

Legal Issues in Professional Sports 2108

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National Sports Law Institute

Oct. 12, 2018



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Legal Issues in Pro Sports?

Common Law

Contractual

- Governance
- League Constitution & Bylaws
- Collective Bargaining Ks
- Agents
- Media
- Merchandising
- Stadium

Torts

Fiduciary

Criminal

Intellectual Property- ROP

Statutory

- Antitrust & Exemptions?
- Tax
- Agent Acts
- Corporate Laws
- Gambling - PAPSA
- Broadcasting
- Copyright/TM
- Disability Law
- Labor Laws

Constitutional??

SCOTUS, Sports Gambling, & Anti-Commandeering

Murphy v. NCAA, 138 S.Ct. 1461 (U.S. May 14, 2018)

Professional and Amateur Sports

Protection Act (PASPA) 25 USC § 2701 (1992)

→ unlawful for **State** [or person] “to sponsor, operate ... license ... betting ...” on competitive sporting events.

→ Grandfather Exceptions (Nevada +3*)
2012/2014 New Jersey authorized v. repeals law that outlawed sports gambling

Held (6-3): PAPSAs are unconstitutional.

→ “Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own.”

→ States can not be *commandeered* to enforce a federal regulation.



Legalized Sports Betting -- All Bets Are On! (yet)

STATES 2018

- Nevada, Montana, Delaware, and Oregon
- New Jersey, New York, West Virginia, Pennsylvania, and Mississippi.
- Bills Introduced: 20 + States & DC

IMPACT

- League & Athlete Response?
- Revenue & Taxes
- Could net NHL \$216M, NFL \$2.6B annually
- New Fan Experience
- All Sports, All Aspects
- Who will win/lose?
- Chance or Skill?
- Data, Tech & Screens



The Dark Side?

Biggest Gamble? Sponsorships

- Companies around the world are set to spend \$65.8 billion on sponsorship deals in 2018, but *few businesses know whether it actually works.*
Risk & ROI?
- Reynaldo - Lawsuit seeks to void NDA (2009)
- Nike *Just* “deeply concerned”



On the rise and dominating ...?

Legal Implications of E\$ports

- Is Esports a Sport?
- Labor & Player Rep
- Gamers as The New (cyber) Athlete?
- Governance
- E-doping
- Gambling/Betting
- IP
- Dispute Resolution
- “Can a guy in his 40's become an eSports professional player?”
- Leagues owned by game
- game



Changing Industry: Sports Television Distribution:

- *Gone Streaming*
- ESPN+
- Amazon/Hulu/Netflix/FB



- New Sports on the Rise



- “Live streams of MMA, karate, and niche sports are terrifying major sports leagues”

Labor Relations as CBA Expiration Looms

NFL2020 DeSmith: “NFLPA will approach 2021 talks like ‘war’”

- Player discipline



- Commissioner discipline ¶46

- Player Injuries

- 18-game season



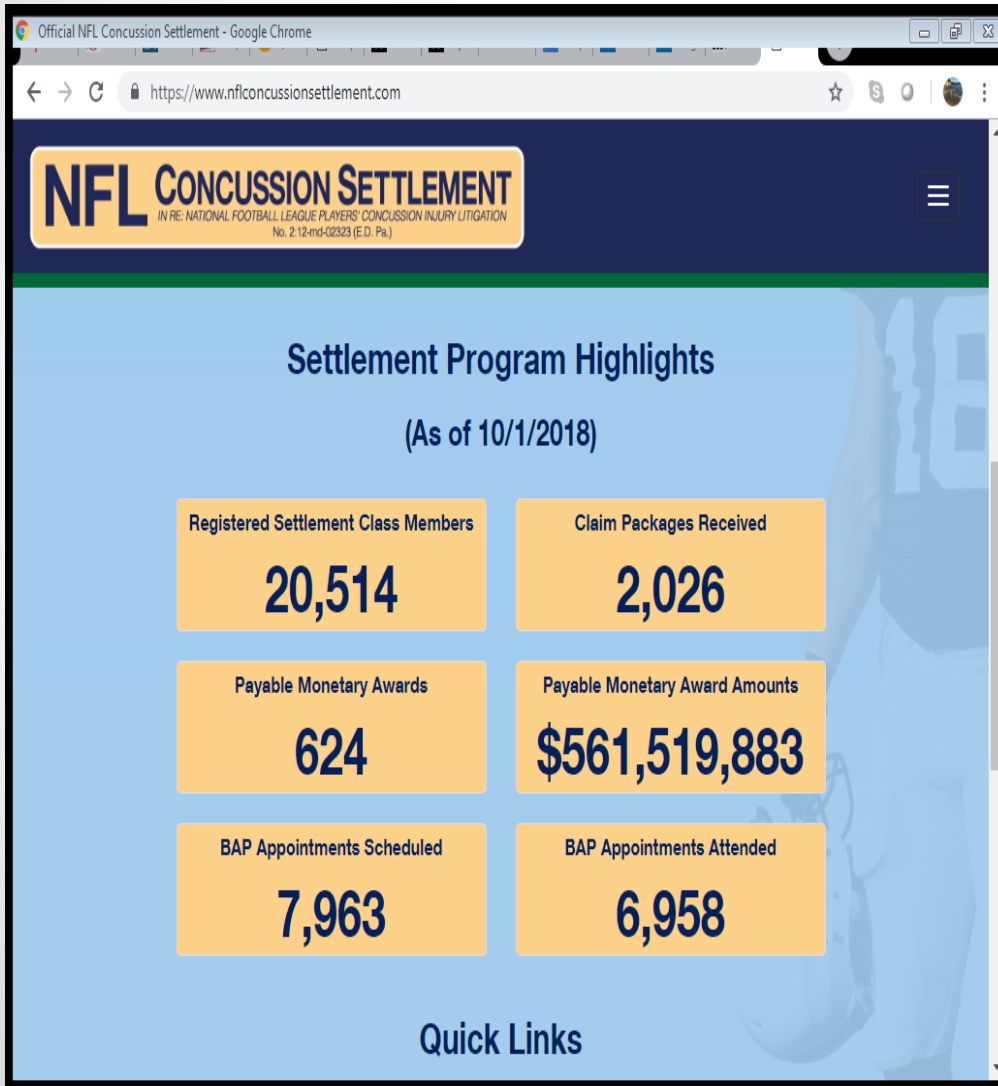
- Biometrics/Wearable Tech (NFLPA Whoop Deal) and

- **NHL CBA 2022**



- Opt Out Sept. 2019
- Distribution of hockey-related revenue (HRR)
- Escrow - bi-monthly clawbacks from players' salaries.
- Max contract lengths
- Olympic participation
- Seattle Expansion Team 2020-21

Concussion Litigation



- **NFL - Dispute over Attorney Fees**



NHL

- ***In Mediation (Oct.)***
- *July – class status denied*
- *Now: 100 former players – failure to warn or protect*

Labor & Pro Sports

Minor League Players

- No Minimum Wage Protection \$7,500 v. \$4M
- “Saving America’s Pasttime Act”
- FLSA & Antitrust Exemption
- Exploring MiLB Union
- *Senne v. MLB*



Cheerleaders v. NFL

- “harassed, bullied, body-shamed” for \$7.25/hour
- NFL or team Restrictions
- Control Personal Lives
- Social Media
- Fraternalization



Most Controversial? Athlete Activism Kaepernick's Protest & Collusion Case



#TimesUp, #MeToo, & Pro Sports

- Hitting Team Owners
 - Jerry Richardson sells Panthers
 - Dallas Mavericks owner Mark Cuban agreed to pay \$10 million in response to widespread sexual harassment and workplace misconduct
- Silver: Hire More Women, Workplace Investigation, Harassment Training
- "Respect in the Workplace" hotline



-- Tattoo Drama -- Copyrightability & Ownership of Athlete Tattoos

- **Can LeBron License His Own Tattoos?** *Solid Oak v. 2K Games*
- **Who owns JR's Smith's skin???**



LeBron & LA



Thank you!



