

You Make the Call. . .



Volume 12, Number 1

{Spring/Summer 2010}

Alternative Dispute Resolution

U.S. Olympic Comm. v. Ruckman, 2010 WL 2179527 (D. N.J. May 28, 2010). The plaintiffs, the USOC and U.S. Rowing, moved to have an arbitration award awarded against the defendants affirmed. In the underlying arbitration award, the defendants argued against the particular manner in which athletes were chosen for the Olympic Games. The panel found in favor of the USOC and U.S. Rowing. Afterwards, only U.S. Rowing moved to have the award confirmed under the Federal Arbitration Act. In response, the defendant filed a motion to have the case removed to federal court, which the court granted. There were two main issues before the court: (1) the plaintiffs challenged the removal to federal court and (2) USOC moved for dismissal because it was an improperly joined party. The court concluded that the case was improperly moved to federal court because there was neither a federal question nor complete diversity with a damage amount in excess of \$75,000. The court noted that the Amateur Sports Act specifically states that it does not create a private right of action. Furthermore, the defendants never requested monetary damages, only injunctive relief. The court also granted the USOC's motion to dismiss the claims against it because it was improperly joined as a party. The court reasoned that while the USOC was a party to the underlying arbitration, it was U.S. Rowing that moved to have the arbitration award confirmed.

AGENCY/FIDUCIARY DUTY ISSUES

Adams v. Barnes, 2010 WL 2484251 (N.D. Tex. Jun. 17, 2010). Dallas Cowboys professional football player Flozell Adams brought claims against his agent over agency fees. These claims were settled in two arbitration decisions by the same arbitrator. In both instances, the arbitrator found against Adams and ordered him to pay the agency fees. Adams appealed to the District Court after the second arbitration decision on the grounds that the arbitrator acted with partiality and bias. The District Court denied Adams's motion to vacate the arbitration award on the grounds that courts are to take only a narrow review of arbitration decisions. Furthermore, Adams was unable to meet the high burden of demonstrating partiality or bias because his factual allegations were no more than mere speculation.

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Gordon v. Vitalis Partners, LLC, 2010 WL 381119 (N.D. Ill. Jan. 27, 2010). There are two transactions at issue here between the plaintiff, professional basketball player Ben Gordon, and his financial advisors, the defendants. The first transaction occurred when defendants changed their rates from a flat-fee to a percentage of Gordon's yearly salary without informing him or getting his approval. Although the defendants did not directly inform him, Gordon paid the full amount of the new rate for fourteen months. Consequently, the court dismissed this claim.

The second transaction was a loan of \$1.35 million from Gordon to the defendants. While the purpose of this loan was unclear, the court determined that Gordon met his obligations under the promissory note and was entitled to summary judgment and thus the repayment of the loan.

Gordon also brought breach of fiduciary duty claims against the defendants stemming from the above transactions. The fiduciary duty claims were dismissed on the grounds that prior to the above transactions, Gordon consulted with other financial advisors before signing.

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ANTITRUST LAW

Am. Needle, Inc. v. Nat'l Football League, 130 S.Ct. 2201 (U.S. 2010). American Needle brought a section 1 Sherman Antitrust Act claim against the defendant NFL on the grounds that the NFL's decision to grant an exclusive license for the manufacture of headwear (baseball caps) to another company constituted an unreasonable restraint of trade. American Needle was a corporation that designed and manufactured headwear that used the various trademarks of the NFL teams. The central issue before the Supreme Court was whether to accept the single entity defense. In this defense, the NFL argued that its actions could not be understood as concerted for purposes of section 1 of the Sherman Antitrust Act because the NFL acts not as a collective, but as one, unified entity. The Supreme Court, in an opinion by Justice Stevens, rejected the NFL's argument and concluded that its actions were properly understood as concerted for purposes of

section 1. Notably, Stevens wrote that [e]ach of the teams is a substantial, independently owned, and independently managed business.

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Deutscher Tennis Bund v. ATP Tour, Inc., 610 F.3d 820 (3rd Cir. 2010). The ATP Tour, in an attempt to increase its popularity, reorganized its tour. As part of its plan, the ATP Tour downgraded a tournament owned by the plaintiffs. As a result, the plaintiff owners brought claims under sections 1 and 2 of the Sherman Anti-Trust Act and also alleged that the ATP's Directors violated fiduciary duties owed to the plaintiffs. At a jury trial, the jury found in favor of the defendant ATP Tour on all counts. On appeal, the plaintiffs argued several sources of error. First, they argued that the trial court erred when it instructed the jury as to the single entity defense on the section 1 Sherman Act claim. The court stated that even if this were an error, the section 1 claim would have failed nonetheless because the plaintiffs failed to define the relevant market. The plaintiffs retaliated that the reason they did not define a relevant market was because the antitrust analysis should be under quick look rule of reason, which does not require market analysis. The court disagreed, stating that the various manners in which a violation of section 1 can be demonstrated should be thought of as a single inquiry. In other words, even though the plaintiffs thought the analysis should be under quick look, they should have included discussions on full look and per se analysis, to cover all potential circumstances.

As to the breach of fiduciary claim analysis, the court stated that the ATP Directors were protected by the business judgment rule, which protected them from the breach of fiduciary duty claim.

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O'Bannon v. NCAA, 2010 WL 445190 (N.D. Cal. Feb. 8, 2010). Two NCAA student-athletes brought section 1 Sherman Anti-Trust Act and common law claims against the NCAA for its program of licensing student athletes' images and likenesses. The student-athletes complaint alleged that the NCAA engaged in a conspiracy to deprive NCAA student-athletes of their rights in their own likenesses and images, retained perpetual rights in those images, and unjustly enriched themselves as a result. The court, in this 12(b)(6) motion, determined that the first of the student-athletes, O'Bannon, sufficiently pled a section 1 anti-trust claim under rule of reason analysis. The second student, Newsome, failed to define the relevant market and thus his claim was dismissed on those grounds. The court rejected the NCAA's defense that the student-athletes lacked Article III and Anti-Trust standing on the grounds that O'Bannon was able to demonstrate both an injury that was traceable to the defendant NCAA and an anti-trust injury stemming from the NCAA's program of licensing the student-athlete images and likenesses. Lastly, the court found that O'Bannon's common law claim for unjust enrichment survived the 12(b)(6) motion because his factual allegations supported such a claim under California law.

CONSTITUTIONAL LAW

Christopher v. Windom Area Sch. Bd., 781 N.W.2d 904 (Minn. Ct. App. 2010). Plaintiff, a teacher and basketball coach, filed a complaint alleging violations of Minnesota state law and federal constitutional due process when he was not rehired to his position as a boys basketball coach. The court dismissed the plaintiff's arguments on all counts. It concluded that Minnesota statutes, in their plain language, permitted a school to decide not to rehire a coach as it saw fit. The court also dismissed the Due Process Clause (DPC) claim on the grounds that the plaintiff, who had a one-year renewable contract to coach, did not have a protected property interest under the DPC. Instead, the coach had only a unilateral expectation of continued employment.

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Evans v. Ky. High Sch. Athletic Ass'n, 2010 WL 1643758 (W.D. Ky. Apr. 20, 2010). Four students challenged KHSAA's passage of bylaw thirteen, which prohibits, inter alia, recruitment of student-athletes by non-public high schools. It does so in two relevant ways: (1) by placing limitations on the amount of aid and (2) by limiting sources of aid to only those bodies that are under the control of the member school. The students challenged this bylaw on constitutional grounds, specifically under the Equal Protection Clause. The court determined that the appropriate level of scrutiny here was rational basis because the students were unable to demonstrate that the bylaw discriminated on religious or gender grounds. As a result, the court concluded that the KHSAA's purpose of preventing the recruitment of student-athletes by non-public high schools passed the lowest form of constitutional scrutiny. The court remanded the students remaining state law claims to state court.

Joyce v. Town of Dennis, 705 F.Supp.2d 74 (D. Mass. 2010). Plaintiff, a female golfer, brought claims against the Town and its officials (in both their official and individual capacities) alleging violations of the Equal Protection Clause (EPC), the Massachusetts Anti-Discrimination statute, and the Massachusetts Consumer Protection Act. The plaintiff was denied entry into the town's men's golf tournament. For the EPC claim, the court determined that the plaintiff was entitled to intermediate scrutiny, which resulted in the court concluding that there was no exceedingly persuasive justification for denying the plaintiff entry into the tournament. For the state anti-discrimination claim, the court rejected the defendants' attempts to convince the court to interpret the statute as allowing separate but equal treatment of genders in the tournament schedule. The golf course had two women's tournaments and five men's tournaments on that year's schedule. Lastly, the court denied summary judgment to the consumer protection claim on the grounds that it was an issue of first impression as to whether a municipality could be liable under the act.

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Natke v. N. Branch Area Sch. Dist., 2010 WL 522798 (E.D. Mich. Feb. 8, 2010). Plaintiff, a student on his high school baseball team, was suspended by the school when he stole a case of beer from a local store. The plaintiff brought claims alleging violations of his due process rights and state law breach of contract. The court dismissed the due process clause claim on the grounds that the plaintiff did not have a constitutionally protected right to participate in interscholastic athletics; his student-athlete handbook even referred to his participation as a

privilege, not a right. The court also dismissed the breach of contract claim on the grounds that Michigan does not recognize a breach of contract claim against a public school brought by a student.

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St. Patrick High Sch. v. N.J. Interscholastic Athletic Ass'ns, 2010 WL 715826 (D. N.J. Mar 1, 2010). Several student-athletes, via their high school, brought constitutional claims against the New Jersey Interscholastic Athletic Association (NJIAA) for banning the high school basketball team from a yearly tournament after the NJIAA discovered that the team's coach had violated the association's rules. The students brought constitutional claims under the Due Process Clause (DPC) and the Fourth and Fourteenth Amendments. The students also sought a preliminary injunction to allow them to participate in the tournament. The court dismissed the DPC claim on the grounds that even if the students had a protected property interest, they received the amount of process that was due to them. The court also dismissed the Fourth and Fourteenth Amendment claims for unreasonable search and seizure because, on balance, the students did not have a high degree of expected privacy because the searches took place during open practices, which were designed to give scouts and opportunity to watch the students practice. Because the students were unable to demonstrate any likely success on the merits, the court did not issue a preliminary injunction.

Wis. Interscholastic Athletic Ass'n v. Gannett Co., Inc., 716 F.Supp.2d 773 (W.D. Wis. 2010). The WIAA sought declaration that its contract with When We Were Young Productions (WWWY) for the exclusive licensing of its interscholastic athletic events, including Internet rights, did not violate the First or Fourteenth Amendments. Gannett, the defendant, was a newspaper publisher that published articles about various interscholastic athletic events across the country, including events run by the WIAA. The court concluded that the contract between the WIAA and WWWWY did not violate either the First or Fourteenth Amendments. As the court explained, this is a case about commerce, not the right to a free press. There was nothing in the contract that prohibited Gannett from publishing articles regarding WIAA events or anything that would limit the content of those articles. Instead, the court saw the WIAA as an organization that was trying to remedy a budgetary problem that occurred when its previous contract with a third party fell from \$140,000 annually, to \$40,000. As a result, the WIAA sought out a new partner to increase revenue, which ultimately led to the contract with WWWWY. Specifically, the court concluded that the forum for the WIAA events were non-public. As a result, the right of the State to limit expression in a non-public forum is greater than it would be if it were a public forum. Additionally, the court concluded that the fees charged to users to access the data from WWWWY did not violate the First amendment and neither did the WIAA's decision to make the contract exclusive to WWWWY.

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CONTRACT LAW

Classic Entm't & Sports, Inc. v. Pemberton, 988 A.2d 847 (R.I. 2010). Plaintiff, a boxing promoter, brought an action for breach of contract against professional boxer Scott Pemberton. Pemberton was obligated, by the terms of his contract with the plaintiff, to sign with the plaintiff for an additional three years if the plaintiff secured a title fight for the defendant. The plaintiff secured the fight, but was never compensated for its services. At trial, the court granted the plaintiff's summary judgment motion. The defendant appealed that decision on the grounds that he never agreed to pay the plaintiff for the title fight in question. The court, however, noted that the defendant failed to provide any evidence for his contention. Thus, the court affirmed the lower court's summary judgment motion.

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Equipo de Baloncesto Capitanes de Arecibo, Inc. v. Premier Basketball League, Inc., 706 F.Supp.2d 195 (D. Puerto Rico 2010). Plaintiff, a Puerto Rican basketball team, filed suit against the defendant professional basketball league alleging breach of contract, breach of implied covenant of good faith and fair dealing, and tortious and intentional interference with prospective economic advantage after league expelled the team. The league moved to dismiss for want of personal jurisdiction and improper venue. The court denied the league's claims on the grounds that personal jurisdiction in this case comported with the Constitution's Due Process Clause. The court also determined that because there was personal jurisdiction over the defendant, the venue was proper in Puerto Rico or, for that matter, any venue where the defendant conducts business.

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Guiliani v. Duke Univ., 2010 WL 1292321 (M.D. N.C. Mar. 30, 2010). Plaintiff, a student-athlete golfer, sued Duke and its head golf coach for tortious interference and breach of contract claims after the head coach allegedly made various promises to the plaintiff as a condition of his acceptance to play for the university, including lifetime access to the university's facilities. The central issue in this case was whether a contract was formed between the plaintiff and the head coach, and thus, the university. The court concluded that there had been no such contract. The court noted that all the coach stated to the plaintiff were potential benefits available if the plaintiff attended Duke. The court emphasized that there had been no meeting of the minds nor were the terms of the alleged contract sufficiently well defined.

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Gutkowski v. Steinbrenner, 680 F.Supp. 2d 602 (S.D. N.Y. 2010). Plaintiff brought claims under New York state law for breach of contract, unjust enrichment, quantum meruit, and fraud in the inducement that arose out of an alleged oral agreement between the plaintiff and the New York Yankee's television network, the YES Network. At issue before the court was the defendant's summary judgment motion for failure to state a claim under 12(b)(6). The court granted the motion on the grounds that the plaintiff's complaint lacked definiteness because the oral agreement lacked specific contractual terms such as compensation. Additionally, the court concluded that the plaintiff's claim was barred under New York's statute of frauds. Finally, the

court dismissed the fraud in the inducement claim because the plaintiff failed to plead sufficient facts that would give rise to such a claim.

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Hambric Sports Mgmt., LLC v. Team AK, Inc., 2010 WL 2605243 (N.D. Tex. Jun. 29, 2010). Plaintiff, a sports agent and management company, entered into a contract with professional golfer Anthony Kim for the purpose of licensing his rights and marketing his skills. Kim, shortly after signing the contract with the plaintiff, signed with another sports management company, IMG. This new partnership created the endeavor Team AK, which is the named defendant. The plaintiff brought claims of tortious interference and breach of contract against Team AK, IMG, and other two other parties allegedly involved. At issue in the instant case were the defendants' motions to dismiss for lack of personal jurisdiction and for failure to state a claim under 12(b)(6). The court determined that the plaintiff failed to state a claim against Team AK and one of the other defendants, but provided the plaintiff an opportunity to amend the complaint. As to the other defendants, the court determined that personal jurisdiction existed and denied the motion to dismiss.

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Mayer v. Belichick, 605 F.3d 223 (3rd Cir. 2010). Mayer, a season ticket holder to the New York Jets Football Club, brought several claims against the New England Patriots and the team's head coach, Bill Belichick. These claims were brought as a result of the so called spygate scandal, wherein the Patriots were found to have violated NFL rules by videotaping the various play-calling signals of their opposing teams during Belichick's time as head coach. As a result of the violations, both the Patriots and Belichick were fined by the NFL. In this case, Mayer filed a class action lawsuit against the defendants alleging that, as a season ticket holder, the class was entitled to watch a legitimate and honest football contest between the Jets and Patriots for the years 2000-2007. At trial, the district court granted the defendants' summary judgment motion on the grounds that the plaintiff failed to state an argument upon which relief can be granted. On appeal, the circuit court upheld the district court's ruling that a season ticket, or any ticket for that matter, grants only a license to sit in a particular seat to watch the particular game. It does not grant the right to watch a particular type of game. The court noted similar claims, such as that made after the Mike Tyson versus Evander Holyfield fight (in which Tyson bit Holyfield's ear), failed on similar grounds.

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MRD Motorsports, Inc. v. Trail Motorsports, LLC, 694 S.E.2d 517 (N.C. App. 2010). The plaintiff, MRD, executed a contract with the defendant, Trail, to provide Trail with the equipment and manpower to participate in two Camping World Truck Series races. The defendant was late on the first of two payments and failed to make the second payment. The plaintiff filed claims for breach of contract and unjust enrichment against the defendant. The trial court entered default judgment against the defendants but did not address the plaintiff's motions to award treble damages and attorney's fees. The court in the instant action found it to be an abuse of discretion for the trial court to not award the plaintiff, once able to demonstrate a

breach, its choice of damages pursuant to N.C.G.S. 75-16. Thus, the court reversed and remanded on the issue of treble damages. The court also remanded the issue of attorney's fees even though the decision to award attorney's fees is within the trial court's discretion because the trial court failed to address the matter.

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Stockstill v. Quinnipiac Univ., 2010 WL 2011152 (D. Conn. May 19, 2010). The plaintiff, a student-athlete, filed for a preliminary injunction against the defendant to prevent it from rescinding its acceptance of admission to the plaintiff. The defendant university recruited the plaintiff to play lacrosse. Ultimately, the plaintiff signed with the university and was accepted, which allowed him to register for fall classes. During the same time, however, the plaintiff was involved in a serious hazing incident, for which the plaintiff was sentenced and convicted. As part of the conviction, the plaintiff had to serve probation, which prevented him from moving out of the state of Florida (Quinnipiac is located in Connecticut). The plaintiff did not disclose this to the university. Upon finding out, the university rescinded its offer of acceptance. The plaintiff moved for preliminary injunction so he could remain enrolled while the remainder of his legal issues, namely his probation status, could be handled. The court denied the motion on the grounds that he failed to demonstrate irreparable harm. The plaintiff alleged that the loss of classes during the time would irreparably place him behind other students. The court disagreed on the grounds that the plaintiff provided nothing more than speculation for this allegation. The court also concluded that the plaintiff failed to demonstrate a likelihood of success on the merits because the university had several legitimate reasons for rescinding its offer of acceptance. Specifically, the plaintiff failed to disclose his probation status to the university and he may not legally be able to travel to Connecticut.

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Teel v. Rogers, 2010 WL 2679755 (E.D. Va. Jun. 4, 2010). The plaintiff brought breach of contract and unjust enrichment claims against a professional football player, Carlos Rogers, for failing to repay a loan made by the plaintiff. The plaintiff loaned Rogers the money because his house was about to be foreclosed on and Rogers needed enough money to last until he received his first game paychecks from the Washington Redskins. At issue here was whether to enter default judgment against Rogers who failed to timely respond to the complaint. After the court determined it had jurisdiction, it found in favor of the plaintiff and entered default judgment on both claims. Specifically, the court noted that the plaintiff met all of his obligations under the loan and Rogers had discontinued his repayment of the loan.

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Turner Broad. Sys., Inc. v. McDavid, 693 S.E.2d 873 (Ga. App. 2010). Plaintiff was a prospective buyer of the National Hockey League's Atlanta Thrashers and the National Basketball Association's Atlanta Hawks from the defendant Turner Broadcasting System (TBS). The two parties allegedly agreed, despite the absence of a written contract, for the defendant to sell the two teams to the plaintiff. After TBS allegedly breached this contract, the plaintiff filed and won a breach of contract claim in the trial court, for which the jury awarded \$281 million to

the plaintiff. TBS appealed that decision in this case. The court upheld the trial court's decision and damage amount on all counts and found no error in its decision. Specifically, the court concluded that although there was no written executed contract, the statute of frauds did not require the contract to be in writing. Furthermore, the court agreed that, as a result of TBS's breach, the plaintiff was unable to obtain approval from various professional sports leagues. Lastly, the court concluded both that the plaintiff was entitled to more than mere nominal damages and that the amount itself was within the range of possible damages given the evidence.

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TYR Sport, Inc. v. Warnaco Swimwear, Inc., 709 F.Supp.2d 802 (C.D. Cal. 2010). The manufacturer of high-end swimwear, TYR, brought Sherman Act, California Cartwright Act, and tortious interference claims against USA Swimming (the NGB for swimming), a competitor (Warnaco), and the head coach and general manager of Olympic swimming teams. The complaint arose as a result of statements made by the head coach encouraging his swimmers to wear the competitor's swimsuit during competitions and that the competitor's swimsuit would result in faster times. The claim against the NGB resulted from it keeping secret certain information it obtained out of collaboration with other swimwear manufacturers. In each of these claims, the court concluded that these actions did not demonstrate a coercive statement or conspiracy between the parties in violation of the state and federal antitrust laws. The court dismissed the tortious interference claim against one of the professional swimmers on the grounds that the plaintiff had not even a scintilla of actual evidence that demonstrated an intent to breach the endorsement contract.

Whitaker v. Limeco Corp., 32 So. 3d 429 (Miss. 2010). Plaintiffs, who were the holders of notes produced by the defendant, brought action against the defendant company. The plaintiffs alleged breach of said promissory notes obtained to purchase a hockey team, breach of continuing guaranty, fraud, and fraudulent transfers of assets. The plaintiffs alleged that they were duped into signing promissory notes to the defendant for the purchase of the team when the defendant produced false documents showing that the company was able to take on the amount of the loan. The trial court dismissed the complaint on the grounds that the appropriate statute of limitations, which was for three years, already ran. The plaintiffs appealed this decision and moved to have to vacate the trial court's decision that prevented the plaintiffs from piercing the defendants' corporate veil. The court in this case determined that although the appropriate statute of limitations was three years, the defendant concealed its fraudulent acts, which prevented the running of the statute. As a result, the plaintiff's complaint was filed timely. The court, however, declined to address the piercing of the corporate veil claim on the grounds that the trial court did not address the issue because it dismissed the claim under the statute of limitations. Since this court overturned the trial court's ruling as to the statute of limitations, it remanded the issue of piercing the corporate veil to the trial court for further action.

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Court of Arbitration for Sport Decisions

Australian Olympic Comm. v. Fed'n Internationale de Bobsleigh et de Tobogganing, CAS Ad Hoc Division - XXI Olympic Games in Vancouver, CAS arbitration N° OG 10/01 AOC v/FIBT (Feb. 9, 2010). In this CAS decision, the AOC challenged the FIBT's ruling that prevented two Australian women from competing in the bobsled competition at the 2010 Winter Olympics. The central dispute was over the FIBT's manner of selecting athletes through the continental representation quota, which guaranteed that only a certain number of male and female bobsledders could participate based on the individual athlete's ranking. After an in depth analysis of the specific language in the continental representation rule and the FIBT documents that created it, the CAS panel concluded that the appropriate interpretation of the document was to guarantee the two Australian women the opportunity to compete in the 2010 Winter Olympics.

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Berger v. World Anti-Doping Auth., CAS 2009/A/1948 (Mar. 23, 2010). Berger, a 52 year-old paraplegic and world-class shooter, suffered from a heart condition for which he took the beta-blocker Metoprolol. Metoprolol, however, is a banned substance under the WADA Code. Berger applied for a Therapeutic Use Exemption (TUE) with the International Paralympic Committee (IPC). The IPC denied Berger's TUE, largely on the grounds that the drug's side effects of a reduction in heart rate and a reduced hand tremor could provide Berger with a significant competitive advantage. Berger appealed the IPC decision to this CAS panel. The panel, after examining various medical documents, expert opinions, and other studies determined that the hand tremor and the drug's other effects could not be dismissed as pure speculation. Although the CAS panel came to a different conclusion regarding the reduced heart rate, it was particularly concerned that a reduced hand tremor would provide Berger with an advantage during competition. As a result, it upheld the IPC's denial of Berger's request for a TUE.

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Confederaçao Brasileira de Desporto no Gelo v. Fed'n Internationale de Bobsleigh et de Tobogganing, CAS Ad Hoc Division - XXI Olympic Games in Vancouver, CAS arbitration N° OG 10/02 CBDG v/FIBT (Feb. 12, 2010). The impetus for this CAS arbitration decision was an earlier arbitration decision by CAS in *AOC v. FIBT*, in which the CAS panel permitted the Irish Bobsled team to participate instead of the Australian team after a review of the continental representation rules for bobsled. The CBDG challenged the decision to permit the Irish team to participate in the 2010 Winter Olympics on the grounds that the reason the Irish team had more qualifying points than the Brazilian team was a result of the FIBT's decision to not permit the Brazilian team to the previous year's World Cup competition. This event, in which Ireland was allowed to participate, was the main reason behind the point differential between the two teams. At the time, however, the CBDG did not challenge the FIBT's decision to permit Ireland to participate in the World Cup. This failure was critical to the CAS panel's determination to reject the CBDG's appeal. The CAS panel reasoned that the dispute was not over the decision to permit the Irish team to the 2010 Winter Olympics, but over FIBT's decision to permit the Irish team to participate in the World Cup event. Therefore, when the CBDG declined its opportunity to challenge that decision, it waived its ability to challenge that decision before CAS.

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Devyatovskiy v. IOC, CAS 2009/A/1752 (June 10, 2010); Tsikhan v. IOC, CAS 2009/A/1753 (June 10, 2010). The two athletes in these CAS decisions are Olympic Hammer-Throwers. After competing in the 2008 Beijing Olympics, the two athletes tested positive for excessive testosterone in their system. The IOC, after an investigation, handed down the following penalties: (1) Devyatoskiy was ordered to return his 2008 Beijing medal, is disqualified from the event, and is permanently banned from all future Olympic Games in any capacity, and (2) Tsikhan was ordered to return his medal and was disqualified from the 2008 event. The two athletes appealed the IOC decision to the CAS panel on the grounds that the tests undertaken by the various labs violated the WADA Code testing standards in several ways. The CAS panel found in favor of the athletes when it found that the Beijing laboratory that conducted several of the tests was found to have used cut and paste documents that did not reflect the precise sequence of the testing procedures. Due to this disruption, the CAS panel concluded, and expert testimony reinforced, that the samples of the two athletes had been compromised. As a result, the CAS panel granted the athletes' appeal and vacated the penalties imposed by the IOC.

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Doping Auth. Netherlands v. Zuijkerbuijk, CAS 2009/A/2012 (June 11, 2010). The athlete in this appeal is a professional Dutch billiards player. Prior to an organized event, he ingested a small amount of cocaine at a party, which appeared on a random drug test the day of the event. The Dutch Appeal Committee (DAC) concluded that the appropriate penalty in this instance was a one-year suspension as opposed to the standard, WADA Code two-year suspension. The Doping Authority Netherlands (NADO) appealed the decision and alleged that the circumstances did not dictate a reduction from the standard two-year suspension. The CAS agreed and specifically noted that the WADA Code was designed to create uniformity and, as a result, does not often move from the standard two-year penalty without significant reason (e.g. the no fault or no significant fault provisions). Because the athlete was not able to demonstrate no fault or no

significant fault (he admitted knowingly ingesting cocaine at the party), the CAS overturned the DAC's decision and reinstated the two-year suspension.

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FC Sion v. FIFA & Al-Ahly Sporting Club, CAS 2009/A/1880 (June 1, 2010); Essam El-Hadary v. FIFA & Al-Ahly Sporting Club, CAS 2009/A/1881 (June 1, 2010). In this CAS decision, the two appellants, FC Sion and El-Hadary, challenged the lower panel's decision regarding the transfer of El-Hadary to from the respondent's team, Al-Ahly, to FC Sion. El-Hadary, the football player, claimed that there was an oral agreement in place whereby he would be transferred from Al-Ahly, his Egyptian club, to the Swiss FC Sion club. The dispute arose when El-Hadary and FC Sion, a day after the alleged oral agreement occurred, signed a Swiss employment contract effective until the end of the 2010-2011 season. Shortly thereafter, El-Hadary notified Al-Ahly that he was terminating his contract with the team. Al-Ahly appealed to the Dispute Resolution Center, which found in favor of the team on most counts and ordered El-Hadary to pay compensation to Al-Ahly and held FC Sion jointly and severally liable for that payment. Both El-Hadary and FC Sion appealed to the CAS panel. The CAS concluded that FC Sion lacked standing to file and appeal from the DRC decision. Thus, it denied FC Sion's appeal. El-Hadary's claim, however, was deemed admissible, but only in part. The CAS panel reduced the damage award from 900,000 EUR (roughly \$1.18 million USD) to \$796,500 USD. The CAS panel, however, upheld the suspension against El-Hadary, which prohibited from competing for four months.

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Fiji Ass'n of Sports and Nat'l Olympic Comm. v. Commonwealth Games Fed'n, CAS 2010/O/2039 (Mar. 30, 2010). In this CAS panel decision, the Fiji Sports and NOC appealed the decision of the Commonwealth Games Federation (CGF) to suspend Fiji following the military overthrow of its civilian government. Fiji appealed the decision on the grounds that the CGF constitution specifically provides that contests are between athletes, not nations, and that the constitution prohibits discrimination on political grounds. The CAS panel agreed that contests are between athletes, not nations, and was sympathetic to the athletes who would lose the opportunity to participate. Nonetheless, the CAS panel concluded that [t]o take action against a country because it does not countenance democracy does not per se discriminate against it even if the grounds for it could be described as 'political.' Consequently, the panel denied Fiji's appeal and upheld the CGF's decision to suspend the country from the Commonwealth.

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FK Pobeda v. UEFA, CAS 2009/A/1920 (Apr. 15, 2010). In this CAS decision, a Macedonian Football Club, FK Pobeda, appealed UEFA's decision to ban the team from competition for eight years, to enforce a lifetime ban against the team's president and the team's captain as a result of a match-fixing scheme between the various appellants. The central dispute was over the appellant's opportunity to examine anonymous witnesses and key pieces of evidence that implicated the several appellants. The CAS panel determined that, although there may have been due process problems with the manner in which UEFA handled its decision, any defects were remedied by

the CAS panel's hearings, which afforded the appellants the appropriate amount of time to examine the various evidence. When the CAS panel examined that evidence, it upheld the eight-year ban against FK Pobeda and the lifetime ban against the team's president. As to the team's captain, however, the evidence was inconclusive to prove that the team's captain actually participated in the match-fixing. As a result, the CAS panel eliminated the lifetime ban as to the team's captain only.

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Kenya Football Fed'n v. FIFA, CAS 2008/O/1808 (Apr. 27, 2010). In this CAS decision, the Kenya Football Federation (KFF) sought to be recognized as the official FIFA association in Kenya. At the time, however, FIFA declined to recognize KFF on the grounds that the Kenyan government had already decided, sua sponte, to recognize a different association, Football Kenya Limited (FKL). As a result, FIFA opted not to use its own expulsion procedures to remove KFF as the sole association for FIFA in Kenya. Furthermore, FIFA, by its own rules, is prevented from recognizing more than one association per country. KFF appealed FIFA's refusal to recognize KFF as the sole association for FIFA football in Kenya on the grounds that it was never properly expelled. The CAS panel concluded that it was appropriate for FIFA to decline to use its expulsion procedures given the particular political situation in Kenya. As the CAS panel noted, there was nothing to prevent the members of FKL from holding new elections and having KFF reinstated as the FIFA association in accordance with Kenyan law.

[{Webfind}](#)

Pechstein v. Deutscher Olympischer Sportbund, CAS Ad Hoc Division - XXI Olympic Games in Vancouver, CAS arbitration N° OG 10/04 (Feb. 18, 2010). In this CAS panel decision, Pechstein, a world-class speed skater attempted to appeal the DOSB's decision to not nominate her for the 2010 Winter Olympics. The DOSB declined to nominate her because she was serving a two-year suspension for blood doping. That suspension was upheld by both the CAS and the Swiss Federal Tribunal in separate decisions. The current CAS panel denied Pechstein's appeal on the grounds that she failed to point to a decision made by an applicable sports governing body that she was appealing. All Pechstein could, in effect, point to was the original two-year suspension, which was already upheld by a previous CAS panel and the Swiss Federal Tribunal. Because the decision to suspend her was already upheld by these two bodies, this CAS panel was prohibited from reviewing again the decision to suspend Pechstein.

[{Webfind}](#)

WADA v. Valverde & RFEC, CAS 2007/A/1396 (May 31, 2010); UCI v. Valverde & RFEC, CAS/A/1402 (May 31, 2010). Valverde, a world-class cyclist, was involved in a Spanish criminal investigation referred to as Operation Puerto, which involved a number of parties, doctors, and athletes around a systemic pattern of blood doping. The RFEC declined to open disciplinary proceedings against Valverde, one of the athletes caught up in the Spanish investigation. Both WADA and UCI, the international federation for cycling, appealed to CAS the decision not to open proceedings. Examining an extensive record, which including Spanish and Italian court proceedings, physical evidence, and testimony, the CAS panel granted the WADA and UCI

appeals, in part. Significantly, the CAS panel found Valverde guilty of an anti-doping violation under the UCI Anti-Doping rules and suspended him for a period of two years. All other requests for relief made by WADA and UCI were denied.

[{Webfind}](#)

World Anti-Doping Agency v. Hardy & United States Anti-Doping Agency, CAS 2009/A/1870 (May 21, 2010). Hardy, a member of the U.S. National Swim Team, was suspended by the United States Anti-Doping Agency (USADA) after Hardy tested positive for Clenbuterol, a prohibited substance. Hardy successfully argued before the AAA arbitration panel that the presence of the banned substance was a result of her use of the supplement AdvoCare. As a result, that panel reduced her two-year suspension to one-year. Additionally, the AAA panel declined to enforce Olympic Charter Rule 45, which would have prevented Hardy from participating in the next Olympic Games, on the grounds that doing so would be disproportionate to Hardy's actions. The World Anti-Doping Agency (WADA) appealed that decision to CAS. The CAS panel dismissed WADA's appeal and determined that the AAA panel has some degree of flexibility to determine the proportionality of the punishment relative the athlete's actions.

[{Webfind}](#)

Virgin Islands Olympic Comm. v. IOC, CAS Ad Hoc Division - XXI Olympic Games in Vancouver, CAS arbitration N° OG 10/03 (Feb. 12, 2010). In this CAS panel decision, the VIOC appealed the IOC's decision to not re-allocate an unused men's skeleton quota position to allow an additional women's skeleton competitor to participate in the 2010 Winter Olympics. The central issue was over the meaning of the FIBT's quota rule that states places earned and not taken up are reallocated until all 30 places (men) or 20 places (women) are filled. The CAS panel concluded that there was no intention to permit reallocation between the men's and women's positions on the grounds that had this been the intention, the rule would have read as follows: places earned and not taken up are reallocated until all 50 places are filled. Consequently, the CAS panel denied the VIOC's appeal.

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Disability Law

Celeste v. E. Meadow Union Free Sch. Dist., 373 Fed.Appx. 85 (2nd Cir. 2010). Plaintiff was a student and manager of the school's football team who suffered from cerebral palsy. He brought Americans with Disability Act claims against the school district because of architectural problems that caused him to miss half of his physical education class and limited his ability to participate as manager of the football team. The defendant appealed the jury verdict in favor of the plaintiff on the grounds that (1) there was no objective or expert testimony supporting the plaintiff's allegations and (2) the damage amount was arbitrary. The court rejected the defendant's first contention, but concluded that the jury had improperly weighed the emotional damage suffered by the plaintiff. Consequently, the court remanded the case for a new trial to determine damages. The court also remanded the plaintiff's cross appeal, which alleged that the

defendants violated new ADA standards for bus stops. The court remanded this issue back to the trial court to further develop the facts and complete a full inquiry.

[{Webfind}](#)

Doe v. Deer Mountain Day Camp, Inc., 682 F.Supp. 2d 324 (S.D. N.Y. 2010). Mother, on behalf of her son, brought discrimination claims under the Americans with Disabilities Act (ADA) and the New York State Human Rights Law (NYSHRL) when her son was denied admission to a basketball camp on the grounds that he was HIV-positive. The mother brought claims against both the company that owned the land used for the camp and the organizers of the camp itself. The court determined that the plaintiff could make the prima facie case under the ADA against the organizers of the camp because her son's HIV-positive status was a substantial reason for denying the son admission to the camp. The plaintiff was unable to impute this to the company that owned the land for the camp because of a lack of sufficient ties between the two companies.

On defense, the defendants argued that the son's HIV-positive status represented a direct threat to the safety of the other campers. The court rejected this argument on the grounds that the defendants failed to provide sufficient evidence to support such a claim.

As to the NYSHRL claim, the court found that because the plaintiff was entitled to summary judgment as to the ADA claim, she was also entitled to summary judgment on the NYSHRL claim because the NYSHRL has a broader definition of a disability than the ADA.

[{Webfind}](#)

Ross v. Indep. Living Res. of Contra Costa Cty., 2010 WL 1266497 (N.D. Cal. Apr. 1, 2010). Plaintiff, a quadriplegic, brought claims against a sports facility (not the defendant) for denying accessible facilities to him. As a result, the sports facility, on an Internet discussion board, published the plaintiff's name as having brought the suit and encouraged those upset by the closing to contact the plaintiff's employer, IRL (the defendant). IRL, allegedly in response to plaintiff's actions, fired him. The plaintiff then brought claims under the ADA for retaliatory discharge and California Labor Law. The defendant moved to dismiss under 12(b)(6). The court dismissed without prejudice the plaintiff's ADA claim on the grounds that he failed to demonstrate that the IRL was an employer under the ADA. The court denied plaintiff's motion as to the plaintiff's California Labor Code Section 1101 claim on the grounds that the section's use of the term political activities encompassed not just the creation, but the exercise of, a particular right. In this case, that right was the plaintiff's right to be free from discrimination under the ADA. The court dismissed the plaintiff's claim under CLC Section 1102.5 on the grounds that the section was meant to cover only the employer-employee relationship. Here, the subject of this claim was not between the plaintiff and the IRL, but between the plaintiff and the sports facility. Lastly, the court dismissed the plaintiff's claim under the Unruh Civil Rights Act because the court did not equate the plaintiff's claim for termination of employment (which the act does not cover) with an act of employment discrimination (which the act does cover).

Discrimination Law - Race

Graham v. Town of Normal, 2010 WL 582608 (C.D. Ill. Feb. 10, 2010). Plaintiff, an African-American who worked at a golf course, was not rehired. He brought discrimination, retaliation, and breach of contract claims against the golf course alleging that the decision not to rehire was racially based. The defendant golf course argued that the decision not to rehire was based on several, not racial factors, including the plaintiff's past work performance and, most notably, his decision to quit in the middle of the 2005 season. Both parties moved for summary judgment. The court determined that the plaintiff failed to provide direct or indirect evidence of either racial discrimination or retaliation in the defendant's decision to not rehire him in 2005. The court emphasized that the plaintiff was unable to demonstrate that the allegedly discriminatory conduct (extra interviewer, being interviewed, and the decision to not rehire) was pretextual or evidenced a desire not to rehire him out of racial animosity. As a result, the court granted the defendant's summary judgment as to both of those claims.

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Reed v. Town of Williston, 2010 WL 1409427 (D. S.C. Feb. 26, 2010). Plaintiff, an African-American recreational director for the town, filed a complaint alleging racial discrimination under Title VII and a civil conspiracy between the various defendants. The court determined that the plaintiff's complaint was that, in his attempts to provide a racially neutral recreation league, the mostly white community filed false complaints against him in order to get him fired. The court concluded that while the plaintiff was able to demonstrate disparate treatment, the defendants were able to demonstrate that he was fired for alternative, non-pretextual reasons. In this case, the defendants pointed to the plaintiff's numerous poor performance reviews. Lastly, the court dismissed the civil conspiracy claim because the plaintiff was unable to demonstrate or even plead special damages.

Discrimination Law - Gender

Egli v. Congress Lake Club, 2010 WL 2184062 (Ohio App. Jun. 1, 2010). Plaintiff, a woman and former head golf professional at the defendant's golf club, brought employment discrimination claims against the defendant on several grounds, including that she was prevented from hiring female assistants and her allegedly voluntary resignation from her position at the golf club. At trial, the defendant moved for summary judgment, which was granted. At issue in the instant case is the plaintiff's appeal of the motion to dismiss. The court granted the plaintiff's motion and reversed and remanded the case back to the trial court. The court concluded that there were still outstanding issues of fact as to the circumstances surrounding the plaintiff's allegedly voluntary resignation. Specifically, which votes of the various board members were motivated by a discriminatory purpose.

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Drug Testing Issues

Mayfield v. Nat'l Ass'n for Stock Car Auto Racing, Inc., 713 F.Supp.2d 527 (W.D. N.C. 2010). Mayfield, a professional racecar driver, was found to have violated NASCAR's substance abuse policy. Mayfield brought various claims against NASCAR, including for defamation and deceptive trade practices, when the NASCAR officials refused to turn over a copy of Mayfield's test results and improperly disclosed information about the positive test to the public. Critical for the court in this case was a document that NASCAR drivers are required to sign that releases and holds harmless NASCAR and its employees from liability for claims arising out of implementation of NASCAR's drug testing policy. Because the court upheld the various waivers NASCAR requires drivers to sign, many of the claims brought by Mayfield were dismissed. Others, such as his North Carolina state law claim under the Persons with Disabilities Protection Act, failed because Mayfield was not a NASCAR employee.

Employment Law

Leonard v. E. Ill. Univ., 606 F.3d 428 (7th Cir. 2010). The plaintiff, a Native-American, worked as a janitor and maintenance worker for the defendant EIU. He sued the university after he was denied a promotion, which he alleged was based on his attempts to exercise rights under Title VII. Specifically, the plaintiff complained after one interview for a promotion that the two interviewers wore shirts bearing University of Illinois's mascot Chief Illiniwek. The interviewers argued that they wore the shirts out of support for the in-state school during the NCAA boys basketball tournament. The plaintiff protested against the use of the U of Illinois mascot because he found it offensive to Native-Americans. When the plaintiff interviewed a second time for a promotion, he was again denied. This sparked the instant lawsuit against the university when the plaintiff believed the refusal to promote was based on his complaint against the previous two interviewers. The defendant moved for summary judgment at trial, which was granted. The plaintiff appealed that decision to the present court. The court in the instant action upheld the defendant's motion for summary judgment on the grounds that the plaintiff could provide only speculation of retaliation for exercise of his Title VII rights. The court noted that, at the time of the first interview, EIU was participating in the NCAA men's basketball tournament, which is a plausible alternative reason for the shirts printed with the university's mascot.

Intellectual Property Law

108 Degrees, LLC v. Merrimack Golf Club, Inc., 2010 WL 1254920 (D. N.H. Mar 25, 2010). Defendant hired plaintiff to create a new marketing program, including a new website. The deal went awry and the plaintiff brought claims for copyright infringement and breach of a promissory note against defendant when the defendant designed a nearly identical website to the one created by the plaintiffs. At issue before the court was defendant's motion to strike two of the plaintiffs claims on the grounds that (1) the website constituted a work made for hire, thus not protected by the Copyright Act, and (2) the plaintiff cannot recover for the promissory note because it failed to attach the note to its complaint. The court concluded that the issue of whether the work constituted a work made for hire could not be resolved at this stage. Thus, it denied the

motion. The court concluded as to the second issue that while it would have assisted the plaintiff's claims, the failure to attach the promissory note does not bar the claim under the Federal Rules of Civil Procedure.

[{Webfind}](#)

Cazet v. Epps, 2010 WL 2474382 (N.D. Cal. Jun. 11, 2010). The plaintiff filed a complaint against the defendant for infringement of its trademark Alumni Athletics USA. After filing the complaint, the plaintiff moved for a temporary restraining order to prevent any infringing use during the case. The court denied the plaintiff's motion on the grounds that the plaintiff was unable to demonstrate that it had a protected mark in the mark at issue. Specifically, the court noted the lack of secondary meaning or acquired distinctiveness. While the plaintiff had used the name on occasion for many years, there was no evidence suggesting that the mark had been used broadly and consistently for an extended period of time.

DIRECTV, Inc. v. Walls, 2010 WL 1433173 (S.D. Ohio Apr. 7, 2010). A local bar owner publicly exhibited a live broadcast of DIRECTV's NFL Sunday Ticket game between the Indianapolis Colts and the Houston Texans. DIRECTV brought claims under the Federal Communications Act on the grounds that the bar owner willfully ignored the fact that he was receiving a non-commercial rate for his television service and thus could not publicly exhibit the broadcast. The court disagreed and found that the bar owner was not aware of the reduced rate and that upon becoming aware, subscribed to the appropriate DIRECTV service. Nonetheless, while the court awarded only \$500 in damages to the plaintiffs, the FCA also allowed for reasonable attorney's fees and costs, which amounted to an additional award of \$2890.50 to the plaintiffs.

[{Webfind}](#)

Dryer v. Nat'l Football League, 689 F.Supp.2d 1113 (D. Minn. 2010). Former football players brought class action suit against the NFL alleging that the NFL's use of video footage violated their right of publicity. The players also brought claims for false endorsement under the Lanham Act and unjust enrichment. The court concluded that the plaintiffs sufficiently pled their claim to demonstrate that the NFL's videos amounted to commercial speech under the First Amendment. Also, the court held that the Copyright Act did not preempt the right of publicity and unjust enrichment claims.

[{Webfind}](#)

Hoffman v. Impact Confections, Inc., 2010 WL 99072 (S.D. Cal. Jan. 6, 2010). In this patent case, the issue before the court was the claim construction of a patent for an ornamental design for a container, which incorporated the words NASCAR, 20, and Tony Stewart into the design. The plaintiff attempted to expand the scope of the patent by arguing that the words 20 and Tony Stewart were only examples of what could be used. The court rejected this argument because there was a lack of evidence in the patent diagrams that explained the interchangeable nature of those words.

Innovative Patents, LLC v. Brain-Pad, Inc., 719 F.Supp.2d 379 (D. Del. 2010). Plaintiff, a patentee, brought patent infringement claims against the maker of a head-band designed to absorb perspiration and impact. The plaintiff moved for summary judgment and the defendant filed a cross motion, also seeking summary judgment. The court granted the defendant's summary judgment motion for non-infringement on direct infringement principles. The court noted that in order for a patent to literally infringe upon another, it must have all the elements of one patent included in another. Here, the key difference between the patents was the Brain-Pad's curved configuration, which was not included in the plaintiff's patent. Once the court determined that no direct infringement occurred, it determined that the remainder of the plaintiff's claims for willful, contributory, and inducement of infringement could not survive because they were dependent on the direct infringement claims.

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Izzo Golf, Inc. v. King Par Golf Inc., 2010 WL 86653 (W.D. N.Y. Jan. 6, 2010). Plaintiff brought a patent infringement claim for a dual strap carry system for golf bags. Many of the issues, including a Markman hearing, regarding this case had already been resolved by the court. The sole issue before the court in this instance was whether the court should grant defendant's motion to stay while the USPTO resolved several of the underlying issues in the case (namely, whether the trial court took the appropriate construction of the various patents involved). The court, after weighing the various factors, including prejudice to the plaintiff, denied the motion to stay, despite its admission that the USPTO's decision could eliminate several of plaintiff's claims.

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Intellectual Property Law (Part Two)

J & J Sports Prod., Inc. v. Humphries Enterprises, LLC, 715 F.Supp.2d 71 (D. D.C. 2010 (#1)); *J & J Sports Prod., Inc. v. Aguilera*, 2010 WL 2362189 (N.D. Ill. Jun. 11, 2010 (#2)); *J & J Sports Prod. Inc. v. Ithier*, 2010 WL 2490674 (E.D. Wis. Jun. 17, 2010); *J & J Sports Prod., Inc. v. Rose's Dream, Inc.*, 2010 WL 2553609 (D. D.C. Jun. 25, 2010 (#3)); *J & J Sports Prod., Inc. v. Just Fam., LLC*, 2010 WL 2640078 (N.D. Ga. Jun. 28, 2010); *J & J Sports Prod., Inc. v. Grajales*, 2010 WL 2640091 (N.D. Ga. Jun. 28, 2010 (#4)). This series of cases involved J & J Sports Productions. In each case, the plaintiff filed suit against either a sports bar or restaurant and alleged the unlawful interception and broadcast of a pay-per-view sports event. The details of each case differ slightly from case to case, but each involves the court's analysis of the claim under 47 U.S.C. § 605.

Webfinds: [#1](#) | [#2](#) | [#3](#) | [#4](#).

Joe Hand Promotions, Inc. v. Blanchard, 2010 WL 1838067 (S.D. Ga. May 03, 2010). Plaintiff, a company that distributes rights to pay-per-view events including the one at issue here, brought suit against the defendant for broadcasting a UFC event at its bar and restaurant. At issue before the court was the plaintiff's motion for summary judgment. The plaintiff discovered the violation in this instance by sending out auditors who would go to various restaurants and bars, determine

whether the broadcast was being improperly intercepted, and then take photographs of the unlawful conduct. From this, the plaintiff was able to gather evidence that demonstrated a knowing violation of 47 U.S.C. § 605. The court granted the plaintiff's motion for summary judgment, largely on the grounds of this evidence, which demonstrated that around seventy-five people watched the unlawful broadcast. The court concluded by awarding not only damages to the plaintiff, but also attorney's fees and costs.

Joe Hand Promotions, Inc. v. Young, 2010 WL 1979388 (W.D. Ky. May 14, 2010). The plaintiff, a company that distributes the rights to pay-per-view events including the one at issue here, brought suit against the defendant for broadcasting a UFC event at one of its bar and restaurant locations. At issue before the court was the plaintiff's motion for summary judgment as to liability. The defendant argued (1) that he was not liable because it did not knowingly violate 47 U.S.C. § 605 and (2) even if he did, he could not be held vicariously liable for the violation. The court found in favor of the plaintiff on both counts. The court determined that even though the statute spoke only of knowing violations, the statutory scheme encompassed both intentional and unintentional violations. The difference between the two violations was merely a matter of damage amount, not whether a violation occurred. The court also determined that the evidence clearly showed that the defendant was vicariously liable for the violation because he was the person who ordered the pay-per-view service.

[{Webfind}](#)

Joe Hand Promotions, Inc. v. Smith, 2010 WL 2292315 (D. Ariz. Jun. 7, 2010). The plaintiff brought a claim for unlawful interception and broadcast of an Ultimate Fighting Championship pay-per-view event against the defendant, who allegedly broadcast the program at his bar and restaurant. At issue here was the plaintiff's motion for summary judgment. The court denied the motion on several grounds; namely, the plaintiff was not able to definitively prove that the broadcast actually occurred by unlawfully intercepting the program because witnesses did not notice a satellite or cable box on the premises. Furthermore, there remained questions of who was responsible for the broadcast. The owner of the bar, also the named defendant, claimed that he did not know that the program was broadcast at his bar.

Keller v. Electronics Arts, Inc., 2010 WL 530108 (N.D. Cal. Feb. 08, 2010). Plaintiff, a former collegiate quarterback brought right of publicity and other state and federal claims against Electronic Arts (EA) for use of college football players' likenesses for use in their video game. The plaintiff also alleged a civil conspiracy between the NCAA, EA, and others for facilitating violations of the right of publicity. The court, in this hearing on EA's motion to dismiss, found in favor of the plaintiff by finding his claim was supported by sufficient evidence and dismissing defendants defenses of transformative use and public interest. The court also found in favor of the plaintiff and denied the motion to dismiss the civil conspiracy claim on the grounds the plaintiff provided specific allegations of the civil conspiracy, not a bare allegation.

[{Webfind}](#)

McDavid Knee Guard, Inc. v. Nike USA, Inc., 2010 WL 151998 (N.D. Ill. Jan. 14, 2010). Plaintiff brought patent infringement claims against Nike for a line of foam-padded shorts alleging that Nike's process for manufacturing the pads infringed upon the plaintiff's patent. The court, in a separate opinion, denied the plaintiff's motion for a preliminary injunction. At issue was the plaintiff's motion for leave to file an amended complaint. The court also denied this motion on the grounds that amending the complaint would be both futile and likely unduly prejudice Nike.

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NBA Properties, Inc. v. Banks, 2010 WL 1233386 (N.D. Tex. 2010). NBAP brought federal and Texas state law claims against a number of defendants for trademark infringement and unfair competition. In this case, the numerous defendants did not respond to the complaint and default judgments were entered against them. The court issued a permanent injunction against the defendants and ordered that the infringing goods be seized and turned over to the plaintiff. The specifics of the underlying claim are not discussed at great length in this opinion.

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PPV Connection, Inc. v. Nieves-Sosa, 268 F.R.D. 42 (D. Puerto Rico 2010). PPV Connection filed a complaint under the Communications Act of 1934, alleging that the defendant improperly intercepted a broadcast of a live television program. At issue in this case was the defendant's motion to dismiss for improper joinder. The motion was unopposed by the plaintiff, but the court nonetheless determined that the plaintiff failed to satisfy the two prong test for joinder. Specifically, the plaintiff did not demonstrate that the defendants' conduct arose out of the same transaction because the several defendants shared little or no business interaction.

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Swoboda v. Hero Decks, 36 So.3d 994 (La. App. 2010). Plaintiff, a baseball player, brought action against a novelty playing card publisher seeking to enjoin them from using his name and likeness on playing cards sold over the Internet. The issue before the court was whether the defendant had sufficient minimum contacts with the State of Louisiana for the court to have personal jurisdiction. The court concluded, after applying the Zippo scale, that the defendant lacked sufficient minimum contacts with Louisiana. The only evidence of contact with Louisiana were unilateral activity of consumers with the website. The court stated there was no other record of any contact made with the plaintiff's website. As a result, the court lacked personal jurisdiction and upheld the trial court's ruling.

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Univ. of S.C. v. Univ. of S. Cal., 367 Fed.Appx. 129 (C.A. Fed. 2010). South Carolina University filed a trademark application, wherein it sought registration of an SC logo for use with its baseball team. The University of Southern California, which already had a registered SC logo, challenged the registration. South Carolina counterclaimed against Southern California. At issue before the court was the decision of the USPTO to deny trademark registration to South Carolina. The court upheld the USPTO's decision on the grounds that (1) the two marks would

appear in the same channels of trade, (2) the board's conclusion as to the likely purchasers of the products bearing the two marks, even if in error, was harmless, and (3) the USPTO's decision to not weigh the lack of actual evidence of confusion in favor of South Carolina was supported by the evidence. Lastly, the court upheld the summary judgment motion against South Carolina for its counterclaim against Southern California on the grounds that South Carolina lacked standing.

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Wallenfang v. Havel, 707 F.Supp.2d 800 (E.D. Wis. 2010). Plaintiff, a photographer, brought action against the creators and publishers of a book, alleging that they used hundreds of his photographs in book, which commemorated the Green Bay Packers Football Club's championship season, without his permission in violation of Copyright Act. The defendants filed a motion to dismiss for lack of subject matter jurisdiction and the both parties moved for summary judgment in response. The court concluded that it had subject matter jurisdiction under Judge Friendly's rule from T.B. Harms. The court denied plaintiff's summary judgment motion because there was a genuine issue of material fact related to whether the photographer licensed use of his photographs to the defendants. Lastly, the court also denied defendant's summary judgment motion on the grounds that the plaintiff's failure to register the photographs with the Copyright Office still left the issue of whether the photographer was entitled to statutory damages on the dust cover of the book, which incorporated several of the plaintiff's photographs.

[{Webfind}](#)

Who Dat Yat LLC v. Who Dat? Inc., 2010 WL 2289976 (E.D. La. Jun. 2, 2010). The two parties are companies utilizing a phrase often used by the National Football League's New Orleans Saints. The plaintiff brought trademark claims against the defendant company for use of the Who Dat? phrase. The case was initially removed to federal court, but the plaintiff subsequently challenged the removal. The court determined that at issue was a question of a federal right, namely, trademark rights. The court noted that the complaint alleged violations not of state rights, but only of federal. The court also granted the defendant's motion for transfer on the grounds that there was another pending lawsuit in the same state that dealt with the same issue (defendant's federal trademark) in the instant case.

Labor Law

Derrig v. Rich Harvest Farms Co., 2010 WL 375188 (N.D. Ill. Feb. 1, 2010). Plaintiff, an employee at defendant golf course, alleged that the defendant violated the Fair Labor Standards Act by not paying him time-and-a-half for his overtime hours in accordance with the Act. The defendant argued that the golf course falls under the seasonal exemption for those certain businesses that have sharp peak and slack seasons. The court determined that the golf course fell under the exemption. The golf course took in nearly 75% of its receipts from its best six months and roughly 25% of its receipts from its worst six months. Accordingly, the golf course demonstrated that it was entitled to the seasonal exemption, which did not require it to pay the plaintiff time-and-a-half for his overtime hours.

Miscellaneous

Hanis v. Shinseki, 2010 WL 2334428 (Vet. App. Jun. 11, 2010). The plaintiff, a professional water skier and member of the U.S. Army, was injured when he fell a number of years after his active service ended. He was treated with a brace at a local VA medical center. Several weeks later, the brace became caught in a radial saw and pulled his left hand into the saw while the plaintiff was assisting a neighbor in some repair work. The plaintiff filed a claim for benefits under 38 U.S.C. § 1151 on the grounds that he should have been fitted with a splint instead of a brace. The board denied his claim. On appeal, the plaintiff argued that the VA physicians acted without the appropriate degree of care by failing to consider his active lifestyle, including his professional water skiing career. The court affirmed the board's decision on the grounds that the plaintiff failed to provide any evidence that the VA physicians used less than then requisite amount of care.

Jewish Acad. of Metro. Detroit v. Mich. High Sch. Athletic Ass'n, 780 N.W.2d 296 (2010). In this case, the Michigan Supreme Court denied the defendant's motion for reconsideration of its decision to enjoin the MHSAA from maintaining several rules regulating interscholastic athletics. The dissenting justice argued that the MHSAA should at least be afforded the opportunity to justify its policies before enjoining the various practices.

Kigundu v. Holder, 381 Fed.Appx. 692 (9th Cir. 2010). Kigundu, a Ugandan citizen, appealed the decision of the Board of Immigration Appeals denying his petition for asylum. Kigundu alleged that he faced persecution in his native Uganda because, as a boxer on the Ugandan national team, he supported a former Ugandan President's regime. The court upheld the denial of the petition on the grounds that Kigundu was able to only provide speculation, not objective support, for his claim.

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Mayfield v. Nat'l Ass'n for Stock Car Auto Racing, Inc., 2010 WL 1434298 (W.D. N.C. 2010). In this case, the plaintiff challenged the removal of this underlying case to federal court on diversity grounds by arguing that the defendant, Brian France (the CEO of NASCAR), is a citizen of North Carolina, not Florida. The plaintiff relied heavily on tax documentation of France's wife and argued that France should be estopped from denying North Carolina citizenship. The court rejected his claim and stated that a husband is not presumed to live where his wife is domiciled. Furthermore, there was ample evidence that France was indeed a Florida citizen.

[{Webfind}](#)

Products Liability

Fuss-McCullough v. Nike, Inc., 2010 WL 2560407 (Cal. App. Jun. 28, 2010). Plaintiff, a minor, was injured when he was struck in the head while participating in a baseball game while wearing a helmet designed by the defendant. The plaintiff suffered serious head injuries and emotional

problems after the incident. After trial, a jury found in favor of the defendant. The plaintiff raised eight points of contention with the decision on appeal. The most significant of these was that the jury should have been instructed on the consumer expectations test for products liability instead of the balancing test. The court dismissed the appeal on the grounds that the consumer expectation test is appropriate only where the facts of the case are such that they do not require expert testimony. In this instance, the design of the helmet and the fact that both sides called numerous experts evidenced the complex nature of the product in question. As a result, the jury was instructed as to the appropriate test.

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Green v. Schutt Sports Mfg. Co., 369 Fed.Appx. 630 (5th Cir. 2010). High school student and football player brought a products liability claim against manufacturer of a football helmet that allegedly malfunctioned when the student suffered a severe neck injury that resulted in quadriplegia. At trial, only the plaintiff's claim under liability theory survived to the jury, which found in favor of the defendant. On appeal, the plaintiff raised several objections. Notably, the plaintiff argued that his claim for gross negligence should not have been dismissed. The Fifth Circuit, however, noted that in order to recover for punitive damages under gross negligence, a plaintiff must first demonstrate compensatory damages. Here, the plaintiff's only claim, under liability theory, did not produce compensatory damages. Therefore, he could not be entitled to punitive damages. The plaintiff also appealed the district court's decision to admit evidence submitted by the defendant from the National Operating Committee on Standards for Athletic Equipment (NOCSAE), which maintained that no helmet can prevent all neck injuries. The circuit court was not convinced by the plaintiff's argument, especially because his own expert used the NOCSAE standards in his report. Ultimately, the circuit court dismissed each of the plaintiff's objections and affirmed the judgment of district court.

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Property Law

Forsgren Associates, Inc. v. Pac. Golf Cmty. Dev., 105 Cal. Rptr. 3d 654 (Cal. App. 2010). The plaintiff, a general contractor for a golf course, brought a breach of contract claim and a mechanic's lien against the defendant developer of golf course. The plaintiff general contractor unsuccessfully argued at trial that the lien should include an adjacent property to the golf course. Upon losing, plaintiff appealed that decision. On appeal, the defendant argued that the adjacent property should not be included in the mechanic's lien because the adjacent property had already been transferred to a third party. Also at issue was the convenient use doctrine, which required that only certain portions of the adjacent property, including a tee box that was outside the golf course property and certain portions of the property where the plaintiff general contractor had performed landscaping work, be attached to the lien. The court found in favor of the defendant and ruled that only these specified portions should be included in the lien.

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Title IX

Jones v. Beverly Hills Unified Sch. Dist., 2010 WL 1222016 (C.D. Cal. Mar. 24, 2010). Plaintiff, a female student athlete, and her mother brought Title IX claims against the school district and its board members in their official capacities when the plaintiff was kept off the varsity basketball team. The plaintiff alleged that she was kept off the team for two reasons (1) racial discrimination and (2) retaliation for her Title IX claims. The defendant moved to dismiss the charges on several grounds, specifically that the plaintiff failed to demonstrate a concise statement of her claims. This was the fourth time the plaintiff, filing pro se, had filed and amended her complaint. The court determined that the mother's claims against the school district should be dismissed, largely on the grounds that it was her daughter that endured the discrimination, not the mother. As for the daughter, the plaintiff, her claim against the board members in their official capacities was dismissed under Eleventh Amendment immunity. Her claim for racial discrimination under Title IX was dismissed because Title IX does not cover racial discrimination, only gender based; however, the court found that, although not pled, the plaintiff did have a Title IV claim. The plaintiff's claims under Title IX for retaliation, however, survived the motion to dismiss. Lastly, the court dismissed the plaintiff's claims for injunctive relief because she was no longer a student of the same high school; therefore, her claims for injunctive relief were found to be moot.

Kommendant v. Diocese of Trenton, 2010 WL 1526262 (N.J. Super. A.D. Apr. 13, 2010). Plaintiff, a teacher and girl's softball coach, brought claims for, inter alia, wrongful discharge when his employment with the school was terminated. The plaintiff alleged that he was discharged in retaliation for filing a Title IX claim against the school for failing to provide equal equipment and scheduling to the girls softball team. The school responded that the plaintiff was discharged for several legitimate reasons, including that he maintained an improper banking account for the softball team and had stolen school property. Although the court determined that the trial court improperly dismissed the plaintiff's claim on the grounds that it was not timely filed, the court nonetheless concluded that the plaintiff failed to demonstrate sufficient evidence to show a causal connection between the filing of the Title IX claim and the plaintiff's discharge.

[\[Webfind\]](#)

Mansourian v. Regents of Univ. of Cal., 594 F.3d 1095 (9th Cir. 2010), opinion amended and superseded on denial of rehearing by, *Mansourian v. Regents of Univ. of Cal.*, 602 F.3d 957 (9th Cir. 2010) (#2). The plaintiffs, a group of female wrestlers, brought Title IX and other claims against the defendant university on the grounds that the university violated Title IX when it eliminated its female wrestling program. The district court granted the defendant summary judgment on the grounds that the plaintiffs were required, under Title IX precedent, to provide the university with knowledge of the violation and an opportunity to remedy the violation. The Ninth Circuit reversed and remanded after an extensive look at Title IX precedent. The court explained that the requirement to provide notice and an opportunity to remedy is a requirement that is limited to sexual harassment cases under Title IX for those situations where the violation is not a product of university policy and the university would not otherwise have notice of the violation. In those cases, the violation is not the harassment itself, but the failure to remedy the

harassment. The court distinguished this set of cases from the one at hand, where the university had an actual policy of discriminating between men's and women's wrestling by eliminating women's wrestling entirely. The court did not come to a conclusion, however, as to whether the university violated Title IX. Instead, the court reversed and remanded back to the district court.

[{Webfind #2}](#)

Ollier v. Sweetwater Union High Sch. Dist., 267 F.R.D. 339 (S.D. Cal. 2010). Current and prospective female high school students brought a class action suit alleging, inter alia, violations of Title IX for unequal participation opportunities in athletic programs. Students moved to exclude expert testimony and to exclude 38 of the school district's witnesses. The court granted both of the plaintiffs' motions. The court concluded that the expert witnesses (one of whom had expertise largely with diminishing funding in schools; the other visited the school facilities only once for 1.25 hours) did not have the ability to form a relevant expert opinion in the underlying case. The court also granted the plaintiffs' motion to exclude 38 other witnesses because the defendants failed to disclose them in a timely manner.

Parker v. Ind. High Sch. Athletic Ass'n, 2010 WL 987750 (S.D. Ind. Mar. 11, 2010). In this case, the plaintiff brought action against the IHSAA for violations of Title IX for its practice of scheduling more boy's sporting events on Friday and Saturday than girl's sporting events. At issue here was the plaintiff's motion to reconsider the court's decision to dismiss the case on 12(b)(6) grounds for failure to state a claim. The Court granted the plaintiff's motion on the 12(b)(6) grounds because the complaint, on reconsideration, was sufficiently well pled. Additionally, the court denied the defendant's motion for interlocutory appeal on the grounds that Title IX encompasses a wide array of plaintiffs, not just those who are beneficiaries of sports programs or activities.

Tort Law

3BA Intern. LLC v. Lubahn, 2010 WL 2105129 (W.D. Wash. May 20, 2010). The plaintiff, a three-on-three basketball company, brought tortious interference and other tort claims against the defendants for allegedly attempting to create their own three-on-three basketball league while still employees of the plaintiffs. The plaintiff moved for a temporary restraining order to prevent the defendants from marketing or licensing the new basketball league while the case was pending. The court found that, on balance, the facts weighed in favor of granting the motion, if only in part. Specifically, the court noted that the tortious interference claim was likely to succeed on the merits because the plaintiff had evidence (emails between the defendants) in which the defendants discuss various aspects of their new basketball league. The court granted the plaintiff's motion and prohibited the defendant from, inter alia, soliciting clients to purchase franchises in the new basketball league.

Chepkevich v. Hidden Valley Resort, 2 A.3d 1174 (Pa. 2010). A woman and her son were injured when they fell from a ski lift at the defendant's resort. The woman was injured when the ski lift operator failed to stop the lift to allow the woman and her son to safely board the lift. The woman was an experienced skier and, as part of her pass to the resort, signed a waiver of liability

releasing the defendant from all duties and obligations related to skiing, including the lift. At trial, the court granted the defendant's motion for summary judgment on the grounds that the waiver of liability immunized the defendant from the lawsuit. The Superior Court of Pennsylvania reversed and found in favor of the plaintiffs. At issue before the Pennsylvania Supreme Court were (1) whether the Skiers Responsibility Act (SRA) barred the lawsuit under the doctrine of assumption of the risk and (2) whether the waiver of liability immunized the defendant from lawsuit.

As to the first issue, the court determined that although Pennsylvania eliminated the common law doctrine of assumption of the risk, its principles remained embodied in the SRA, such that it would still bar the plaintiffs' claims. As to the second issue, the court noted that agreements such as the present one were not contracts of adhesion because, as is the case with other sports and activities, each person can freely choose whether to participate.

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Davis v. City of Philadelphia, 987 A.2d 1274 (Pa. Cmwlth. 2010). Plaintiff, a recreational football player, brought personal injury action against the city and against a sport and social club to recover damages for fractured tibia he incurred when he tripped in a depression in a city football field. The city argued that it was immune under the Recreational Use of Land and Water Act (RULWA). The plaintiff argued that the RULWA should not apply because (1) the park in which the field sat constituted a highly-developed recreational area not covered by the Act, (2) that the city charged an admission fee, and (3) the city willfully failed to warn against the depression in the field. The court rejected these arguments. First, the court did not look to the park as a whole, but only the football field, which in and of itself, did not constitute a highly-developed recreational area. Second, the court concluded that the plaintiff's football team never paid its registration fee to the city, nor did it have a permit to play on the day the plaintiff was injured. Third, the court concluded that even if the city did act willfully, it was still immune from tort liability under the Tort Claims Act.

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Delaney v. MGI Land Dev., 72 A.D.3d 1254 (N.Y. App. Div. 2010). Plaintiff golfer filed negligence action against owner and operator of golf course, seeking damages for injuries sustained when golfer was struck on head by errant golf ball during golf tournament. The court upheld the defendant's motion for summary judgment on the grounds that the plaintiff assumed the risk of being struck by a golf ball. The court reasoned that being struck by a golf ball is the type of risk that is inherent to participating in a golf tournament.

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Gamache v. State, 898 N.Y.S.2d 426 (N.Y. Ct. Cl. 2010). Gamache, a professional boxer, brought negligence claims against the State of New York, alleging that it acted negligently in the pre-fight weigh-in of Gamache's opponent, Arturo Gatti. In the fight itself, Gamache was knocked out and suffered career-ending injuries. The court, although it agreed that the state boxing commission acted negligently during the weigh in, determined that its negligence was not the

proximate cause of Gamache's injuries. Those injuries, as the court point out, were caused by Gatti, not by the state. Furthermore, the court concluded that the state boxing commission did not act negligently by permitting the fighters to wear eight-ounce boxing gloves. The weight of the gloves is determined by the weight of the fighters. Although the court concluded that Gatti weighed more than the contracted 141 pounds, it was unclear whether he weighed in excess of 154 pounds to necessitate the heavier gloves. As a result, the court dismissed that part of the claim.

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Givens v. Tenn. Football, Inc., 684 F.Supp.2d 985 (M.D. Tenn. 2010). Plaintiff, a former professional football player, filed a complaint against his former football team alleging that the team intentionally withheld medical information regarding his knee. The plaintiff brought intentional infliction of emotional distress, outrageous conduct, and breach of contract claims. The defendant argued that the plaintiff's claims were preempted by federal labor law under section 301 of the Labor Management Relations Act (LMRA). The court found in favor of the defendant on the grounds that the plaintiff's claims were not sufficiently independent of the terms of the CBA covering medical care of NFL players. As a result, the court dismissed the plaintiff's complaint.

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Hubbard v. Jefferson Parish Parks and Recreation, 40 So.3d 1106 (La. App. 2010). Plaintiff was injured when she slid into third base on a baseball field maintained by the defendant. The plaintiff brought tort and discrimination claims against the defendant. The plaintiff alleged that not only was she injured, but she was also prevented from playing on the better fields, which were typically reserved for the men only. The trial court granted summary judgment in favor of the defendants and the plaintiff appealed. The present court upheld summary judgment on both counts. It noted that the plaintiff was unable to demonstrate that the defendants had actual or constructive notice of the defect in the base. The court upheld summary judgment as to the gender discrimination claims on the grounds that the plaintiff alleged only that the field was typically reserved for men only. She did not attempt to reserve the field herself and she could not prove that she would have been prevented from reserving the field had she attempted to do so.

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Jenks v. N.H. Motor Speedway, Inc., 2010 WL 830244 (D. N.H. Mar. 3, 2010). Plaintiff, a volunteer at a charity event held on a motor speedway, brought suit when the plaintiff was injured when he fell from a golf cart and suffered serious head injuries. At issue here was the defendant's motion to dismiss on the grounds that the plaintiff signed a waiver of liability prior to the injury. The plaintiff argued, and the court agreed, that the waiver was invalid because it was unclear that the plaintiffs understood that he was signing a waiver of liability form. The defendant argued that it maintained a practice of telling each volunteer that he or she was signing a waiver, but the plaintiff was able to demonstrate that this practice was not followed in all instances. As a result, the court was unwilling to infer that the defendant adhered to this practice in this specific instance. Therefore, the court denied the defendant's motion.

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Jozewicz v. GGT Enterprises, LLC, 2010 WL 2244102 (D. Utah Jun. 2, 2010). The plaintiff was injured while skiing when the binding on her skis, which were rented from the defendant, unexpectedly released due to a product defect. The manufacturer of the skis had placed a recall on the product, which informed rental shops to not rent the particular skis in question. The plaintiff brought negligence claims against the defendant on the grounds that it should not have rented the skis with the product defect. The defendant responded with a summary judgment motion based on the waiver of liability the plaintiff signed at the time she rented the skis. The court denied the defendant's motion on public policy grounds. Specifically, the court noted that Congress enacted the Consumer Product Safety Act, which demonstrated a heightened concern for the safety of consumers as a result of product defects. Accordingly, the court took this as an indication that to prohibit recovery in this instance would go against the act and public policy. Therefore, the court denied the summary judgment motion.

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Kratter v. Catholic Health Initiatives Colo., 2010 WL 2507611 (D. Colo. Jun. 17, 2010). The plaintiff, a professional snowboarder, suffered a serious injury during a half-pipe competition. He was later diagnosed with compartment syndrome. The plaintiff filed suit against the physicians that treated him because the compartment syndrome was allegedly not timely diagnosed or treated. At issue before the court, however, was the plaintiff's motion to strike an expert witness for the defendants that would testify to the plaintiff's controversial lifestyle and his marketability as a professional snowboarder. The court dismissed the plaintiff's motion to strike on the grounds that the plaintiff would not be surprised by the expert's testimony because the plaintiff, in fact, already knew to what the expert would testify. Also, the plaintiff declined his opportunity to inquire about the expert's testimony. Once the plaintiff declined the opportunity, the court was unwilling to provide a second.

Ladd v. Uecker, 780 N.W.2d 216 (Wis. App. 2010). Ladd, a fan of Milwaukee Brewers radio broadcaster Bob Uecker, brought claims against him for defamation. The origin of these claims are from several sources: (1) statements Uecker made during a trial against Ladd for felony stalking of Uecker, (2) publication of the transcript of that testimony to an internet website, (3) statements the Brewers Club made to police, and (4) statements made to the media. The court dismissed each part of the defamation claim on various grounds. Several of the claims were

dismissed because the statute of limitations (two years, in this case) already ran; others, specifically those made to the media, were dismissed because they were protected under the wire service or similar privilege.

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Maddalena v. Town of Southington, 2010 WL 367763 (Conn. Super. Jan. 06, 2010). In this case, the plaintiff suffered an injury when she fell on a crack in a basketball court located in a public park. She brought claims of public nuisance against the town in which the park was located. The court rejected her nuisance claim on the grounds that such a claim requires that a municipal defendant have taken some positive act to bring about the nuisance. Here, the court disagreed with the plaintiff's contention that the town's refusal to properly maintain the basketball court constituted such a positive act.

Mateo v. PGA Tour, 2010 WL 745055 (D. Mass. 2010). Plaintiff, a food service employee hired to work during a golf tournament, brought several tort claims against the organizer of the golf tournament, the PGA Tour, the company that hired the driver of the golf cart, and others for injuries that arose when she was thrown from a utility cart on the golf course. The court roundly dismissed her claims for negligent hiring, for negligent maintenance, and under vicarious liability. Critically, the plaintiff was unable to demonstrate that the head injuries she sustained were proximately caused by a breach of any duty by the defendants, or that the named defendants had any role in the hiring of the driver of the golf cart.

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Melton v. Ousley, 925 N.E.2d 430 (Ind. App. 2010). Melton, a golf instructor and professional, brought defamation and tortious interference claims against a fellow golf professional. Ousley reported Melton to the Indiana Section because Ousley believed that Melton was cheating the PGA classification system by having a particular classification without having the proper prerequisites for that classification. The court dismissed the defamation claim on the grounds that Ousley's statements that Melton was a cheater were true. Melton was improperly skirting the PGA classification system. The tortious interference claim was similarly dismissed on the grounds that the particular procedure used for investigating Melton's status did not diverge from the standard and appropriate measures normally taken by the Indiana Section.

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Peters v. Herrin Cmty. Sch. Dist. No. 4, 928 N.E.2d 1258 (Ill. App. 2010). The mother of the plaintiff filed a personal injury lawsuit against the defendant school district when her son was injured while participating in a football camp run by the school district. The trial court dismissed the lawsuit under a recreational immunity statute. The plaintiff appealed on the grounds that the field where the injury occurred was also used for educational purposes. The plaintiff argued that the facts were not allowed to develop sufficiently so as to determine the precise nature of the purpose of the field. The plaintiff also argued that the recreational immunity statute provided for an exception where the defendant has actual or constructive notice of the defective condition.

The court agreed with the plaintiff on both counts and reversed and remanded the case back to the trial court.

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Pickel v. Springfield Stallions, Inc., 398 Ill.App.3d 1063 (Ill. App. Mar. 23, 2010). Plaintiff, a spectator at an indoor-football game, was injured when a player fell over the stands and collided with the plaintiff. The plaintiff brought tort claims not against the player, but as a result of the negligent maintenance and failure to warn spectators of the possibility of injury. The trial court found in favor of the defendants on the grounds that they owed no duty because of the inherent risk involved with watching the football game. The court here, however, agreed with the plaintiff's argument that the precedent for the trial court's decision came from cases wherein the plaintiff was a participant not a spectator. Accordingly, the court determined that the defendants owed a duty to take reasonable action to prevent unreasonable risks of harm. Therefore, the court remanded the case back to the trial court for action consistent with its ruling.

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Pierce v. Wash. Motorsports Ltd. P'ship, 2010 WL 2433123 (Wash. App. Jun. 17, 2010). The plaintiff, a fifty-nine year old man, died as a result of injuries he suffered when he fell down a flight of concrete bleachers at a racetrack that were improperly maintained by the defendant. At trial, a jury found the defendant company liable for his death and awarded significant damages. The defendant appealed that decision on several grounds. Most significantly, however, was the defendant's challenge that there was judicial bias during the proceedings. The defendant was particularly concerned with statements made by the judge during the damages phases of the trial, during which the judge inferred that damages might act as a deterrent. The defendant argued that this statement demonstrated bias because the judge's statement seemed to imply punitive damages, which are prohibited under Washington State law. The court rejected this contention for several reasons, most notably that the judge's statement that damages can act as a deterrent does not necessarily refer to punitive damages. Compensatory damages, in so far as they are expensive, would likely deter defendants to alter the conditions on the bleachers.

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Portner v. Sullivan, 2010 WL 109518 (Cal. App. Jan. 13, 2010). Plaintiff, the owner of a minor league baseball team, brought libel and defamation suits against the defendant, a local newspaper, for publishing eighteen statements regarding the plaintiff's business dealings in conjunction with the sale of the team's baseball stadium. At trial, the court found in favor of the defendants on numerous grounds. The court upheld the trial court's decision and specifically noted that the plaintiff failed to demonstrate that the defendant acted with actual malice. The court held that although the defendants may have, as a result of their investigation, harbored ill-will towards the plaintiff, there was insufficient evidence to demonstrate that the defendants doubted the voracity of the eighteen statements.

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Pryor v. Iberia Parish Sch. Bd., 42 So.3d 1015 (La. App. Jun. 16, 2010). Pryor, an elderly woman, attended her grandson's football game at a stadium operated by the school board. As a result of a defective step in the bleachers, Pryor fell and broke her leg. She brought a tort claim against the school board alleging negligent maintenance of the stadium bleachers. The trial court concluded that while the school board acted negligently in its maintenance of and failure to warn about the defective step, that, on balance, the school board did not act unreasonably. The present court overturned the lower court on the grounds that the trial court, when it determined the reasonableness of the school board's action, considered the bleachers as a whole without examining the specific defect. As a result, the court concluded that not only was the school board negligent, but that it acted unreasonably. The court awarded a total of \$300,000 to Pryor for her injuries.

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Wolfe v. Bison Baseball, Inc., 2010 WL 1254597 (Ohio App. Mar 31, 2010). Plaintiff, a television crew manager, brought state tort law claims against a baseball team when she was struck by a baseball during pre-game interviews. At issue before the court was the trial court's decision to dismiss the complaint on several grounds. The court in this case determined that the players, including the one who threw the baseball, were not occupiers of the baseball field for premises liability purposes. Thus, the players owed no duty to the plaintiff. Furthermore, the court also held that the open and obvious and primary assumption of the risk doctrines barred recovery as well because the plaintiff was a professional who was fully aware of the risk of conducting on-field interviews during warm-ups.

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Zuckerman v. Coastal Camps, Inc., 716 F.Supp.2d 23 (D. Me. Jun. 4, 2010). Plaintiff, a minor, was injured while participating in a camp hosted by the defendant when she fell off a horse she was riding. The plaintiff alleged that the saddle was negligently attached to the horse and thus slipped as she was riding. At trial, defendant moved for summary judgment under the Main Equine Activities Act. This act roughly states that the defendant would not be liable for the plaintiff's injuries because a slipping saddle is an inherent risk in horseback riding. This court determined that the initial burden of proof lay with the defendant to demonstrate that the Act provided immunity. Here, the court concluded that while the defendant may be able to meet its initial burden of proof, there remained a significant factual question of whether one of the Act's exceptions applied. Specifically, the court was unable to determine, at the summary judgment stage, whether the saddle had been properly tacked. An improperly tacked saddle is one of the exceptions to the immunity granted under the Act. As a result, the court denied the defendant's summary judgment motion as to this part of the claim.

USADA Arbitration Decisions

USADA v. Cosby, AAA No. 771900054309 (May, 2010). Cosby, a world-class hammer thrower, tested positive for the banned substance hydrochlorothiazide during an out-of-competition test. At the time, she had recently endured her husband having an affair with a fellow athlete, which

resulted in a severe depressive episode. During that time, she was having difficulty urinating, including while she was staying at her mother's house. While staying at her mother's house, her mother provided Cosby with a water pill. The next day, Cosby was tested. As a result of the positive test, she was suspended for two-years; she challenged that suspension in this hearing. The USADA panel determined that the appropriate sanction was a four month suspension. The panel concluded that the emotional problems that Cosby experienced, the positive test occurred out of the competition season, and the lack of any intent to mask or hide the violation weighed in favor of the reduced sanction.

USOC Arbitration Decisions

Beckom v. U.S. Bobsled and Skeleton Fed'n, Inc., AAA No. 77 190 E 00105 10 (Feb. 10, 2010) (Mitten, Matthew, Arb.). In this arbitration decision, several athlete members of the USBSF filed complaint against the USBSF, alleging that the federation failed to develop rational rules for selecting the athletes for the 2010 US Bobsled Team and that, even if the rules were rational, they were applied arbitrarily. The fulcrum of the athletes' contention arose when the USBSF decided to use the dry land run times instead of on-ice run times. The use of dry land times was not included in the twelve criteria promulgated by the USBSF. Nonetheless, the arbitrator determined that the athletes did not meet their burden of demonstrating that the USBSF violated its own rules because the athletes could not demonstrate that if the on-ice times were used instead, they would have qualified for the bobsled team. As a result, the arbitrator concluded that there was no legal basis for ordering the USBSF to assign them to the US team.

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Gunther v. U.S. Speedskating, AAA No. 77 190 0007 10 (Jan. 15, 2010) (Rivkin, David, Arb.). This arbitration decision concerned the selection of the last speedskater to the 2010 U.S. Olympic Speedskating Team. Gunther alleged that the USS improperly awarded the final spot to Rebekah Bradford. Her complaint is based on the fact that although Bradford ran the fastest time at the U.S. Speedskating Championships, she did so during a re-skate. Although it did not count in the Speedskating Championship, it was used to award her the final position on the U.S. Olympic Team. The USS selection criteria do not specifically state whether a re-skate time can be used in this manner; rather, it states only that the person with the best time will qualify for the Olympic Team. The arbitrator concluded that although Bradford's re-skate time was unofficial for the Championship itself, it was official for purposes of team selection. Furthermore, the arbitrator noted that both parties were under the same expectation: that if a re-skate occurred, it would count towards becoming the final member of the U.S. Team. The only issue then, was whether a re-skate was properly requested by Bradford during the event. Although the arbitrator noted that the rules do not require Gunther to be notified of another's request for a re-skate, he nonetheless determined that it was not his position to rewrite the rules of competition, after the fact.

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Stewart v. USADA, AAA No. 77 190 1110 10 (June 2, 2010) (Murphy, James, Arb.). In this arbitration decision, at issue was whether to impose a suspension upon Stewart, a track and field coach, and if so, how long it should last. Stewart was implicated as having distributed the drug EPO to athletes over the course of his coaching career. This implication was primarily based on the testimony of Angel Memo Heredia, who was an admitted drug dealer who supplied Stewart with the drug in question. Due to the extent of the distribution, the dangerous nature of the drug, and the position of trust Stewart held as a coach, the arbitrator imposed a lifetime ban against Stewart, as requested by USADA.

Vinogradova v. U.S. Biathlon Ass'n, AAA No. 77 190 00511 09 (Feb. 16, 2010) (Benz, Jeffrey, Arb.). In this arbitration decision, Vinogradova, a world-class biathlete, challenged the decision of the US Biathlon decision to prevent her from participating in a qualifying event for the US Olympic Team. Vinogradova was a citizen of Belarus and could participate on the US Team, but she was required to sit out from competition for a period of two years before she could participate in US events. The arbitrator denied the claim for two reasons. First, Vinogradova's claim was time barred because she had filed a similar claim in October of 2008. Second, her claim would have failed, even if not time barred, because she participated in US biathlon events without having sat out two years since her last non-US competition.

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Vogel v. U.S. Speedskating, AAA No. 77 190 00553 09 (Jan 15, 2010) (Rivken, David, Arb.). In this arbitration decision, the appellant, a US Speedskater, challenged the decision of US Speedskating to not permit him to participate in the 2010 USS Championships. The central issue was the appropriate interpretation of the rules regarding qualifying times and by what date skaters needed to achieve the qualifying time. The arbitrator concluded that although Vogel had a qualifying time, he did not qualify by the appropriate date. Vogel argued that the rule itself was ambiguous; however, Vogel admitted during arbitration that he did not rely on the portion of the rule that referred to a later date for qualifying. The arbitrator also noted that the portion of the rule in question placed a caveat that stated that the portion applied [u]nless otherwise provided.

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World Intellectual Property Organization Decisions

Krauter v. BusinessService Ltd, WIPO Arbitration and Mediation Center, Case No. D2010-0048 (Jaki, Ladislav, Arb.) (2010). This arbitration decision concerned the registration of the domain name *speq.com*. The complainant, a manufacturer of sporting equipment, filed complaint alleging both that the respondent's use created a likelihood of confusion and for cyberflight, which is the attempt to avoid judicial or other proceedings by changing domain name registration. The panel agreed with the complainant on both counts. Specifically, the panel found that the respondent registered the domain name with the intent to sell it for profit and did not have any specific connection to the mark SPEQ itself. As a result, the panel ordered the transfer of the domain name to the complainant.

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London Organising Committee of the Olympic Games and Paralympic Games Ltd., v. H & S Media Ltd., WIPO Arbitration and Mediation Center, Case No. D2010-0415 (Thorne, Duncan, Arb.) (2010). This arbitration decision concerned the registration of the domain name mylondon2012.com for use in connection with the 2012 Olympic Games to be held in London. The panel ordered the respondent to transfer the domain name to the complainant largely on the grounds that the complainant was entitled to a United Kingdom statutory right, which confers exclusive rights in the UK for any representation that would suggest an association between the London Olympics and goods or services. This right was the product of the London Olympic Games and Paralympic Games Act 2006 and is commonly known as the London Olympics Association Right. The respondent's mark, mylondon2012.com, was registered the same day London was awarded the 2012 Olympics and had no connection to the respondent's business. As a result, the panel ordered the transfer of the domain name.

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Rosenfeld v. Tweed Holdings Pty. Ltd., WIPO Arbitration and Mediation Center, Case No. DAU2010-0002 (Rothnie, Warwick, Arb.) (2010). This arbitration decision concerned the registration of the domain name massnutrition.com.au in Australia. The panel dismissed the complaint on the grounds that the complainant failed to demonstrate a sufficient reputation in Australia such as to create common law rights with regards to the use of the domain name. Because the complainant possessed no common law right with respect to the trademark, there was no need to determine whether the mark was registered or used in bad faith. Additionally, the panel also refused to disregard the trademark registration in Australia and held that the determinations to revoke a registered trademark are to be made by the courts, not arbitration.

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World Fishing Network Ltd., v. Forsythe Corp., WIPO Arbitration and Mediation Center, Case No. D2010-0407 (Page, Richard, Arb.) (2010). This arbitration decision concerned the registration of the domain name worldfishingnetwork.net. The complainant alleged that the domain name infringed upon its valid Canadian trademark in the name World Fishing Network. The panel ordered the transfer of the domain name to the complainant largely based on the fact that the respondent failed to file a response with the panel. As a result, the panel held the reasonable assertions of the complainant to be sufficient, which included the allegations that the complainant owned the valid trademark, the respondent's use created a likelihood of confusion, and that the respondent had no rights in the domain name.

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Worker's Compensation

Branch v. New Orleans Saints, 31 So.3d 627 (La. App. 5 Cir. 2010). Plaintiff, a former NFL player, was injured during football game and sought worker's compensation benefits. The

worker's compensation board granted the plaintiff disability benefits, and the defendants appealed that ruling. The court overturned the worker's compensation board's ruling granting benefits on the grounds that the plaintiff did not miss any employment opportunities for which he could have been compensated. On the contrary, the plaintiff recovered from his injury in time to participate in off-season, non-mandatory workouts, for which he was paid.

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Cincinnati Bengals, Inc. v. Abdullah, 2010 WL 1857270 (S.D. Ohio 2010). The Cincinnati Bengals football organization filed a complaint against six of their former players, seeking an injunction barring them from seeking or receiving worker's compensation benefits in any state other than Ohio. Several of the players had already filed and been awarded worker's compensation benefits in California. For a variety of reasons, four of the players did not respond to the Bengals complaint and, consequently, default judgments were entered against them. The four players, in this case, filed motions to vacate the default judgments. While the court provided several reasons for why they granted the players motion to vacate, most notably among them is that to have upheld the default judgments would have created a conflict in the law between California and Ohio. As the court pointed out, it is the domain of the California worker's compensation board to determine whether to issue benefits, not the State of Ohio's.

Williams v. Time Warner Cable, 2010 WL 1689807 (Ohio App. Apr. 28, 2010). Employee of Time Warner Cable (TWC) participated in a company-sponsored marathon, for which TWC provided t-shirts and other attire. The plaintiff employee suffered from tendonitis in her knees and ankles as a result of participating in the marathon. She applied for worker's compensation benefits, but was denied after TWC made an appeal to the worker's compensation board. The court determined that the plaintiff-employee was not entitled to worker's compensation on the grounds that the marathon did not constitute an activity that was related to TWC's business. The court pointed out that the plaintiff's participation in the marathon provided no benefit to TWC, which distinguished this situation from other cases (e.g. a police officer participating in a company-sponsored workout program to remain fit for duty).

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

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

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

Peter Baran (L'11), Contributing Author. Editorial Assistance provided by Ashley Fale (L'11), Ben Leibovitz (L'12) and Peter Prigge (L'12).