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AGENCY LAW

[*Harmon v. Gordon, No. 10 C 1823, 2011 U.S. Dist. LEXIS 7848 \(N.D. Ill. Jan. 27, 2011\)*](#). This decision arises out of Plaintiffs' claims of breach of contract, malicious prosecution, abuse of process, and tortious interference with prospective business advantage. At issue was a financial advising and consulting agreement entered into between Plaintiff and Defendant Ben Gordon, an NBA basketball player employed by the Detroit Pistons at the time of the suit, and Plaintiffs' subsequent termination. Defendant Gordon moved to dismiss each count for failure to state a claim. After analyzing each claim, the court granted Defendant's motion to dismiss the malicious prosecution, abuse of process, and tortious interference claims. However, holding that the client in an agency relationship does not have an absolute right to terminate the agent without breaching the contract, the court denied Defendant's motion to dismiss Plaintiff's breach of contract claim.

[*Hilario v. Taft, Stettinius & Hollister, LLP, No. 95262, 2011 Ohio App. LEXIS 1499 \(Ohio Ct. App. Apr. 7, 2011\)*](#). Plaintiff Nene Hilario is a Brazilian-born NBA basketball player who, at the time of this suit, played for the Denver Nuggets. Despite an evident conflict of interest, Defendants represented both Plaintiff and his interpreter regarding their contractual agreement relating to the interpreter's payment. Additionally, Plaintiff alleged he was never advised to consider obtaining independent counsel and that he did not fully understand or consent to the terms of the contractual agreement. Following the trial court's grant of summary judgment, Plaintiff appealed, asserting that the trial court erred in granting summary judgment in favor of the defendants. After analyzing each assignment of error, the court reversed and remanded the case.

[*Kivisto v. NFL Players Ass'n, No. 10-24226-CIV-MORENO, 2011 U.S. Dist. LEXIS 8827 \(S.D. Fla. Jan. 31, 2011\)*](#). Plaintiff Jake Kivisto, a former agent certified by the NFL Players Association (NFLPA) via the NFL CBA, filed a declaratory action under § 301 of the Labor Management Relations Act following the expiration of his certification pursuant to certain rules contained within the CBA. As part of his certification process, Plaintiff had signed a contract providing for arbitration as the required administrative remedy in the event of a dispute regarding certification issues like Plaintiff's. Pursuant to that contract, Plaintiff appealed the expiration of his certification to an arbitrator, but he ultimately voluntarily withdrew the claim from arbitration dismissing his claims with prejudice. Accordingly, as relevant to this decision, Defendant filed a motion to dismiss, arguing that by Plaintiff's voluntary withdrawal from arbitration, he could not pursue the same claims in this court. Agreeing with Defendant, the court granted the motion.

ANTITRUST LAW

[*Graham v. Am. Golf Corp., No. 09-56769, 2011 U.S. App. LEXIS 4345 \(9th Cir. Mar. 4, 2011\).*](#) Plaintiff, a golf instructor, sued Defendant American Golf Corporation, alleging Sherman Act and civil rights violations arising out of a policy permitting only Defendant's employees to teach golf at certain public golf courses. Noting the lack of substantial effect on interstate commerce, the neutrality of the policy, and the fact that employment as a golf instructor is not a fundamental right, the Ninth Circuit affirmed the district court's dismissal of each claim.

In re NCAA Student-Athlete Name & Likeness Litig., No. C 09-1967 CW, 2011 U.S. Dist. LEXIS 46841 (N.D. Cal. May 2, 2011). Plaintiffs, former intercollegiate athletes, in consolidated cases, filed a claim under § 1 of the Sherman Act and claims of violations of their rights to publicity against Defendants, Electronic Arts Inc. (EA), Collegiate Licensing Company (CLC), and the Nat'l Collegiate Athletic Association (NCAA). Here, the court considered Defendants' separate motions to dismiss Plaintiffs' claims. Both the antitrust claims and publicity claims stemmed from the use of Plaintiffs' "images, likenesses, and . . . names" relating to NCAA-branded video games, DVD sales, and other similar items. The court denied the CLC's and the NCAA's motions to dismiss both the antitrust and right of publicity claims. Regarding Plaintiffs' claims against EA, the court granted the motion to dismiss; however, these claims were dismissed with leave to amend.

[*Minn. Made Hockey, Inc. v. Minn. Hockey, Inc., No. 10-3884 \(JRT/JJK\), 2011 U.S. Dist. LEXIS 537 \(D. Minn. May 12, 2011\); see also Minn. Made Hockey, Inc. v. Minn. Hockey, Inc., 761 F. Supp. 2d 848 \(D. Minn. Jan. 4, 2011\).*](#) District 6 of Minnesota Hockey adopted a rule barring its players from participating in other hockey leagues while playing for a District 6 team. Plaintiff Minnesota Made Hockey, who offers play opportunities to youth in District 6, brought this claim. Plaintiff sought a preliminary injunction to enjoin enforcement of the rule, alleging tortious interference with prospective business relations; tortious interference with existing contractual relations; violations of Minnesota's antitrust laws; and violations of the Sherman Act. The court stated that although Plaintiffs had shown a likelihood of success on its claims, it had to deny Plaintiff's motion for a preliminary injunction because Plaintiff failed to show irreparable harm that is not compensable with money damages, a requirement for a preliminary injunction. Subsequently, Defendants moved for dismissal for failure to state a claim. The court granted Defendant's motion with regard to the antitrust conspiracy claim, but denied the motion in all other respects. The court found that there was sufficient evidence of antitrust injury, that there were sufficient facts to state a plausible monopolization claim, and that there were sufficient facts for plaintiff's tortious interference claims to survive motions to dismiss.

BANKRUPTCY LAW

[*In re Adelpia Recovery Trust v. HSBC Bank USA, 634 F.3d 678 \(2nd Cir. 2011\).*](#) This is a case arising out of various bankruptcy proceedings involving the NHL's Buffalo Sabres and other various related ownership entities regarding certain fraudulent conveyance claims brought against appellees, three banks. After noting the highly complex factual and procedural background of the case, the court addressed the central issue in the case, which was "whether a debtor-in-possession is barred from bringing fraudulent conveyance claims against three banks

because it actively participated in and facilitated a sale of the assets of a different debtor-in-possession, to which it was a creditor, while remaining silent about the possibility that it would bring fraudulent conveyance claims with respect to its prior take-outs of loans secured by those assets.” Appellees were three banks that had granted loans related to the Sabres and their stadium, the HSBC Arena. Adelpia Recovery Trust, a trust created pursuant to Chapter 11 bankruptcy proceedings, appealed the district court’s decision barring its fraudulent conveyance claims against the banks. The Second Circuit affirmed.

[In re Tex. Rangers Baseball Partners, No. 10-43400\(DML\), 2011 Bankr. LEXIS 1247 \(Bankr. N. D. Tex. Apr. 6, 2011\).](#) At issue in this proceeding was the Application of Perella Weinberg Partners, LP for “Allowance of Compensation and Reimbursement of Expenses” in connection with its financial advising services related to the Texas Rangers’ Chapter 11 Bankruptcy case. Here, Perella argued that it was entitled to certain fees for performing its financial advising services in the case. The court, although agreeing to a certain extent, concluded that the facts of the case warranted an award of fees less than those sought by Perella. Specifically, regarding the higher transaction fee sought by Perella, the court stated that this case differed from a normal financial advising situation, as the risk “that the Rangers would not be bought . . . was so small as to be insignificant.” This fact, in addition to other circumstances regarding Perella’s involvement in the Rangers’ sale, resulted in the court granting the Application in the amount of \$912,450 with provisions related to further expenses and reductions. Additionally, the court declined to decide whether Perella was entitled to any reimbursement for legal fees.

[Mid-City Bank v. Skyline Woods Homeowners Ass’n \(In re Skyline Woods Country Club\), 636 F.3d 467 \(8th Cir. 2011\).](#) Skyline Woods Country Club filed for Chapter 11 bankruptcy, and the court subsequently approved the highest bid for the sale of the Skyline Woods’ property to the Liberty Building Corporation. The purchased property included a golf course that was the subject of express and implied restrictive covenants that required the property to be maintained as a golf course. As part of the bankruptcy purchase, Liberty was to receive the property free of interests such as those restrictive covenants, and adverse claimants were to be barred from asserting such claims against Liberty. Nonetheless, various homeowner associations sued Liberty to enforce the covenants. Liberty subsequently filed a motion with the bankruptcy court to enforce the terms of the sale that had barred such claims by the homeowner associations. However, Liberty decided to argue the case on the merits and withdrew its motion from the bankruptcy court. The state trial court granted summary judgment to the homeowners associations, a decision that was subsequently affirmed by the Nebraska Supreme Court. Thus, the property was to be maintained as a golf course. Liberty and its lender, Mid-City Bank, sought to reopen the bankruptcy case to enforce the terms of the sale and enjoin the homeowners associations from enforcing the Nebraska Supreme Court decision. The bankruptcy court denied the motion to reopen the case as it concluded it would be bound by the decision of the Nebraska Supreme Court. Here, the court affirmed the bankruptcy court decision, concluding that the bankruptcy court did not abuse its discretion in denying the motion to reopen the case.

COURT OF ARBITRATION FOR SPORT DECISIONS

Blanco v. USADA, CAS 2010/A/2185 (Apr. 1, 2011). This arbitration arose from a decision made by the United States Anti-Doping Agency (USADA), the national anti-doping body in the United States, to suspend Blanco, an American cyclist, for an anti-doping rule violation. While competing in the Tour of the South China Sea competition, Blanco provided two urine samples that tested positive for exogenous testosterone, a prohibited substance. As a result, USADA charged him with an anti-doping rule violation and sanctioned him with a two-year suspension. On appeal to the Court of Arbitration for Sport (CAS), Blanco argued that he should be exonerated because the laboratory departed from the International Standards for Laboratories (ISL), and as a result, the laboratory findings were unreliable. However, the laboratory benefitted from the presumption that World Anti-Doping Agency-accredited laboratories comply with the ISL, and the CAS Panel upheld Blanco's anti-doping rule violation and suspension.

Bulgarian Boxing Fed'n v. European Boxing Confederation, CAS 2010/A/2401 (June 7, 2011). This arbitration arose from a decision made by the European Boxing Confederation (EUBC), the governing body for the sport of boxing in Europe, to revoke Bulgaria's right to host the 2011 European Men Championships. In January 2011, the Bulgarian Boxing Federation (BBF), the national governing body for the sport of boxing in Bulgaria, was awarded the right to host the 2011 European Men Championships. However, at that time, there was a pending International Boxing Association (AIBA) disciplinary investigation, which could have resulted in the BBF being suspended. As a result of this uncertainty, EUBC revoked Bulgaria's hosting rights and awarded the rights to host the 2011 Championships to Turkey. BBF appealed to the Court of Arbitration for Sport (CAS), arguing that the outcome of the investigation was unknown, and therefore, EUBC had no legal basis to revoke Bulgaria's hosting rights. The Sole Arbitrator for CAS agreed with BBF. However, because Turkey, the athletes, spectators, and sponsors had all incurred significant costs in preparing for the Championships in Turkey, which were to be held two months from the time this appeal was filed, reinstating Bulgaria's hosting rights would have been a disproportionate remedy. Therefore, Turkey was still allowed to host the 2011 European Men Championships.

Finnish Ski Ass'n & Saarinen v. Int'l Ski Fed'n, CAS 2010/A/2090 (Feb. 7, 2011). This arbitration arose from a decision made by the International Ski Federation (FIS), the international governing body for skiing, to disqualify Saarinen, a Finnish cross-country skier, during a World Cup race. During the race, Saarinen moved in front of another competitor, causing the other competitor to fall. As a result, Saarinen was disqualified from the race for intentionally obstructing the other competitor's path. After the FIS Court upheld her disqualification, Saarinen appealed to the Court of Arbitration for Sport (CAS), arguing that the FIS Court was wrong to find her guilty of intentional obstruction. However, because of the field-of-play doctrine, which prohibits CAS from reviewing an official's field-of-play decision except in exceptional circumstances, the CAS Panel's review under this appeal was limited to whether the FIS Court properly followed its own procedures in rendering its decision. The Panel held that the FIS Court made no procedural error; therefore, Saarinen's disqualification was upheld.

[*Int'l Wheelchair Basketball Fed'n v. U.K. Anti-Doping Ltd. & Gibbs, CAS 2010/A/2230 \(Feb. 22, 2011\).*](#) This arbitration arose from a decision made by the International Wheelchair Basketball Federation (IWBF), the international federation governing wheelchair basketball, to suspend Gibbs, a wheelchair basketball player, for an anti-doping rule violation. In February 2010, Gibbs tested positive for a prohibited substance. As a result, he was charged with an anti-doping rule violation and received a two-year suspension. On appeal to the Court of Arbitration for Sport (CAS), Gibbs argued that his suspension should be reduced because he did not intentionally ingest the prohibited substance. Instead, he asserted that he ingested the substance because someone else “spiked” his drinks with the substance. However, Gibbs could not provide sufficient evidence to corroborate this story. Because Gibbs could not establish how the prohibited substance entered his system, a condition that is required to reduce an anti-doping violation sanction, the CAS Panel upheld his two-year suspension.

[*Netball N.Z. v. Int'l Netball Fed'n Ltd., CAS 2010/A/2315 \(May 27, 2011\).*](#) This arbitration arose from a decision made by the International Netball Federation (INFA), the international federation governing the netball, to declare Latu, a netball athlete, ineligible to compete for New Zealand in international netball competitions. In 2008, Netball New Zealand (NNZ), the national governing body for netball in New Zealand, applied to have Latu declared eligible to compete for New Zealand in international netball competitions. However, because Latu had competed for Samoa the previous year, INFA refused to declare him eligible to compete for New Zealand. After a year of unsuccessfully trying to convince the INFA Board to reconsider its decision, NNZ appealed to the Court of Arbitration for Sport (CAS). The CAS Panel determined that the appeal was inadmissible because it was filed well after the twenty-one day time limit to appeal decisions. Moreover, the CAS Panel determined that NNZ could not use each of INFA's repeated refusals to revisit its decision as appealable decisions because that would frustrate the purpose of the time limit for an appeal. As such, CAS dismissed NNZ's appeal.

[*Oriekhov v. Union des Ass'ns Européennes de Football, CAS 2010/A/2172 \(Jan. 18, 2011\).*](#) This arbitration arose from a decision made by the Union des Associations Européennes de Football (UEFA), the governing body for soccer in Europe, to ban Oriekhov, a UEFA referee, for participating in illegal betting and match fixing. In November 2009, German police intercepted multiple phone conversations that indicated that Oriekhov had been paid to manipulate the results of a soccer match. As a result, the UEFA Control and Disciplinary Body sanctioned Oriekhov with a lifetime ban for engaging in illegal betting and match fixing. On appeal to the Court of Arbitration for Sport (CAS), Oriekhov argued that he did have contact with the criminal organization that was involved in the match fixing, but that he did not accept the offer to fix the outcome of any matches. The CAS Panel, however, was sufficiently convinced that Oriekhov was involved in the match-fixing scandal and upheld his lifetime ban from the soccer.

[*Queiroz v. Autoridade Antidopagem de Portugal, CAS 2010/A/2226, \(Mar. 23, 2011\).*](#) This arbitration arose from a decision made by the Autoridade Antidopagem de Portugal, the national anti-doping body in Portugal, to suspend Queiroz, the coach of the Portuguese National Football Team, for an anti-doping rule violation. Prior to an anti-doping sample collection, Queiroz stopped the anti-doping officers (ADOs) to have a conversation with them. During the conversation, Queiroz made some “very distasteful and sexually descriptive comments” regarding an ADO's mother. The ADOs conducted the anti-doping control as usual and reported

the incident later, stating that even though the encounter with Queiroz did not undermine the anti-doping control procedure, it did disturb their work. As a result of his conduct, the Instituto de Deporte de Portugal found Queiroz guilty of an anti-doping rule violation for disturbing the collection of an anti-doping sample. After Queiroz appealed to the Court of Arbitration for Sport (CAS), the CAS Panel set aside his suspension because it determined that even though Queiroz's behavior was inappropriate and offensive, it did not intentionally or negligently disturb the sample collection process.

[Tong v. Int'l Judo Fed'n, CAS 2010/A/2161 \(Feb. 23, 2011\)](#). This arbitration arose from a decision made by the International Judo Federation (IJF), the international federation governing Judo, to suspend Wen Tong, a Chinese judo athlete, for an anti-doping rule violation. In August 2009, while competing at the IJF World Judo Championships, Tong provided two urine samples for an anti-doping control. The A-sample tested positive for a prohibited substance. Tong requested that her B-sample be tested to confirm the presence of the prohibited substance in her system. The IJF tested the B-sample but never told Tong. Therefore, Tong never had an opportunity to be present during the testing, which is required under IJF rules. Nevertheless, because the B-sample confirmed the presence of a prohibited substance, the IJF suspended Tong two years for an anti-doping rule violation. On appeal to the Court of Arbitration for Sport (CAS), the CAS Panel annulled Tong's suspension because the IJF's failure to afford Tong the essential right to be present rendered the B-sample analytical results invalid. As those results could not be used to confirm the A-sample analytical results, no doping violation could be established.

[Sevilla FC SAD v. Udinese Calcio S.p.A., CAS 2010/A/2145, and de Sanctis v. Udinese Calcio S.p.A., CAS 2010/A/2146, and Udinese Calcio S.p.A. v. de Sanctis & Sevilla FC SAD, CAS 2010A/2147 \(Feb. 28, 2011\)](#). This arbitration arose from a dispute regarding the correct compensation for a soccer player's breach of contract. Morgan de Sanctis is a professional soccer player who had three years remaining on his contract with the soccer club Udinese Calcio S.p.A. ("Udinese") for three more years when he signed a new contract to play for Sevilla FC SAD. Because de Sanctis prematurely terminated his contract, Udinese filed a complaint with the Fédération Internationale de Football Association's (FIFA) Dispute Resolution Chamber (DRC), requesting compensation for the de Sanctis' breach. The DRC granted the request and ordered de Sanctis to pay €3,933,134. All parties appealed to the Court of Arbitration for Sport (CAS), contesting the method the DRC used to calculate damages. The CAS Panel recalculated the damages and ordered de Sanctis to pay €2,250,055 as compensation. This figure was based on replacement costs that were incurred as a result of the player's breach of contract.

CONSTITUTIONAL LAW

[Adamo v. Dillon, No. 1:10-CV-02382, 2011 WL 864387 \(M.D. Pa. Mar. 10, 2011\)](#). Plaintiffs Anthony Adamo and Michael Dillon, a race horse trainer and race horse owner respectively, were ejected from the Penn National Race Course and not allowed to participate in any racing at the course, in part as a result of complaints from jockeys and trainers regarding Plaintiffs' horses. Adamo requested a hearing in front of the Pennsylvania Horse Racing Commission ("Commission"), which was denied as moot after an order was issued rescinding his ejection. Gill subsequently requested the rescission of his ejection or an administrative hearing on the

subject; both requests were denied. As a result, Plaintiffs filed suit against numerous officials associated with the Commission, alleging Defendants violated their Fifth and Fourteenth Amendment rights to procedural due process and equal protection. At issue before the court in this decision was Defendants' motion to dismiss Plaintiffs' procedural due process claims. In support of their motion, Defendants relied in large part on their argument that Plaintiffs did not have a procedural due process claim because they had no property interest in their horse racing licenses. The court, however, did not find Defendants' argument to be sufficient. As such, the motion was denied.

[Apilado v. N. Am. Gay Amateur Athletic Alliance, No. C10-0682, 2011 U.S. Dist. LEXIS 58297 \(W.D. Wash. May 31, 2011\).](#) During the championship game of the 2008 Gay Softball World Series in which Plaintiffs' team lost, a protest was filed under Rule 7.05 of the North American Gay Amateur Athletic Alliance (NAGAAA) Softball Code against six players on Plaintiffs' team. The rule limited the number of heterosexual players that a team could carry. Following a hearing, the protest committee determined that Plaintiffs were non-gay, and as a result, the committee disqualified their team from the tournament, annulled its victories and second-place finish, and recommended the one-year suspension of Plaintiffs from NAGAAA softball. Plaintiffs filed suit, alleging that NAGAAA is a "public accommodation" under Washington law and it unlawfully discriminated against Plaintiffs based on sexual orientation. At issue before this court was Plaintiffs' motion for partial summary judgment as to the unlawful discrimination claim and Defendant's motion for partial summary judgment as to Plaintiffs' request for injunctive relief. Although the court concluded that Defendant is a public accommodation under Washington law, it determined that issues of material fact remain regarding whether the NAGAAA rule is protected by the First Amendment's freedom of association. Similarly, the court concluded that Plaintiffs failed to demonstrate clear harm and imminent danger. As such, Defendant's motion for partial summary judgment regarding Plaintiff's requested injunctive relief was granted, and Plaintiff's motion for partial summary judgment was denied.

[Awrey v. Gilbertson, No. 10-14738-BC, 2011 U.S. Dist. LEXIS 70613 \(E.D. Mich. June 30, 2011\).](#) Plaintiff Anthony Awrey sued Defendants Saginaw Valley State University (SVSU) and the University's president and athletic director in their official capacities, alleging violations of his right to due process under the Fourteenth Amendment when he was informed he would no longer be eligible to play football at SVSU as a result of Defendants' determination that Plaintiff had violated NCAA rules. Specifically, Plaintiff argued that SVSU deprived him of his property interest in continued eligibility to play college football and his liberty interest in his good name and reputation. Defendants filed a motion to dismiss. The court noted that Plaintiff did not have a constitutionally protected property interest in his continued eligibility to play football and concluded that even if Plaintiff had a protected property or liberty interest, the claim would still fail due to the applicable statute of limitations, Eleventh Amendment immunity, and qualified immunity. Thus, the court granted Defendants' motion to dismiss.

Davis v. NCAA, No. C 11-01207, 2011 U.S. Dist. LEXIS 68034 (N.D. Cal. June 24, 2011). Plaintiffs sued the NCAA and other related parties, alleging violations of the equal protection clause of the Fourteenth Amendment as well as violations of California state laws. Specifically, Plaintiffs, representing students that did not meet the requirements, challenged aspects of NCAA Division Bylaw 14.5.4.2, which governs students wishing to compete in intercollegiate athletics

following a transfer from a two-year college to a Division I four-year college. The challenge centered around three aspects of the bylaw—(1) the requirement that such students earn an associate’s degree from the two-year college as well as certain (2) course and (3) residency requirements—that differed from requirements other students must meet to participate in Division I intercollegiate athletics. Defendants filed a motion to dismiss. Finding that Plaintiffs failed to prove that the challenged aspects were not rationally related to a legitimate purpose, the court granted Defendants’ motion without prejudice to re-file the state law claims in state court.

[*Ferguson v. Dep’t of Educ. of N.Y., No. 08-CV-4701, 2011 U.S. Dist. LEXIS 8809 \(S.D.N.Y. Jan. 31, 2011\).*](#) Plaintiff served as coach of the Harlem Hellfighters football team, part of a Board of Education initiative to provide college scholarship opportunities for male students in Harlem. After encountering what he perceived to be a “racially charged atmosphere,” Plaintiff contacted the police and local media. Shortly thereafter, Plaintiff was terminated as coach of the Hellfighters. Subsequently, Plaintiff filed a § 1983 claim, alleging violations of his First Amendment right to free speech. As Defendant is a municipality, Plaintiff needed to show that the actions taken against him were part of a municipal policy. Concluding that Plaintiff failed to meet this burden, the court granted Defendant’s motion for summary judgment.

[*Immaculate Heart Cent. Sch. v. N.Y. State Pub. High Sch. Athletic Ass’n, No. 7:10-CV-1471, 2011 U.S. Dist. LEXIS 67132 \(N.D.N.Y. June 23, 2011\).*](#) Plaintiff brought this declaratory action against Defendants, seeking to enjoin them from classifying private and public schools differently. Specifically, Plaintiffs alleged violations of the Fourteenth Amendment, First Amendment, the Religious Freedom Restoration Act of 1993, and § 1983 of the United States Code after Defendants’ reclassified Plaintiff’s private school from Class D to Class C based on their overall winning record. Reclassification determinations for private schools were made based on analysis of various factors such as win/loss records, championships, and post-season appearances; public schools were reclassified based purely on enrollment figures. Defendants filed a motion to dismiss. Although noting that Defendants have a legitimate interest in maintaining competitive balance—their asserted interest—the court denied Defendants’ motion to dismiss Plaintiff’s Fourteenth Amendment Equal Protection Clause claim. However, the court granted Defendants’ motion to dismiss the remaining claims.

[*Lopera v. Town of Coventry, No. 09-2386, 2011 U.S. App. LEXIS 6757 \(1st Cir. Apr. 1, 2011\).*](#) Lead plaintiff Lopera and other former high school soccer players appealed the decision of a district court in favor of Defendant Town of Coventry and its police officers. Plaintiffs were accused of stealing iPods and cell phones from an opposing team’s locker room by a hostile, racist group of fans from the opposing team. Police officers, with the consent of the coach, conducted a search of the players but found no “stolen” items. Plaintiffs sued, alleging violations of the Fourth Amendment, Fourteenth Amendment, and Rhode Island state law. The district court granted summary judgment for the defendants, stating that the officers were entitled to qualified immunity; the First Circuit affirmed.

[*McFadyen v. Duke Univ., No. 1107CV953, 2011 U.S. Dist. LEXIS 34839 \(M.D.N.C. Mar. 31, 2011\).*](#) Plaintiffs, former members of the Duke Lacrosse team charged with rape, sexual assault, and kidnapping, were subject to a Non-Testimonial Order but were not indicted in that investigation. Plaintiffs brought forth forty-one claims against fifty defendants. Defendants

collectively filed multiple, separate motions to dismiss. Counts one, two, and five will go forward under § 1983 for alleged constitutional violations. Plaintiffs also stated valid claims for certain state law claims. In total, the court dismissed more than half of the claims asserted.

[Mignault v. Ledyard Pub. Sch., No. 3:08cv01063 \(DJS\), 2011 U.S. Dist. LEXIS 51829 \(D. Conn. May 16, 2011\).](#) Plaintiff, a paid assistant football coach at Ledyard High School filed suit against Ledyard Public Schools and other school officials claiming violations of his procedural and substantive due process rights under the Fourteenth Amendments, and intentional infliction of emotional distress under Connecticut common law. Defendants filed a motion for summary judgment. The court granted Defendants' motion, holding that Mignault had no property interest protected by the Fourteenth Amendment and that the conduct relied upon by Plaintiff does not satisfy the "extreme and outrageous" requirement necessary for an intentional infliction of emotional distress claim under Connecticut law.

CONTRACT LAW

[Action Grp. Int'l, LLC v. AboutGolf, Ltd., No. 3:10CV2132, 2011 U.S. Dist. LEXIS 46133 \(N.D. Ohio Apr. 29, 2011\).](#) Plaintiff Action Group International (AGI) entered into a series of three one-year distribution agreements with Defendant AboutGolf whereby Plaintiff was entitled to serve as AboutGolf's sole distributor for AboutGolf's 3Trak golf products in South Korea. The third contract was the same as the previous two in most material terms; however, the third contract contained a new liability clause that served to limit Defendant's liability regarding a host of issues such as defective products. Although the agreement required Defendant to provide Plaintiff with future product development information, among other things, most of these supposed developments never materialized. Additionally, Plaintiff allegedly repaired numerous defects following complaints regarding Defendant's products, and Defendant allegedly violated the exclusivity portion of the agreement by communicating with other potential distributors in South Korea. Eventually, Defendant notified Plaintiff it was terminating the agreement. This suit followed with Plaintiff asserting eight separate causes of action seeking damages and injunctive relief for Defendant's alleged breach of contract, fraud, unjust enrichment, and other related claims. At issue before the court was Defendant's motion to dismiss. Analyzing each claim in turn, the court granted Defendant's motion as to Plaintiff's claims for improper termination, breach of territorial exclusivity, unjust enrichment, and tortious interference with business relations. However, Defendant's motion was denied as to Plaintiff's claims for breach of warranty, fraud, promissory estoppel, and for violations of Ohio's Deceptive Trade Practices Act.

[Alexander v. Daley, No. CV2009-02887, 2011 Mass. Super. LEXIS 38 \(Mass. Super. Ct. Jan. 27, 2011\).](#) Plaintiff Helen Alexander participated in a golf outing held by the Armenian Church of Our Saviour ("Church") at Defendant Spring Garden's Cyprian Keyes Golf Club. While exiting a golf cart driven by one of Spring Garden's employees, the employee prematurely drove off, causing Plaintiff to suffer injuries and subsequently file suit. The issue in this decision concerned Defendant Spring Garden's motion for leave to file a third-party complaint against the Church, asserting that because of a clause contained in a standard form contract between the Church and Cyprian Keyes, the Church was required to defend and indemnify Spring Garden in the underlying action. The clause in question stated that "the contractee assumes all

responsibility for any . . . personal injury to the guests and employees of [Cyprian Keyes] caused by their acts” After analyzing the language of the contract, the court noted that it was a standard form agreement such that the ambiguous language must be construed against the drafter, Spring Garden. As such, the court denied the motion for leave to file a third-party complaint.

[Assurance Indus. Co. v. SNAG, Inc., No. C 10-1718 SBA, 2011 U.S. Dist. LEXIS 4995 \(N.D. Cal. Jan. 14, 2011\)](#). Plaintiff Assurance Industries Company (AIC) entered into an agreement with Defendant Terrence Anton on behalf of the other defendants regarding the design and manufacture of products based on SNAG golf patents. Following a rocky business relationship between the parties due to Defendants’ many missed payments to AIC, Plaintiff brought causes of action against Defendants for fraud, breach of contract, and unjust enrichment. Additionally, Plaintiff sought an accounting by all Defendants of all revenues on profits associated with the patents as well as an action for declaratory relief. Three of the Defendants moved to dismiss each cause of action. The court granted Defendants’ motion regarding Plaintiff’s unjust enrichment, accounting, and declaratory relief claims; however, the motion was denied as to Plaintiff’s fraud and breach of contract claims.

[Auto Club Grp. Ins. Ass’n v. Andrzejewski, No. 297551, 2011 Mich. App. LEXIS 888 \(Mich. Ct. App. May 17, 2011\)](#). During a YMCA Teen Night, Matthew Volk and Nicolas Andrzejewski—Defendants in this action—played on opposite teams during a basketball game in which Matthew claimed Nicolas was playing rough. Allegedly, Nicolas threw Matthew to the floor causing him to hit his head and suffer severe injuries, which resulted in a tort claim brought by Matthew through his parents against Nicolas through his parents. As relevant to this action, Nicolas’s family was insured under a homeowners insurance policy issued by Plaintiff Auto Club Insurance Association. The circuit court granted Plaintiff’s motion for summary disposition, concluding that Nicolas’ actions on the basketball court were criminal and intentional as understood in the insurance policy issued by Plaintiff, and thus, Plaintiff had grounds to deny coverage. Defendants appealed the decision asserting that Nicolas’ actions were neither criminal nor intentional. Analyzing the circumstances surrounding the incident on the basketball court as well as the specific exclusionary language contained in the insurance policy, the Michigan Court of Appeals affirmed the circuit court’s decision granting summary disposition to Plaintiff.

[Canadian Am. Ass’n of Prof’l Baseball, LTD. v. Ottawa Rapidz, No. COA10-758, 2011 N.C. App. Lexis 1171 \(N.C. Ct. App. June 21, 2011\)](#). Ottawa Rapidz (“Rapidz”) appealed from the trial court’s judgment granting a motion filed by Canadian American (“the League”) to confirm an arbitration award. Rapidz had entered into a “League Affiliation Agreement” with the League, entitling Rapidz to operate a professional baseball team for play in the League during the 2008 and 2009 seasons. Rapidz did not actually field a team for the 2009 season. A hearing was held before the League’s Board of Directors, acting as an arbitration panel, to determine if grounds existed for the involuntary automatic termination of Rapidz’ membership. The Board determined that Rapidz had committed an unsanctioned withdrawal from its membership, subjecting it to automatic and immediate termination as a League member. The arbitration panel also decided that the League was entitled to draw down in full the \$200,000 (Canadian) letter of credit Rapidz had posted with the League to be eligible for membership, and to the extent that Rapidz’ stadium lease was assignable, also to assign the lease to the League. Rapidz contested

the arbitration and filed a motion to dismiss at the trial level, but the trial court confirmed the arbitration. Rapidz appealed, contending that their motion to dismiss should have been granted because there was no arbitration to confirm in the first place, the arbitrator did not sign the arbitration, and personal jurisdiction was lacking. However, the various documents comprising the League Agreements are replete with evidence that the Board is authorized to arbitrate disputes involving League members and that Rapidz agreed to submit any membership disputes to arbitration. Rapidz voluntarily and willingly agreed to have the Board act as arbitrator when it joined the League. Rapidz did not move to vacate or modify the award based on the alleged irregularity in the form of the award. The court of appeals affirmed.

[Estate of Oshinsky v. N.Y. Football Giants, Inc., No. 09-cv-01186 \(PGS\), 2011 U.S. Dist. LEXIS 11331 \(D.N.J. Feb. 2, 2011\).](#) The issue before the court was a joint motion for summary judgment on behalf of Defendants representing the New York Giants' and New York Jets' collective interests arising out of a dispute regarding season tickets. Defendants announced that season ticket holders would be required to enter into a personal seat license contract requiring a designated payment for each seat assigned to the season ticket holder in order to retain their season tickets. Plaintiff challenged this policy, arguing that it constituted a breach of the parties' long-standing contract that allegedly entitled him to automatic renewal rights. However, Defendants maintained that season tickets are revocable licenses. Finding that no automatic renewal rights to season ticket holders existed, the court granted Defendants' motion for summary judgment.

[Feldkamp v. Long Bay Partners, LLC, No. 2:09-cv-253-FtM-29SPC, 2011 U.S. Dist. LEXIS 16683 \(M.D. Fla. Feb. 18, 2011\).](#) Plaintiffs, as part of a residential development that included golf club facilities owned by Defendant, submitted a \$92,000 deposit to Defendant for a Golf Membership. According to the contract, the deposit was to be fully refundable within thirty days after the member provided written notice to Defendant. Although Plaintiffs provided written resignation, Defendant refused to refund the deposit, claiming that it was authorized to unilaterally change the refund policy. The court granted Plaintiffs motion for summary judgment on their breach of contract claim, finding that Defendant could not unilaterally alter the refund policy; thus, failing to refund Plaintiffs' deposit constituted a breach of their contract, and the court entered a judgment in the amount of the original deposit. Given this holding, the court held the unjust enrichment claim was moot. Additionally, Plaintiffs' count alleging a violation of the Florida Uniform Fraudulent Transfer Act was dismissed.

[Gilbert v. MEC Or. Racing, Inc., 251 P.3d 788 \(Or. Ct. App. 2011\).](#) This contractual dispute arose out of an agreement depicting the amount Plaintiff was to pay for use of a racetrack. When the agreement was originally drafted, "simulcast" races were not authorized. However, a change in Oregon's law permitted "simulcasting," and a disagreement arose between the parties over how to appropriately classify these simulcast races under the terms of the contract so as to determine the proper payment amount. The lower court in this action for breach of contract and declaratory judgment granted Defendants' motion for summary judgment. On appeal, this court affirmed.

[*HBCU Pro Football, LLC v. New Vision Sports Props., LLC, No. WDQ-10-0467, 2011 U.S. Dist. LEXIS 17394 \(D. Md. May 24, 2011\).*](#) Plaintiff, HBCU produces television broadcasts of athletic contests involving historically black colleges and universities. In this capacity, Plaintiff met with Defendant Victor Pelt and executed an agreement whereby Plaintiff would provide broadcasts of three football games to Defendant New Vision Sports Properties (NVSP), an “official broadcast agent of College Sports Television,” to be aired on College Sports Television (CSTV) and pay NVSP a broadcast fee for each game. In return, Plaintiff was guaranteed a certain minimum gross revenue payment for each game. A similar deal was reached regarding three other college football games. Although Plaintiff followed through with its portion of the agreement by providing the games and the broadcast fees, no revenue was received and none of the games aired on CSTV. Eventually, HSBC was notified that Pelt was making false representations and that NVSP was not an authorized agent of CSTV. After settling with CSTV, HBCU filed a motion for default judgment against Defendants NVSP and Pelt regarding its breach of contract, intentional misrepresentation, and unjust enrichment claims. In this report and recommendation, U.S. Magistrate Judge Beth P. Gesner recommended that the court grant Plaintiff’s motion for default judgment against these remaining defendants. The report also included recommendations regarding the amount of damages to be awarded.

[*Kan. City Brigade, Inc. v. DTG Operations, Inc., 251 P.3d 112 \(Kan. Ct. App. 2011\).*](#) Kansas City Brigade, Inc., an arena football team, appealed from the trial court’s denial of its contract claims against the defendant rental car company, DTG Operations, Inc. (“Dollar”). Kansas City Brigade alleged that two valid sponsorship agreements existed between the two parties. However, the trial court held that the Dollar was not liable under either contract, and the Kansas Court of Appeals affirmed the trial court’s decision as to both contracts. Regarding the first contract, the court held that the Dollar counter agent who signed the agreement did not have actual or apparent authority to do so and that the Kansas City Brigade director of corporate sponsorships should have known this fact. The court stated, “[a]n \$80,000 marketing contract with a professional sports team would probably be an unusual or extraordinary transaction for the branch manager of a car rental company,” and that given this fact and other circumstances such as the sponsorship director’s experience, it was not reasonable for the director to believe the counter agent had such authority. As to the second contract, the court held that Dollar could not be liable because the signature was forged.

[*Laffin v. NFL, No. 3:11-CV-0345-M, 2011 U.S. Dist. LEXIS 39688 \(N.D. Tex. Apr. 12, 2011\).*](#) This decision arises out of the highly publicized Super Bowl XLV ticket incident in which Defendants allegedly “denied, relocated, or delayed the seating of over 2000 ticket holders.” Plaintiffs, ticket holders on behalf of themselves and other similarly situated people, sued Defendants, alleging fraud; breach of contract; fraudulent inducement; negligence; and negligent misrepresentation, in addition to seeking attorney’s fees. Although Plaintiffs brought suit in the District Court of Dallas County, Texas, Defendants successfully removed the class action to this court, the United States District Court for the Northern District of Texas, on the ground that the amount in controversy exceeded \$5 million. At issue here is Plaintiffs’ motion to remand the case back to the original court. To establish that the amount in controversy exceeded \$5 million, Defendants relied on such information as the face value for a Super Bowl ticket and the approximate number of plaintiffs. Finding that Defendants established by a preponderance of the

evidence that the amount in controversy would be over \$5 million and that Plaintiffs arguments to the contrary were purely speculative, the court denied Plaintiffs motion to remand.

Leach v. Tex. Tech. Univ., 335 S.W.3d 386 (Tex. App. 2011). At issue before the court was whether the common law doctrine of sovereign immunity barred the suit of former head football coach Mike Leach against Texas Tech University and its chancellor, regents, president, athletic director, and attorney for breach of contract. Leach claimed that the University's immunity was waived by statute, but a statute does not waive immunity unless the waiver contains clear, unambiguous language of a waiver. As such, the court stated that sovereign immunity barred Leach's breach of contract claim.

McCarthy v. Hamilton Farm Golf Club, LLC, No. 11-1565, 2011 U.S. Dist. LEXIS 49105 (D.N.J. May 9, 2011). Plaintiffs filed a complaint against Defendants Hamilton Farm Golf Club and Hamilton Farm Social Club for breach of contract and breach of covenant of good faith and fair dealings, among six other claims, after the club refused to refund Plaintiffs' \$275,000 membership deposit. According to a written agreement, Defendants' were supposed to refund Plaintiffs their membership deposit within thirty days of their resignation and their spot being filled by a new member. Despite additional members joining the club, defendants refused to pay the refund. The court granted plaintiffs' motion to remand.

Milan v. Colvin, No. 09-3666(DWF/TNL), 2011 U.S. Dist. LEXIS 54612 (D. Minn. May 20, 2011). Milan and Colvin are presidents of CSN Sports and Colvin Sports Network, respectively. The two entered into an oral agreement that involved the sharing of revenue on clients that were mutually pitched, won, and worked on together. Milan later discovered that Colvin Sports Network had been receiving fees and commissions, not shared with or disclosed to Milan, from certain shared clients. Milan filed suit for breach of contract, fraud, and breach of fiduciary duty. Colvin moved for summary judgment on all claims, but the motion was denied. The court concluded that a fact issue existed as to whether or not Milan and Colvin formed a partnership.

Original Pizza Pan v. CWC Sports Grp., Inc., 2011 Ohio 1684 (Ohio Ct. App. Apr. 7, 2011). Original Pan Pizza, an Ohio corporation, entered into an endorsement agreement with The Sports Link, Inc., a California corporation, for the exclusive right to use Cleveland Browns' Brian Robinskie's name and likeness for advertising purposes. Four months after it entered into the agreement, another pizza company began offering a collector's cup with Robinskie's photo on it. Pizza Pan sued Sports Link and Robinskie's agent for fraud and negligent misrepresentation. Defendants moved to dismiss, stating that the endorsement agreement contained a valid forum selection clause, prohibiting suit against Defendants in Ohio. Trial court granted Defendants' motion and dismissed the complaints with prejudice because it found the forum selection clause to be valid. The court of appeals affirmed stating that there was nothing in the record to establish that California would be so gravely difficult and inconvenient for Pizza Pan.

Rosen v. Univ. of S.C., No. 2011-UP-331, 2011 S.C. App. Unpub. LEXIS 401 (S.C. Ct. App. June 27, 2011). Plaintiffs appealed the trial court's order granting summary for the University of South Carolina on claims of breach of contract and constitutional taking. The Rosens became Lifetime Silver Spur Scholarship members in the Gamecock Club after donating about \$140,000 in money and property to the school. They executed contracts to memorialize the terms. After

twenty years of receiving free parking benefits, the University initiated a fee for the assigned reserved parking at the football stadium for the Gamecock Club donors. The Rosens filed suit, alleging breach of contract, conversion, and constitutional taking. The trial court found the contract was not ambiguous and contained no language that the benefits would be free; lifetime donors only received the benefit of maintaining their donor level in the Gamecock Club. On appeal, the Rosens argued that the trial court erred in finding the language of the contracts to be unambiguous. The Court of Appeals found that the contract made no distinction in the language used describing the tickets and parking spaces; it neither stated additional charges would apply or that the benefits would be free. This created ambiguity. The Court of Appeals also found that the contracts did not specifically prohibit or allow a change of the designated beneficiary and made it impossible from the language of the contract to determine if the parties intended to allow a change. Finding the contract to be ambiguous, the court reversed and remanded.

[Ruffu v. Haney, No. B218864, 2011 Cal. App. Unpub. LEXIS 933 \(Cal. Ct. App. Feb. 7, 2011\).](#)

Appellant Ruffu, a horse trainer, brought an action against respondents for breach of a contract regarding a racehorse named Urgent Envoy. In 2003, Ruffu entered an agreement with the respondents regarding the purchase and training of Urgent Envoy, whereby Ruffu and the four other respondents each held a 20% ownership interest in the horse. In December 2004, the California Horse Racing Board filed a complaint against Ruffu, alleging that she had improperly taken the horse from another trainer, and the Board of Stewards ordered Ruffu to return the horse to the trainer. In November 2005, the California Horse Racing Board adopted the Board of Stewards' findings, but Ruffu never returned the horse. In July 2008, Ruffu initiated the action against the respondents; she filed a second amended complaint in December 2008 asserting claims for breach of the agreement. Respondents filed a motion to dismiss Ruffu's action on the basis of collateral estoppel. Under the doctrine of collateral estoppel, a final decision in an administrative adjudication may be given collateral estoppel effect in a subsequent judicial proceeding if the agency was acting in a judicial capacity and the threshold requirements are satisfied. The trial court dismissed the action, stating that an administrative proceeding before the California Horse Racing Board collaterally estopped Ruffu's claims. The appellate court affirmed.

[Southwick v. City of Rutland, 2011 VT 53 \(Vt. 2011\).](#) The City of Rutland and the Vermont Swim Association (VSA) signed an agreement that granted VSA use of a City facility for its annual swim meet. The agreement included an indemnification clause and also required VSA to procure liability insurance for the meet and to name the City as an additional insured entity. A child attending the swim meet, Southwick, fell from a piece of playground equipment and sustained injuries. The child's parents filed a complaint against the City for negligently installing and maintaining the equipment. The City, in turn, filed a third-party complaint against VSA asserting a claim for indemnity pursuant to the written agreement, and plaintiffs added a claim against VSA. The City moved for summary judgment against VSA on the grounds of enforcement of the indemnity clause and for breach of contract for failing to procure insurance naming the City as an additional insured. The trial court granted summary judgment, and the association appealed. The court explained that VSA could not escape the plain language of the agreement; the indemnification clause allocated responsibility to VSA for any negligence claims directly arising out of VSA's event at the City's park and pool facility. The court held that the

trial court properly granted summary judgment to the City, denied it to VSA, and entered judgment for the City in the amount of \$700,000 on the city's indemnity claim against VSA.

[*Swan Lake Holdings, LLC v. Yamaha Golf Car Co., No. 3:09-CV-228, 2011 U.S. Dist. LEXIS 19684 \(N.D. Ind. Feb. 28, 2011\).*](#) Swan Lake, a golf resort, purchased 110 new Yamaha golf carts and installed a GPS system in each one. The batteries subsequently began to fail because they could not hold a charge. Swan Lake informed Yamaha of the problem, and Yamaha replaced all 110 batteries in February 2007. The new batteries also began to fail prematurely by the end of 2007; Yamaha replaced the batteries in 22 of the carts in early 2008. Swan Lake sent Yamaha a letter in March 2009 stating that it was revoking its acceptance of the carts. Swan Lake filed a breach of warranty claim against Yamaha. At issue in this opinion was Defendant's summary judgment motion on Count III – revocation of acceptance. After analyzing the applicable Indiana statutory section, the court concluded that this delay in revocation was not reasonable. The court further reasoned that even if the revocation would have been timely, the fact the Swan Lake continued to use the carts after its attempted revocation is not permitted. The continued use of a good converts a revocation into an acceptance. As such, Yamaha was entitled to summary judgment in regards to the revocation of acceptance claim. Plaintiff still had two other claims that proceeded to trial in March.

[*Tucker v. Fayetteville State Univ., No. COA10-726, 2011 N.C. App. LEXIS 613 \(N.C. Ct. App. Apr. 5, 2011\).*](#) Eric Tucker was the head women's basketball coach at Fayetteville State University. His employment was documented by a written employment contract that was set to expire in June of 2010. In April 2009, however, Plaintiff was told to resign and retire or else he would be terminated; the reasoning for the request being that Plaintiff cursed during basketball practices and games. Plaintiff retired and subsequently filed suit seeking monetary damages for breach of contract. Defendants filed a motion to dismiss, which the trial court granted; Plaintiff appealed, arguing that the trial court erred in granting the motion. The trial court stated that Plaintiff's complaint failed to state a claim upon which relief can be granted. The Court of Appeals reversed and remanded the district's order.

[*Wasserman Media Group, LLC v. Bender, No. 10 Civ. 8783 \(SAS\), 2011 U.S. Dist. LEXIS 52825 \(S.D.N.Y. May 13, 2011\).*](#) Wasserman Media Group, LLC (WMG) petitioned the court pursuant to the Federal Arbitration Act to confirm an arbitration award issued against Jonathan Bender, a former NBA player, and to be awarded attorneys' fees incurred in this action. WMG and Bender entered into an NBPA Standard Player Contract pursuant to NBPA Regulations; the parties signed an agreement whereby WMG would represent Bender throughout his NBA career and Bender would pay WMG \$396,766.60 at scheduled intervals. Bender failed to meet the payment schedule, and WMG filed for arbitration pursuant to the Regulations. Bender was notified of the arbitration hearing but failed to respond or show up. The arbitrator found in favor of WMG and ordered payment of the scheduled amount within ten days; Bender did not pay any portion. The court confirmed the arbitration award for multiple reasons: (1) the Regulations' arbitration agreement expressly stated that any award would be final and binding upon the parties; (2) the arbitrator's decision was justified given that Bender and WMG both signed an agreement acknowledging the payment and Bender failed to adhere to the agreement or even show up to the arbitration hearing; and (3) Bender's right to vacate the award was waived by virtue of his failure

to challenge the award within three months of its issuance. The court also awarded WMG attorney's fees of \$2,500 due to Bender's bad faith throughout the proceedings.

White v. NFL, 766 F. Supp. 2d 941 (D. Minn. 2011). The NFL Players' Association alleged that the NFL violated the White Stipulation and Settlement Agreement (SSA), Article X § 1(a)(i) and XIX § 6 specifically, by ignoring the obligation to act in good faith and use best efforts to maximize total revenues for both the NFL and the Players for each SSA playing season. In May 2008, the NFL opted out of the final two years of the CBA and SSA, leaving the CBA and SSA to expire in March 2011. After opting out of the CBA, the NFL began negotiating extensions to its broadcast contracts. The NFL had contracts with DirecTV, CBS, FOX, NBC, and ESPN; it also had contracts with Verizon Wireless and Comcast. The NFL negotiated access to over \$4 billion in rights fees in 2011 if it locked out the players and had no obligation to repay \$421 million of that sum to the broadcasters. The Players argued that the NFL violated the SSA when it extended and renegotiated its broadcast contracts without satisfying its duty to maximize total revenues in 2009 and 2010. On February 1, 2011, the special master proceeding over a trial found that the NFL violated Article X § 1 (a)(i), but that the NFL did not otherwise breach the SSA. The Players objected, arguing that the special master erred by concluding that the NFL did not breach the SSA by finding that the good-faith requirement added nothing to the SSA, by erroneously interpreting "sound business judgment" and total revenues, and by declining to issue an injunction. The court first considered the meaning of the words in Article X and agreed with the special master that "consistent with sound business judgment" qualified the duties to act in good faith and use best efforts. However, the court found that the special master erred in his application and analysis of the language. The court also explained that the special master erred in not analyzing the SSA's good faith obligation, which would have shown that the NFL did not act in good faith when it renegotiated its broadcast contracts. Similarly, the NFL also did not act in its best effort when it did not seek revenue modifications to the 2009-10 broadcast contracts. Therefore, the court found that the NFL breached Article X § 1(a)(i) in extending or renegotiating its broadcast contracts, and ordered that a hearing be held concerning relief to be granted to the Players.

DISABILITY LAW

Barton v. Clancy, 632 F.3d 9 (1st Cir. 2011). Plaintiff Gordon Barton served as a firefighter in the City of Lynn, Massachusetts for almost thirty years before retiring due to a disability that rendered him incapable of performing his firefighting duties. While serving as a firefighter, he had been an active and outspoken union representative and had even participated in several lawsuits against the City of Lynn. Following his disability retirement, Plaintiff was hired as a basketball coach for a local high school, a hiring wildly opposed by Defendant Clancy, the City's mayor. Defendant even went so far as to publicly criticize Plaintiff and his coaching appointment through letters directed to the local press, the principal of the high school, and the superintendent. As a result, Plaintiff sued, alleging Defendant's actions constituted unlawful disability harassment under Massachusetts state law and unlawful retaliation as a violation of the First Amendment. The district court granted Defendant's motion for summary judgment regarding both claims, and Plaintiff appealed. Noting that Clancy would need to qualify as either Plaintiff's employer or interfere with Plaintiff's work environment in some manner, the First Circuit concluded that Clancy (1) was not Plaintiff's employer as he did not have the ultimate

hiring and firing capabilities regarding the coaching position and (2) had never been physically present at Plaintiff's place of work. As such, the district court's decision regarding the disability harassment claim was affirmed. Similarly, the First Circuit also affirmed the district court's grant of summary judgment as to the First Amendment claim, as Defendant was entitled to qualified immunity for the retaliation claim.

Boyd v. Bert Bell/Pete Rozelle NFL Player Ret. Plan, No. JFM-10-0360, 2011 U.S. Dist. LEXIS 55882 (D. Md. May 24, 2011). Plaintiff Brent Boyd, a former NFL offensive lineman qualified as a Vested Inactive Player under the Bert Bell/Pete Rozelle NFL Retirement Plan, filed suit seeking judicial review of Defendant's refusal to reclassify his disability benefits from "Inactive" total and permanent benefits to "Football Degenerative" total and permanent benefits. The former is available to any Vested Inactive Player who suffers a total and permanent disability, whereas the latter is limited to Vested Inactive Players who suffer from a total and permanent disability arising out of NFL activities. Plaintiff was eventually approved for the "Inactive" plan, and both a district court and the Ninth Circuit held that the Board did not abuse its discretion by denying Plaintiff the more comprehensive "Football Degenerative" plan. Subsequently, Plaintiff requested reclassification to the "Football Degenerative" plan and was again denied, the Retirement Board decision at issue before this court. After determining that the Retirement Board did not abuse its discretion in deciding not to reclassify Plaintiff due to a lack of "changed circumstances," the court granted summary judgment in favor of Defendant.

Daubert v. Lindsay Unified Sch. Dist., No. 1:09-cv-1463 GSA, 2011 U.S. Dist. LEXIS 61581 (E.D. Cal. June 9, 2011). For a period of many years, Plaintiff attempted to attend public high school football games at a school located within the Lindsay Unified School District; however, the stadium did not have any accessible seating in the bleachers, a situation that was not addressed at a new stadium. Throughout the process, Plaintiff contacted relevant officials regarding the issue, but no action was ever taken to remedy the situation. Plaintiff seeks injunctive relief, actual damages, attorney's fees and other costs as a result of alleged violations of the ADA and Rehabilitation Act. The court analyzed the applicable ADA and Rehabilitation Act provisions and denied Defendant's motion to dismiss.

Feldman v. Pro Football, Inc., Nos. 09-1021, 09-1023, 2011 U.S. App. LEXIS 6188 (4th Cir. Mar. 25, 2011). Plaintiffs, deaf or hearing-impaired individuals who regularly attend Washington Redskins games at FedEx Field, sued Defendants, urging that the Americans with Disabilities Act (ADA) requires them "to provide auxiliary access to the content of broadcasts from FedEx Field's public address system." The district court agreed, holding that music lyrics were also included in the content requiring auxiliary access, and granted summary judgment for the plaintiffs. Defendants appealed. After concluding that Defendants provide a football game as well as a general entertainment experience, the court noted that game-related information, emergency information, advertisements, and music lyrics are all included in those experiences. As such, the Fourth Circuit affirmed the district court's decision, holding that the ADA requires Defendants to provide auxiliary access to that aforementioned information.

DISCRIMINATION-AGE

Cardo v. Arlington Cent. Sch. Dist., No. 07 Civ. 8667 (JSR), 2011 U.S. Dist. LEXIS 3324 (S.D.N.Y. Jan. 11, 2011). Plaintiff Michael Cardo, an elderly man suffering from osteoarthritis in his right knee, served as a volunteer wrestling coach at a middle school within the defendant Arlington Central School District (the “District”). Subsequently, Plaintiff was hired as a paid assistant wrestling coach at the middle school and a track coach at a high school. However, the high school’s athletic director and the principal of the middle school, both named as defendants in this suit, received numerous complaints regarding Plaintiff’s lack of professionalism and inability to meet the physical demands of his coaching positions; one letter was received from the new head wrestling coach (also a defendant in this case) at the middle school where Plaintiff served as an assistant wrestling coach. As a result of these complaints, Plaintiff was terminated from both positions. Plaintiff sued the District, the high school’s athletic director, the middle school’s principal, and the new head wrestling coach, alleging age discrimination in violation of the ADEA and discrimination on the basis of his disability in violation of the ADA. A defamation claim was also brought against the head wrestling coach regarding the letter he sent denouncing Plaintiff’s abilities. On procedural grounds, the court granted summary judgment in favor of the individual defendants regarding all claims. Similarly, summary judgment was granted in favor of the District, on the grounds that Plaintiff did not have an ADA-qualifying disability and the evidence did not give rise to any sufficient inference of age discrimination in violation of the ADEA.

Dent v. U.S. Tennis Ass’n, Inc., No. 08 CV 1533(RJD)(VVP), 2011 U.S. Dist. LEXIS 8341 (E.D.N.Y. Jan. 21, 2011). Plaintiff Marvin Dent, an African-American tennis instructor in his mid-60s employed by Defendants, filed suit alleging various age and race discrimination claims after he did not receive a coveted promotion to the National Tennis Center’s Director of Tennis position; a Caucasian man in his 40s was selected instead. In the search to fill the position, Defendants received approximately ninety applicants for the managerial position, of which they identified ten top candidates. Defendants claimed that Plaintiff was not identified as one of these top managerial candidates, but was still given a chance to interview allegedly out of respect for his experience as a senior tennis instructor. In response to Plaintiff’s suit, Defendants moved for summary judgment, urging that there was no evidence from which a reasonable juror could conclude that the decision not to promote Plaintiff was at all motivated by his age or race. The court granted Defendants motion.

Sandholm v. Dixon Pub. Sch. Dist. No. 170, No. 09 C 50119, 2011 U.S. Dist. LEXIS 24921 (N.D. Ill. Mar. 10, 2011). Plaintiff brought this action against Defendant school district and four individuals claiming that the district violated the Age Discrimination in Employment Act (ADEA) when it removed him as head high school basketball coach and that the district denied him his Fourteenth Amendment procedural due process rights when it terminated his services as a high school athletic and activities director. To establish a claim under the ADEA, plaintiff must prove that age was the “but-for” cause of the decision not to renew his coaching contract. Here, the evidence was that a parent lodged a complaint about plaintiff’s coaching style, sideline decorum, and perceived detrimental conduct toward the team. The district received complaints about the manner that Plaintiff conducted himself as a coach and removed him from his coaching

position accordingly. In order to have a valid due process claim, plaintiff must have a protected property interest in his position as athletic director. Plaintiff, however, failed to establish a protected property interest in the athletic director's position after the 2008-09 school year, and therefore, had no due process claim for subsequent school years.

[Yonan v. U.S. Soccer Fed'n, No. 09 C 4280, 2011 U.S. Dist. LEXIS 66383 \(N.D. Ill. June 22, 2011\).](#) Plaintiff Yonan is a soccer referee, registered with Defendant—the governing body for soccer in the United States—and lawyer who sued, alleging age discrimination in violation of the Age Discrimination in Employment Act (ADEA) and retaliation after he was informed he would not be assigned to work Major League Soccer games. Defendant moved for summary judgment, urging that the ADEA claim could not stand because Plaintiff is an independent contractor not protected by the ADEA. The court employed a five-factor test to determine whether Plaintiff qualifies as an employee or independent contractor. Specifically, the court considered the (1) control and supervision of Plaintiff's duties as a referee, (2) occupation and skill, (3) responsibility for cost of operation, (4) method and form of payment and benefits, and (5) the length of job commitment. Finding that all of these factors indicated Plaintiff was an independent contractor, the court granted Defendant's motion for summary judgment.

DISCRIMINATION-GENDER

[Joyce v. Town of Dennis, No. 08-10277-NMG, 2011 U.S. Dist. LEXIS 839 \(D. Mass. Jan. 4, 2011\).](#) The Plaintiff, a female golfer, filed suit after she was denied entry into an all-male golf tournament. Although the defendants voted to change the rules to allow women to play in men's tournaments, the Plaintiff still filed suit. The court issued a Memorandum and Order that found the defendants liable for six of eleven total counts, mostly related to gender discrimination. The case at hand deals specifically with the issue of attorney's fees and punitive damages sought by the Plaintiff. The court held that Plaintiff was still a prevailing party and eligible for an award of attorney's fees even though the defendants changed the tournament rules before she filed suit. As for punitive damages, however, the court noted that for punitive damages to be awarded in gender discrimination cases, there must be some proof that the defendant was are that its actions would violate federal law, and thus has an "evil motive or intent." In the context of sports, the court noted, "federal courts have held that gender separation may be justifiable." Given this realization, combined with other facts and circumstances of the case, the court held that punitive damages would not be available in this case.

[Summa v. Hofstra Univ., No. CV 08-0361 \(WDW\), 2011 U.S. Dist. LEXIS 37975 \(E.D.N.Y. Apr. 7, 2011\).](#) Plaintiff Lauren Summa served as a student manager for the Hofstra football team. She claimed that while working as the student manager she was the victim of a hostile work environment due to comments and certain behavior from the football players. The comments and actions included remarks about her relationship with another player on the team, comments that Plaintiff stunk up the bathroom on the bus, blocking Plaintiff from exiting the restroom on the bus, and an offensive comment about black men and white women. Plaintiff alleged eight causes of action including discrimination, harassment, and retaliation under Title VII, Title IX, and New York State Human Rights Law (NYSHRL), and aiding and abetting violations of NYSHRL. Defendants moved for summary judgment, and after a thorough analysis of each claim, the court granted the motion in its entirety and dismissed Plaintiff's claims.

DISCRIMINATION-RACE

Gerald v. Locksley, No. CIV 10-0721 JB/LFG, 2011 U.S. Dist. LEXIS 53469 (D.N.M. May 6, 2011). Plaintiff Gerald, assistant football coach at the University of New Mexico (UNM), sued Defendant Locksley, the University's head football coach, UNM, and UNM's athletic director. In his first amended complaint Gerald asserted claims of race discrimination under Title VII of the Civil Rights Act of 1964 as well as various tort claims arising out of a verbal and physical altercation with Defendant Locksley following a team practice session. Regarding the administration, Plaintiff challenged the alleged failure to take appropriate remedial action following the altercation. Defendants filed a motion to dismiss Plaintiff's amended complaint. Following a thorough analysis of each claim and various applicable immunities, the court dismissed Plaintiff's first amended complaint. However, Plaintiff's request to file a second amended complaint for a hostile-work-environment claim was granted.

Peppers v. Traditions Golf Club, No. 2:09-CV-105-RWS-SSC, 2011 U.S. Dist. LEXIS 15773 (N.D. Ga. Jan. 27, 2011). Brenda Peppers, an African-American woman formerly employed by Traditions Golf Club, alleges that Traditions terminated her on the basis of her race, in violation of Title VII of the Civil Rights Act of 1964. Traditions is a private golf facility in Jefferson, Georgia. Traditions filed a motion for summary judgment, and Plaintiff filed a motion for leave to file a surrebuttal response to Tradition's reply brief in support of its motion for summary judgment. The court found that Peppers failed to point to evidence that created issues of fact but granted Peppers' motion for leave and recommended that Traditions' motion be granted.

Small v. Feather River College, No. 2:10-CV-3026-JAM-GGH, 2011 U.S. Dist. LEXIS 51579 (E.D. Cal. May 2, 2011). Plaintiff Eric Small, an assistant football coach and academic advisor at Feather River College, alleges that he was passed up for promotion to head coach despite his qualifications and was retaliated against for complaining about discriminatory treatment towards himself and his recruits. Defendants Feather River Community College District, FRC's Athletic Director Merle Trueblood, and Head Coach James Johnson filed a motion to dismiss and a motion to strike. The court granted in part and denied in part Defendants' motion to dismiss and denied the motion to strike.

Thompson v. Red Bull Racing, Inc., No. 1:10cv135, 2011 U.S. Dist. LEXIS 67293 (W.D.N.C. June 22, 2011). Plaintiff Jeffrey Thompson, an African-American, was employed by Defendant Red Bull Racing as a quality control manager. Following poor performance evaluations, Plaintiff was demoted to the position of quality technician, and his performance continued to deteriorate. After several meetings between Plaintiff, the new quality control manager, and the facility's head manager, Plaintiff left a document on the desk of the human resources manager that alleged various claims of racial discrimination against him. Soon after, Plaintiff was terminated, which led to an EEOC charge filed by Plaintiff claiming he was discharged in retaliation for the letter. The court granted Defendant's motion for summary judgment, dismissing the action with prejudice.

[*Wilson v. Lock Haven Univ., No. 4:09-cv-2566, 2011 U.S. Dist. LEXIS 39639 \(M.D. Pa. Apr. 11, 2011\)*](#); see also *Wilson v. Lock Haven Univ., No. 4:09-CV-02566, 2011 U.S. Dist. LEXIS 41569 (M.D. Pa. Mar. 22, 2011)*. Plaintiff, the former men's head basketball coach at Lock Haven University, filed this action against Defendants, alleging a hostile work environment and racial discrimination in violation of Title VII of the Civil Rights Act, and the Pennsylvania Human Relations Act (PHRA). At the March hearing, a magistrate judge filed a Report and Recommendation that Defendant's motion for summary judgment be granted in its entirety; the April decision adopted the Report and Recommendation in its entirety and closed the case. Plaintiff alleged that he suffered adverse employment actions, such as unsatisfactory performance reviews that made him ineligible for a pay raise and ineligible for an employment contract renewal at the hands of Defendants based on his race. Plaintiff, however, did not dispute that he received numerous sub-par performance reviews based on the team's win-loss record, documented NCAA rules violations, and low grade point averages of his team members. The Magistrate Judge found that the defendants adequately rebutted the presumption of discrimination with legitimate non-discriminatory reasons, whereas plaintiff only made conclusory arguments that he was treated differently than non-African-American coaches; this was the basis for the Magistrate Judge's recommendation regarding summary judgment for the racial discrimination claims. The Magistrate Judge also found that there was absolutely no evidence of racially charged conduct that rose to the level of a hostile work environment and recommended that summary judgment be granted with respect to the hostile work environment claim. The court adopted the Report and Recommendation in its entirety.

EUROPEAN COURT OF JUSTICE

Case T-250/08, Batchelor v. European Comm'n, 2011 ECJ EUR-LEX LEXIS (May 24, 2011). This case came in front of the European Court of Justice (ECJ) after the United Kingdom adopted measures regarding the coordination of certain television broadcasting activities under Article 3a of Directive 89/552. Following the United Kingdom's actions, Infront WM AG ("Infront")—an acquisition, management, and marketing firm for television broadcasting rights for sporting events—filed a complaint with the European Commission ("the Commission") in 2005. However, in 2007, the Commission adopted a decision that held the United Kingdom's measures were compatible with European Community law, effectively dismissing Infront's complaint. Batchelor, the Applicant and legal counsel for Infront, subsequently contacted the Commission and requested all documents relating to the correspondence between the United Kingdom and the Commission since Infront submitted its complaint as well as all the statistics and data contained in the documents. In an express decision, the Commission refused Batchelor's request. As a result, Batchelor filed an action with the ECJ requesting it annul the Commission's refusal. Specifically, Batchelor alleged that in its express decision, the Commission breached its duty to state reasons for its decision and infringed on Article 255 of the European Community Treaty (read in conjunction with Articles 1, 2, and 4 of Regulation No. 1049/2001). The Court dismissed Batchelor's action directed towards the Commission's implied decision and rejected Batchelor's argument that the Commission breached its duty to state reasons for its express decision. However, the Court held that the Commission erred as a matter of law by invoking Article 4(2) of Regulation No. 1049/2011 for certain aspects of the request. As a result, the Court annulled part of the Commission's express decision.

Case T-68/08, Fédération Internationale de Football Association v. European Comm'n, 2011 ECJ EUR-LEX LEXIS 41 (Feb. 17, 2011). This case came in front of the European Court of Justice (ECJ) after the Secretary of State for Culture, Media, and Sports of the United Kingdom of Great Britain and Northern Ireland (“Secretary of State”) drew up a list of events of major importance for the United Kingdom. The final list included all matches at the World Cup, an event that is organized by and has its television rights sold by the Fédération Internationale de Football Association (“FIFA” and “Applicant”). The inclusion of the World Cup on the Secretary of State’s list meant that FIFA could not broadcast the event on an exclusive basis, effectively lowering the value of the broadcast. The Applicant subsequently challenged the new measures, bringing an action with the ECJ to annul the Commission’s decision insofar as it concerned the World Cup. FIFA specifically argued that the Commission: (1) failed to provide reasons as to why its decision broadly encompassed all World Cup matches; (2) infringed on FIFA’s rights pursuant to Article 3a(1) of Directive 89/552; (3) infringed on FIFA’s right to property; (4) infringed on FIFA’s freedom to provide services pursuant to the European Community Treaty; (5) infringed on FIFA’s freedom of establishment pursuant to the European Community Treaty; and (6) infringed on the European Community Treaty on competition. FIFA also requested that the Court adopt the measures of organization of procedure to assess whether the Commission had sufficient evidence and was justified in including all World Cup matches on its list of events of major importance to the United Kingdom society, and whether it was justified in restricting fundamental freedoms, the right to property, and competition law. However, for various reasons, the ECJ rejected all of FIFA’s arguments and its request; thus, the Court dismissed FIFA’s action and upheld the Commission’s decision.

Case T-385/07, Fédération Internationale de Football Association v. European Comm'n, 2011 ECJ EUR-LEX LEXIS 39 (Feb. 17, 2011). This case came in front of the European Court of Justice (ECJ) after the Flemish government drew up a list of events of major importance for the Flemish Community within the Kingdom of Belgium. The final list contained the World Cup, an event that is organized by and has its television rights sold by the Fédération Internationale de Football Association (“FIFA” and “Applicant”). The inclusion of the World Cup on the list meant that FIFA had to broadcast the event live and on free television and could not do so on an exclusive basis, effectively lowering the value of the broadcast. After the Flemish government provided the European Commission with the list of events, the Commission issued a Directive stating that the Kingdom of Belgium’s measures were compatible with European Community law (“the Commission’s Directive”). The Applicant subsequently challenged the Commission’s Directive, bringing an action with the ECJ to annul it insofar as it concerned the World Cup. FIFA specifically argued that the Commission: (1) failed to provide reasons as to why its decision broadly encompassed all World Cup matches; (2) infringed on FIFA’s rights pursuant to Article 3a(2) of Directive 89/552 by finding the Belgian measures were compatible with Article 49 of the European Community Treaty; (3) infringed on Article 49 of the European Community Treaty by finding that that the Belgian measures were compatible with Article 49; (4) infringed on Article 3a(2) of Directive 89/552 by finding that the Belgian measures were compatible with Article 43 of the European Community Treaty; (5) infringed on Article 3a(2) of Directive 89/552 by finding that the Belgian measures were compatible with FIFA’s right to property; (6) infringed on Article 3a(2) of Directive 89/552 by finding that the procedure that led to the adoption of the Belgian measures was clear and transparent. FIFA also requested that the Court

adopt the measures of organization of procedure to assess whether the Commission had sufficient evidence to find that the Belgian measures were compatible with Community law and whether the list was drawn up in a clear and transparent manner. However, for various reasons, the ECJ rejected all of FIFA's arguments and its request; thus, the Court dismissed FIFA's action and upheld the Commission's Directive.

Case C-403/08, Football Ass'n Premier League Ltd. v. QC Leisure, 2008 OJ 301/34; and Case C-429/08, Murphy v. Media Protection Servs. Ltd., (Feb. 3, 2011)), available at <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en> (opinion of the Advocate General). In these cases, the German Advocate General ("Advocate General") of the European Court of Justice (ECJ) issued her opinion on a matter before the High Court of Justice for the United Kingdom ("High Court"). The Advocate General and the Court considered two separate cases together in the same proceeding. The first—Case C-403/08—concerned the television broadcasting channels' transmission of matches in Greece using a decoder card, and the second—Case C-429/08—concerned criminal proceedings brought against a pub owner for the transmission of matches in Greece using a decoder card. In both cases, the High Court sought the Advocate General's interpretation of various national directives and the effect of various international provisions. The Advocate General reviewed and interpreted some of the laws applicable to each respective case and proposed that the ECJ answer the remaining questions set forth by the High Court in both decisions.

Case C-604/10, Football Dataco Ltd. v. Yahoo UK Ltd., 2011 OJ C 89/14. In this case, the Court of Appeals for England and Wales referred several questions for interpretation to the European Court of Justice (ECJ). Specifically, the Court of Appeals asked the ECJ to determine what was meant by the phrase "databases which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation" as stated in Article 3(1) of Directive 96/9/EC, adopted by the European Parliament and Council in 1996. Specifically, the court asked whether the intellectual effort and skill of creating data is excluded; if "selection or arrangement" lent more importance to pre-determined dates of soccer matches; if "author's own intellectual creation" required a significant level of labor and skill; and if the Directive precluded national rights in the nature of copyright in databases other than those provided by the Directive.

Case T-10/09, Formula One Licensing BV v. Office for Harmonisation in the Internal Market, 2011 ECJ EUR-LEX LEXIS 62 (Feb. 17, 2011). This case came in front of the European Court of Justice (ECJ) after Racing-Live SAS filed an application for registration of a European Community trademark with the Office for Harmonisation in the Internal Market (OHIM), the defendant, in April 2004. In May 2005, Formula One Licensing BV ("Applicant") filed a notice of opposition against the registration of the trademark, alleging a likelihood of confusion between those trademarks and the Applicant's previously registered European Community trademarks in relation to various goods and services. In January 2009, the Applicant appealed to the ECJ and sought an annulment of an OHIM decision that would affirm the rejection of Racing-Live's trademark registration. Specifically, the issues on appeal were whether OHIM erroneously found no likelihood of confusion existed between the marks and whether OHIM failed to assess whether the trademark applied for might take unfair advantage of the reputation and distinctive character of the Appellant's marks. The ECJ ultimately rejected the Applicant's arguments.

Case C-212/08, Société Zeturf, Ltd. v. Premier Ministre (Fr.), 2011 ECJ EUR-LEX LEXIS 1107 (June 30, 2011). This case came in front of the European Court of Justice (ECJ) after Zeturf, Ltd. (“Applicant”)—a Maltese company that provides online betting for, *inter alia*, French horse races—applied in 2005 to the French Minister for Agriculture, seeking the repeal of part of Article 27 of a 1997 French Decree. The relevant part of Article 27 established a monopoly in favor of a French horseracing outlet to accept off-course bets. Because the Minister for Agriculture failed to respond to the Applicant’s request, the request was implicitly rejected. In this matter, referred from the Conseil d’État, the ECJ concluded that Articles 49 and 50 must be interpreted to allow a Member State to grant exclusive rights to a single body, but left it for the national court to determine whether such means are necessary. The ECJ also concluded that the national courts should take into account all of the substitutable channels of marketing for horse-race betting, unless using the Internet increases the traditional risks of the traditional channels of betting.

Case T-55/08, Union des Associations Européennes de Football v. European Comm’n, 2011 ECJ EUR-LEX LEXIS 40 (Feb. 17, 2011). This case came in front of the European Court of Justice (ECJ) after the Secretary of State for Culture, Media and Sports of the United Kingdom of Great Britain and Northern Ireland (“Secretary of State”) drew up a list of events of major importance for the United Kingdom—a final list that included all matches involving United Kingdom national teams at the European Football Championship (“the EURO”), an event that is organized by and has its commercial rights owned and television rights sold by the Union des Associations Européennes de Football (“UEFA” and “Applicant”). The inclusion of the EURO on the Secretary of State’s list meant that UEFA could not broadcast the event live and on an exclusive basis, effectively lowering the value of the broadcast. In this matter, UEFA specifically argued that the Commission: (1) failed to provide reasons as to why its decision broadly encompassed all EURO matches; (2) infringed on UEFA’s rights pursuant to Article 3a(1) of Directive 89/552; (3) infringed on UEFA’s rights pursuant to Article 3a(2) of Directive 89/552; (4) infringed on UEFA’s freedom to provide services pursuant to the European Community Treaty; (5) violated the European Community Treaty on competition; (6) infringed on UEFA’s right to property; (7) infringed on the principle of proportionality pursuant to the European Community Treaty; and (8) infringed on the principle of equal treatment. UEFA also requested that the Court adopt the measures of organization of procedure. However, for various reasons, the ECJ rejected all of UEFA’s arguments and its request; thus, the Court dismissed UEFA’s action and upheld the Commission’s decision.

[*Case T-228/09, U.S. Polo Ass’n v. Office for Harmonisation in the Internal Market, \(Apr. 13, 2011\).*](#) This case came in front of the European Court of Justice (ECJ) after U.S. Polo Association (“Applicant”) filed an application for registration of an European Community trademark with the Office for Harmonisation in the Internal Market (OHIM), the defendant, in August 2005. A Spanish company, Textiles CMG, SA, filed a notice of opposition to the trademark registration based on its own European Community trademark for goods in the same class. Here, the issues on appeal were whether OHIM failed to apply principles established by ECJ case law and whether it erroneously found a likelihood of confusion existed between the two marks. The ECJ rejected the Applicant’s arguments, finding them legally and factually incorrect, and dismissed the action.

EDUCATION LAW

[Neily v. Manhattan Beach Unified Sch. Dist., No. B221102, 2011 Cal. App. LEXIS 92 \(Cal. Ct. App. Jan. 27, 2011\).](#) Neily, a high school baseball coach, received notice of termination after the last day of classes and claimed his classification as a “temporary” employee was incorrect and that the notice of termination was untimely under the Education Code. The California Court of Appeals affirmed the trial court’s decision, holding that an athletic coach is expressly defined as a temporary position, and as such, the notice requirement did not apply to Neily. The court also explained that the school year did not end on the last day of classes, but rather on statute-specified June 30th. Because of this specific date, the notice of termination was timely.

[S.B. v. Ballard Cnty. Bd. of Educ., No. 5:11-CV-00005-R, 2011 U.S. Dist. LEXIS 9711 \(W.D. Ky. Feb. 1, 2011\).](#) Plaintiff, a minor and a junior in high school, brought an action under 42 U.S.C. § 1983 and KRS § 158.150 petitioning for a preliminary injunction compelling her immediate reinstatement at Ballard Memorial High School, after being placed in the Ballard County Alternative School. Plaintiff was placed in the Alternative School for ninety days due to plaintiff’s purchase of a prescription medication from another student. During her assignment to the Alternative School, plaintiff may not participate in extracurricular activities; she argues that her hope of receiving a softball scholarship following her senior year will be greatly hindered by this punishment. The court concluded that Plaintiff’s motion should be denied because Plaintiff failed to demonstrate three of the four requirements necessary for a preliminary injunction. The court, in its analysis, also noted that playing softball is a privilege; Plaintiff does not have a general constitutional right to participate in extracurricular athletics.

EMPLOYMENT LAW

[Carter v. Gibson, No. 4:10-CV-825-Y, 2011 U.S. Dist. LEXIS 42839 \(N.D. Tex. Apr. 20, 2011\).](#) Plaintiff Joseph Carter served as the offensive coordinator for a high school football team. Following the Defendant head coach’s alleged use of racial slurs when addressing the football team, Plaintiff filed a grievance with Defendant Crowley Independent School District Board (“Board”). Plaintiff withdrew his grievance as a result of an agreement in which he was reassigned to a new position, director of football operations. Two years later, Plaintiff was informed that his position had been eliminated and he had been reassigned to a different school as a physical-education teacher. After his internal procedures were denied, Plaintiff filed a charge with the EEOC, and he received a right-to-sue letter. As such, Plaintiff sued the head coach for fraud, retaliation, and discrimination; involved individuals for fraud, and the Board (as well as the head coach) for race discrimination and equal-protection under § 1983. For a variety of reasons procedural reasons, the court dismissed each of Plaintiff’s claims.

[Galveston Indep. Sch. Dist. v. Jaco, 331 S.W.3d 182 \(Tex. App. 2011\).](#) Plaintiff Brent Jaco, while serving as Defendant’s Director of Athletics, reported a University Interscholastic League (UIL) parent-residency rule violation committed by a certain high school football player and his school. Shortly after he reported the incident, Plaintiff was removed from his position as Director of Athletics. Subsequently, Plaintiff sued the Galveston Independent School District alleging violations of the Texas Whistleblower Act, a law preventing a governmental entity from

terminating an employee who reports violations of law. Plaintiff urged that the UIL's rules are "laws" such that the Whistleblower Act would apply. Although the trial court agreed with Plaintiff, the Court of Appeals of Texas reversed, concluding that a UIL rule is not a "law" as used in the Whistleblower Act.

[Ginsburg v. Concordia Univ., No. 4:10CV3064, 2011 U.S. Dist. LEXIS 1098 \(D. Neb. Jan. 5, 2011\).](#) Plaintiff Robert Ginsburg is Catholic and was hired as the head women's softball coach at Concordia University in Seward, Nebraska, a university based in the Lutheran faith. Following an argument with his assistant coach, a Lutheran, Plaintiff was terminated as the head softball coach and the position granted to the Lutheran assistant coach. Plaintiff sued Defendant Concordia University, alleging employment discrimination in violation of Title VII. Defendant filed a motion to dismiss. Applying a factor test, the court determined that Concordia University falls under the Title VII exemptions, qualifying as a "religious educational institution." As such, the court granted the motion for summary judgment.

[Gleason v. Glasscock, No. CIV S-10-2030 MCE EFB PS, 2011 U.S. Dist. LEXIS 19302 \(E.D. Cal. Feb. 28, 2011\).](#) Defendant, a supervisory investigator for the California Horse Racing Board (CHRB), decided not to renew Plaintiff's racehorse owner and racehorse trainer licenses. Following this nonrenewal, Plaintiff sued, alleging violations of the California Civil Code, the California Constitution, and California's Unfair Competition Law. The court explained that CHRB, an administrative agency, has the discretionary power to refuse to issue or renew a license based on the applicant's criminal history. Noting that Plaintiff has a criminal history, the court found Defendant immune from liability pursuant to the California Government Code. As a public entity immune from liability for such discretionary decisions, the court dismissed all of Plaintiff's claims.

[Hall v. Sterling Park Dist., Nos. 08 C 50116, 09 C 50146, 2011 U.S. Dist. LEXIS 48367 \(N.D. Ill. May 4, 2011\).](#) In this consolidated action, Plaintiff, a middle-aged man, filed suit against Defendant Sterling Park District alleging violations of the Fair Labor Standards Act, the Illinois Minimum Wage Law, Illinois and Age Discrimination in Employment Act, seeking back pay, damages, and equitable relief. The action arose out of Plaintiff's termination from his post as Director of Golf Operations at the Emerald Hill Golf and Learning Center as well as subsequent administrative procedural actions and Defendant's hiring of a man in his twenties to fill a newly created managerial position at the golf course. Defendant filed motions for summary judgment on all counts. Applying the standard for summary judgment to each claim, the court granted Defendant's motion as to the claims relating to the Fair Labor Standards Act, the Illinois Minimum Wage Law, and those relating to unpaid overtime. However, the court denied Defendant's motion for summary judgment as to claims regarding uncompensated accrued vacation time and those alleged violations of the Age Discrimination in Employment Act.

[Morris v. NFL Ret. Bd., No. 10-22750-Civ-Cooke/Turnoff, 2011 U.S. Dist. LEXIS 69379 \(S.D. Fla. June 29, 2011\).](#) In this action to recover benefits under the Bert Bell/Pete Rozelle NFL Player Retirement Plan ("Retirement Plan"), an ERISA benefits plan, Plaintiff Morris—a former NFL Player—appealed Defendant's denial of Plaintiff's request for increased retirement benefits. Specifically, Plaintiff urged that Defendant incorrectly: (1) calculated his benefits, (2) determined that § 4.6 of the Retirement Plan applied to him, (3) determined that he was not

qualified for certain disability benefits under § 4.6(A), and (4) determined that a certain agreement did not affect a deduction in Plaintiff's benefits. As this was an ERISA benefits case, the court simply analyzed Defendant's decision to determine whether it was arbitrary or capricious. Finding that it was not, the court granted Defendant's motion for summary judgment and denied Plaintiff's motion for summary judgment.

[Purdham v. Fairfax Cnty. Sch. Bd., 637 F.3d 421 \(4th Cir. 2011\).](#) Plaintiff Purdham, a safety and security assistant employed by the Fairfax County School Board, filed this action, asserting a violation of the Fair Labor Standards Act (FLSA) when the school board failed to pay him overtime wages for his services as the coach of a high school golf team. The district court granted Defendant's motion for summary judgment. The appellate court affirmed, holding that Purdham was properly classified as a volunteer, rather than an employee, with respect to his services as a golf coach. The court explained that Congress created an exemption to the FLSA's coverage, applicable in the public employment context, stating that where an public employee engages in services different from those he is normally employed, i.e. safety and security assistant as compared to golf coach, and receives "no compensation," or only a "nominal fee," such as the stipend that Purdham received for coaching, such work is exempt from the FLSA and the public employee is deemed a volunteer.

[Sprochi v. Cleveland State Univ., No. 2007-05016, 2011 Ohio Misc. LEXIS 41 \(Ohio Ct. Cl. Mar. 15, 2011\).](#) Plaintiff, an assistant men's baseball coach at Cleveland State University (CSU), filed an action against Defendant CSU, alleging that CSU committed a breach of his employment contract and violated the Fair Labor Standards Act (FLSA). Plaintiff was appointed to the part-time position as assistant coach in 1993, and his appointment was thereafter renewed annually through 2006. In May 2006, Plaintiff was notified that the director of athletics had recommended that Plaintiff's appointment not be renewed; Plaintiff's employment contract expired on June 30, 2006. Plaintiff contends that Defendant's non-renewal of his appointment violated the terms of his contract and the terms and conditions of Defendant's policies. After looking at the relevant policies and the actual language of his employment contract, the court concluded that Defendant's non-renewal of plaintiff's appointment was not a violation of either and that Plaintiff failed to prove his breach of contract claim. In regards to the FLSA claim, Defendant admitted liability as to the claimed FLSA violations and Plaintiff sought compensation for certain unpaid wages. Plaintiff estimated that he worked at least 1,210.03 hours for which he was not paid by CSU during a certain time period, as supported by certain records; Defendant stipulated that the information reflected in those records had been accurately summarized. Judgment was entered in favor of the defendant on Plaintiff's breach of contract claim, but in favor of plaintiff on the FLSA claim in the amount of \$70,369.58.

INTELLECTUAL PROPERTY LAW

[Birmingham v. Mizuno USA, Inc., No. 5:09-CV-0566 \(GTS/GHL\), 2011 U.S. Dist. LEXIS 34696 \(N.D.N.Y. Mar. 31, 2011\).](#) Plaintiff owns an incontestable federally-registered trademark for the term "Softhands" in conjunction with an instructional, hand-held baseball catching device. After Plaintiff became aware of Defendant's use of the phrase "Softhands Construction" to describe a certain new technology used in its baseball gloves, it sent Defendant a cease and desist letter. However, Defendant continued to use the phrase in conjunction with the baseball glove

technology, which prompted Plaintiff to file suit. Specifically, Plaintiff filed a trademark infringement action pursuant to the Lanham Act in addition to a variety of New York State law claims. The court undertook an in-depth factor-balancing analysis to conclude substantial likelihood of confusion exists between the Plaintiff's "Softhands" mark and the Defendant's use of the word in describing its new glove technology. Subsequently, the court granted Plaintiff's motion for summary judgment for trademark infringement under the Lanham Act and ordered that a permanent injunction be issued against Defendant from using the mark in conjunction with baseball and softball-related equipment and training tools. The host of remaining cross-motions for summary judgment were granted in part and denied in part.

[Callaway Golf Co. v. Acushnet Co., No. 06-091-SLR, 2011 U.S. Dist. LEXIS 43211 \(D. Del. Apr. 21, 2011\); see also Callaway Golf Co. v. Acushnet Co., No. 06-091-SLR, 2011 U.S. Dist. LEXIS 3361 \(D. Del. Jan. 13, 2011\).](#) The decision before this court followed a long history of litigation between the parties, centralized around Plaintiff's claims against Defendant alleging infringement of Plaintiff's golf ball patents. Although Defendant did not dispute its own golf balls infringed on Plaintiff's patents, it urged that the patent claims were invalid for anticipation and obviousness. At retrial on these validity issues, judgment was entered in favor of Defendant as each of the golf ball patents were found to be invalid as anticipated and obvious. Here, the court was faced with Plaintiff's motion for judgment as a matter of law or for a new trial, as well as Defendant's motion to amend the judgment. Concluding that substantial evidence supported the jury's verdict of that patents' obviousness and no evidence warranted a new trial, the court denied Plaintiff's motion for a judgment as a matter of law regarding validity or for a new trial. Additionally, the court granted Defendant's motion to amend the judgment to reflect an existing agreement between the parties.

[Circuito Cerrado Inc. v. La Camisa Negra Rest. & Bar Corp., No. 09-CV-5181 \(RJD\)\(MDG\), 2011 U.S. Dist. LEXIS 32225 \(E.D.N.Y. Mar. 7, 2011\).](#) This is a report and recommendation by U.S. Magistrate Judge Marilyn D. Go regarding default judgment against Defendant and appropriate damages to be awarded as a result. Defendant did not enter into any agreement with Plaintiff to broadcast a particular Honduras v. Trinidad & Tobago soccer match, a pay-per-view cable match in which Plaintiff held exclusive broadcasting and licensing rights. Nevertheless, Defendant intercepted the broadcast and displayed it to its customers. As a result Plaintiff filed suit, alleging violations of § 553 and § 605 under Title 47 of the United States Code, and an entry of default was entered against Defendant. The case arrived in front of Judge Marilyn D. Go upon referral for default judgment and a determination regarding damages. Although Plaintiff's complaint had not properly named Defendant, the court first recommended the record be deemed amended to reflect the proper name. Regarding damages, the court recommended Plaintiff be awarded a total of \$18,162.50—\$4,250 in damages based on a formula accounting for the number of customers present at Defendant's establishment for the unauthorized broadcast, \$12,750 in enhanced damages, and the remainder to cover attorneys' fees and other costs.

[Dogleg Right Partners, LP v. Taylor Made Golf Co., No. 2:07-CV-533, 2011 U.S. Dist. LEXIS 29474 \(E.D. Tex. Mar. 22, 2011\).](#) As relevant to this decision, Plaintiff Dogleg Right Partners holds three patents relating to golf club heads and asserts that Defendant Taylor Made infringed on various claims contained within each patent. The U.S. Magistrate Judge analyzed each of the

claims at issue, came to a conclusion regarding the proper construction of each claim, and ordered the parties to refrain from mentioning portion of the opinion in front of the jury other than the court's adopted constructions.

[*Epic Sporting Goods, Inc. v. Fungoman, LLC, No. 09-1981, 2011 U.S. Dist. LEXIS 13278 \(W.D. La. Feb. 10, 2011\).*](#) Plaintiff sued Defendant, alleging Defendant had infringed on a patent for a "Baseball Fielding Practice Machine." Rather than attack the merits of Plaintiff's claim, Defendant filed a motion to dismiss, asserting that Plaintiff did not have standing to bring the suit, as it had no legal rights to the patent at the time of the filing. Although an assignment agreement granting Plaintiff the rights to the aforementioned patent had been reached, the agreement was not actually executed until eleven days after this suit was filed. Accordingly, the court granted Defendant's motion to dismiss, concluding that Plaintiff did not have legal title to the patent at the time the suit was filed.

[*Internetshopsinc.com v. Six C Consulting, Inc., No. 1:09-CV-00698-JEC, 2011 U.S. Dist. LEXIS 31222 \(N.D. Ga. Mar. 24, 2011\).*](#) Both parties are in the business of selling golf equipment over the Internet. At issue in this particular case is the sale and advertising of practice golf mats. The Plaintiff used the trademark "Dura Pro" to advertise its golf mat since 2002, while Defendant began using the same term for its own golf mats in 2008. Plaintiff notified Defendant of its rights, and Defendant took action to stop use of the term "Dura Pro." However, Defendant's efforts failed, and Plaintiff filed suit alleging a federal trademark infringement claim under the Lanham Act and a state claim for unfair competition. As the Defendant conceded that it infringed on Plaintiff's trademark rights by using "Dura Pro" in its Internet advertising campaign for practice golf mats, the issues in this case concerned cross-motions for summary judgment related to damages, costs, attorney's fees, Defendant's profits, and permanent injunctive relief. The court granted Plaintiff's motion for summary judgment as to liability under the Lanham Act, its claim to recover the costs of this action, and permanent injunctive relief. However, the court denied Plaintiff's motion for summary judgment, and thus granted Defendant's motion for summary judgment for the claim for damages and attorney's fees.

[*J & J Sports Prods., Inc. v. Allen, 2011 U.S. Dist. LEXIS 25453 \(N.D. Ga. Mar. 14, 2011\);*](#) [*see also J & J Sports Prods., Inc. v. Angulo, 2011 U.S. Dist. LEXIS 12119 \(N.D. Ill. Feb. 8, 2011\);*](#) [*J & J Sports Prods., Inc. v. Aramayo, 2011 U.S. Dist. LEXIS 22945 \(S.D. Tex. Mar. 8, 2011\);*](#) [*J & J Sports Prods., Inc. v. Aviles, 2011 U.S. Dist. LEXIS 53232 \(N.D. Cal. May 17, 2011\);*](#) [*J & J Sports Prods., Inc. v. Bachman, 2011 U.S. Dist. LEXIS 42661 \(E.D. Cal. Apr. 11, 2011\);*](#) [*J & J Sports Prods., Inc. v. Basto, 2011 U.S. Dist. LEXIS 16824 \(N.D. Cal. Feb. 14, 2011\);*](#) [*J & J Sports Prods., Inc. v. Bongo's Sports Bar, Inc., 2011 U.S. Dist. LEXIS 42230 \(S.D. Tex. Apr. 19, 2011\);*](#) [*J&J Sports Prods., Inc. v. Bonilla, 2011 WL 1344346 \(N.D. Cal. 2011\);*](#) [*J & J Sports Prods., Inc. v. Cortez, 2011 U.S. Dist. LEXIS 11247 \(N.D. Cal. Jan. 28, 2011\);*](#) [*J & J Sports Prods., Inc. v. Coyne, 2011 U.S. Dist. LEXIS 6623 \(N.D. Cal. Jan. 24, 2011\);*](#) [*J & J Sports Prods., Inc. v. Fernandez, 2011 U.S. Dist. LEXIS 40710, 1-2 \(M.D. Fla. Mar. 14, 2011\);*](#) [*J & J Sports Prods., Inc. v. Flores, 2011 U.S. Dist. LEXIS 53264, 1-2 \(E.D. Cal. May 18, 2011\);*](#) [*J & J Sports Prods., Inc. v. Fraide, 2011 U.S. Dist. LEXIS 16800 \(N.D. Cal. Feb. 14, 2011\);*](#) [*J & J Sports Prods., Inc. v. Garcia, 2011 U.S. Dist. LEXIS 29262 \(S.D.N.Y. Mar. 1, 2011\);*](#) [*J & J Sports Prods., Inc. v. Gencarelli, 2011 U.S. Dist. LEXIS 32523 \(D.N.J. Mar. 28, 2011\);*](#) [*J & J Sports Prods., Inc. v. Gidha, 2011 U.S. Dist. LEXIS 17674 \(E.D. Cal. Feb. 22, 2011\);*](#) [*J & J*](#)

[*Sports Prods., Inc. v. Herrera*, 2011 U.S. Dist. LEXIS 16760 \(E.D. Cal. Feb. 8, 2011\)](#); [*J & J Sports Prods., Inc. v. Juanillo*, 2011 U.S. Dist. LEXIS 11757 \(N.D. Cal. Feb. 1, 2011\)](#); [*J & J Sports Prods., Inc. v. Juarez*, 2011 U.S. Dist. LEXIS 6020 \(E.D. Cal. Jan. 20, 2011\)](#); [*J & J Sports Prods., Inc. v. Lemus*, 2011 U.S. Dist. LEXIS 8383 \(E.D. Cal. Jan. 28, 2011\)](#); [*J & J Sports Prods., Inc. v. Lopez*, 2011 U.S. Dist. LEXIS 4814 \(S.D. Tex. Jan. 18, 2011\)](#); [*J & J Sports Prods., Inc. v. Mannor*, 2011 U.S. Dist. LEXIS 32367 \(E.D. Cal. Mar. 25, 2011\)](#); [*J & J Sports Prods., Inc. v. Martinez*, 2011 U.S. Dist. LEXIS 38355, 1-2 \(S.D. Miss. Apr. 7, 2011\)](#); [*J&J Sports Prods., Inc. v. McDonald*, 2011 WL 308959 \(S.D. Tex. 2011\)](#); [*J & J Sports Prods., Inc. v. Mendoza-Govan*, 2011 U.S. Dist. LEXIS 47075 \(N.D. Cal. Apr. 25, 2011\)](#); [*J & J Sports Prods., Inc. v. Miramontes*, 2011 U.S. Dist. LEXIS 30931 \(D. Ariz. Mar. 14, 2011\)](#); [*J & J Sports Prods., Inc. v. Mosley*, 2011 U.S. Dist. LEXIS 56220 \(N.D. Cal. Apr. 13, 2011\)](#); [*J & J Sports Prods., Inc. v. Ortiz*, 2011 U.S. Dist. LEXIS 11465 \(S.D. Tex. Feb. 7, 2011\)](#); [*J & J Sports Prods., Inc. v. Palm Tree Sports Bar Inc.*, 2011 U.S. Dist. LEXIS 32211 \(E.D.N.Y. Mar. 8, 2011\)](#); [*J & J Sports Prods., Inc. v. Paniagua*, 2011 U.S. Dist. LEXIS 33940 \(N.D. Cal. Mar. 21, 2011\)](#); [*J & J Sports Prods., Inc. v. S & S Lounge, Inc.*, 2011 U.S. Dist. LEXIS 10604 \(E.D.N.Y. Feb. 2, 2011\)](#); [*J&J Sports Prods., Inc. v. Scace*, 2011 WL 2132723 \(S.D. Cal., May 27, 2011\)](#); [*J & J Sports Prods., Inc. v. Torres*, 2011 U.S. Dist. LEXIS 27657 \(E.D. Cal. Mar. 17, 2011\)](#); [*J & J Sports Prods., Inc. v. Walia*, 2011 U.S. Dist. LEXIS 26316 \(N.D. Cal. Mar. 14, 2011\)](#); [*J & J Sports Prods., Inc. v. Whitmore*, 2011 U.S. Dist. LEXIS 25004 \(E.D. Ark. Feb. 24, 2011\)](#); [*J & J Sports Prods., Inc. v. Zevallos*, 2011 U.S. Dist. LEXIS 50634 \(E.D. N.Y. Apr. 22, 2011\)](#). Plaintiff, J&J Productions, Inc., asserted that it was the exclusive commercial distributor of the broadcast of certain boxing matches and similar-type events. Plaintiff filed suit against a number of businesses based on these defendant businesses' "alleged unlawful interception and transmission of the exclusive broadcasts." At issue in each case was Plaintiff's motion for default judgment.

[*Joe Hand Promotions, Inc. v. Gamino, No. 1:10-cv-01544-AWI-SKO*, 2011 U.S. Dist. LEXIS 1960 \(E.D. Cal. Jan. 7, 2011\)](#); see also [*Joe Hand Promotions, Inc. v. La Nortena Rest. Inc., No.10-CV-4965 \(NGG\)*, 2011 U.S. Dist. LEXIS 45376 \(E.D.N.Y. Mar. 28 2011\)](#); [*Joe Hand Promotions, Inc. v. Labonte, No. 1:10-cv-02164-LJO-SKO*, 2011 U.S. Dist. LEXIS 48945 \(E.D. Cal. May 6, 2011\)](#); [*Joe Hand Promotions, Inc. v. Meola, No. C-10-4781 CW \(JCS\)*, 2011 U.S. Dist. LEXIS 57184 \(N.D. Cal. Apr. 22, 2011\)](#); [*Joe Hand Promotions, Inc. v. Nguyen, No. 10-CV-3504-LHK*, 2011 U.S. Dist. LEXIS 49408 \(N.D. Cal. May 2, 2011\)](#); [*Joe Hand Promotions, Inc. v. Piacente, No. C-10-3429 CW \(JCS\)*, 2011 U.S. Dist. LEXIS 60676 \(N.D. Cal. Apr. 11, 2011\)](#). Plaintiff Joe Hand Promotions asserted that it was the exclusive commercial distributor of the broadcast of certain mixed martial arts and boxing matches. Plaintiff filed suit against a number of businesses based on these defendant businesses' "alleged unlawful interception, receipt, and exhibition" of the exclusive broadcasts. In each case, Plaintiff filed a motion for default judgment, all of which were subsequently granted.

Kingvision Pay-Per-View, Ltd. v. Vibes Sports Bar and Café, Inc., No. 10-CV-127 (RRM) (ALC), 2011 U.S. Dist. LEXIS 37342 (E.D.N.Y. Mar. 15, 2011). Plaintiff Kingvision, pursuant to an agreement, was the rightful owner of a closed-circuit license to broadcast a certain boxing match. Although Defendants had an opportunity to purchase a license to show the event, they did not. Instead, Plaintiff alleges Defendants illegally intercepted and transmitted the broadcast in violation of § 705 of the Federal Communications Act of 1934. Plaintiff filed a motion for default judgment, which the court granted.

[Lane No. 1. v. Lane Masters Bowling Inc., No. 5:06-CV-0508 \(GTS/GJD\), 2011 U.S. Dist. LEXIS 29231 \(N.D.N.Y. Mar. 22, 2011\).](#) Plaintiff Lane No. 1 brought this action against Defendant Lane Masters Bowling Inc., claiming patent infringement after Defendant made two bowling balls with designs that are protected by a patent owned by Plaintiff. Defendant moved for summary judgment claiming that Plaintiff's patent was invalid for obviousness and that there is no infringement because Defendant's balls are not covered by Plaintiff's patent. The court rejected the obviousness argument because Defendant did not present clear and convincing evidence to overcome the validity presumption of a registered patent. After examining prior art and looking into the patent claims, the court granted in part and denied in part Defendant's motion for summary judgment on Plaintiff's infringement claim.

Ruggers, Inc. v. U.S. Rugby Football Union, Ltd., No. 09-30051-MAP, 2011 U.S. Dist. LEXIS 43872 (D. Mass. Feb. 17, 2011). Ruggers charged Defendants with trademark infringement under the Lanham Act, false advertising, unjust enrichment, interference with contract, misappropriation of publicity, and violations of certain Massachusetts laws. On December 9, 2010, a district judge granted Ruggers' motion for default judgment against Defendant XP Apparel, LLC and referred the matter to this court for a hearing on damages. The hearing was held in February 2011, but the defendant did not appear. In seeking to establish damages, Ruggers relied on § 35(a) of the Lanham Act, which addresses damages, costs, and attorney's fees. § 35(a) entitles a plaintiff to defendant's profits that shall be assessed by the plaintiff's proof of the defendant's sales. Ruggers asserted, by Defendant's own admission in the CEO's affidavit, that Defendant's net sales from 2006-08 were just over \$23 million. Accordingly, the court recommended that Ruggers be awarded \$23 million in damages, plus \$24,600 in attorney's fees.

[Ruggers, Inc. v. U.S. Rugby Football Union, LTD., No. 09-cv-30051-MAP, 2011 U.S. Dist. LEXIS 43212 \(D. Mass. Apr. 21, 2011\).](#) Ruggers charged Defendants XP Apparel and United States of America Rugby Football Union with trademark infringement under the Lanham Act. Defendant XP asserted a cross-claim against co-defendant USA Rugby. On February 17, 2011, Judge Neiman issued his Report and Recommendation that Ruggers be awarded \$23 million in damages and \$24,600 in attorney's fees from defendant XP. On March 4, 2011, Defendant USA Rugby filed a motion for default judgment on the cross-claim asserted by XP. This court adopted Judge Neiman's Report and Recommendation, awarding damages to Ruggers and allowed USA Rugby's motion for default judgment against XP. The court clarified that the damages finding against XP will have no bearing on the litigation between Ruggers and USA Rugby.

Skyhawk Techs., LLC v. Deca Int'l Corp., No. 3:10cv708-TSL-MTP, 2011 U.S. Dist. LEXIS 54553 (S.D. Miss. May 11, 2011). Skyhawk accused DECA of infringing on two patents of which Skyhawk is the assignee—Patent No. 6,456,938 (the 938 patent) entitled "Personal DGPS Golf Course Cartographer, Navigator and Internet Web Site with Map Exchange and Tutor", and Patent No. 7,118,498 (the 498 patent) entitled "Personal Golfing Assistant and Method and System for Graphically Displaying Golf Related information and for Collection, Processing and Distribution of Golf Related Data." Skyhawk's principal place of business is in Mississippi, and DECA's principal place of business is in California. DECA is before the court asking for a

transfer from the Southern District of Mississippi to the Central District of California. The court denied the motion. Although the transfer to California was permissible, the court employed a balancing test and concluded that a change of venue would simply transfer any inconvenience DECA might suffer to SkyHawke. As such, the plaintiff's choice of forum should be upheld.

[Steele v. Bongiovi, No. 10-11218-NMG, 2011 U.S. Dist. LEXIS 53156 \(D. Mass. May 17, 2011\).](#) Samuel Bartley Steele brought this action against numerous defendants from a prior action and their attorneys alleging that they unlawfully removed a copyright notice from an advertisement in violation of the Digital Millennium Copyright Act. In the prior action, the court granted summary judgment to Defendants on Steele's copyright infringement claim because there was no substantial similarity between Steele's song about the Boston Red Sox and a song used in Defendants' advertisements. In the case at hand, Steele alleged that Defendants intentionally concealed acts of copyright infringement, altered the TBS Promo logo by deleting the MLBAM copyright notice, and submitted false evidence to the federal courts in the form of that altered TBS Promo. Defendants moved to dismiss, arguing that Steele lacks standing because he does not own the TBS Promo material, he fails to allege sufficient facts to support his claims, and his claims are precluded because they arise from the same facts as the prior pending action. By accepting all factual allegations in the complaint as true and drawing all reasonable inferences in Steele's favor, the court found that Steele was not injured by the alleged acts. As such, Steele did not have standing to bring an action. Consequently, Steele failed to state a claim upon which relief could be granted and the defendant's motion was allowed. The court also held that Steele's lawsuit was frivolous and vexatious, as it was an attempt to circumvent the court's holding in the prior case; the court will impose sanction if Steele files any future abusive, frivolous, or vexatious cases in the court.

[Steele v. Ricigliano, No. 10-11458-NMG, 2011 U.S. Dist. LEXIS 53170 \(D. Mass. May 18, 2011\).](#) Samuel Steele brings this case against numerous defendants for copyright infringement, stemming from a song Steele wrote about the Boston Red Sox that he claims was unlawfully copied and used in a TBS promo. This was the third lawsuit Steele brought on this matter. Defendants TBS and the Red Sox filed a motion to dismiss on claim preclusion grounds and a motion to award the defendants' attorney's fees and costs. The remaining defendants filed similar motions after. Defendants argued that the doctrine of *res judicata* barred Steele's claims. The court found that Steele's claims were precluded and granted Defendants' motion to dismiss. Defendants also asked for Steele to be enjoined from making additional motions related to the Steele song without the court's approval. The court also granted that motion and forewarned Steele that any future filing of frivolous or vexatious claims would result in the imposition of sanctions.

[Syrus v. Bennett, No. CIV-10-1116-D, 2011 U.S. Dist. LEXIS 41798 \(W.D. Okla. Apr. 19, 2011\).](#) Plaintiff brought this action against Clay Bennett, owner of the Oklahoma City Thunder, and the Oklahoma City Thunder for allegedly violating a copyright that Plaintiff claims to hold. Plaintiff claims that Defendants used the phrases "Go Thunder," "Let's go Thunder," and "Thunder Up!" in connection with advertising and promotional activities without his permission. Defendants filed a motion to dismiss, arguing that the complaint fails to allege sufficient facts to support a claim. According to copyright laws, words and short phrases, such as names, titles, and slogans, are works not subject to copyright, as those materials do not exhibit the minimal level of

creativity necessary to warrant copyright protection. Thus, Defendants' motion to dismiss was granted.

Unique Sports Prod., Inc. v. Ferrari Imp. Co., No. 1:09-CV-660-TWT, 2011 U.S. Dist. LEXIS 7054 (N.D. Ga. Jan. 23, 2011). This is a trademark infringement claim involving overgrip tape for tennis rackets. Unique Sports Products manufactures and sells sporting goods including LIGHT BLUE TOURNA GRIP, the subject of this lawsuit. Ferrari markets racket grip tape in a variety of colors, including blue. White, black, and light blue were Ferrari's best-selling overgrip colors. In 1999, Unique filed suit against Ferrari that ended in a settlement enjoining Ferrari from using the specified light blue color or any other imitation or copy in any form or in any connection with overwrap grip material for sports rackets. In 2009, Unique filed this lawsuit alleging that Ferrari was again selling light blue overgrip tape that infringed Unique's mark and violated the 1999 order. Ferrari contends that the light blue color is functional and therefore cannot be trademarked. Unique filed a motion for partial summary judgment, and Ferrari filed a motion for summary judgment of non-infringement and cancellation and a motion for summary judgment of no violation of the final judgment. The court found that Ferrari presented no evidence that the color of the tape increased grip performance or served an actual functional purpose, and thus, granted the plaintiff's motion for summary judgment. The court denied Defendant's motion for summary judgment of non-infringement and cancellation because this motion also relied on the functionality argument. Lastly, the court granted Defendant's motion of no violation of the final order because Ferrari had not used any material that is lighter than the specified color *and* has speckles and a chamois surface texture, like the original order called for.

[*WPIX, Inc. v. ivi, Inc., 765 F. Supp. 2d 594 \(S.D.N.Y. 2011\); see also ivi, Inc. v. Fisher Commc'ns, Inc., No. C10-1512JLR, 2011 U.S. Dist. LEXIS 4925 \(W.D. Wash. Jan. 18, 2011\); WPIX, Inc. v. ivi, Inc., 10 Civ. 7415 \(NRB\), 2011 U.S. Dist. LEXIS 43582 \(S.D.N.Y. Apr. 18, 2011\).*](#) [I]vi, inc., is a Seattle, Washington based company that obtains over-the-air broadcasts of copyrighted television content and simultaneously retransmits these broadcasts over the Internet in real-time. Broadcast copyright owners, including Major League Baseball entities, sent ivi cease and desist letters requesting that ivi stop distributing these broadcasts. As a preemptive move, ivi filed a declaratory judgment action seeking a declaration of non-infringement before the broadcast copyright owners could file suit against ivi for copyright infringement. The broadcast copyright owners subsequently did file suit. Given the totality of the circumstances, the court in ivi's declaratory judgment action dismissed the matter, declining to hear the case. In the remaining copyright infringement suit, Major League Baseball and the other plaintiffs requested a preliminary injunction against ivi, which the court granted. Subsequently, ivi's motion for a stay of the order pending appeal was denied.

LABOR LAW

[*Brady v. NFL, 640 F.3d 785 \(8th Cir. 2011\); see also Brady v. NFL, 638 F.3d 1004 \(8th Cir. 2011\); Brady v. NFL, No. 11-639 \(SRN/JJG\), 2011 U.S. Dist. LEXIS 45511 \(D. Minn. Apr. 27, 2011\); Brady v. NFL, No. 11-639 \(SRN/JJG\), 2011 U.S. Dist. LEXIS 44523 \(D. Minn. Apr. 25, 2011\).*](#) As part of the highly-publicized NFL labor dispute regarding CBA negotiations, in response to the threat of a lockout, Plaintiffs ("Players")—professional football players and prospective players on behalf of themselves and other similarly situated football players— filed

suit against a party collectively known as “the League,” on March 11, 2011, alleging that the lockout would violate federal antitrust laws and state contract and tort laws. The following day, the League did in fact impose a lockout that generally prohibited players from entering NFL facilities. However, Plaintiffs sought to enjoin the League from continuing the lockout. In an April 25 decision, the district court granted Plaintiffs’ motion for a preliminary injunction, thus enjoining the lockout; the district court denied a stay of its order pending appeal. The League appealed the district court’s decision on the merits; on April 29, the Eighth Circuit granted the League’s motion for a temporary stay of the district court’s order enjoining the lockout. Similarly, in a decision filed on May 16 after assessing the League’s likelihood of success on the merits of its appeal, the Eighth Circuit granted the League’s motion for stay pending the expedited appeal on the merits of the district court’s decision.

Rodgers v. Callaway Golf Operations, Inc., No. 10-12009-KPN, 2011 U.S. Dist. LEXIS 50031 (D. Mass. May 10, 2011). Plaintiff Willie Rodgers sought to recover damages from his former employer, Callaway Golf Operations, Inc. and his union for their allegedly discriminatory treatment of him in violation of Massachusetts’s law. The complaint was removed to federal court, and the plaintiff sought to remand the matter back to state court. The court denied Rodgers’ motion, explaining that the removal was appropriate under § 301(a) of the Labor Management Relations act, which provides for federal jurisdiction of suits for violation of contracts between an employer and certain labor organizations.

[*Yahraes v. Rest. Assocs. Events Corp., No. 10-CV-935 \(SLT\), 2011 U.S. Dist. LEXIS 23115 \(E.D.N.Y. Mar. 8, 2011\).*](#) Plaintiff employees, who served as suite attendants at the U.S. Tennis Open, brought action to recover unpaid overtime wages pursuant to the Fair Labor Standards Act (FLSA). Plaintiffs filed a motion for equitable tolling of their 2007 FLSA claims to permit the claims of potential opt-in plaintiffs, who only recently received notice of their possible claims for unpaid wages, to proceed. The FLSA provides for a two-year statute of limitations generally, with an additional one-year extension for willful violations. In a FLSA collection action, the statute of limitations runs for each plaintiff until he files written consent with the court to join the lawsuit. In determining whether equitable tolling is warranted, the court must determine whether the person seeking the tolling has acted with reasonable diligence during the time period she seeks to have tolled, and has proved that the circumstances are so extraordinary that the doctrine should apply. The procedural history demonstrated that the plaintiffs vigorously pursued their claims, and through no fault of their own, were delayed in prosecuting their action and distributing notice to potential opt-in plaintiffs. Defendants also engaged in actions that frustrated Plaintiffs’ diligent attempts to ensure that claims did not expire. The court found that equitable tolling was warranted in light of the procedural history of the case.

MISCELLANEOUS

[*Bd. of Dirs. of Jesup Cmty. Sch. Dist. v. Wall, No. 10-1375, 2011 WL 1584415 \(Iowa Ct. App. Apr. 27, 2011\).*](#) Bruce Wall, head varsity football coach at the Jesup Community School District, was contacted by the principal in 2006 regarding the football team’s success or perceived lack thereof. In response to the principal’s concerns, Wall provided him with proposed changes to increase weightlifting incentives and improve the football program as a whole. Following the 2008 season, Wall was again contacted regarding the football program and was asked to resign

as football coach; he refused and was then terminated as football coach. The school board found that the superintendent satisfied her burden to show cause for termination. Pursuing his administrative remedies, Wall sought adjudicatory review, and the arbitrator found that neither of the reasons cited by the school board as justifying the termination—alleged ineffective program leadership and alleged failure to maintain participation in the football program—were supported by the evidence. As such, the arbitrator ordered that Wall be reinstated and receive back pay for any time lost. On judicial review, the district court reversed the adjudicator. Wall appealed. The Iowa Court of Appeals agreed with the arbitrator’s decision, noting Wall’s response to the 2006 discussion regarding the football program’s perceived lack of success. Finding that the real reason for Wall’s termination was his apparently unacceptable win-loss record, the court concluded that the board’s decision to terminate Wall was unsupported by the preponderance of the evidence. Thus, the court vacated the district court’s decision and remanded for an order affirming the arbitrator’s decision.

[Bensalem Racing Ass’n v. Pa. State Harness Racing Comm’n, Nos. 1053 C.D. 2010, 2710 C.D. 2010, 2011 Pa. Commw. LEXIS 113 \(Pa. Commw. Ct. Mar. 21 2011\).](#) Plaintiff Bensalem Racing Association (“Philadelphia Park”) sought judicial review of three orders issued by Defendant Pennsylvania State Harness Racing Commission (“Commission”). Philadelphia Park and Harrah’s Chester are competitors in the harness racing and pari-mutuel wagering business and both hold licenses from the Commission. After Harrah’s Chester filed a petition with the Commission seeking authorization to conduct telephone account wagering, Philadelphia Park—a business already authorized to conduct telephone account wagering—filed a petition to intervene citing financial and competitive harms to its own business that would result from the Commission’s approval of Harrah’s Chester’s petition. The Commission denied Plaintiff’s petition to intervene, determining that its claimed interests in the matter were too remote to constitute a right to intervene. Philadelphia Park then sought this court’s review of that denial as well as the conditional and final approval order granting Harrah’s Chester’s petition to conduct telephone account wagering. In analyzing whether the Commission’s decision was an abuse of discretion, the court explained that Philadelphia Park was exactly the type of party meant to intervene in such a situation, as it was an existing competitor of Harrah’s Chester and would become a competitor in the telephone account wagering market as well if Harrah’s Chester’s petition was approved. The court held that given the facts surrounding Philadelphia Park’s intervention request, it was an abuse of discretion for the Commission to deny the request. To remedy the situation, the court reversed the Commission’s Intervention Order and vacated the conditional and final approval order granting Harrah’s Chester’s petition.

[Croghan v. N.J. Racing Comm’n, No. A-1700-09T3, 2011 N.J. Super. Unpub. LEXIS 180 \(N.J. Super. Ct. App. Div. Jan. 26, 2011\).](#) Plaintiff, a racehorse trainer, was found to have violated Defendant New Jersey Racing Commission rules related to performance-enhancing substances. As a result of these violations, Plaintiff’s trainer’s license was suspended, and Defendant denied his application for a 2010 trainer’s license. On appeal to the New Jersey Superior Court, Plaintiff specified six challenges to Defendant’s various decisions related to this suspension and application denial. Noting that the suspension was already served, rendering many suspension-related arguments moot, and that Plaintiff failed to exhaust his administrative remedies regarding the 2010 denial of his license, the court affirmed the Commission’s decisions on all but one

issue. Regarding a dispute over the test administered to his horse for performance-enhancing substances, the court reversed and remanded for an evidentiary hearing.

[*Fla. High Sch. Athletic Ass'n v. Delancy, No. 3D11-390, 2011 Fla. App. LEXIS 1937 \(Fla. Dist. Ct. App. Feb. 16, 2011\).*](#) The circuit court had issued a temporary injunction preventing the Florida High School Athletic Association (FHSAA) from disqualifying a high school basketball player and his team from the state championship. On appeal, the Court of Appeal of Florida noted that the determination of whether to disqualify an athlete or team is a decision assigned by statute to the FHSAA, determinations that prompt judicial intervention only in exceptional circumstances. Accordingly, this court reversed the circuit court's decision and the temporary injunction was dissolved.

[*George v. NCAA, 945 N.E.2d 150 \(Ind. 2011\).*](#) Plaintiffs challenged the NCAA's ticket-distribution system for the 2009 NCAA Men's Final Four basketball tournament. The system provided that all those wishing to purchase tickets would first submit payment and a handling fee for the tickets. If demand for the tickets exceeded the supply, a random selection process was used to allocate the tickets. If an applicant was not randomly selected, the handling fee was lost, but the rest of the payment was refunded to that applicant. Plaintiffs sued alleging a number of claims. The Seventh Circuit, on appeal, held that the NCAA's ticket-distribution system was an illegal lottery under Indiana law. However, the Seventh Circuit certified three questions to the Indiana Supreme Court, including the determinative question as to whether the system constituted an illegal lottery under Indiana law. The Supreme Court concluded that the system does not constitute an illegal lottery under Indiana law because there was no "prize" given to those who were randomly selected. That is, those selected paid the face value price for the tickets.

[*Graham v. U.S. Anti-Doping Agency, No. 5:10-CV-194-F, 2011 U.S. Dist. LEXIS 34637 \(E.D.N.C. Mar. 31, 2011\).*](#) Plaintiff, Trevor Graham, was sanctioned by USADA based on allegations that he willingly provided performance-enhancing drugs to athletes. Subsequently, he filed suit, alleging a variety of state law and constitutional claims. As part of its analysis, the court noted the exclusive jurisdiction and other authority granted to the USOC under the Amateur Sports Act for issues regarding the United States' involvement in the Olympic games. The court went on to hold that all of Plaintiff's state law and constitutional claims were merely labeled as such. That is, the claims all surrounded the sanctions imposed by USADA disallowing his participation as a coach to amateur Olympic athletes. Given the exclusive jurisdiction granted by the Amateur Sports Act, the court granted Defendant's motion to dismiss.

[*Knight v. Twp. of Shamong, No. A-1780-10T4, 2011 N.J. Super. Unpub. LEXIS 1667 \(N.J. Super. Ct. App. Div. June 27, 2011\).*](#) This action arose out of Plaintiffs' opposition to Defendant's decision to add three softball fields to an already existing recreational area. The parties had previously reached a settlement agreement, subject to approval by the Pinelands Commission, that the new fields would not contain lights. However, as a result of threatened Title IX claims, Defendant received approval for and installed lights for the fields. Plaintiffs sought to enjoin Defendant's use of the lights. However, the lower court determined that Plaintiffs' claims of harm from the lighting were insubstantial, and as such, granted Defendant's motion for summary judgment. On appeal, this court affirmed the decision.

Lidle v. Cirrus Design Corp., 08 Cv. 1253 (BSJ)(HBP), 2011 U.S. Dist. LEXIS 46315 (S.D.N.Y. Apr. 23, 2011). Defendant Cirrus filed a motion in limine to exclude the testimony of Corey Lidle's former teammates. Plaintiff Melanie Lidle, the personal representative on behalf of the estate of Cory Lidle, sought to call five former teammates of Cory Lidle and his former manager to testify and provide evidence in regards to Cory Lidle's character, skills as a major league pitcher, training regimen, and future career. Plaintiff sought these witnesses for the purpose of assessing damages if Cirrus is found liable for Cory Lidle's death. However, the court opined that the proposed witnesses could offer first-hand perceptions on Cory Lidle, but could not be permitted to testify about Cory Lidle's future earning potential, which was a key inquiry. The Court granted Defendant's motion in limine.

LoPiccolo v. Am. Univ., No. 10-CV-3131, 2011 U.S. Dist. LEXIS 34852 (E.D. Pa. Mar. 29, 2011). Plaintiff LoPiccolo was a college wrestler let go from his team in the middle of his third year at American University for allegedly being in violation of an athletic scholarship agreement. Plaintiff brought this diversity action against Defendants American University, its Board of Trustees, the athletic director, and the men's wrestling coach for (1) breach of contract, (2) breach of the duty of good faith and fair dealing, (3) fraud in the inducement, (4) intentional infliction of emotional distress, and (5) negligent infliction of emotional distress. Defendants moved to dismiss for lack of personal jurisdiction, lack of subject matter jurisdiction, improper venue, and failure to state a claim. The court denied Defendants' motions to dismiss, and after finding the current venue improper, transferred the case to its proper venue.

Mandl v Bd. of Educ. of the City Sch. Dist. of N.Y., No. 104036/2011, 2011 N.Y. Misc. LEXIS 2462 (N.Y. Sup. Ct. May 18, 2011). Plaintiff Mandl sought immediate reinstatement as head coach of the George Washington High School varsity baseball team. Plaintiff violated the Public Schools Athletic League's (PSAL) rules and regulations when he recruited a student transfer to play for the George Washington High School baseball team. The PSAL suspended Plaintiff for one year. However, Plaintiff filed this complaint before exhausting all of his administrative remedies, and as such, the court declined to intervene in the matter to provide relief.

McGriff v. Bd. of Educ., No. A-3186-09T2, 2011 N.J. Super. Unpub. LEXIS 86 (N.J. Super. Ct. App. Div. Jan. 12, 2011). Winthrop McGriff's position as part-time athletic director was terminated after the high school soccer team was disqualified from tournament participation for having non-matriculated students on the team. McGriff sought review of his dismissal and later appealed from a final decision of the Commissioner dismissing his petition. This court affirmed the Commissioner's decision.

Seminole County Sch. Bd. v. Downey, 59 So. 3d 1156 (Fla. Dist. Ct. App. 2011). Seminole County School Board appealed from an order of the trial court granting a temporary injunction in favor of Mr. Downey, father to the minor at issue, and enjoining the school board from prohibiting the minor from participating in high school wrestling. In January 2011, the minor transferred to Oviedo High School from a school in Maryland. On January 7, 2011, the Florida High School Athletic Association (FHSAA) determined that the minor was ineligible to compete based on Bylaws 9.3.2 and 9.3.4 of the FHSAA. After exhausting his administrative remedies, Mr. Downey went to the judicial branch and sought a temporary injunction against the School

Board and the FHSAA. Mr. Downey secured a hearing at 9:00am on January 21, 2011 and informed the School Board and the FHSAA by fax at 5:02pm or 6:02pm (the time was disputed) on January 20, 2011. The injunction hearing went uncontested. The court of appeals reversed, holding that the notice of the injunction given by Mr. Downey was inadequate, the pleading was not verified, and the affidavit was inadequate as it did not meet the minimum requirements of the rule, including specifying the reasons for the entry and describing the acts being restrained.

United States v. Clemens, No. 10-223 (RBW), 2011 U.S. Dist. LEXIS 66554 (D.D.C. June 23, 2011). This decision arose out of the criminal case against Defendant Roger Clemens, a former MLB pitcher, relating to testimony he provided to the House Committee on oversight and Government Reform as part of the MLB steroid investigation. Specifically at issue in this decision was DLA Piper US LLP's ("DLA Piper") motion to quash Defendant's subpoena seeking various interview summaries and notes relating to the steroid investigation. Of note is that Senator Mitchell, who was in charge of the steroid investigation that culminated with the Mitchell Report, was a partner at DLA Piper at the time of the investigation and retained DLA Piper to represent him. Following Defendant Clemens' subpoena and DLA Piper's subsequent motion, this court ordered the motion granted in part and denied in part, finding that some information was barred by the "work product" doctrine while Defendant demonstrated a substantial need for other portions of the requested information.

[*W. Va. Secondary Sch. Activity Comm'n v. Webster, No. 10-4001, 2011 W. Va. LEXIS 10 \(W.Va. Feb. 24, 2011\).*](#) The West Virginia Secondary School Activities Commission (WVSSAC) imposed a one-game suspension on four high school football players for unsportsmanlike conduct after they were involved in a fight during a game; the game that the players were to miss was the AAA semi-final game that would lead to the 2010 Class AAA state football championship game. In response to the suspension, the players sought a temporary restraining order from the circuit court, arguing that the WVSSAC ruling was arbitrary and capricious and in violation of statutory authority. The circuit court granted that order on November 23, 2010; the WVSSAC filed a motion to dissolve on November 26; and the football players played in and won the AAA semi-final game on November 27. On November 29, the circuit court held an evidentiary hearing and concluded that the officials violated the WVSSAC rules during the game, and the court granted a preliminary injunction. On December 2, the WVSSAC filed a petition with the Supreme Court of Appeals seeking a writ of prohibition to prevent enforcement of the preliminary injunction. The WVSSAC contended that the trial court acted in excess of its authority when it issued a temporary restraining order and later when it issued the preliminary injunction. On December 7, the Supreme Court of Appeals issued the WVSSAC's writ on prohibition after determining that both of the trial court's rulings were an improper exercise of authority. The court explained that nothing in the jurisprudence of the court supported the trial court's foundational premise that courts are permitted to second-guess the manner in which the WVSSAC applies its rules. As a result of the improper exercise of jurisdiction, the WVSSAC was entitled to a writ of prohibition.

[*Williams v. NFL, 794 N.W.2d 391 \(Minn. Ct. App. 2011\).*](#) This is an appeal stemming from the district court's denial of permanent injunctive relief regarding claims under the Drug and Alcohol Testing in the Workplace Act (DATWA). In 2008, Kevin Williams and Pat Williams, NFL players playing for the Minnesota Vikings, each gave urine samples for drug testing as part

of their annual physicals and tested positive for bumetanide, a banned substance. The NFL notified the players that they would be suspended for four regular-season games. Plaintiffs challenged the decision via arbitration, but the decision was upheld. Plaintiffs then filed suit in state district court, which granted a temporary restraining order enjoining the NFL from enforcing the suspensions. For the next two years, the case was litigated in state and federal court. In May 2010, the district court found that the NFL was a joint employer with the Vikings and had violated the notice requirements of DATWA when it did not notify Plaintiffs of their positive test results within three days. The district court, however, did not find sufficient evidence to prove that the confidentiality provisions of the DATWA were violated and found that the Williams' could not show that the DATWA violations caused them any injury; the district court declined to enter permanent injunctive relief. Plaintiffs challenged the district court's failure to grant the permanent injunctive relief, arguing that the DATWA mandates injunctive relief for any violation. The DATWA places limitations on an employer's ability to require employees to undergo drug and alcohol testing. Bumetanide is not identified in any of the schedules. For this reason, the DATWA did not govern the Williams' positive test results and there was no basis to grant permanent injunctive relief. Accordingly, the court did not reach Plaintiffs' assertion that injunctive relief be mandatory.

PROPERTY LAW

[*Asphalt Specialists, Inc. v. Steven Anthony Dev. Co., No. 295182, 2011 Mich. App. LEXIS 698 \(Mich. Ct. Appeals Apr. 19, 2011\).*](#) Asphalt Specialists, Inc. (ASI), Lakeview Contracting ("Lakeview"), and A&R Sealcoating, Inc. (A&R) entered into agreements to provide the service and materials for various improvements to a certain golf course. Lakeview's project included a number of infrastructure improvements, ASI's project involved the construction and asphalt paving of golf cart paths, and A&R's project involved asphalt paving, labor, and materials for the course. These three parties were not fully compensated for their work, which resulted in claims of a lien on the golf course as well as actions for breach of contract, unjust enrichment, and foreclosure on their liens. Eventually, the circuit court entered judgments in favor of Lakeview, ASI, and A&R, concluding that they had liens on the golf course that had priority over all other claims regarding the golf course. The circuit court ordered the foreclosure sale of the golf course in order to satisfy these three parties' liens. On appeal, the central issue was whether the parties' liens attached to the entire golf course or merely the improvements—those ancillary portions of the golf course relating to the parties' work. Finding that Lakeview, ASI, and A&R were entitled only to construction liens on the improvements, this court determined that the circuit court erred in ordering foreclosure of the entire golf course to satisfy their liens. As such, the Michigan Court of Appeals vacated the circuit court's judgments regarding the liens, foreclosure, and attorney fees and remanded the case for further proceedings.

[*Citizens for Cmtys. Pres., Inc. v. City of Indus., No. B223648, 2011 Cal. App. Unpub. LEXIS 738 \(Cal. Ct. App. Jan. 27, 2011\).*](#) Plaintiffs opposed a redevelopment plan for a certain 592-acre piece of land. Originally, the City approved the site for a variety of office and retail uses—an approval process that included a water supply assessment (WSA) complying with the Water Code (the "Code"). However, the newly approved plan, "the stadium project," called for development of an NFL stadium and related facilities, yet did not include an updated WSA. Plaintiffs filed an action seeking a writ of mandate alleging various violations of the California

Environmental Quality Act (CEQA) as well as a Code violation. Subsequently, the California Assembly passed a special bill exempting the stadium project from complying with CEQA provisions, which resulted in Plaintiffs dismissing the CEQA claims, leaving only the Code violation as a cause of action. Defendants argued that the claim should be dismissed given that the Code requires a WSA only when a project is subject to the CEQA and that the special bill explicitly exempted the project from the CEQA provisions. The trial court agreed and granted Defendants' motion for judgment on the pleadings. On appeal, Plaintiffs challenged the trial court, asserting that the CEQA exemption was to take effect only after preliminary findings were made, findings Plaintiffs allege were never made, and that the trial court erred in finding a CEQA claim was necessary to bring an action for a Code violation. After thoroughly analyzing the language and intent of the special bill, the court affirmed the trial court's decision.

E. Hampton Indoor Tennis Club, LLC v. Zoning Bd. of Appeals of E. Hampton, No. 2010-02305, 2011 N.Y. App. Div. LEXIS 3167 (N.Y. App. Div. 2011). A private high school in the Town of East Hampton submitted a proposal to build a variety of recreational and athletic facilities on the school site. The application included tennis courts and a tennis pavilion that would be open to the public for a fee. Subsequently, the East Hampton Indoor Tennis Club argued that this public, fee-based use of the tennis facilities would be a prohibited use under the school location's zoning classification. The Chief Building Inspector determined that the planned use of the facilities would not be prohibited because the facilities were not going to be used during school hours. After a failed appeal to the Zoning Board of Appeals, the East Hampton Indoor Tennis Club filed this action. Noting that decisions of the Zoning Board of Appeals are given great deference, this court affirmed.

In re Laberge Moto-cross Track, 15 A.3d 590 (Vt. 2011). Landowners of an eighteen-acre residential lot in Hinesburg, Vermont, created a half-mile motocross track on the lot. As a result of the use of the motocross track, neighbors requested that the landowners obtain a zoning permit and approval for the backyard track. Neighbors complained to the town's zoning administrator and requested that the landowners be required to obtain a zoning permit and condition use approval for the track. The landowners appealed the Environmental Court's ruling that they were required to obtain a zoning permit. Here, the court reversed the Environmental Court's ruling, holding that the track is not prohibited, the track is not a "structure" as contemplated by the zoning ordinance, and the landowners did not need conditional approval. However, the court did note that if certain circumstances were present—expanded use, size, or scope of the track—that the decision might have been different.

J.R. Golf Servs., Inc. v. Benton Cnty. Assessor, No. TC-MD 100588B, 2011 Ore. Tax LEXIS 172 (Or. T.C. Apr. 7, 2011). Plaintiff appealed the 2009-10 real market value of the subject property, an 18-hole daily fee golf course located in an exclusive farm use zone. Plaintiff urged that the land value should be reduced given factors such as the industry downturn and the existence of multiple other golf courses in the immediately surrounding geographic area. First, the court defined and explained the concept of real market value, and it also noted that the parties agree that the property's highest and best use is a golf course. Subsequently, the court analyzed the two methods of property valuation—the sales comparison approach and the income approach. The court settled on the income approach after concluding that the use of the sales comparison approach for golf courses is questionable because of the possibility of notable differences

amongst various courses. Using the income approach to calculate the real market value, the court held that the real market value of the golf course for 2009-10 was \$1,205,508.

[L.A. By-Products Co. v. City of L.A., No. B216090, 2011 Cal. App. Unpub. LEXIS 281 \(Cal. Ct. App. Jan. 13, 2011\).](#) The Los Angeles City Council reversed an approval of a zoning variance that would have permitted Plaintiff L.A. By-Products to construct and operate a motocross track on a former landfill. The City Council stated that the motocross track did not meet the terms of a certain agreement or the requirements for a zoning variance. Plaintiff appealed the City's reversal and claimed the City committed legal error in its review. This court affirmed the decision, stating that the substantial evidence supported the findings that the track did not meet any of the requirements for approval of a zoning variance.

SWISS FEDERAL TRIBUNAL

[Bundesgericht \[BGer\] \[Federal Tribunal\] Jan. 3, 2011, 4A 386/2010 \(Switz.\).](#) This Swiss Federal Tribunal decision involved the Appellant, a professional Spanish cyclist, and the Respondents, the World Anti-Doping Agency (WADA), the International Cyclist Union (ICU), and the Real Federación Española de Ciclismo (RFEC). In May 2006, Spanish investigators seized blood, allegedly belonging to the Appellant, from the office of a doctor arrested in 2004 for violating the Spanish law of public health for doping offenses. However, both the Comité Nacional de Competición y Disciplina Deportiva (CNCDD) and President of RFEC chose not to open any disciplinary proceedings against the Appellant. In October 2007, WADA and the ICU filed a claim with the Court of Arbitration for Sport (CAS), challenging the CNCDD and President of RFEC's decisions not to pursue disciplinary proceedings against the Appellant. The CAS Panel found the Appellant guilty of committing an anti-doping violation and banned him from competition for two years; however, the Panel did not annul the Appellant's previous competition results. In this appeal to the Swiss Federal Tribunal, Appellant challenged a CAS award, seeking to annul it on the grounds that CAS lacked proper jurisdiction and procedurally erred in many respects. However, the tribunal rejected each of the Appellant's arguments and thus the Appellant's appeal; as a result, the Appellant's two-year ban from competition was upheld.

[Bundesgericht \[BGer\] \[Federal Tribunal\] Jan. 3, 2011, 4A 420/2010 \(Switz.\).](#) This Swiss Federal Tribunal decision involved the Appellant, a professional Spanish cyclist, and the Respondents, the World Anti-Doping Agency (WADA), the International Cyclist Union (ICU), and the Real Federación Española de Ciclismo (RFEC). On the same date that he had filed the appeal at issue in Case 4A_386/2010 with the Swiss Federal Tribunal, the Appellant also submitted a request to the Court of Arbitration for Sport (CAS) for interpretation and correction of its previous award. However, the Deputy of the President of the Appeals Arbitration Division of CAS refused to address the merits of the Appellant's request. As a result, the Appellant filed another appeal with the Swiss Federal Tribunal. He requested that the case be joined with his previous appeal, which had not yet been heard at that point. This request was rejected. In the latter appeal, the issue was whether the decision was capable of a civil law appeal to the Swiss Federal Tribunal. However, the tribunal held that because it had already found in the former appeal that CAS's award did not contradict its reasoning for the award, the Appellant's separate

claim was incapable of appeal and refused to address the merits of the Appellant's request for interpretation.

Bundesgericht [BGer] [Federal Tribunal] Jan. 7, 2011, 4A_440/2010 (Switz.). This Swiss Federal Tribunal decision arose from an intellectual property dispute. The Respondent owns the exclusive operation rights for a clothing trademark. In 2005, the Appellant took over the operation of several shops under a sign bearing the trademark as well as the manufacture and distribution of clothes bearing the trademark. Subsequently, the Appellant and Respondent reached a license agreement (the "Agreement"). In 2009, the Respondent notified the Appellant that the contract was terminated for a serious breach of the Appellant's obligations. Following the termination, the Appellant changed the name of its boutiques but continued to sell items with the Respondent's trademark. Here, Appellant challenged a World Intellectual Property Organization (WIPO) arbitrator's final award, arguing: (1) that the arbitrator granted the Respondent more than what was claimed, (2) that its right to be heard in contradictory proceedings or the rule of equity was violated, and (3) that the award was inconsistent with public policy. The tribunal rejected all of the Appellant's claims and held that the matter was incapable of appeal.

[*Bundesgericht \[BGer\] \[Federal Tribunal\] Jan. 11, 2011, 4A_579/2010 \(Switz.\).*](#) This Swiss Federal Tribunal decision involved the Appellant, a sports-DVD production and distribution company that had entered into several agreements in 2008 with the Respondent, the International Olympic Committee (IOC), for the production and sale of DVDs containing footage from the 2008 Olympic games in Beijing, China. Each agreement contained a choice of law provision, which provided that all disputes shall be governed under Swiss law and that exclusive jurisdiction was held by the Court of Arbitration for Sport (CAS). In September 2009, the IOC sought an arbitration ruling from CAS, alleging that the Appellant had failed to perform its financial obligations pursuant to the agreements. The arbitrator found for the IOC, and the Appellant subsequently appealed to the Swiss Federal Tribunal on the matter of jurisdiction. The jurisdictional issues on appeal were whether the agreements were invalid because the Appellant never received an IOC-signed copy and whether the IOC tacitly renounced the arbitral clauses. The Appellant also raised the issue of whether the CAS award violated public policy. Ultimately, the tribunal held that the Appellant and the IOC fulfilled part of their respective obligations under the agreement; thus, the Appellant could not contest the validity of the agreements or arbitral clauses, nor did the IOC tacitly renounce the arbitral clauses. Moreover, the tribunal dismissed the Appellant's argument that the CAS award violated public policy.

Bundesgericht [BGer] [Federal Tribunal] Jan. 12, 2011, 4A_392/2010 (Switz.). This Swiss Federal Tribunal decision involved the Appellant, a Swiss, non-profit, professional soccer club associated with the Swiss Football Association (SFA), and the Respondents, the Fédération Internationale de Football Association (FIFA) and Al-Ahly Sporting Club ("Al-Ahly"), a professional soccer club belonging to the Egyptian Football Federation (EFF), which is a member of FIFA. In 2007, a professional Egyptian soccer player, Essam El Hadary, signed an employment contract with Al-Ahly through the end of the 2009–10 season. In 2008, El Hadary then entered into an employment contract with the Appellant through the end of the 2010–11 season. The EFF refused to issue an international transfer certificate to the SFA, which was necessary to complete El Hadary's move to the Appellant. Soon after, the FIFA Players' Status

Committee provisionally authorized the SFA to register El Hadary as a player for the Appellant. As part of the ensuing dispute, CAS issued a final award, which resulted in El Hadary owing nearly \$800,000 to Al-Ahly and being banned for four months following the 2010–11 season. The Appellant subsequently appealed the CAS award to the Swiss Federal Tribunal, seeking an annulment of the award. However, the tribunal rejected the Appellant’s arguments and concluded that the matter itself was incapable of appeal.

Bundesgericht [BGer] [Federal Tribunal] Jan. 12, 2011, 4A_394/2010 (Switz.). This Swiss Federal Tribunal decision involved the Appellant, a professional Egyptian soccer player, and the Respondents, the Fédération Internationale de Football Association (FIFA) and Al-Ahly Sporting Club (“Al-Ahly”), a professional soccer club belonging to the Egyptian Football Federation (EFF), which is a member of FIFA. In 2007, the Appellant signed an employment contract with Al-Ahly through the end of the 2009–10 season. In 2008, the Appellant then entered into an employment contract with FC Sion, a Swiss professional soccer club, through the end of the 2010–11 season. The EFF refused to issue an international transfer certificate to the Swiss Football Association (SFA), which was necessary to complete the Applicant’s move to FC Sion. Soon after, the FIFA Players’ Status Committee provisionally authorized the SFA to register the Appellant as a player for FC Sion. Following a subsequent CAS award, which resulted in the Appellant owing nearly \$800,000 to Al-Ahly and being banned for four months following the 2010–11 season, the Appellant appealed to the Swiss Federal Tribunal to annul the award. Appellant argued that CAS severely breached his right to be heard and the rule of equity by not examining the pertinent issues, namely that the Appellant’s departure from Al-Ahly was mutually agreed upon and that CAS disregarded the principle of contractual observance and thus issued an award inconsistent with public policy. Ultimately, the tribunal held that there was no evidence of such a breach or disregard; thus, the tribunal upheld the CAS award.

TAX LAW

The Chapel v. Testa, Tax Comm’r, 950 N.E.2d 142 (Ohio 2011). Plaintiff, a non-profit corporation, built a church on a portion of its property and devoted the rest to recreational use by the public. Most of those who used the recreational facilities were not members of the church community, but rather members of the community at large. Plaintiff covered the cost of maintaining and developing the recreational portion of its property; it did not charge the public any fee to offset these costs. In 2002, Plaintiff filed an application seeking tax exemptions for three portions of its land. The tax commissioner granted the exemption as to the church as a house of public worship as well as a charitable-use exemption for a portion of the remainder of the property. However, holding that it did not qualify for the charitable-use exemption, the commissioner denied it as to the recreational portion of the property. After a failed appeal to the Board of Tax Appeals, Plaintiff appealed to this court asserting that opening its recreational facilities to the public constitutes a charitable use to qualify it for the tax exemption. Among other minor issues, the court noted that opening the use of the recreational facilities to the public was in itself a charitable use and not merely an ancillary use to the charitable use of public worship. As such, the court reversed and remanded the decision.

TITLE IX

Cummings v. Tex. S. Univ., No. H-10-1096, 2011 U.S. Dist. LEXIS 49181 (S.D. Tex. May 6, 2011). Plaintiff Claude Cummings served as the head women's basketball coach at Defendant Texas Southern University for a span of five seasons, where in each season, his teams failed to produce a winning record or reach even the NCAA's average APR. While serving in this position, Plaintiff complained to administrators on multiple occasions about what he perceived to be the University's many violations of Title IX. The University underwent a host of administrative changes, including many in the athletic department. Just one week before being terminated from his position as head women's basketball coach, Plaintiff complained again of alleged Title IX violations. As a result, Plaintiff filed suit against Texas Southern University, alleging that Defendant was terminated in retaliation for the Title IX complaints. The court granted Defendant's motion for summary judgment.

Equity in Athletics, Inc. v. Dep't. of Educ., 639 F.3d 91 (4th Cir. 2011). In 2006, James Madison University announced that it planned to cut ten of its athletic programs to comply with proportionality prong of the Title IX three-part test. Plaintiff, Equity in Athletics, Inc. (EIA), was comprised of opponents to these cuts, including student-athletes on the eliminated teams as well as female athletes on non-eliminated teams at James Madison University. It sued a number of parties, including the Department of Education and James Madison University seeking declaratory and injunctive relief through a direct challenge to the Title IX guidelines. Alternatively, Plaintiff sought to require James Madison University to equalize scholarship payments to those student-athletes affected by the decision. The district court denied Plaintiff's motion for preliminary injunction and granted Defendants' motions to dismiss. On appeal, the Fourth Circuit first held that Plaintiff had standing to bring suit given those that comprised the entity. After conducting an in-depth analysis of each of Plaintiff's challenges to the Title IX three-part test, the Fourth Circuit affirmed the district court.

Mansourian v. Bd. of Regents of the Univ. of Cal., No. CIV. S 03-2591 FCD EFB, 2011 U.S. Dist. LEXIS 53637 (E.D. Cal. May 18, 2011). Plaintiffs brought a motion for reconsideration of the court's decision that Plaintiffs' claim against Defendant Board of Regents was time barred. In December 2003, Plaintiff Mansourian and two other females brought a Title IX claim and an Equal Protection claim challenging their removal from the wrestling team in the 2000-01 season and Defendants' 2001 policy requiring women to wrestle-off against men. The court denied Plaintiffs' motion stating that Plaintiffs' claims as to the elimination of the team and the implementation of the new policy were only actionable at the time the alleged discrimination occurred. As for the Equal Protection claim, because the Ninth Circuit was silent with respect to those allegations, the court was bound to the Ninth Circuit's holding.

Mathis v. Wayne Cnty. Bd. of Educ., No. 1:09-0034, 2011 U.S. Dist. LEXIS 20282 (M.D. Tenn. Mar. 1, 2011). Plaintiffs are mothers suing on behalf of their sons, who were, at the time of the incidents, 7th graders at Waynesboro Middle School. The events of this case surround the boys' basketball team at WMS and the sexual harassment their sons endured at the expense of 8th grade members of the team. Plaintiffs brought a claim under Title IX and a § 1983 claim. Defendants filed a motion for summary judgment and a motion to strike. The court denied Defendants'

motion for summary judgment on the Title IX claim because the plaintiff satisfied the three elements necessary to move forward with the claim. The court granted the motion for summary judgment on the § 1983 claim, because the violations of bodily integrity were not committed by the defendants and Plaintiffs did not meet the criteria of the danger exception. The defendants' motion to strike was also denied as moot.

TORT LAW

[*A.K.W. v. Easton-Bell Sports, Inc., No. 1:09cv703-HSO-JMR, 2011 U.S. Dist. LEXIS 23955 \(S.D. Miss. Mar. 9 2011\).*](#) Plaintiff, on behalf of her minor son, brought a product liability action against Defendants arising out of injuries her son sustained due to an allegedly faulty Riddell football helmet during a school-sponsored football practice. All Defendants except for Riddell, Inc. moved for summary judgment on the ground that they were not involved in the manufacture of the helmet. Although Plaintiff did not dispute the dismissal, she urged for dismissal without prejudice in order to preserve recourse in the event of possible evidence showing the dismissed Defendants' involvement. The court, however, granted the motion for summary judgment, dismissing the claims with prejudice.

[*Altman v. HO Sports Co., No. 1:09-cv-1000 AWI JLT, 2011 U.S. Dist. LEXIS 54462 \(E.D. Cal. May 18, 2011\).*](#) Plaintiff Jeffrey Altman, an expert wakeboarder, filed this product liability suit against Defendant HO Sports Co. following an injury Plaintiff sustained while wearing wakeboarding boots manufactured by Defendant. Although the boots in question contained warnings cautioning riders about the inherent risks of wakeboarding and the possibility that the attached boots may or may not release during a fall, Plaintiff did not read them. While wakeboarding and wearing the boots at issue, Plaintiff suffered severe injuries to his right ankle and subsequently filed suit against Defendant, alleging defective warning and defective design. Defendant then moved for summary judgment. Notwithstanding any defective warning, it was undisputed that Plaintiff did not read the warnings. Noting this lack of causation relating to Plaintiff's injury, the court granted summary judgment as to the warning defect cause of action. As to the design defect cause of action, the court analyzed the evidence in the light most favorable to the plaintiff and determined that Defendant's boot design increased the risk of inherent injury and substantially contributed to Plaintiff's injury. Thus, the court denied Defendant's motion for summary judgment as to the defective design claim.

[*Ashburn v. Bowling Green State Univ., No. 10AP-716, 2011 Ohio App. LEXIS 1297 \(Ohio Ct. App. Mar. 29, 2011\).*](#) Aaron Richardson died as a result of full-blown sickle cell anemia episode that resulted in cardiac arrest following his participation in intense physical activity at his first football practice at Bowling Green State University (BGSU). During the practice, Richardson complained of leg cramps that eventually progressed into full body cramps finally resulting in a 9-1-1 emergency call. At some point, Richardson stopped breathing and eventually died. Richardson's estate sued BGSU arguing that Defendant had failed to respond appropriately to Richardson's medical issues and that an appropriate response would have saved Richardson's life; but the trial court entered a verdict in favor of Defendant BGSU. On appeal, Plaintiff raised several assignments of error. The Ohio Court of Appeals determined that the central, possibly determinative, issue on appeal was whether Richardson would have survived had there been no delay in calling for emergency help. Reviewing a doctor's testimony a trial, the court found that

it constituted credible evidence that Richardson would not have survived even without the delay. As such, Defendant could not be held liable for his death, and the trial court's judgment was affirmed.

[*Beer v. La Crosse Cnty. Agric. Soc'y, No. 2010AP581, 2011 Wisc. App. LEXIS 89 \(Wis. Ct. App. Feb. 10, 2011\).*](#) Plaintiffs Charles Beer and Darin Toot suffered severe injuries at the La Crosse county Fairgrounds Speedway when they were struck by an out-of-control racecar while standing in the restricted area in the infield of the track. As a result, Plaintiffs sued, seeking damages, but the circuit court granted Defendants' motion for summary judgment based on a Speedway Release form signed by the Plaintiffs releasing the Defendants from any liability. On appeal, Plaintiffs argued that the waivers they signed were void as against public policy. Although acknowledging that exculpatory contracts are disfavored in Wisconsin, the Wisconsin Court of Appeals noted that it had previously held a nearly identical waiver not to be void as against public policy. Bound by precedent, the court affirmed the circuit court's grant of summary judgment in favor of Defendants.

[*Blakney v. Dery, No. 296017, 2011 WL 682898 \(Mich. Ct. App. Feb. 24, 2011\).*](#) Plaintiff filed an action for negligence, alleging that Defendant was negligent and grossly negligent in striking Plaintiff with a golf club while stretching as he waited to tee off. The trial court granted Defendant's motion for summary judgment. Plaintiff appealed, arguing that the trial court erred in holding that Defendant owed a duty to refrain only from acting recklessly rather than negligently. Alternatively, Plaintiff argued that even if the reckless standard was the correct one to apply, the facts of the case did not warrant summary judgment. The Michigan Court of Appeals first noted that the recklessness standard was the correct duty owed to Plaintiff regardless of the fact that the injury occurred before either party had actually teed off. Analyzing the circumstances of the case under the recklessness standard, the court similarly agreed with the trial court's decision finding that Plaintiff did not present any evidence that Defendant's actions rose to the level of recklessness. Accordingly, the court affirmed the trial court's grant of summary judgment in favor of Defendant.

Bloomfield v. Jericho Union Free Sch. Dist., No. 2009-08613, 2011 N.Y. App. Div. LEXIS 349 (N.Y. App. Div. Jan. 18, 2011). Plaintiffs appealed from a lower court's order granting Defendant's motion for summary judgment in a negligent supervision claim arising out of an incident during the minor plaintiff's gym class. On the date in question, the substitute teacher supervising the class granted the minor plaintiff permission to spend the gym period on mats approximately fifty yards away. While walking on one of the mats, the minor plaintiff's foot became caught in a tear causing her to fall and suffer injuries. On appeal, the court held that the lower court erred in granting Defendant's motion for summary judgment because Defendant did not meet its initial burden of establishing, prima facie, that it did not have notice of the tear in the mat or that the tear constituted an open and obvious danger. Accordingly, the lower court's order was reversed as to the action for negligent supervision.

[*Bonifas v. City of Lexington, No. A-10-623, 2011 Neb. App. LEXIS 47 \(Neb. Ct. App. Apr. 19, 2011\).*](#) As parents of minor Stevie Bonifas, Plaintiffs sued the City of Lexington and the Dawson County School District for premises liability, alleging that Defendants were negligent installing, maintaining, or inspecting either a known danger or one they reasonably should have known to

exist. Specifically, while participating in a required physical education class on a school district field, she stepped on a manhole cover and fell in. The district court granted Defendants' motions for summary judgment, and Plaintiffs appealed. Finding that the evidence showed that Defendants did not create, did not know, and should not have known about the dangerous condition relating to the manhole cover. As such, the Nebraska Court of Appeals affirmed the district court's grant of summary judgment for Defendants.

[Butts v. Whitton, No. 296574, 2011 Mich. App. LEXIS 990 \(Mich. Ct. App. May 26, 2011\).](#)

Plaintiff, a minor, was injured during a snowboarding lesson taught by Defendant James Whitton. During the snowboarding lesson, Defendant signaled to Plaintiff to cross a hill; while crossing the hill Plaintiff was struck by a reckless skier, a collision that fractured his leg. In Plaintiff's negligence suit against the defendant instructor, the trial court granted Defendant's motion for summary judgment, finding that Defendant did not have a duty to protect Plaintiff from the actions of the third-party skier, nor did the evidence support a finding of probable cause. Noting that generally there is no duty to protect against actions of a third party, the Michigan Court of Appeals determined that no special relationship existed between Plaintiff and Defendant that would give rise to such a duty. As such, the decision of the trial court granting summary judgment to Defendant was affirmed.

[Chryczyk v. Juhas, No. 294348, 2011 Mich. App. LEXIS 204 \(Mich. Ct. App. Jan. 27, 2011\).](#)

Plaintiff John Chryczyk suffered eye injuries from the impact of a tennis ball hit by Defendant, his high school tennis teammate, during a team practice. Plaintiff's original complaint alleged that Defendant acted negligently in striking Plaintiff with the tennis ball to cause his injuries. In response to Defendant's motion for summary judgment based on the doctrine that athletes assume those risks and dangers inherent in sport, Plaintiff amended his complaint alleging Defendant acted recklessly when he attempted to hit the ball forward between two adjacent courts in frustration. The trial court denied Defendant's motion for summary judgment. However, the Court of Appeals of Michigan reversed, holding that although his aim was off when Defendant attempted to hit a ball in frustration between two tennis courts, the intent to hit between the two courts and resulting misfire did not rise to the level of recklessness. As tennis athletes assume the risks of dangers inherent to the sport of tennis, of which getting hit by an errant tennis ball qualifies as such an inherent risk, Defendant could not be held liable for his allegedly negligent act. Thus, the court reversed and remanded the case for an order of summary judgment in favor of Defendant.

[City of Dallas v. Hughes, No. 05-10-00511-CV, 2011 Tex. App. LEXIS 4466 \(Tex. Ct. App. June 14, 2011\).](#)

Plaintiff James Hughes suffered injuries when he was thrown from his bicycle as he attempted to avoid protruding wooden planks on a bridge on a biking trail owned and maintained by Defendant City of Dallas. In the resulting premises-liability action, Hughes claimed that Defendant was grossly negligent under the Texas Tort Claims Act and applicable recreational-use statute by failing to repair or warn of the protruding planks. Defendant filed a plea as to the jurisdiction, citing governmental immunity, which the trial court denied. Defendant appealed, urging that Plaintiff did not raise a material fact question as to gross negligence, and as such, the trial court erred in denying its jurisdictional plea. Finding that under the circumstances of the case, Plaintiff failed to raise a factual issue regarding the claims of gross negligence, the Texas Court of Appeals held that the trial court erred in refusing to grant the jurisdictional plea. As

such, the trial court's decision was reversed and Plaintiff's claims against the City of Dallas were dismissed.

[City of Montgomery v. Patterson, No. 2090960, 2011 Ala. Civ. App. LEXIS 127 \(Ala. Civ. App. May 20, 2011\).](#) Plaintiff Mary Ann Patterson suffered injuries when a concession stand window collapsed and struck her in the head while she was attending an Alabama State University football game at a stadium operated by Defendant. Plaintiff sued the City alleging negligence. After Defendant's failed motion to dismiss and subsequent motion for directed verdict based on Alabama recreational-use statutes, the trial court entered judgment in favor of Plaintiff. On appeal, Defendant again argued that it was immune under the statutes, and as such, the trial court erred in entering judgment for Plaintiff. The court noted that the record lacked sufficient evidence regarding Defendant's breach of duty in securing the concession-stand window such that the City of Montgomery's involvement in was speculative, at best. Thus, *res ipsa loquitor* could not apply and Defendant should have been immune under the Alabama Code; accordingly, the court reversed the judgment and remanded the case to the trial court to enter judgment in favor of Defendant.

[Clark v. AMF Bowling Ctrs., Inc., No. 2010-05224, 2011 N.Y. App. Div. LEXIS 2944 \(N.Y. App. Div. Apr. 12, 2011\).](#) Plaintiff Sheila Clark alleged she was injured when she tripped over a small table in the lobby of a bowling alley owned by Defendant, and she subsequently filed a negligence action against the owner. The lower court granted Defendant's motion for summary judgment, basing its decision on the open and obvious danger doctrine. However, the New York Appellate Division determined that given the circumstances surrounding the incident, such as the furniture arrangement and dim lighting in the lobby where the injury occurred, Defendant failed to meet its burden. That is, a reasonable jury could conclude that the table Plaintiff tripped over was not an open and obvious danger. Thus, the New York Appellate Division reversed the lower court's grant of summary judgment.

[DiBartolomeo v. N.J. Sports & Exposition Auth., No. A-2716-09T2, 2011 N.J. Super. Unpub. LEXIS 345 \(N.J. Super. Ct. App. Div. Feb. 16, 2011\).](#) Plaintiff Thomas DiBartolomeo suffered injuries from a fall he suffered as a result of an escalator malfunction when he and many other football fans exited Meadowlands Stadium. A mechanic had previously examined the same escalator following a previous malfunction and had cautioned stadium officials about the dangers of overcrowding on escalators. Subsequently, Plaintiff filed suit against the stadium's owner, N.J. Sports & Exposition Authority, as well as the escalator maintenance company alleging that both parties were negligent. Following the trial court's grant of summary judgment to both defendants, Plaintiff appealed. Regarding the escalator mechanic, Plaintiff argued that *res ipsa loquitor* applied, providing an inference of the mechanic's negligence. As for the owner of the property, Plaintiff asserted on appeal that the mechanic's warning regarding overcrowding on escalators placed the owner on notice of the potentially dangerous condition such that summary judgment should not have been allowed. The court affirmed the trial court's grant of summary judgment to the Defendant escalator mechanic, but it reversed and remanded the trial court's decision regarding the stadium's owner.

[Eriksson v. Nunnink, 120 Cal. Rptr. 3d 90 \(Cal. Ct. App. 2011\).](#) Plaintiffs sued Defendant for wrongful death and negligent infliction of emotional distress in conjunction with their daughter's

untimely death when her horse that had been previously deemed unfit to ride fell on top of and crushed her during a competition. Plaintiffs had signed a waiver of release from liability prior to the competition. Although Defendant had served as Plaintiffs' daughter's riding coach rather than the horse's trainer, the California Court of Appeals noted that the evidence showed that Defendant was responsible to a certain extent for determining the fitness of the horse and whether or not a horse would participate in a particular event. After analyzing Defendant's duty and breach of duty, the court reversed the trial court's judgment in favor of Defendant, holding that triable issues of fact existed as to whether Defendant's conduct fell outside the scope of the release.

[*Faulkner v. Greenwald*, No. 2009-CA-001802-MR, 2011 KY. App. LEXIS 45 \(Ky. App. Mar. 11, 2011\).](#) Defendant, as athletic director at Seneca High School in Louisville, Kentucky, was responsible for the safety and maintenance of the various athletic facilities at the high school. Plaintiff, a parent of a Seneca High School athlete, was injured when a concession stand door dislodged and hit her. Subsequently, Plaintiff sued Defendant alleging he was negligent as to the maintenance of the concession stand door. The trial court granted summary judgment in favor of Defendant based on qualified immunity, holding that the maintenance of the concession stand is a discretionary act. However, the Court of Appeals of Kentucky reversed and remanded the proceeding, concluding that maintenance of the concession stand is a ministerial act; thus, qualified immunity does not apply.

[*Finn v. Barbone*, No. 511136, 2011 N.Y. App. Div. LEXIS 3254 \(N.Y. App. Div. 2011\).](#) Plaintiff, a skier, was injured as she exited a ski-lift at West Mountain Ski Resort. Although those risks associated with the ski-lift are included in the inherent risks of skiing, the lower court held that allegations that the placement of the snowmaking guns related to the ski-lift increased the inherent risks and were sufficient to survive Defendant's motion for summary judgment. This court affirmed.

[*Fontaine v. Boyd*, C.A. No. WC-200-0794, 2011 R.I. Super. LEXIS 27 \(R.I. Super. Ct. Feb. 21, 2011\).](#) Following a skiing collision between the parties, Plaintiff filed suit alleging that Defendant acted negligently while skiing, causing the collision and Plaintiff's resulting injuries. Defendant responded, arguing that the doctrine of primary assumption of the risk applied and she owed no duty to protect Plaintiff from the inherent risks of skiing. Plaintiff urged that skiers owe other skiers the duty to act with reasonable care. The court noted that this question was a novel one for New Hampshire, but athletes in other sports do not have a duty to protect others from inherent risks of those sports. Recognizing that fact and other factors, the court concluded that Defendant had no duty to protect Plaintiff from the inherent dangers of skiing. Rather, the duty owed was to simply not act in such a way so as to unreasonably increase those inherent risks. As Defendant did not breach that duty, the court granted Defendant's motion for summary judgment.

[*Gill v. Town of N. Hempstead*, No. 2010-00993, 2011 N.Y. App. Div. LEXIS 2983 \(N.Y. App. Div. Apr. 12, 2011\).](#) Plaintiff Timothy Gill was injured when he stepped into a hole for a water main valve while watching his son play baseball at a property maintained by Defendant. The lower court in this negligence action denied Defendant's motion for summary judgment. After considering information provided by Defendant in support of its motion, the court here reversed

the lower court's decision, holding that Defendant met its burden of establishing that it did not have actual or constructive notice of the condition.

Goldin v. Bally Total Fitness Corp., No. 3232, 2011 Phila. Ct. Com. Pl. LEXIS 54 (Pa. C.P. Mar. 8, 2011). Plaintiff, Executor for the Estate of Goldin, appealed an Order granting Defendants' motion for summary judgment in Plaintiff's negligence action following Goldin's cardiac arrest while exercising at a Bally's Total Fitness establishment and resulting death. The crux of Plaintiff's argument was that Defendant was negligent in failing to have an automated external defibrillator at the establishment. Based on precedent in Pennsylvania that fitness clubs do not have a duty to carry or use such a device, the Common Pleas Court of Philadelphia County affirmed.

[*Griffin v. Simpson, 948 N.E.2d 354 \(Ind. Ct. App. 2011\).*](#) On behalf of their daughter, a minor, Plaintiffs filed a personal injury action against a number of parties following an incident in which their daughter was injured falling from a golf-cart at a teammate's grandparent's home during a break from volleyball tournament games. At issue on appeal was Plaintiffs' contentions that the trial court erred in granting the defendant volleyball coach and defendant Team Indiana Volleyball, Inc. (TIV)'s motions for summary judgment. Noting a number of circumstances, such as the fact that the informal gathering was not a team event, the court held that the defendant volleyball coach had no duty to supervise the injured player's golf cart activity, so she was not negligent. As such, TIV was also not liable under a respondeat superior theory. Thus, the court affirmed the trial court's grant of summary judgment in favor of both Defendant TIV and Defendant Coach Murray, the volleyball coach.

[*Guerin v. IcePro, LLC, No. G042455, 2011 Cal. App. Unpub. LEXIS 556 \(Cal. Ct. App. Jan. 25, 2011\).*](#) Plaintiff appealed following the trial court's grant of summary judgment in favor of Defendant, IcePro LLC regarding a premises liability action for injuries Plaintiff sustained while playing broomball at Defendant's ice rink. Finding that Defendant IcePro met its burden of showing the applicability of primary assumption of the risk to the situation at hand, a complete defense to Plaintiff's claim, this court affirmed.

[*Haymon v. Pettit, No. 344 CA 10-01730, 2011 N.Y. App. Div. LEXIS 2356 \(N. Y. App. Div. Mar. 25, 2011\).*](#) Plaintiff appeals from a grant of summary judgment to Defendant City of Auburn in Plaintiff's suit for injuries sustained by her son when he was hit by car while crossing the street in an attempt to retrieve a baseball hit outside a stadium. Concluding that the lower court correctly determined that the City of Auburn met its burden of establishing that it did not owe a legal duty to Plaintiff, this court affirmed the decision granting summary judgment to Defendant City of Auburn.

[*Hill v. Nat'l Grid, 11 A.3d 110 \(R.I. 2011\).*](#) Plaintiff Austin Hill was injured when he tripped over a metal pole stuck in the ground, while playing touch football on a vacant lot owned by Defendant National Grid. Subsequently, Plaintiff filed suit, alleging that Defendant negligently maintained its property, which resulted in Hill's injuries. The Superior Court granted Defendant's motion for summary judgment, holding that Hill was a trespasser and there had been no showing that Defendant had known or should have known that children were trespassing onto the property. Here, however, the court vacated the judgment of the Superior Court, concluding

that disputed material facts exist regarding whether the defendant knew or had reason to know that children were likely to trespass.

[Horvath v. Ish, No. 25442, 2011 Ohio App. LEXIS 1907 \(Ohio Ct. App. May 11, 2011\).](#) Plaintiff, Angel Horvath, suffered severe injuries when she was skiing at a ski resort and Defendant cut across the hill into the skiing area from the snowboarding area and collided with Plaintiff. Subsequently, Plaintiffs filed suit, alleging that Defendant acted negligently, careless, recklessly, willfully, and wantonly. The trial court granted summary judgment for the defendants on the grounds that colliding with another skier was an open and obvious danger for Plaintiff, a risk she assumed. The issue on appeal was whether the trial court erred in granting summary judgment by concluding that a particular ski-related statute imposing duties on skiers did not apply to collisions between skiers. After concluding that a snowboarder, such as Defendant in this case, falls within the definition of “skier” for purposes of the statute, the Court of Appeals found that the trial court erred in interpreting the statute; thus, the case was reversed and remanded.

[Hutts v. W. Heights Indep. Sch. Dist. No. 1-41, No. 108785, 2011 Okla. Civ. App. LEXIS 26 \(Okla. Civ. App. Jan. 25, 2011\).](#) A minor student was injured while lifting weights as part of a weightlifting class to fulfill a physical education requirement. The student was required to attempt to increase his own previous maximum lift weight, but at no point was he competing against other students or training for a future competition. The Plaintiff, one of the student’s parents, filed a negligence action against Defendant, the school district, and the trial court granted summary judgment in favor of Defendant. On appeal, the issue was whether a student’s participation in a required weightlifting class that does not entail competition against other students or training for future competition constitutes “participation in . . . any . . . athletic contest” for purposes of state immunity from liability. Holding that the trial court’s decision would broaden the scope of the statute and prior court interpretation of it given that the student was merely trying to best his individual performance, the appellate court reversed and remanded the trial court’s decision.

[Hyde v. N. Collins Cent. Sch. Dist., No. 546 CA 10-02520, 2011 N.Y. App. Div. LEXIS 3353 \(N.Y. App. Div. Apr. 29, 2011\).](#) Plaintiff filed suit following an injury sustained by her daughter when she slid into second base during a junior-varsity softball game. Although her daughter was aware that sliding was part of the game and had some experience playing softball, she claimed that she was not taught how to slide in practice. After an order denying Defendant’s summary judgment motion based on Plaintiff’s daughter’s assumption of risk, Defendant appealed. This court affirmed, holding that “there is a question of fact whether, based on her experience, plaintiff’s daughter was aware of and appreciated the risks of sliding.”

[Isaiah v. Unified Gov’t of Wyandotte County, 249 P.3d 912 \(Kan. Ct. App. 2011\).](#) Plaintiff, DeWayne Isaiah, injured himself during a softball game at a park owned by the Defendant when he planted his foot on a water grate in the ground and subsequently filed a petition for damages. The district court granted summary judgment for the Defendant, finding that Plaintiff’s action was barred by the applicable statute of limitations. Additionally, the district court found that there was insufficient evidence to prove that Defendant had committed gross and wanton negligence so as to avoid the governmental immunity under the Kansas recreational-use exception. Here, the court affirmed the district court’s grant of summary judgment, finding that

the district court did not err in granting summary judgment based on the statute of limitations. Given this finding, the court of appeals did not reach the issue of the recreational-use exception.

[Lomonico v. Massapequa Pub. Schools, No. 2010-08819, 2011 N.Y. App. Div. LEXIS 4125 \(N.Y. App. Div. May 17, 2011\).](#) Defendant Massapequa Public Schools appealed from an order of the lower court that denied its motion for summary judgment to dismiss the complaint. Plaintiff cheerleader was injured during cheerleading practice while performing a stunt and alleged that Defendant's negligence in failing to instruct and supervise the cheerleaders properly, and failure to provide protective floor mats, caused Plaintiff's injuries. The court granted Defendant's motion for summary judgment, reasoning that the Plaintiff assumed the risk of injury by participating in the activity of cheerleading. The court made sure to explain that a school must still exercise ordinary reasonable care to protect student athletes voluntarily involved in extracurricular sports from unassumed, concealed, or unreasonably increased risks.

[Karalyos v. Bd. of Educ. of Lake Forest Cmty. High Sch. Dist. 115, No. 10 C 2280, 2011 U.S. Dist. LEXIS 23871 \(N.D. Ill. Mar. 9, 2011\).](#) Plaintiff filed a nine-count complaint after suffering injuries following a dive while attending a swimming and diving program at Lake Forest High School in the defendant school district. At issue before the court was Defendants motions to dismiss Plaintiff's complaint. Defendants urged that, as a municipal corporation, they and their employees were immune from liability under the Illinois Local Governmental and Governmental Employees Tort Immunity Act. After analyzing the applicable statutory section, the court denied Defendants' motion to dismiss.

[Krebs v. Town of Wallkill, No. 2010-04271, 2011 N.Y. App. Div. LEXIS 3787 \(N.Y. App. Div. May 3, 2011\).](#) Plaintiff Krebs suffered injuries when his foot became caught in detached netting on a tennis court owned by Defendant Town of Wallkill. In the resulting negligence action, Defendant moved for summary judgment, arguing that Plaintiff assumed the inherent risks of tennis; the lower court denied the motion. On appeal, this court found that the cause of Plaintiff's injury was directly related to the sport of tennis, and as such, reversed the lower court's decision.

[Matson v. Or. Arena Corp., No. A139601, 2011 Ore. App. LEXIS 643, \(Or. Ct. App. 2011\).](#) Plaintiff Matson was injured when she fell forty feet from a railing enclosing an outdoor lounge at The Rose Garden, the arena where the Portland Trail Blazers play. Plaintiff sued the developer and owner of the arena, Oregon Arena Corporation, for nine specific allegations of negligence. The trial court found Defendant fifty percent at fault. Defendant appealed, claiming that the trial court erred in its jury instructions. The Court of Appeals affirmed the trial court's decision, stating that the trial court did not err because the jury instructions read to the jury were consistent with Defendant's theory of the case.

[Maybloom v. Jackson Twp. Bd. of Educ., No. A-5906-09T3, 2011 N.J. Super. Unpub. LEXIS 508 \(N.J. Super. Ct. App. Div. Mar 3, 2011\).](#) Plaintiff Maybloom appealed from the grant of summary judgment for Defendants. Plaintiff was injured when she got her foot stuck in a divot and twisted her knee while playing flag football in gym class. Plaintiff had to undergo multiple surgeries. On appeal, plaintiff argued that the principles of ordinary negligence should be applied when a school's negligent supervision of a student is the cause of the student's injury

from a dangerous condition of school property. The court did not agree with this argument stating that there was no proof that the school did not exercise due care to detect any dangerous conditions; accordingly, it affirmed.

[McCassy v. Superior Court, No. E050743, 2011 Cal App. Unpub. LEXIS 2988 \(Cal. Ct. App. 4th Dist. Apr. 21, 2011\).](#) Kelly Posthuma was injured while riding her motorcycle on a motocross racetrack. She sued the owners and operators of the track based on a theory of premises liability. She tried arguing that a PVC pipe in the vicinity of the track was a contributing factor. The court held that Posthuma failed to raise a triable issue of fact and granted the motion for summary judgment.

[McNamee v. Clemens, 762 F. Supp. 2d 584 \(E.D.N.Y. 2011\).](#) Plaintiff Brian G. McNamee (player's former trainer) brought this action against Defendant William Roger Clemens (former MLB player), alleging state and common law causes of action for defamation, malicious prosecution, and intentional infliction of emotional distress, and sought damages in excess of \$75,000. Clemens' motion to dismiss for lack of personal jurisdiction was denied. Clemens' motion to dismiss McNamee's claim for defamation was denied in part and granted in part. The defamation claims based on statements that McNamee has a mental disorder and statements that McNamee was extorting Clemens were the two claims that were denied. Clemens' motion to dismiss McNamee's IIED claim was granted. McNamee's malicious prosecution claim was dismissed.

[Moffatt v. N. Colonie Cent. Sch. Dist., No. 509875, 2011 N.Y. App. Div. LEXIS 1514 \(N.Y. App. Div. Mar. 3, 2011\).](#) Parents of basketball game attendee, Tyler Moffatt, sued the North Colonie Central School District seeking to recover damages for injuries Moffatt allegedly sustained in an altercation with a group of high school students. The parents alleged that North Colonie provided inadequate security and negligent supervision at the game, which led to Moffatt's injuries. The court affirmed the summary judgment granted to Defendant because Plaintiff did not establish that the school authorities had sufficiently specific knowledge or notice of the dangerous conduct that caused the injury.

[Nitkiewicz v. Valleywood Golf Course, No. L-10-1184, 2011 Ohio App. LEXIS 688 \(Ohio Ct. App. Feb. 18, 2011\).](#) Frances Nitkiewicz lost her footing and fell while walking at the Valleywood Golf Course, sustaining injuries that required medical attention. She filed a complaint against the golf course alleging negligence and loss of consortium. The trial court granted summary judgment to the golf course after finding that the golf course had no indication that there was a hole under the sod where Nitkiewicz was walking; Nitkiewicz appealed. The court of appeals affirmed, finding that there was no evidence that the golf course created a hazard or had any notice of the condition of the ground.

[Ormiston v. Cal. Youth Soccer Ass'n, No. C064002, 2011 Cal. App. Unpub. LEXIS 4226 \(Cal. Ct. App. June 6, 2011\).](#) Ormiston and her parents sued the Davis Youth Soccer League (DYSL), the California Youth Soccer Association (CYSA), and the City of Davis for negligence and premises liability after she injured her knee at a soccer tournament. The trial court granted summary judgment for the defendants based on a release of liability signed by the girl's mother. Sixteen-year-old Ormiston was playing in a soccer tournament organized by defendants when

she fell and landed on a plastic sprinkler head embedded in the grass at ground level. To participate in the tournament, Ormiston's mother had signed a CYSA membership form that contained a release of liability. Plaintiffs raised two issues on appeal: (1) the scope of the release and (2) the readability of the release. The court explained that a plaintiff's injuries are within the scope of the release if the injuries are reasonably related to the purpose for which the release was signed. Ormiston was playing soccer when she was injured; the release was principally directed at playing soccer. She just so happened to land on a plastic sprinkler head, but this is not outside the realm of ordinary negligence. The injury was so reasonably related to the release that there is no room for an alternative, semantically reasonable meaning of the release. Accordingly, the judgment was affirmed.

[*Pacquiao v. Mayweather, No. 2:09-cv-2448-LRH-RJJ, 2011 U.S. Dist. LEXIS 29804 \(D. Nev. Mar. 18, 2011\).*](#) Emmanuel Pacquiao, a premier professional boxer, filed a complaint in federal court for defamation *per se* against defendants Floyd Mayweather, Jr.; Oscar de la Hoya; de la Hoya's manager Richard Schaefer; Roger Mayweather; Floyd Mayweather, Sr.; and Mayweather Promotions, LLC. Pacquiao alleges that Defendants stated publicly that he has used, and is using, performance enhancing drugs, including steroids and human growth hormone. Defendants sought to dismiss Plaintiff's claims for failure to state a claim upon which relief can be granted. The court found that Defendants' alleged statements were actionable defamatory statements because they falsely asserted an objective fact; that Pacquiao had sufficiently pled malice in the amended complaint; and that Pacquiao's conspiracy allegations were sufficiently within the context of the defamation *per se* claim. Accordingly, the court denied Defendants' motions to dismiss.

[*Palladino v. Lindenhurst Union Free Sch. Dist., No. 2010-05217, 2011 N.Y. App. Div. LEXIS 4298 \(N.Y. App. Div. May 24, 2011\).*](#) Plaintiff's minor son was playing handball on Defendant's premises when he allegedly stepped on an improperly placed grate and sustained injuries. Plaintiff brought an action to recover damages for personal injuries. Prior to the incident, the son was aware of the conditions of the grate. Defendant motioned for summary judgment to dismiss the complaint. The court stated that the son assumed the risk of injury by voluntarily participating in the handball game, and as such, granted Defendant's summary judgment motion.

[*Pereira v. Fitzgerald, 21 A.3d 369 \(R.I. 2011\).*](#) Pereira brought suit to recover damages for injuries she sustained at Kent Height Park in East Province. Defendant Fitzgerald, Treasurer of the City of East Province, moved for summary judgment based on recreational immunity and prevailed at both the Superior Court and, in this decision, the Supreme Court of Rhode Island. After watching her grandson's soccer game at Kent Height Park, Pereira walked to her car and was injured when she fell into a large, unmarked ditch that was covered in grass. Subsequently, she filed a personal injury action against the city. Defendant claimed that Rhode Island's recreational-use statute shielded the city from liability. The relevant inquiry focuses on the nature and scope of the activity for which the premises are held open to the public. As such, the statute was applicable because the nature of Kent Heights Park qualified it as open to the public for recreational activity. Also, the area where Pereira fell was open to the public. Accordingly, the court affirmed.

Pfenning v. Lineman, 947 N.E.2d 392 (Ind. 2011). Plaintiff, a minor girl struck by a golf ball at a golf outing, filed an action for damages against the estate of her grandfather, who brought her to the event; the golfer that hit the ball that struck her; the tavern that promoted the event; and the operator of the golf course. The trial court granted summary judgment for all four defendants, and the court of appeals affirmed. Plaintiff appealed. The Supreme Court of Indiana affirmed summary judgment for the golfer and the operator of the golf course, but reversed summary judgment as to the tavern and the grandfather. The court rejected the concept that a participant in a sporting event owes no duty of care to protect others from inherent risks of the sport, and instead adopted the view that summary judgment is proper due to the absence of breach of duty when the conduct of a sports participant is within the range of ordinary behavior of participants in the sport and therefore reasonable as a matter of law.

Potrzebowski v. Redline Raceway, No. 3:10-0722, 2011 U.S. Dist. LEXIS 55871 (M.D. Pa. May 25, 2011). Plaintiff Kimberly Potrzebowski fell and sustained injuries while walking from an elevated spectator area to the lower pit area at defendant Redline Raceway in order meet her husband who had just completed a race. Her husband had signed a Release and Waiver of Liability and Indemnity Agreement prior to competing in the race. Defendants argue that they should be permitted to file a third-party complaint against the plaintiff's husband because the Indemnity Agreement that he signed requires him to indemnify the defendants for any damages or liability they may incur due to Plaintiff's injuries. Plaintiffs argued that there was no clear and unequivocal language stating that the husband agreed to indemnify the defendants for injuries sustained by a third party due to the defendant's sole negligence. The court agreed with the plaintiffs and denied Defendants' motion for leave to file a third-party complaint against the husband.

Pryor v. Iberia Parish Sch. Bd., 60 So.3d 594 (La. 2011). Pryor, a 69-year-old woman recovering from hip surgery one year prior, attended her grandson's football game at a facility owned and maintained by the Iberia Parish School Board. She fell while descending the bleachers and sustained injuries; as a result, she filed suit against the school board claiming that the bleachers constituted an unreasonable risk of harm. The district court found for the school board, and the court of appeals reversed and rendered judgment for Pryor. The Supreme Court of Louisiana reversed the court of appeals' decision and reinstated the district court's judgment. The court used a risk-utility balancing test to determine if the bleachers were unreasonably dangerous and concluded that the social utility of the bleachers outweighed any minimal risk posed by the gap between the seat boards where Pryor fell. There was also proof that Pryor was aware of the open and obvious risk, and as such, the school board had no duty to protect.

Pugliese v. Grande, No. CV085003753S, 2011 Conn. Super. LEXIS 473 (Conn. Super. Ct. Mar. 7, 2011). Plaintiff Pugliese, a gym teacher, filed a six-count defamation claim against defendants Grande and Maulucci in relation to four alleged instances where defamatory statements were made by defendants. Pugliese was attending his son's baseball practice where he allegedly had a conversation with another player from his son's team, Maulucci's son, after the practice, which left Maulucci's son feeling frightened and threatened by Pugliese. Maulucci reported the incident to Grande, the assistant principal of the school and discussed the matter via email, letter, and phone conversations; these communications were the basis of Pugliese's claims. Defendants moved for summary judgment, stating that a federal rule prohibits a public official from

recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with actual malice. The court found that Pugliese, as a public school teacher, was a public official and that the conduct in question was sufficiently related to his role as a public official. The court also found that Pugliese did not put forth clear and convincing evidence that the defendants' statements were made with actual malice. The court granted Defendants' summary judgment motion.

[Ramsey v. Gamber, No. 3:09cv919-MHT \(WO\), 2011 U.S. Dist. LEXIS 11893 \(M.D. Ala. Feb. 7, 2011\).](#) Plaintiff Austin Chaz Ramsey, a former football player at Auburn University, suffered a back injury while lifting weights. Dr. Goodlett was the primary coordinator for Ramsey's rehabilitation. Defendant Arnold Gamber was the head athletic trainer for Auburn's football team and was required to follow Goodlett's medical instructions regarding athlete patients. Ramsey charged that Gamber failed to supervise his rehabilitation properly, in violation of state law, and that failure caused a second corrective surgery, disqualification of his athletic scholarship, and deprivation of a career as a professional football player. Ramsey asserted three claims under Alabama law: negligence, wantonness, and interference with the physician-patient relationship. Gamber moved for summary judgment, and the court granted the motion. The court explained that Ramsey's negligence and wantonness claims failed because Gamber was not liable for the actions of the weight-room staff that supervised Ramsey. The court also explained there was no "interference with a physician-patient relationship" claim recognized under Alabama law or under the Restatement of Torts.

Rodriguez v. City of N.Y., 82 A.D.3d 563 (N.Y. App. Div. 2011). Rodriguez, a spectator at his son's baseball practice, was struck in the eye by a baseball as he stood at an open gate in a fence surrounding a baseball field. He sued the City of New York and the City's Department of Parks and Recreation to recover for personal injuries. The defendants moved for summary judgment, and the court granted the motion. The court held that dismissal was appropriate because Rodriguez assumed the risk. Rodriguez was aware that batting practice was taking place as he was standing at the open gate.

[Schramel v. Indep. Sch. Dist. 748, No. A10-983, 2011 Minn. App. Unpub. LEXIS 163 \(Minn. Ct. App. Feb. 22, 2011\).](#) Dustin Schramel, nine years old, was playing on playground equipment at school when he fell and sustained significant injuries. His mother commenced this action on behalf of her son, asserting multiple claims of negligence against the school district and product-liability claims against the manufacturer of the playground equipment. The school district moved for summary judgment, arguing that it was entitled to statutory immunity under Minnesota statutes, including a recreational-use statute, and entitled to official immunity under common law. The district court granted the school district's motion for summary judgment as to claims based on statutory immunity but denied the motion as to claims based on the recreational-use immunity and based on the common-law doctrine of official immunity. The appellate court affirmed in part, reversed in part, and remanded. The court explained that the school district was entitled to recreational-use immunity because the record did not suggest that the playground equipment presented an unreasonable risk of death or serious bodily harm.

[*Schwartz v. Martin, No. 2010-08318, 2011 N.Y. App. Div. LEXIS 2616 \(N.Y. App. Div. Mar. 29, 2011\).*](#) Plaintiff purchased a racing license from Defendant USA Cycling, Inc. Each license application included an “acknowledgment of risk, release of liability, indemnification agreement, and covenant not to sue,” which plaintiff signed. Two months after signing the release, Plaintiff was injured during a club-sponsored race and sustained injuries. He brought suit against Terence Martin (the cyclist who injured plaintiff), Century Road Club Association, and USA Cycling, Inc., along with third-party defendants. The appellate court granted the defendants’ motion for summary judgment and dismissed the complaint. The court explained that the releases did not violate “General Obligations Law § 5-326, and that while an enforceable release will not insulate a party from grossly negligent conduct, the alleged acts of the defendants did not rise to the level of intentional wrongdoing or reckless indifference to the rights of others.”

[*Shack v. NBC Universal, Inc., No. E049374, 2011 Cal. App. Unpub. LEXIS 1616 \(Cal. Ct. App. Mar. 4, 2011\).*](#) Vincent Shack sued six defendants, including the Ladies Professional Golf Association (LPGA), alleging two causes of action against each of them for negligence and intentional tort. The claims arose from an incident where Shack alleged that an NBC cameraman intentionally struck him in the neck while recording an errant tee-shot on the 18th hole. The defendants successfully moved to strike both causes of action under the anti-SLAPP statute (Code of Civ. Pro. § 425.16). Shack appealed, and the court of appeal affirmed. The anti-SLAPP statute establishes a two-step procedure whereby the trial court evaluates the merits of a plaintiff’s cause of action, using a summary-judgment-like procedure. The defendant must first show that the cause of action arises from constitutionally protected activity (protected speech or petitioning activity); the plaintiff must then show a reasonable probability of prevailing on the merits. The court concluded that both causes of action were properly stricken because both could be based solely on defendants’ protected activities.

[*Sherry v. E. Suburban Football League, No. 295792, 2011 Mich. App. LEXIS 512 \(Mich. Ct. App. Mar. 17, 2011\).*](#) Renee Sherry, mother of cheerleader Jessica Sherry, appeals from an order granting summary disposition in favor of Defendants. Jessica was injured while performing a stunt at a camp for cheerleaders of the East Suburban Football League. Jessica claimed her injuries occurred as a result of Defendants’ negligence and gross negligence in failing to properly train and supervise the cheerleaders. The Michigan Court of Appeals reversed and remanded, stating that the ordinary negligence principles apply, rather than the reckless misconduct standard of care that the trial court applied, and genuine issues of material fact remain regarding whether defendants acted negligently in the supervision of Jessica. Reasonable minds could differ regarding whether an individual exercising ordinary care would foresee that a young girl without proper supervision or training would become injured in an attempt to execute an advanced cheerleading stunt with a group of high school girls on a grass football field and whether it is foreseeable that unsupervised, high school girls assisting in the execution of difficult cheerleading stunts will become inattentive to the point of creating a risk of harm.

[*Shields v. City of N.Y., No. 12753/09, 2011 N.Y. Misc. LEXIS 1157 \(N.Y. Sup. Ct. Mar. 23, 2011\).*](#) Plaintiff Reynud Shields, a minor, was injured when he was playing lacrosse without protective gear at the Bayside High School Field. His father brought this action for him to recover damages for personal injuries. Defendants, the City of New York, the Public Schools

Athletic League, the City of New York Department of Education, the New York City Board of Education, and the Big Apple Game, moved for summary judgment, but the court granted only the City of New York's motion. Defendants presented sufficient evidence to establish a prima facie case for summary judgment, but the plaintiff raised a triable issue of fact as to the reasonableness of Defendants' actions when Plaintiff presented the affidavit of a fellow lacrosse coach stating that failure to provide safety equipment is a breach of sound coaching practices. Plaintiff had also repeatedly requested safety equipment and was assured that it would be provided. A school district remains under a duty to exercise ordinary reasonable care to protect student athletes involved in extracurricular sports from unreasonably increased risks. The motion was denied as to the remaining defendants.

Simmons v. Saugerties Cent. Sch. Dist., No. 510530, 2011 N.Y. App. Div. LEXIS 1792 (N.Y. App. Div. 2011). William H. Simmons, a sixteen-year-old sophomore at the time, was injured when he stepped into a large hole while playing touch football in the "bus circle" during recess at Defendant's high school. The hole was about one foot in diameter, one foot deep, and had been in existence for at least eighteen months prior to Simmons' accident. Simmons, by his parents, commenced a personal injury action against defendant alleging negligent supervision. Defendant moved for summary judgment, but the lower court denied the motion. Defendant appealed; the appellate division affirmed. The school district claimed that the student primarily assumed the risk. The court explained that a school's negligent supervision may constitute a failure to exercise reasonable care in protecting a student from an unreasonably increased risk. Also, the doctrine of assumption of risk does not exculpate a landowner, including a school, from liability for ordinary negligence in maintaining a premises. There were questions of fact regarding whether defendant's negligent maintenance of the bus circle created a dangerous condition over and above the usual dangers that are inherent in the sport of touch football.

Simpson v. Baronne Veterinary Clinic, Inc. No. H-10-3032, 2011 U.S. Dist. LEXIS 29873 (S.D. Tex. Mar. 22, 2011). This tort case concerned the plaintiff's race-horse that allegedly sustained injuries as a result of the defendant's negligent veterinary treatment. The horse is a registered racing quarter horse named "Jess for the Memories" and was evaluated by Defendant's veterinarian, Edgar Baronne, II, D.V.M., for lameness. Baronne gave Jess injections to relieve the lameness. Some days later, Jess was found to have fluids in one of his joints and was taken to another veterinarian, Dr. Hays. Dr. Hays could not rehabilitate Jess, and Jess could no longer race. Plaintiffs asserted claims for common law negligence and for gross negligence under Texas law. They also sought damages for Jess's lost potential profits. Defendant filed a motion for summary judgment; the court denied the motion in part and granted it in part. Defendant's motion with respect to the plaintiffs' negligence claim was denied. This was due to the fact that the plaintiff had proffered sufficient expert testimony and evidence of infection to establish a genuine issue of material fact. Defendant's motion with respect to Plaintiffs' gross negligence and lost potential profits, however, was granted. The plaintiff presented no evidence to support their gross negligence claim, and Texas law does not allow an injured animal's owner to recover the animal's lost potential profits.

Stirgus v. St. John the Baptist Parish Sch. Bd., No. 11-CA-47, 2011 La. App. LEXIS 763 (La. Ct. App. June 14, 2011). Plaintiffs sued Defendants following injuries Plaintiff Armand Stirgus suffered when he fell during a portion of a football practice that had been moved indoors

following an outdoor portion in the rain. The trial court granted Defendants' motion for summary judgment, concluding that holding an indoor football practice while some players were still wearing wet clothing following an outdoor portion in the rain did not create an unreasonable risk of harm and Plaintiffs failed to show the existence of a significant amount of water on the floor that would have created an unreasonably dangerous situation. Before this court was Plaintiffs' appeal regarding the trial court's conclusions and grant of summary judgment. Finding that reasonable minds could differ as to the reasonableness of the coaches' actions, the court reversed the trial court's grant of summary judgment.

Strauss v. Plainedge High Sch., No. 6587/09, 2011 N.Y. Misc. LEXIS 3561 (N.Y. Sup. Ct. June 20, 2011). Strauss commenced action against Plainedge High School and Valley Stream North High School after slipping on water and falling while officiating a basketball game between the two schools. Strauss alleged that the schools were negligent in the ownership, operation, management, supervision, use, and control of the premises. Defendants moved for summary judgment on the ground that they did not create the alleged condition, nor did they have actual or constructive notice of the alleged condition. They also asserted that Plaintiff voluntarily assumed the risk associated with officiating. Strauss and another official had inspected the basketball court prior to the game and had deemed the court safe to play. Strauss fell within the first couple of minutes of the game; he was backpedaling after a sudden change of possession and fell while turning to run forward. Each coach stated that neither of them had observed any water or liquid at or about the location of the accident and had not seen anyone mop up at or around the location where Strauss fell. Finding insufficient evidence that a dangerous or defective condition existed and that the defendant either created the condition or had actual or constructive notice of it, the court granted Defendants' motion.

Turk v. Town of Westborough, No. CV 08-0362 D, 2011 Mass. Super. LEXIS 48 (Mass. Super. Ct. Feb. 22, 2011). Plaintiff Alexander Turk fell while lifting weights at Westborough High School, a public school owned and operated by the defendant. Turk was performing a squatting exercise when he felt his foot catch on something and subsequently fell. Prior to his accident, the school had installed mats to the weight room, but the mats were not fixed and were of varying thickness, thus causing an uneven floor surface. Turk filed suit, claiming that the town was negligent and willfully reckless for failing to supervise weightlifting activities; failing to provide warnings about the dangers associated with weight lifting; and failing to safely maintain and place floor mats in the weight room safely. The town moved for summary judgment contending that it is immune from suit; the court struck down both immunity claims. The town further argued that it was entitled to summary judgment because Turk did not establish that the mats were the proximate cause of his injuries. Turk, however, provided evidence, through his deposition, that the uneven placement of the mats caused him to fall when his foot caught on either a small space or elevation. The court held that this was sufficient evidence to survive a summary judgment motion. The town's motion for summary judgment as to the negligence counts was denied. Lastly, the town argued that it was entitled to summary judgment on the claim for willful, wanton, and reckless conduct because Turk failed to meet the heightened standard applicable to this claim. The court agreed with the town and granted summary judgment for willful, wanton, and reckless conduct claim.

[Williams v. Richland Sch. Dist. No. 400, No. 28982-6-III, 2011 Wash. App. LEXIS 1332 \(Wash. Ct. App. June 7 2011\).](#) Plaintiff Williams was struck in the mouth by a line drive foul ball while attending her daughter's softball game at a school operated by Defendant. She filed a complaint, alleging that Defendant negligently failed to provide a safe spectator area. Defendant filed a motion for summary judgment, arguing that Williams assumed the risk of injury. The trial court granted the motion; Plaintiff then appealed. Williams first argued that the District waived its ability to assert the assumption of risk defense because the defense was not timely pleaded. The court explained that even though Defendant did not assert the defense in an answer, because Williams addressed the merits of the defense in her summary judgment response, she implicitly consented to trying the defense. As to assumption of risk, Williams stated that she knew foul balls could enter the spectator area, had seen foul balls enter the spectator injury, and knew that a spectator could be hit by a foul ball. Williams also voluntarily chose to sit in an unscreened area of the field. As such, the court of appeals found that the trial court properly granted summary judgment, and it affirmed.

UNITED STATES ANTI-DOPING ASSOCIATION ARBITRATION DECISION

[USADA v. Block, AAA No. 771900015410 \(Mar. 17, 2011\).](#) This arbitration decision concerned anti-doping violations against Mark Block, a track and field coach and agent. The United States Anti-Doping Agency (USADA) brought anti-doping charges against Block, and the American Arbitration Association (AAA) panel decided the case. The charges against Block stemmed from evidence connected to the Bay Area Laboratory Cooperative drug conspiracy, in which prohibited doping substances and techniques were distributed and used. USADA accused Block of assisting and inciting others to use prohibited substances or prohibited techniques, as well as trading, trafficking, and distributing various prohibited substances. Specifically, Block was accused of distributing prohibited substances to his wife, Zhanna Block, an IAAF track and field athlete. Additionally, USADA accused Block of covering up his violations during the proceedings and thereby violating additional rules. The panel agreed with USADA and found that Block committed anti-doping violations. As a result, the panel declared Block ineligible to participate in track and field-related activities for ten years.

UNITED STATES OLYMPIC COMMITTEE ARBITRATION DECISIONS

[Barry v. USA Boxing, Inc., AAA No. 77190E0004911JENF \(Mar. 8, 2011\) \(Alperstein, Donald, Arb.\); Barry v. USA Boxing, INC., AAA No. 77 190 E00049 11 JENF \(Mar. 3, 2011\) \(Alperstein, Donald, Arb.\).](#) This arbitration decision stemmed from the Respondent and national governing body, USA Boxing, implementing new procedures for the qualification and selection of all gendered participants in the 2011 Pan-American Games. With the new procedures in place, only athletes who won in the 2010 National Championship were eligible to compete at the Pan-American Games. The Claimant, a female boxer, on behalf of herself and other athletes who had not won at the 2010 National Championships, challenged the new procedures as a violation of the right to participate in amateur athletic competitions pursuant to the Ted Stevens Olympic and Amateur Sports Act (ASA) and the U.S. Olympic Committee's (USOC) Bylaws. On March 3, 2011, upon analyzing the USOC Bylaws, the arbitrator ruled that winners of the contested National Championship weight classes, Box-Off-qualifying athletes, and all athletes qualified to enter preliminary or qualifying events for the Pan-American Games should be informed of the arbitration proceeding and given the right to be heard. The arbitrator proceeded

to hear the matter on its merits, and on March 8, found for the Claimant, holding that the new procedures were null and void. The arbitrator then ordered USA Boxing to host a single-elimination boxing tournament—in compliance with the ASA, USOC Bylaws, and USA Boxing’s governing documents—to select athletes to represent the United States at the American Boxing Confederation’s qualifying competition series to further qualify for the 2011 Pan-American Games.

WORLD INTELLECTUAL PROPERTY ORGANIZATION ARBITRATION DECISIONS

[*Barclays Bank, PLC v. Barclaysatpworldtourfinal.com, WIPO Case No. D2010-2152 \(2011\) \(Samuels, Jeffrey, Arb.\)*](#). This arbitration decision concerned the Respondent’s registration of the domain name, “barclaysatpworldtourfinal.com.” The Complainant is a major global financial services provider engaged in retail banking, credit cards, corporate and investment banking, wealth management, and investment management services that owns a number of United Kingdom and European Union registrations for the trademark “BARCLAYS.” Additionally, Complainant owns domain name registrations in conjunction with its official title sponsorship of the ATP World Tour Tennis Finals, such as “barclaysatpworldtourfinals.com.” In a complaint filed with the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center, Complainant alleged: (1) that the respondent’s domain name was identical and confusingly similar to the trademark BARCLAYS, (2) that the Respondent had no rights or legitimate interests in the domain name, and (3) that the Respondent registered and used the domain name in bad faith. The arbitration panel agreed with the Complainant on all counts. As a result, the panel ordered the transfer of the Respondent’s domain name to the Complainant.

[*Barclays Bank, PLC v. Current Events, WIPO Case No. D2010-1989 \(2011\) \(Carson, Ross, Arb.\)*](#). This arbitration decision concerned the Respondent’s registration of the domain names, “barclaycenter.info” and “barclaycenters.com.” The Complainant is a major global financial services provider engaged in retail banking, credit cards, corporate banking, investment banking, wealth management, and investment management services that is the owner of a number of United Kingdom, United States, and European Community registrations in the trademark, “BARCLAYS.” Additionally, Complainant is the registered owner of the trademark, “BARCLAYS CENTER,” in conjunction with activities related to sports and entertainment complexes. In a complaint filed with the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center, Complainant alleged: (1) that the Respondent’s domain names were identical or confusingly similar to the trademark BARCLAYS, (2) that the Respondent had no rights or legitimate interests in the domain names, and (3) that the Respondent registered and used the domain names in bad faith. The arbitration panel agreed with the Complainant on all counts. As a result, the panel ordered the transfer of the Respondent’s domain names to the Complainant.

Beachbody, LLC v. Chen, WIPO Case No. D2010-2157 (2011) (Hughes, Sebastian, Arb.); Beachbody, LLC v. Chen, WIPO Case No. D2010-2158 (2011) (Hughes, Sebastian, Arb.); Beachbody, LLC v. Domain Manager, Premium Reserved Names, LLC, WIPO Case No. DCO2010-0042 (2011) (Auvil, Steven, Arb.); Beachbody, LLC v. Domains by Proxy, Inc., WIPO Case No. D2010-2061 (2011) (Hughes, Sebastian, Arb.); Beachbody, LLC v. Dynadot Privacy, WIPO Case No. D2011-0466 (2011) (Ritchie, Lorelei, Arb.); Beachbody, LLC v. Lin, WIPO Case No. D2010-2160 (2011) (Fiammenghi, Eva, Arb.); Beachbody, LLC v. Lina, WIPO Case No. D2010-2156 (2011) (Fiammenghi, Eva, Arb.); Beachbody, LLC v. messi lucy/messi assena, WIPO Case No. D2010-1907 (2011) (Hughes, Sebastian, Arb.); Beachbody, LLC v. Moses, WIPO Case No. D2010-2267 (2011) (Connerty, Anthony, Arb.); Beachbody, LLC v. P90X Pal, Inc., Huand joe, WIPO Case No. D2010-1927 (2011) (Hughes, Sebastian, Arb.); Beachbody, LLC v. Venkateshwara Distributor Private Ltd., WIPO Case No. D2011-0698 (2011) (Azevedo, Rodrigo, Arb.). The Complainant is a leader in the field of in-home health, wellness, weight loss, and fitness solutions that owns an international registration and several registrations in the United States for the trademarks, “P90X,” “INSANITY,” and various other Beachbody-related trademarks. In complaints filed with the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center against a number of entities and individuals, Complainant alleged, generally: (1) that the Respondent’s domain name was confusingly similar to a Beachbody trademark, (2) that the Respondent used the domain name to sell counterfeit products, (3) that the Respondent had no rights or legitimate interests in the domain name, and (4) that the Respondent registered and used the domain name in bad faith. In each decision, the arbitration panel agreed with the Complainant on all counts. As a result, the panel ordered the transfer of the Respondents’ domain names to the Complainant.

bwin Servs. AG v. Casino Seiten Design, WIPO Case No. D2011-0697 (2011) (Ekdial, Dilek, Arb.). This arbitration decision concerned the registration of the domain name “bwinturkiye.com.” The Complainant is a provider of online gambling and gaming entertainment and owns the trademark, “BWIN.” In a complaint filed with the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center, Complainant alleged: (1) that the Respondent’s domain name was confusingly similar to the “BWIN” trademark, (2) that the Respondent had no rights or legitimate interests in the domain name, and (3) that the Respondent registered and used the domain name in bad faith. The arbitration panel agreed with the Complainant on all counts. As a result, the panel ordered the transfer of the Respondent’s domain name to the Complainant.

bwin Interactive Entm’t AG v. qushaobing, WIPO Case No. D2011-0090 (2011) (Nobles, Kimberley, Arb.). This arbitration decision concerned the Respondent’s registration of the domain name, “bbwin.net.” The Complainant is a provider of online gambling and gaming entertainment and owns the trademark, “BWIN.” In a complaint filed with the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center, Complainant alleged: (1) that the Respondent’s domain name was confusingly similar to the BWIN trademark, (2) that the Respondent had no rights or legitimate interests in the domain name, and (3) that the Respondent registered and used the domain name in bad faith. The arbitration panel agreed with the Complainant on all counts. As a result, the panel ordered the transfer of the Respondent’s domain name to the Complainant.

[bwin Interactive Entm't AG v. Sung, WIPO Case No. D2011-0143 \(2011\) \(Trotman, Clive, Arb.\)](#).

This arbitration decision concerned the Respondent's registration of the domain name "betewin.com." The Complainant is a provider of online gambling and gaming entertainment and owns the trademarks, "BWIN" and "BETANDWIN." In a complaint filed with the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center, Complainant alleged: (1) that the Respondent's domain name was confusingly similar to the BWIN trademark, (2) that the Respondent had no rights or legitimate interests in the domain name, and (3) that the Respondent registered and used the domain name in bad faith. The arbitration panel dismissed the complaint on the grounds that the Complainant failed to prove that the domain name and trademarks were confusingly similar. As a result, the panel did not order the transfer of the Respondent's domain name to the Complainant.

[Cleveland Browns Football Co. LLC v. Dinoia, WIPO Case No. D2011-0421 \(2011\) \(Trotman, Clive, Arb.\)](#).

This arbitration decision concerned the Respondent's registration of the domain name, "browns.com." The Complainant owns the Cleveland Browns, a professional football team, and owns the trademarks, "CLEVELAND BROWNS," "BROWNS," and various additional trademarks incorporating "BROWNS." In a complaint filed with the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center, Complainant alleged: (1) that the Respondent's domain name was identical to the trademark BROWNS and confusingly similar to the trademark CLEVELAND BROWNS, (2) that the Respondent had no rights or legitimate interests in the domain name, and (3) that the Respondent registered and used the domain name in bad faith. The arbitration panel agreed with the Complainant on all counts. As a result, the panel ordered the transfer of the Respondent's domain name to the Complainant.

[Fed'n Francaise du Tennis v. Marimuthu Devendran, WIPO Case No. DCO2011-0006 \(2011\) \(Perkins, David, Arb.\)](#).

This arbitration decision concerned the Respondent's registration of the domain name, "frenchopen.co." The Complainant is an association that promotes, organizes, and develops tennis in France and tennis tournaments, such as the French Open, and owns registrations in the trademarks, "FRENCH OPEN," "ROLAND GARROS FRENCH OPEN," and "FRENCH OPEN ROLAND GARROS." In a complaint filed with the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center, Complainant alleged: (1) that the Respondent's domain name was identical and confusingly similar to the trademarks, (2) that the Respondent had no rights or legitimate interests in the domain name, and (3) that the Respondent registered and used the domain name in bad faith. The arbitration panel agreed with the Complainant on all counts. As a result, the panel ordered the transfer of the Respondent's domain name to the Complainant.

[Future Publ'g Ltd. v. DomainsByProxy.com, WIPO Case No. D2010-1526 \(2011\) \(Pibus, Christopher, Arb.\)](#).

This arbitration decision concerned the Respondent's registration of the domain name, "cyclingnewsasia.com." The Complainant is a publisher of special interest magazines and operator of related websites. Additionally, Complainant World Intellectual Property Organization (WIPO) registrations in the trademark, "CYCLING NEWS." In a complaint filed with the WIPO Arbitration and Mediation Center, Complainant alleged: (1) that the Respondent's domain name was confusingly similar to the CYCLING NEWS trademark, (2) that the Respondent had no rights or legitimate interests in the domain name, and (3) that the

Respondent registered and used the domain name in bad faith. The arbitration panel agreed with the Complainant on all counts. As a result, the panel ordered the transfer of the Respondent's domain name to the Complainant.

[Gov't Emp. Ins. Co. v. Ehmer, WIPO Case No. D2011-0035 \(2011\) \(Lyon, Richard, Arb.\)](#). This arbitration decision concerned the Respondent's registration of the domain name "geicobowl.com." The Complainant is a private insurance company in the United States that operates under the acronym "GEICO" and owns at least five trademarks that incorporate the "GEICO" acronym. In a complaint filed with the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center, Complainant alleged: (1) that the Respondent's domain name was confusingly similar to the GEICO trademark, (2) that the Respondent had no rights or legitimate interests in the domain name, and (3) that the Respondent registered and used the domain name in bad faith. The Respondent claimed that the domain name was registered to promote a fictional character he is creating called the "Geicob Owl." However, the arbitration panel agreed with the Complainant on all counts. As a result, the panel ordered the transfer of the Respondent's domain name to the Complainant.

[Harness Racing Austl. v. Acronym Wiki Pty Ltd., WIPO Case No. DAU2011-0007 \(2011\) \(Swinson, John, Arb.\)](#). This arbitration decision concerned the Respondent's registration of the domain name "hra.com.au." The Complainant is the national peak body for the harness racing industry in Australia and owns the trademark for the "HRA HARNESS RACING AUSTRALIA" logo, which prominently features the "HRA" acronym. In a complaint filed with the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center, Complainant alleged: (1) that the Respondent's domain name was identical or confusingly similar to the HRA acronym, (2) that the Respondent had no rights or legitimate interests in the domain name, and (3) that the Respondent registered and used the domain name in bad faith. The arbitration panel agreed with the Complainant on all counts. As a result, the panel ordered the transfer of the Respondent's domain name to the Complainant.

[La Francaise des Jeux v. IM SARL, WIPO Case No. D2011-0592 \(2011\) \(Pibus, Christopher, Arb.\)](#). This arbitration decision concerned the registration of the following domain names: "parionsport.org," "parionssports.info," "parionssports.org," "parionsweb.biz," "parionsweb.org," "parionswebs.com," "parionswebsite.com," "webparions.com," "webparions.info," "webparions.net," and "webparions.org." The Complainant is the French State lottery, which creates, develops, and markets lottery and sports-betting games throughout France and in the French overseas departments, and owns the trademarks, "PARIONS SPORTS" and "PARIONS WEB." In a complaint filed with the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center, Complainant alleged: (1) that the Respondent's domain names were identical or confusingly similar the "PARIONS SPORTS" and "PARIONS WEB" trademarks, (2) that the Respondent had no rights or legitimate interests in the domain names, and (3) that the Respondent registered and used the domain names in bad faith. The arbitration panel agreed with the Complainant on all counts. As a result, the panel ordered the transfer of the Respondent's domain names to the Complainant.

[*Pac.-10 Conference v. Lee, WIPO Case No. D2011-0200 \(2011\) \(Sorkin, David, Arb.\)*](#). This arbitration decision concerned the Respondent's registration of the domain names, "pac-12network.com," "pac12network.com," and "pac-12network.org." The Complainant is an unincorporated California business association that is among the pre-eminent collegiate athletic conferences in the United States. Specifically, Complainant is the PAC-10 conference, and the PAC-10 conference commissioner had recently announced that the Complainant was looking to expand the membership of the conference. Complainant is the owner of registrations in the family of trademarks "PAC-10" and the pending application of the "PAC-12" trademarks. In a complaint filed with the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center, Complainant alleged: (1) that the Respondent's domain names were confusingly similar to the trademarks, (2) that the Respondent had no rights or legitimate interests in the domain names, and (3) that the Respondent registered and used the domain names in bad faith. The arbitration panel agreed with the Complainant on all counts. As a result, the panel ordered the transfer of the Respondent's domain names to the Complainant.

[*Panorama Mountain Vill. Inc. v. High Country Properties, WIPO Case No. D2010-1763 \(2011\) \(Carson, Ross, Arb.\)*](#). This arbitration decision concerned the Respondent's registration of the domain names, "golfgreywolf.com," "panoramamountainvillage.com," "panorama-vacations.com," and "ski-panorama.com." The Complainant is a land-owner and developer, manager of residential and commercial real estate, and owner and operator of the Panorama Mountain Village resort and the Greywolf golf course, and owns the trademarks, "PANORAMA" and "GREYWOLF." In a complaint filed with the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center, Complainant alleged: (1) that the Respondent's domain names were confusingly similar to the PANORAMA and GREYWOLF trademarks, (2) that the Respondent had no rights or legitimate interests in the domain names, and (4) that the Respondent registered and used the domain names in bad faith. The arbitration panel agreed with the Complainant on all counts. As a result, the panel ordered the transfer of the Respondent's domain names to the Complainant.

[*Pepsico, Inc. v. Xcelon Solutions, WIPO Case No. D2011-0136 \(2011\) \(Landry, J. Nelson, Arb.\)*](#). This arbitration decision concerned the Respondent's registration of the following domain names: "mountaindewbajablast.com," "mountaindewdistortion.com," "mountaindewrevolution.com," "mountaindewtyphoon.com," "mountaindewultraviolet.com," "mtndewcodered.com," "mtndewdistortion.com," "mtndewlivewire.com," "mtndewrevolution.com," "mtndewsupernova.com," "mtndewtyphoon.com," "mtndewultraviolet.com" and "mtndewwhiteout.com." The Complainant is one of the world's largest food and beverage companies, owns the trademarks, "MOUNTAIN DEW" and "MTN DEW," and often sponsors various sporting events to promote its brand. In a complaint filed with the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center, Complainant alleged: (1) that the Respondent's domain names were confusingly similar to the trademarks, (2) that the Respondent had no rights or legitimate interests in the domain names, and (3) that the Respondent registered and used the domain names in bad faith. The arbitration panel agreed with the Complainant on all counts. As a result, the panel ordered the transfer of the Respondent's domain names to the Complainant.

[Red Bull, GmbH v. Bing, WIPO Case No. D2011-0072 \(2011\) \(Rindforth, Petter, Arb.\)](#). This arbitration decision concerned the Respondent's registration of the domain name, "red-bull.com." The Complainant is the largest worldwide producer of energy drinks and owns the trademark, "RED BULL." Additionally, Complainant is highly involved in a variety of sporting events as both sponsor and organizer. In a complaint filed with the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center, Complainant alleged: (1) that the Respondent's domain name was confusingly similar to the RED BULL trademark, (2) that the Respondent had no rights or legitimate interests in the domain name, and (3) that the Respondent registered and used the domain name in bad faith. The arbitration panel agreed with the Complainant on all counts. As a result, the panel ordered the transfer of the Respondent's domain name to the Complainant.

[Revlon Consumer Prods Corp. v. Moniker Privacy Servs, WIPO Case No. D2010-2091 \(2011\) \(Narayanswamy, Harini, Arb.\)](#). This arbitration decision concerned the Respondent's registration of the domain name, "revlonwalkrun.org." The Complainant is a leading cosmetics manufacturer and sponsor of a run and walk to support cancer and owns the trademark, "REVLON." In a complaint filed with the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center, Complainant alleged: (1) that the Respondent's domain name was confusingly similar to the REVLON trademark, (2) that the Respondent had no rights or legitimate interests in the domain name, and (3) that the Respondent registered and used the domain name in bad faith. The arbitration panel agreed with the Complainant on all counts. As a result, the panel ordered the transfer of the Respondent's domain name to the Complainant.

[Ryder Cup Eur., LLP v. Gardner, WIPO Case No. D2011-0494 \(2011\) \(Pibus, Christopher, Arb.\)](#). This arbitration decision concerned the Respondent's registration of the domain name, "rydercupireland.com." The Complainant is the organizer of the Ryder Cup, a professional golf tournament, and owns the trademark, "RYDER CUP." In a complaint filed with the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center, Complainant alleged: (1) that the Respondent's domain name was identical or confusingly similar to the RYDER CUP trademark, (2) that the Respondent had no rights or legitimate interests in the domain name, and (3) that the Respondent registered and used the domain name in bad faith. The arbitration panel agreed with the Complainant on all counts. As a result, the panel ordered the transfer of the Respondent's domain name to the Complainant.

[Sportingbet Plc, Internet Opportunity Entm't \(Sports\) Ltd. v. Rough Media, WIPO Case No. D2011-0320 \(2011\) \(Taylor, Adam, Arb.\)](#). This arbitration decision concerned the Respondent's registration of the domain name, "sportingbetcasino.com." The Complainants are part of an online betting and gaming group, and one Complainant is the owner of the trademarks, "SPORTINGBETCASINIO" and "SPORTINGBETCASINIO.COM." In a complaint filed with the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center, Complainants alleged: (1) that the Respondent's domain name was identical or confusingly similar to the trademarks, (2) that the Respondent had no rights or legitimate interests in the domain name, and (3) that the Respondent registered and used the domain name in bad faith. The Respondent denied all of the Complainants' allegations and also alleged that the Complainants' complaint was an attempt to acquire the domain name via "reverse domain name hijacking." However, the arbitration panel agreed with the Complainants on all counts and

rejected the Respondent's laches defense. As a result, the panel ordered the transfer of the Respondent's domain name to the Complainant.

WORKERS' COMPENSATION

[Ariz. Horsemen's Ass'n v. Indus. Comm'n of Ariz., No. 1 CA-IC 10-0032, 2011 Ariz. App. Unpub. LEXIS 750 \(Ariz. Ct. App. May 19, 2011\).](#) Just one day following the commencement of her work as a horse groomer at Turf Paradise, Rosa Hernandez was kicked by a horse and suffered a broken arm as a result. Hernandez then filed a workers' compensation claim, which was denied by the Special Fund, who asserted that Hernandez was entitled to coverage under a workers' compensation policy issued to the Arizona Horsemen's Association (AHA). Among other things, the nonprofit AHA aids in the business aspects of horseracing in areas such as payroll and workers' compensation. Although horse trainers could enroll employees for AHA's services as Hernandez's trainer had done for two other employees, Hernandez had not been enrolled. On this special action review, the central issue was whether Hernandez was under an implied contract of employment with AHA, which would have entitled her to AHA's worker's compensation coverage pursuant to the Arizona Workers' Compensation Act. Finding that AHA's role was ancillary to horse trainers and it had no authority over its member trainers or their employees' work duties, the Arizona Court of Appeals concluded that Hernandez was not an employee of AHA and reversed and remanded the award to The Industrial Commission of Arizona.

[Hoffman v. New Orleans Saints, 56 So. 3d 466 \(La. Ct. App. Jan. 25, 2011\).](#) Plaintiff, a former professional football player for the New Orleans Saints, was injured during the course and scope of his employment with the Saints and was thus eligible for workers' compensation benefits as a result. At issue in this case is Plaintiff's disagreement with the workers' compensation court's judgment. Specifically, Plaintiff argues that the court erred in determining his average weekly wage, which also affected his supplemental earnings benefits, and erred in declining to award attorney fees and penalties for the Saints' failure to pay compensation while the matter was in dispute. As for the average weekly wage calculation, the court agreed with the workers' compensation court and held that "the players' average weekly wage must be based on the amount actually earned at the time of the injury," regardless of any salary amount subsequently paid. However, the court amended the judgment concerning attorneys' fees and penalties. The Louisiana Court of Appeals held that even though the dispute over the benefits had not been conclusively resolved, given that Plaintiff was clearly entitled to workers' compensation benefits, the Saints were obligated to pay him something. The court held that the Saints' decision not to pay Plaintiff anything was arbitrary and capricious. Thus, the court amended the judgment to award Plaintiff compensation in the form of attorneys' fees and penalties and otherwise affirmed the judgment.

[Miami Dolphins, Ltd. v. Newson, No. 10-CV-01144, 2011 U.S. Dist. LEXIS 47379 \(W.D. Pa. May 3, 2011\).](#) Miami Dolphins filed a "Complaint to Enforce Arbitration" in federal court against an employee football player, Kendall Newson. The Dolphins were asking the court to order Newson to discontinue a workers' compensation claim and to order the presiding workers' compensation judge to dismiss the state benefit proceedings. The court found no basis for issuance of an injunction on the workers' compensation claim and that the Dolphins' requested

intrusion on the jurisdiction of the workers' compensation court was barred. Finding that the Dolphins' had no claim to any relief sought through its complaint, the court dismissed the complaint.

NFL Players Ass'n v. NFL Mgmt. Council, No. 10CV1671 JLS, 2011 U.S. Dist. LEXIS 865 (S.D. Cal. Jan. 5, 2011). This case involved the NFL Management Council and the Tennessee Titans' motion to confirm an arbitration award and Plaintiff's, NLFPA on behalf of Bruce Matthews, motion to vacate the same award. The arbitration stated that Matthew's workers' compensation claim was required, according to his contract with the Tennessee Titans, to proceed under Tennessee law rather than California law, which is where Matthews initially filed his complaint. The court explained that it may vacate an arbitration award under a narrow set of situations, none of which were applicable in this case. The court granted Defendants' motion to confirm, concluding that there was not an explicit, well-defined, and dominant public policy specifically militating against the arbitrator's award.

NFL Players Ass'n v. NFL Mgmt. Council, No. 08 Civ. 3658 (PAC), 2011 U.S. Dist. LEXIS 37268 (S.D.N.Y. Mar. 25, 2011). NFLPA moved to enforce a judgment resolving a dispute between the players and the NFL Management Council concerning the meaning of Paragraph 10 of the NFL Players Contract, which defines the "offset" that NFL Clubs are permitted to take from injured NFL players' state workers' compensation awards. A 2009 arbitration award provided that Paragraph 10 provides only for a time offset and not for a dollar-for-dollar offset. The Players argued that despite this judgment, Management and several Clubs continued to insist that the dollar-for-dollar offset applied. The Players moved for a permanent injunction against the Management Council and all Clubs that would prevent them from seeking or obtaining this dollar-for-dollar offset. The court found that the players met their burden for an injunction, and enforced the judgment enjoining Management.

[*Nittel v. Workers' Comp. Appeals Bd., No. G044580, 2011 Cal. App. Unpub. LEXIS 4704 \(Cal. Ct. App. June 22, 2011\).*](#) Adam Nittel, a former hockey player for the NHL's San Jose Sharks, suffered a multitude of injuries during his tenure with the team from 1997 to 2002, and as relevant to this decision, missed some work time during 2001. At issue is whether, for purposes of workers' compensation benefits, the 2005 revised permanent disability rating schedule applies or whether his case fell under an exception such that the 1997 rating schedule would apply. Although Nittel spent time in 2001 on the injured reserve, the WCJ found that he received salary continuation while he was injured, which required the Sharks to provide notice according to the relevant exception to the 2005 rating schedule. As such, the WCJ determined the 1997 rating schedule should apply to Nittel's case. The Workers' Compensation Appeals Board ("Board") amended the WCJ decision, finding that the 2005 rating schedule applied. Upon review of the Board's decision, the California Court of Appeals annulled the decision and remanded the case to award Nittel workers' compensation benefits according to the WCJ's original decision.

[*Pro-Football, Inc. v. Tupa, 14 A.3d 678 \(Md. Ct. Spec. App. 2011\).*](#) Appellants Pro-Football, Inc., a Maryland corporation that operates the Washington Redskins, and Ace American Insurance Co. sought reversal of a workers' compensation award granted to Thomas Tupa, Redskins punter from 2004-06, for an injury sustained while employed as a professional athlete in the NFL. Appellants presented two issues for review: Whether the circuit erred in (1)

determining that Maryland has jurisdiction over the appellee's claims and (2) affirming the Maryland Workers' Compensation Commission's finding that the appellee sustained an accidental injury arising out of and in the course of his employment. The appellate court found that Tupa was regularly employed in Maryland because he had an ongoing relationship with his Maryland-corporation employer for the purpose of playing in football game. The court also found that the evidence presented was more than sufficient to support the jury's finding that Tupa suffered an accidental injury. The judgment of the circuit court was affirmed.

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