which was registered by N.J. Dammers of Tennis Planet LLC. Matrix Investments B.V. owns the Benelux trademark TennisPlanet, and its subsidiaries TennisPlanet B.V. and TennisPlanet International B.V. use the trademark under a license to sell tennis products online. Both of the subsidiaries have already registered various domain names incorporating the term TennisPlanet. Dammers claimed the LLC was not planning on competing with those companies, but would provide tennis training and management in the United States, and registering the domain name prior to moving and starting up his business was only natural. Dammers offered to sell the domain name to the complainants for $7,500 Euros.

The WIPO transferred the disputed domain name to Matrix Investments, as owner of the TennisPlanet trademark, finding it satisfied the three elements required under the UDNDRP.

First, it found the domain name was identical to the company's registered trademark, noting the origin of the mark as well as the scope of goods and services it covers is irrelevant in assessing whether the complainants had rights to it. Second, it concluded Dammers did not have any rights or interests in the name, noting he was allowed to use it for a bona fide offering of services, but he failed to demonstrate actual preparations outside of his efforts to secure a legal right to reside in the U.S. Finally, it held the domain name had been registered and used in bad faith, noting Dammers was a prior customer of the complainants, and he turned down what appeared to be a reasonable settlement offer in an attempt to try to recover far more money than the domain actually cost to maintain.

{Webfind}

Brands Envtl. Establishment v. Matwiejczuk, WIPO No. D2009-0238 (Apr. 24, 2009). Brands Environment Establishment (BEE) sought the transfer of three domain names including the term Bosco Sport, which were registered by Polish citizen Pawel Matwiejczuk. BEE owns two registered trademarks in Bosco Sport, which is used in conjunction with its sponsorship of the Russian Olympic team. The WIPO transferred the disputed domain names to BEE, finding it satisfied the three elements required under the UDNDRP. First, it found domain names were confusingly similar to the company's registered trademarks. Second, it concluded Matwiejczuk did not establish any rights or legitimate interests in the names, noting he has never been commonly known by them, and they do not resolve to any websites. Finally, it held the domain names had been registered and used in bad faith, noting he most likely had prior knowledge of the complainant's trademarks, and other panels had previously determined passive holding could be evidence of deceit. In assessing whether Matwiejczuk had prior knowledge, the panelist noted the marks are widely known in Eastern European countries like Poland, and they were registered while the Russian team was competing in the 2008 Olympics. In assessing whether the passive holding was legit, the panelist noted future good faith use seemed inconceivable in light of the notoriety of the complainant's trademarks.

{Webfind}

Fulham Football Club Ltd. v. Domains by Proxy, Inc. / Official Tickets Ltd., WIPO No. D2009-0331 (May 12, 2009); A.C. Milan S.p.A. v. Domains by Proxy, Inc. / Official Tickets Ltd., WIPO No. D2009-0347 (May 15, 2009). Five English Premier League (EPL) organizations and A.C. Milan sought the transfer of domain names that included all or part of the organizations' names and the terms official and tickets, which were registered by the respondent company and used in connection with its ticket-selling business. The domain names resolved in websites that sold tickets to the clubs' soccer games and other events, as well as a variety of services associated with them. The EPL clubs own a number of registered trademarks that include the organizations' names, and other domain names which incorporate those marks. A.C. Milan owns a number of trademarks in the term Milan, as well as several domain names containing that term or the club's full name. In addition to the disputed names, the respondent company had also registered a series of other names incorporating the trademarks of other popular European clubs and sporting events.

The WIPO transferred the disputed domain names to the football clubs, finding they satisfied the three elements required under the UDNDRP. In the case involving the EPL clubs, it first determined their complaints could be consolidated into one case against the respondent, noting they had a common grievance against the respondent, and it would be both equitable and procedurally efficient to permit it. In tackling the merits of both cases, the panelist first found the domain names were confusingly similar to the clubs' trademarks. It found three names incorporated the entire trademarks owned by two EPL organizations and A.C. Milan, and determined those marks were clearly the distinctive elements of the names. In fact, the generic terms that were used actually increased the confusion to users because they related to one of the clubs' main activities. It noted the other three names did not include the entire trademarks owned by EPL clubs, and were also geographic terms. However, it determined those clubs had unregistered trademark rights in the marks' shorthand use, noting the uses were so well known they have developed a secondary meaning when used in sporting context. Second, the panelist concluded the respondent company had no rights or legitimate interests in the names, noting the websites were used to sell tickets to events other than each respective club's individual matches, and improperly suggested they were authorized to sell tickets. In fact, it appeared as if the company was running a scheme to promote an online ticket store. Finally, the panelist held the names had been registered and used in bad faith, noting the company had a clear pattern of registering names incorporating trademarks in which it had no rights, and those names were likely to cause confusion as to whether the clubs were affiliated with its websites, especially when they resolved to pages that included the word official and colors, fonts, images, and logos similar to those on the clubs' marks.

{Webfind Fulham} ; {Webfind ACM}

Bertarelli v. c/o Ernestobertarelli.com / Tee, WIPO No. D2009-0421 (June 16, 2009). Yacht racing star Ernesto Bertarelli sought the transfer of the domain name ernestobertarelli.com, which was registered by U.S. citizen Nicholas Tee in 2003. The name resolved in a website titled Ernesto Bertarelli - The Fun Club, but contained banners stating it was 100 percent Kiwi owned and gave users the opportunity to wish good luck to Emirates Team New Zealand, the country's famous America's Cup yacht racing syndicate. Bertarelli is a Swiss resident who has no connection with that team; in fact, he formed Alinghi, a competing yacht racing syndicate that has won the America's Cup on two different occasions. In that respect, the site often criticized Bertarelli through satire and sarcasm. But it also contained sponsored links to online stores and other commercial websites operated by Tee, and the domain name was put up for sale at least once. Bertarelli has common law trademark rights in his name as an elite yachtsman who uses his persona for commercial purposes.

The WIPO transferred the disputed domain name to Bertarelli, finding he satisfied the three elements required under the UDNDRP. First, it found the name was identical to Bertarelli's common law trademark in his name, noting he owned rights in that mark prior to the date it was registered. It emphasized he was using his reputation in the business of attempting to win America's Cup as far back as 2002, and the UDNDRP does not require that rights pre-date the registration of a domain name in order to rely on them. Second, it concluded Tee did not establish any rights or legitimate interests in the name, noting there was no evidence to support the idea the shopping links were noncommercial. In fact, the site appeared to misleadingly divert

consumers interested in Bertarelli, and its veiled criticism revealed a motive to tarnish the trademark at issue. Finally, it held the domain name was registered and used in bad faith, noting Bertarelli's reputation in the sailing world was not as strong when the name was registered, but Tee was aware of him and his involvement in the sport. It also emphasized Tee attempted to sell the name for far more than the costs associated with it. Simply put, his claim the auction was a publicity stunt was too hard to believe.

{Webfind}

NBA Properties Inc. v. Domains Plus, WIPO No. D2009-0514 (June 22, 2009). NBA Properties, an affiliated company, and the partnership that owns the Denver Nuggets sought the transfer of the domain name denvernuggets.com, which was registered by the respondent company and used in connection with its ticket-selling business. The name resolved in a website controlled by an entity known as NBATix, which runs an online marketplace for the resale of tickets to NBA events. The page that appeared dealt exclusively with tickets to Denver Nuggets games. NBA Properties is the exclusive licensing agent for all trademarks owned by the NBA and its member teams, including the Denver Nuggets. Its affiliated company, NBA Media Ventures, owns the registered domain names connected with those teams, including nuggets.com. The partnership running the Nuggets owns a registered trademark in the Denver Nuggets.

The WIPO transferred the disputed domain name to the affiliated company, NBA Media Ventures, finding the complainants satisfied the three elements required under the UDNDRP. First, it found the disputed domain name was confusingly similar to the complainants' trademark, noting it replicated Denver Nuggets in its entirety. Second, the panelist determined the respondent company had no rights or legitimate interests in the name, noting it was not an authorized ticket seller, and it was intending to trade on well-known rights by redirecting users to its website. Finally, it held the domain name was registered and used in bad faith. Noting the company knew about the complainants' trademark rights when it registered the name, and sought to profit from the likelihood of confusion about whether the team was associated with the website.

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