

The image features the NCAA logo, which consists of the letters "NCAA" in a bold, white, sans-serif font. The logo is centered on a blue, three-dimensional sphere that has a subtle gradient and a soft shadow. The sphere is set against a dark blue background with a pattern of lighter blue, semi-transparent geometric shapes and lines that create a sense of depth and movement. The overall aesthetic is clean, modern, and professional.

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Litigation Trends: An analysis of NCAA court activity

Donald Remy
Executive Vice President for Law, Policy &
Governance
Chief Legal Officer
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Historical Context: Prior Decisions

- *Board of Regents of the University of Oklahoma (1984)* – Supreme Court decision affirming lower court findings that the NCAA’s plan for televising college football games during the 1982-1985 seasons restricted the marketplace for intercollegiate athletics in an anticompetitive manner, and therefore unlawfully fixed prices and restricted output in violation of the Sherman Act.
- *“Moreover, the NCAA seeks to market a particular brand of football -- college football. The identification of this "product" with an academic tradition differentiates college football from and makes it more popular than professional sports to which it might otherwise be comparable, such as, for example, minor league baseball. In order to preserve the character and quality of the ‘product’, athletes must not be paid, must be required to attend class, and the like.”*

Historical Context: Prior Decisions

- *Tarkanian* (1988) – Supreme Court decision holding that the NCAA is not a state actor in conducting its investigative and enforcement proceedings against a member university, and therefore its actions are not subject to the 14th Amendment or Section 1983 claims. Rather, the NCAA is a private party that can only make recommendations to its members, who voluntarily participate in the association. This decision overturned several lower court rulings.

Historical Context: Prior Decisions

- *White* (2008) – Class action lawsuit in which plaintiffs alleged the NCAA's limitation of student-athlete grants-in-aid to tuition, room, board and books amounted to a restriction of trade. In 2008, the NCAA entered into a settlement agreement that created a \$10 million fund to provide career development services and to reimburse certain educational expenses to the class members, with the fund intended to allow the former student-athletes to gain career development skills and further their education.
- *Law (Restricted Earnings)* (1998) – Tenth Circuit decision holding that the NCAA violated antitrust laws when it implemented the Restricted-Earnings Coaches Rule in 1991, which limited the compensation of entry-level coaches in all DI sports to \$16,000. The NCAA settled the damages claim in 1999 for \$54.5 million.

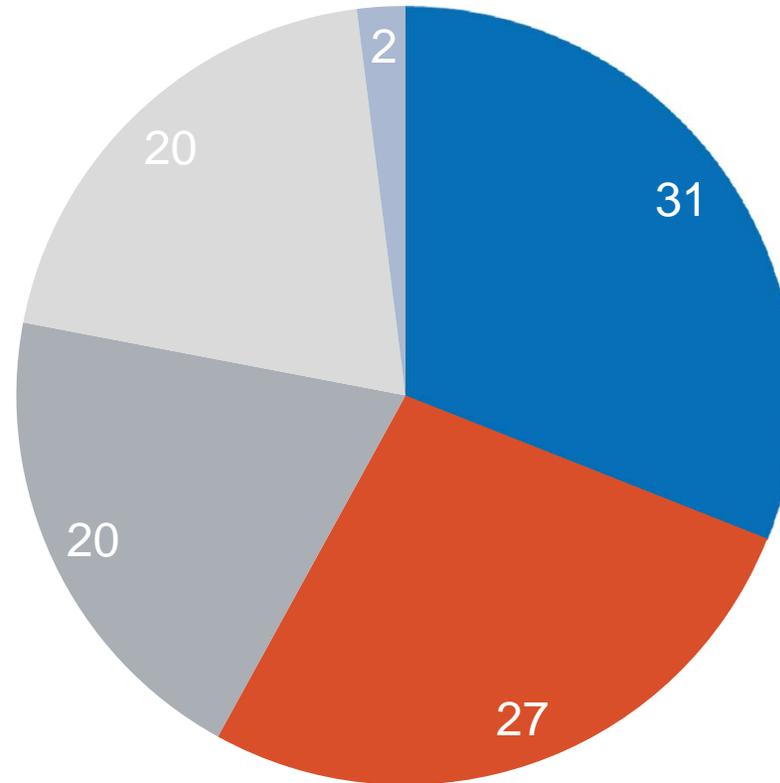


The Numbers

From 2002 – Present

– 100 Lawsuits*

- 31 Dismissed
- 27 Judgment in favor of NCAA
- 20 Settled
- 20 Pending
- 2 Judgment against NCAA



*Number reflects (i) consolidation of 12 student-athlete likeness cases into 1 and (ii) suits in which the NCAA is a plaintiff



The Roster

<u>Plaintiffs Category (97)</u>	<u>Number of Suits</u>
Student-Athletes	44
General Public/Consumers/Individuals	16
Coaches/Formers Coaches	11
Other*	12
Promoters/Operators	7
Manufacturers	7

*includes one Member Institution



Student Athlete Claims (44)

■ 21 Eligibility claims

■ 9 Antitrust claims

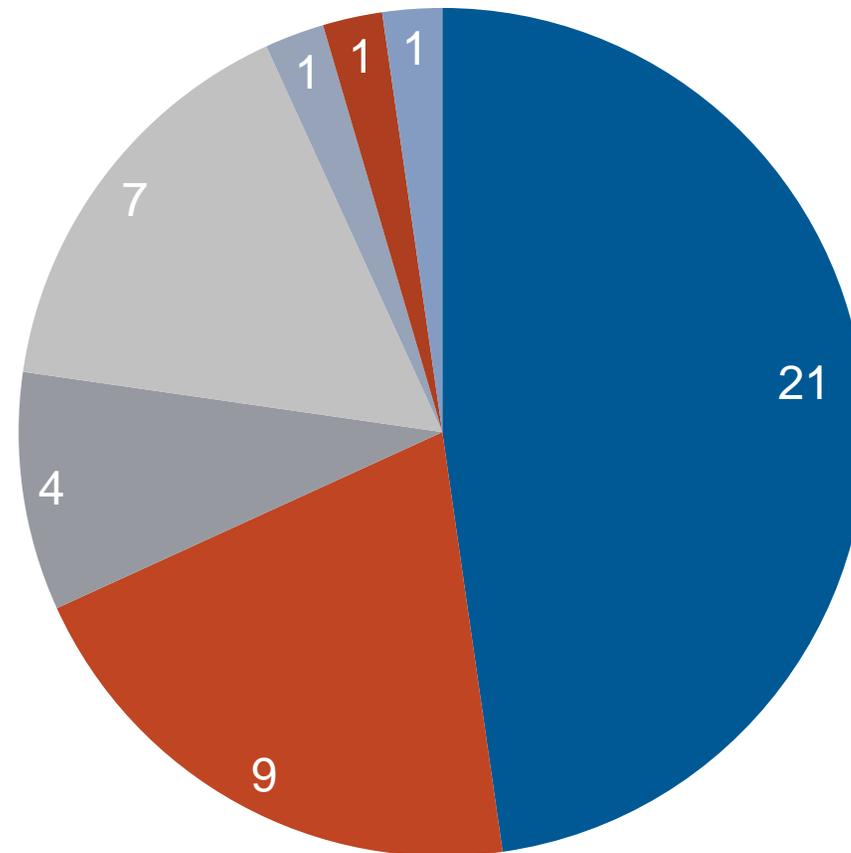
■ 4 Personal Injury/Negligence

■ 7 Negligence

■ 1 Breach of Contract

■ 1 Defamation

■ 1 Drug Testing



Eligibility and the Student-Athlete: *Yeo v. NCAA (2005)*

- Accomplished swimmer from Singapore sought to transfer from UC-Berkeley to UT-Austin following her coach.
- Court: “The determination of whether a student-athlete has a protected interest is necessarily fact-specific, depending on that athlete’s specific situation and reputation.”
- Yeo’s claimed interest in “future financial opportunities is too speculative for due process protection. There must be actual legal entitlement” to afford protection.
- “[J]udges are not super referees.”



Antitrust and the Student-Athletes: *Agnew v. NCAA* (Scholarships)

- Two football student-athletes' year-long scholarships were not renewed after both individuals suffered a series of football-related injuries at their respective institutions.
- Plaintiffs claimed NCAA bylaws prohibiting multi-year scholarships constituted an unreasonable restraint of trade-- an antitrust violation.
- Court: plaintiffs "failed to identify a cognizable market in which trade was improperly restrained."
- Dismissed with prejudice



Antitrust and the Student-Athlete: *Rock v. NCAA (2012) (Scholarships)*

- Plaintiff claimed that the NCAA has violated antitrust laws by imposing restriction on multiyear scholarships.
- Court: “As the poignant refrain from a popular duet cover laments, here we go again.”
- The NCAA has since revised its legislation to allow its members to offer multiyear scholarships. On March 1, 2013, the U.S. District Court for the Southern District of Indiana granted the NCAA’s motion to dismiss, but gave the plaintiff an opportunity to amend.
 - Plaintiff filed second amended complaint. NCAA filed motion to dismiss second amended complaint.
- Pending



Antitrust and the Student-Athlete: *Student-Athlete Likeness (2009)*

12 Cases consolidated into *In re: NCAA Student-Athlete Name and Likeness Licensing Litigation*.

- *Keller v. EA* – Plaintiffs alleged that the NCAA violated student-athlete right of publicity, civil conspiracy, and breach of contract.
- Pending



Antitrust and the Student-Athlete: *Student-Athlete Likeness*

- *O'Bannon v. NCAA* – Plaintiffs have claimed that the NCAA has violated antitrust laws through a restraint of trade and alleged that the NCAA was improperly selling collegiate images of current and former student-athletes.
 - Alleges two classes:
 - Current and former student-athletes seeking only declaratory and injunctive relief
 - Former student-athletes seeking monetary damages
- Pending



Negligence and the Student-Athlete: *Arrington v. NCAA (2012) (Concussions)*

- Former football student-athletes have filed lawsuits seeking class certification for all “former and current NCAA football players who suffered a concussion or concussion-like symptoms while playing football.”
- Plaintiffs have alleged negligence by the NCAA in failing to supervise, regulate, monitor and provide reasonable rules to minimize risk to players.
- Plaintiff’s filed a motion for class certification and NCAA has responded.
- Pending. Mediation scheduled



Negligence and the Student-Athlete: *Walker v. NCAA(2013)* (Concussions)

- Former football student-athletes seeking class certification and the establishment of a Court-supervised fund to provide medical monitoring for all former NCAA football players who did not go on to play professional football in the National Football League.
- Complaint alleged NCAA failed to educate football student-athletes regarding the risks of repeated head trauma, and failed to require actions to prevent, mitigate, monitor, diagnose, and treat brain injuries.
- Amended complaint filed September 6, 2013.
- Pending



Negligence and the Student-Athlete: *Sheely v. NCAA (2013) (Wrongful Death)*

- Frostburg State University football player died in 2011 after suffering a head injury during practice.
- Complaint alleges that the NCAA failed to enforce its own concussion management plan, despite “systematic and blatant violations,” and it never sanctioned the university or the coaches.
- Pending



Personal Injury and the Student-Athlete: *Lloyd v. Rice*(2012) (Sickle Cell)

- Estate of former football student-athlete who collapsed during an off-season workout and died allegedly from complications associated with sickle cell trait.
- Plaintiffs alleged the NCAA failed to prioritize training, education and monitoring of student-athletes with sickle cell trait.
- Settled



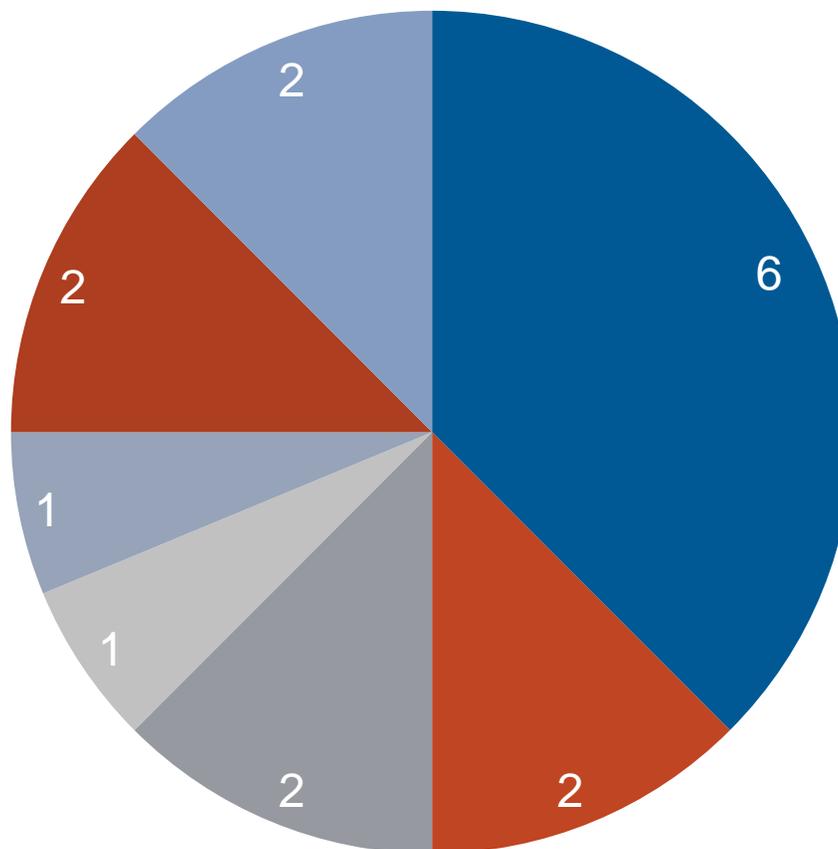
Personal Injury and the Student-Athlete: *Hill v. Slippery Rock (2013)*(Sickle Cell)

- The parents of a Slippery Rock (Pa.) University basketball player who died after collapsing during a practice alleged their son was not screened for the sickle cell trait that contributed to his death and school officials did not do enough to help him.
- NCAA legislation was passed in 2012 requiring all student-athletes to be tested for the sickle cell trait or sign a written release declining the test before competing.
- Pending



General Public, Consumer, & Individual Claims (16)

- 6 Personal Injury/Wrongful Death
- 2 Championship Ticket Distribution/Sales
- 2 Defamation
- 1 Copyright Infringement
- 1 Patent Infringement
- 2 Mascot Policy
- 2 Other



Illegal Lottery and the General Public: *George v. NCAA (2011)*

- Applicants for tickets to Men's Basketball Final Four alleged illegal ticket lottery in violation of anti-gambling and consumer protection laws.
- District court ruled that since Plaintiff had knowingly participated in the transaction, he was prohibited from complaining about it thereafter.
- 7th Circuit certified questions to the IN Supreme Court.
- IN Supreme Court unanimously ruled distribution system was not a lottery under IN law.



Coaches and Former Coaches Claims (11)

All 11 claims are a combination of:

- Due Process
- Conspiracy and Interference with Contract
- Breach of Contract or Duty
- Defamation
- Invasion of Privacy
- Tortious Interference



Antitrust, Due Process and the Coach: *Cohane v. NCAA (2001)*

- Former Division I basketball coach has alleged that the NCAA forced the university at which he coached to make him resign due to alleged violations of NCAA rules, violated his due process, coerced false statements from student-athletes, and allowed the infractions report to contain untrue and stigmatizing charges.
- 2nd Circuit dismissed tortious interference with a contract.
- 2nd Circuit remanded the question of whether the NCAA was a state actor due to its willful participation in joint action with the university, a state agency, and therefore obligated to provide due process.
- Hearing on motion for summary judgment held March 28, 2013.
- Pending



Antitrust, Due Process and the Coach: *McNair v. NCAA (2012)*

- Former assistant football coach at USC has alleged libel, slander, tortious interference with prospective economic advantage, tortious interference with contractual relations, breach of contract, negligence and misconduct.
- Related to the NCAA infractions case against USC.
- Motion to intervene filed by New York Times and L.A. Times
NCAA's opposition to motion to intervene filed.
- Pending



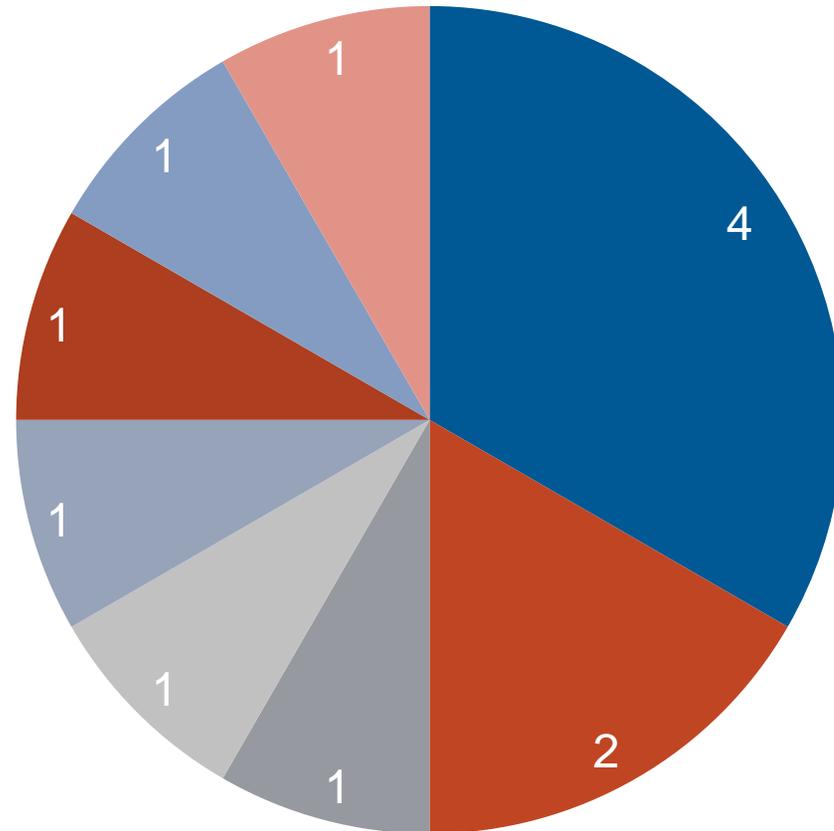
Conspiracy and Interference with Contract: *Paterno v. NCAA (2013)*

- Joe Paterno's family, along with members of the Board of Trustees, current faculty members and former football players and coaches alleged that the NCAA, in connection with the consent decree between the NCAA and Penn State University:
 - Improperly interfered with the existing and prospective contractual relations of certain Plaintiffs;
 - Engaged in a civil conspiracy;
 - Violated contractual obligations to the Plaintiffs; and
 - Defamed and disparaged the Plaintiffs;
- Hearing on NCAA's preliminary objections scheduled for October 29, 2013.



Other Claims (12)

- 4 Antitrust
- 2 Trademark
- 1 Open Records
- 1 Collection
- 1 Fraud/Misrepresentation
- 1 Title II/Disparate Impact
- 1 Violation of State Constitution
- 1 Title VII



Antitrust & Violation of State Constitution: *Corbett v. NCAA; Corman v. NCAA (2013)*

- Governor Thomas W. Corbett, Jr., on behalf of the State of Pennsylvania, filed suit challenging the validity of the consent decree between the NCAA and Penn State University, claiming the terms of that agreement harm the residents of Pennsylvania.
 - Alleges violation of the Clayton and Sherman Acts and seeks injunctive relief against the NCAA.
 - PA state senator Jake Corman has also filed suit to prevent the NCAA from using the \$60 million penalty paid by Penn State outside the state (the NCAA has challenged a state law intended to have the same restrictive effect).
- NCAA's motion to dismiss Corbett's suit was granted.
- NCAA's preliminary objections to Corman's second amended complaint were overruled.

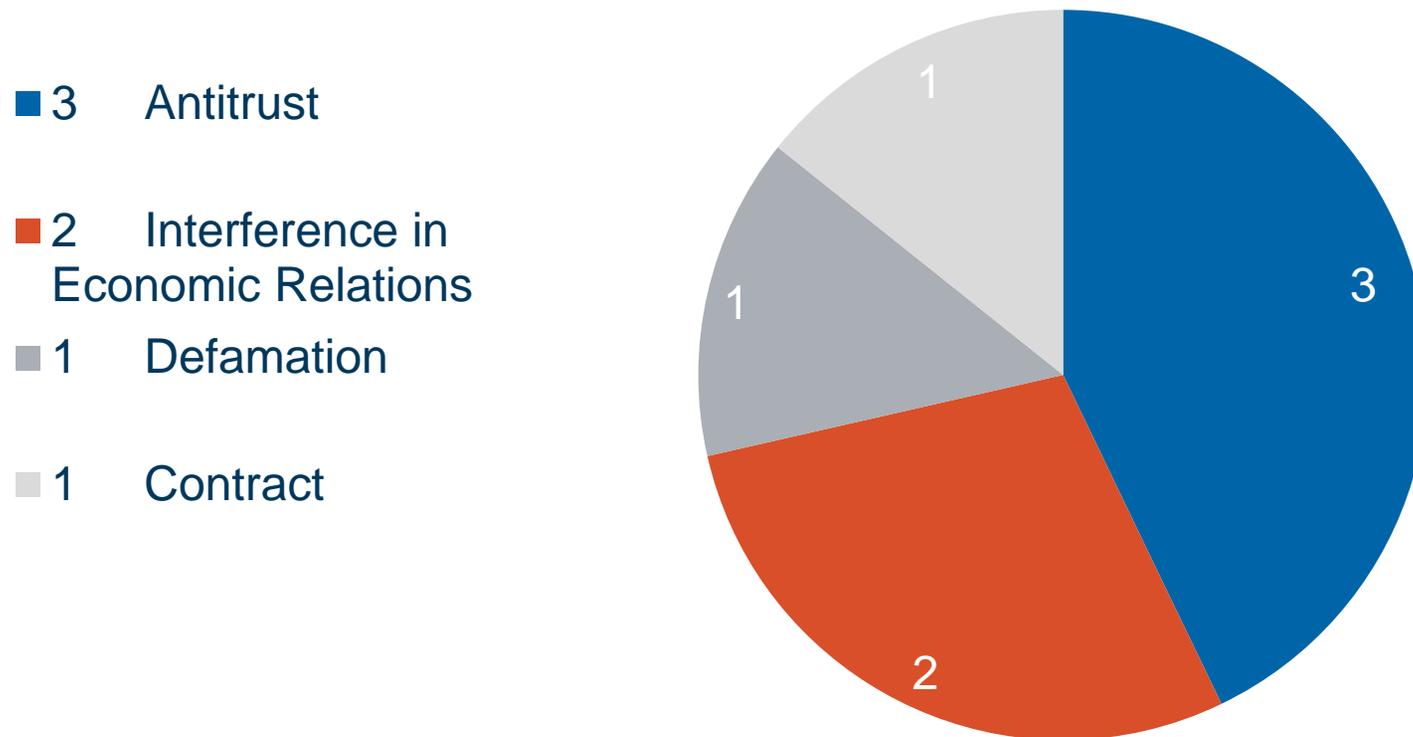


Antitrust and the Other Plaintiff: *State of North Dakota v. NCAA (2006)*

- North Dakota alleged breach of contract to adopt rules in a certain legislative way and unreasonable and unlawful restraint of trade or commerce related to the NCAA Executive Committee's adoption of a policy prohibiting the use of hostile racial/ethnic/national origin mascots, nicknames or imagery.
 - Settled in October 2007
- In November 2011, the Spirit Lake Sioux tribe in North Dakota sued the NCAA, in part challenging the settlement between UND and the NCAA.
 - Federal district court granted the NCAA's motion to dismiss for lack of standing.
 - Judgment in favor of NCAA affirmed by 8th Circuit.



Promoters and Operators Claims (7)



Antitrust and the Promoter: *Aloha Sports, Inc. v. NCAA (2000)*

- Promoter of post-season football bowl games initially claimed violation of antitrust laws regarding NCAA rule requiring bowls to pay institutions participating greater of 75% gross revenue or \$750,000.
 - Claim ultimately dismissed.
- Promoter also alleged breach of contract for refusing to recertify the bowls.
 - Unanimous jury verdict returned in favor of NCAA.
- Appeal filed May 23, 2012.
- Pending

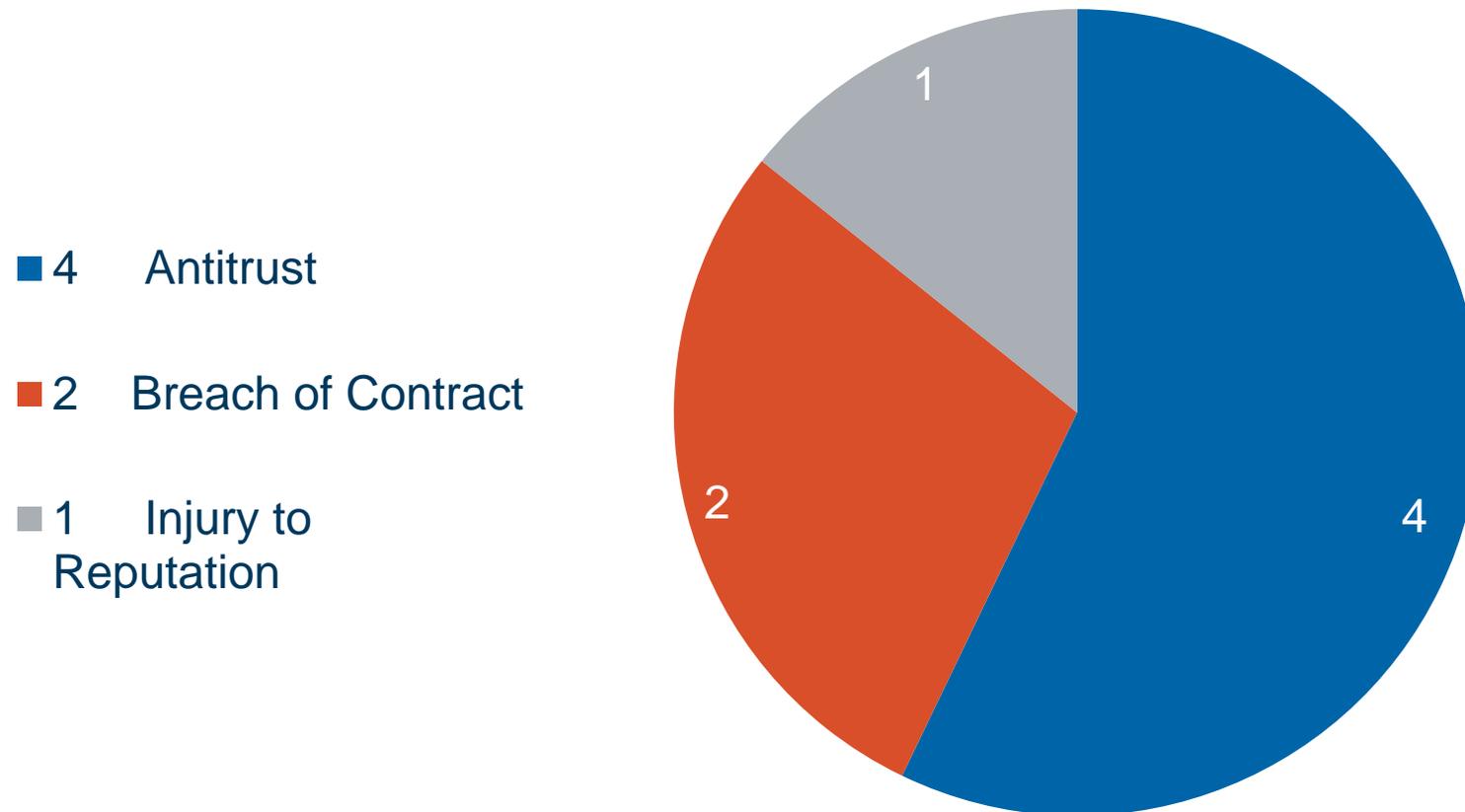


Defamation and the Promoter: *Guillory v. NCAA (2010)*

- Plaintiff claimed he was defamed in the NCAA Public Infractions Report relating to USC, including findings that a “representative B” provided impermissible benefits to a student-athlete and he could reasonably be understood to be this person.
- NCAA motion to strike granted.
- California Court of Appeals affirmed.



Manufacturer Claims (7)



Antitrust and the Manufacturer: *Warrior Sports, Inc. v. NCAA (2010)*

- Warrior Sports sued based on a NCAA Rules change regarding the configuration of the head of a lacrosse stick.
- Alleged antitrust violation by restraining trade and eliminating competition between manufacturers as only one type of head is permitted.
- Also alleged tortious interference with a business relationship as it reasonably relied on a NCAA promise to enforce equipment rules their product was based on.
- Judgment on the pleadings granted to NCAA.
 - 6th Circuit affirmed.

Recent Decisions Adverse to the NCAA

- Open Records – *Associated Press* (2009)
- Scope of Distribution Rights – *Intersport* (2008)



Open Records: *Associated Press (2009)*

- The Associated Press sued under Open Records laws to obtain an un-redacted copy of a transcript and report resulting from a Committee on Infractions case against Florida State University. FSU appealed the COI ruling and was allowed access to the confidential documents to prepare the appeal.

The Court held as follows:

- Records maintained by the NCAA are not generally subject to public disclosure, however these documents were received and examined by lawyers for a public agency in connection with official business (affirmed by Florida Appellate Court).

Scope of Distribution Rights: *Intersport v. NCAA (2008)*

- Intersport, a limited licensee of the “March Madness” mark, sought a declaratory ruling that its distribution of certain basketball-related content to Sprint mobile wireless customers (pursuant to an agreement between Intersport and Sprint) did not violate the terms of Intersport’s license or violate the NCAA’s intellectual property rights, as the NCAA claimed.

The Court held as follows:

- The license agreement gave Intersport an exclusive and lawful right to use the “March Madness” mark in the presentation of athletic personalities in a panel forum and to advertise, promote, and sell “videos” of the programming in any manner, including videos displayed on mobile wireless devices (affirmed by Illinois Appellate Court).



Conclusion

There will always be constants in litigation against the NCAA:

- Antitrust
- Student-Athletes

The wave of the future litigation against the NCAA:

- Negligence



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