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Foreward: The National Sports Law Institute's Sports Law Alumni Association

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SYMPOSIUM:
**SPORTS LAW: ALUMNI ANALYSIS AND
PERSPECTIVES**

**FOREWORD: THE NATIONAL SPORTS LAW
INSTITUTE'S SPORTS LAW ALUMNI
ASSOCIATION**

As part of its Mission, the National Sports Law Institute of Marquette University Law School “strives to be the leading national educational and research institute for the study of legal, ethical, and business issues affecting amateur and professional sports from both an academic and practical perspective.”¹ Through publication of thoughtful scholarship in the *Marquette Sports Law Review*, the Institute provides a national forum for discussion and consideration of important issues affecting American and international sports.

The National Sports Law Institute is also affiliated with the Marquette University Law School Sports Law Program, which provides the nation’s most comprehensive offering of sports law courses and student internships, as well as numerous other opportunities for law students. This affiliation is no accident as the NSLI was created in 1989 through the efforts of several Marquette University Law School alumni including Professor Emeritus Charles Mentkowski (L’48), Professor Martin J. Greenberg (L’71), Dean Emeritus Frank DeGuire (L’60), and Professor Emeritus James Ghiardi (L’42). Throughout the years, the support and leadership of Marquette’s Sports Law program alumni have led to the growth of many aspects of the program from the curriculum and internship offerings, to career panels and guidance offered to current students.

Recognizing the support of our alumni and the incredible resource they could be for our Sports Law program and the National Sports Law Institute, in 1997, William Miller (L’96) and I created what was then called the NSLI’s Alumni Board. Eventually renamed the National Sports Law Institute’s Sports Law Alumni Association, today the Association has 180 members. These

1. National Sports Law Institute’s Mission Statement, <http://law.marquette.edu/cgi-bin/site.pl?2130&pageID=557> (last visited Jan. 11, 2011).

members support our Sports Law program in many ways, sponsoring student internships, providing support for our various scholarship funds, and providing career advice and counseling for our students. Association members also support the National Sports Law Institute by participating in our conferences and other events, and by producing scholarship for many of our publications. Overall, along with our students (our future alums), our alumni are the lifeblood of the Sports Law program at Marquette University Law School.

This symposium contains a collection of articles from members of the National Sports Law Institute's Sports Law Alumni Association. The symposium contains a series of articles that analyze the ways that various areas of the law impact the sports industry.

In the past twenty years, teams and communities have often argued over the specific benefits that the community will provide to the team in order to entice it to stay or to relocate. Several communities (Cleveland, Houston, Charlotte) have lost beloved franchises when the relationship between the team and community broke down. Often, these communities can find no legal recourse in order to force a team to stay in the community and facility that the community built with significant tax dollars. Recently, creative lawyers and community leaders have developed lease clauses that attempt to provide of contractual protection for a community faced with potentially losing a professional sports team. This symposium begins with an extensive analysis of one of these lease clauses, a non-relocation clause. In their article, Professor Martin Greenberg (L'71), the founder of the National Sports Law Institute, its first Director, and a current Adjunct Professor of Law at Marquette University Law School, and recent graduate Bryan Ward (L'10), an associate attorney with Bailes, Craig & Yon in Huntington, West Virginia, provide a detailed analysis of non-relocation agreements in Major League Baseball. They identify possible best practices within these agreements that will provide communities with possible remedies when teams attempt to break their agreement with the community.²

At the same time that teams and communities negotiate over the particular lease agreement both parties must also begin to understand their responsibilities under developing areas of law. One important area that is rarely understood within the sports industry is green law. In his article, Professor Bill Miller (L'96), an assistant professor of Sport Management at the University of Wisconsin-Parkside, in Kenosha, Wisconsin, and creator of one of the first courses in the country to focus solely on green facility development, finance, and marketing issues for sports organizations, provides

2. Martin J. Greenberg & Bryan Ward, *Non-Relocation Agreements in Major League Baseball: Comparison, Analysis, and Best Practice Clauses*, 21 MARQ. SPORTS L. REV. 7 (2010).

an examination of the way in which a lawyer's ethical responsibilities impose a responsibility on a sports lawyer to begin to learn and understand the impact of green law on the sports industry.³

Extending this focus on green law and its impact on sports facilities, attorney Alex Porteshawver (L'10), Energy Program Coordinator, City of San Joaquin, San Joaquin, California, provides a critical analysis of the shortcomings of state environmental policy acts (SEPA's), specifically as they have been applied to sports facilities, for example in California.⁴

Of course, a future sports lawyer's training often begins much earlier with the various practical experiences that they gain while in law school or even earlier in their undergraduate studies. Even these useful experiences are not immune from the many ways in which the law can impose serious responsibilities on all of those in the sports industry. Often student (undergraduate, graduate, or law) interns can be exposed to significant legal liability, as can the organization they work for, and the university that places them in a particular internship. Professor Kristi Schoepfer (L'01), a former Editor-in-Chief of this *Sports Law Review*, and currently assistant professor of Sport Management and Sport Law, and coordinator of the internship program at Winthrop University, in Rock Hill, South Carolina, and Professor Mark Dodds (L'05), assistant professor of Sport Management at SUNY Cortland, in Cortland, New York, analyze the legal implications of students working as interns and recommend that due to the potential legal liabilities involved, sports management programs should reevaluate their internship programs.⁵

As the law continues to evolve and the training needed to succeed within the industry continues to grow, new means of communication, such as Facebook and Twitter, also impact the sports industry in many ways. However, as sports organizations attempt to regulate the ability of their participants to use these new forms of communication, many legal considerations become apparent. Professor Lauren McCoy (L'09), an assistant professor of Sport Management at the University of Wisconsin-Parkside, provides an interesting analysis of these considerations as she surveys the different legal issues that leagues and teams might face as they attempt to regulate the use of social networking sites by their participants.⁶

3. W.S. Miller, *Changing Playing Fields: The Sports Attorney's Obligation to Learn Green*, 21 MARQ. SPORTS L. REV. 139 (2010).

4. Alex Porteshawver, *Under Review: Stadium Construction and State Environmental Policy Acts*, 21 MARQ. SPORTS L. REV. 339 (2010).

5. Kristi L. Schoepfer & Mark Dodds, *Internships in Sport Management Curriculum: Should Legal Implications of Experiential Learning Result in the Elimination of the Sport Management Internship?*, 21 MARQ. SPORTS L. REV. 183 (2010).

6. Lauren McCoy, *140 Characters or Less: Maintaining Privacy and Publicity in the age of*

While the use of Twitter by NBA players has created a bit of controversy, perhaps no area of international sport has faced more scrutiny than the bidding process that goes into a country's candidacy for a high level international sporting event, from the World Cup to the Olympic Games. In the United States, the scandal surrounding the Salt Lake City Olympic Games caused the United States Olympic Committee to initiate several reforms in order to ensure that this type of scandal does not occur in the future. Attorney Thomas Hamilton (L'04), contracts counsel for Thomson Reuters, in Eagan, Minnesota, analyzes this scandal with particular focus on the reforms that have been put in place finding several shortcomings in these reforms and making recommendations for further improvement.⁷

While scandals often dominate the international sports landscape, in the United States, one of the most recent areas of reform has been related to care for athletes who suffer concussions. The media has often focused its attention on the professional level, specifically scrutinizing recent National Football League policies punishing players for certain types of hits that often lead to concussions, and implementing stricter regulations that prevent a concussed player from returning to the field too early. However, sports-related concussions also affect young athletes, as Attorney Marie-France Wilson's (LL.M. '10), from Toronto, Canada, explains in her article.⁸ Attorney Wilson examines the impact of sports-related concussions on young athletes and unique legal issues related to the management of young athletes who have suffered a concussion.

While recent efforts to manage young athletes who have suffered a concussion bring up interesting legal issues, perhaps no area of law impacts the behavior of young athletes more than the United States Constitution. Many courts have found that student athletes at the grade school and high school level have diminished constitutional rights, especially during their actual participation in athletics. In his article, attorney Noel Johnson (L'10), an associate attorney with Bopp, Coleson & Bostrom, in Terre Haute, Indiana, examines the constitutional rights held by these student athletes, and free speech challenges brought by student athletes.⁹

Free speech and other constitutional rights are not only a concern for

Social Networking, 21 MARQ. SPORTS L. REV. 203 (2010).

7. Thomas A. Hamilton, *The Long Hard Fall from Mount Olympus: The 2002 Salt Lake City Olympic Games Bribery Scandal*, 21 MARQ. SPORTS L. REV. 219 (2010).

8. Marie-France Wilson, *Young Athletes at Risk: Preventing and Managing Consequences of Sports Concussions in Young Athletes and the Related Legal Issues*, 21 MARQ. SPORTS L. REV. 241 (2010).

9. Noel Johnson, *Tinker Takes the Field: Do Student Athletes Shed Their Constitutional Rights at the Locker Room Gate?*, 21 MARQ. SPORTS L. REV. 293 (2010).

student athletes, they are also important for professional athletes. Perhaps more than other athletes, professional athletes often seek to protect their persona in order to preserve the perceived commercial value they may be able to reap from sponsoring products or services. However, the courts have been inconsistent in delineating how a professional athlete is best able to protect his or her persona. Attorney Scott Chandler (L'10), Monee, Illinois, in an article that won the *2009 Anne Wall Brand Protection Writing Competition and Scholarship Award*, analyzes this inconsistency as courts have attempted to draw a line between an athlete's right of publicity and protection for the athlete under the First Amendment.¹⁰

Colleges also seek to protect and profit from the use of marks identified with their athletic teams, from their logos and nicknames and even to their identifiable color schemes. While trademark protection is often extended to these logos and nicknames, it is less clear that such protection should extend to collegiate color schemes when they are not accompanied by other marks. In her article, Attorney Kristen Knauf (L'10), an associate attorney with Kennedy, Clark & Williams, P.C. in Dallas, Texas, argues that such color schemes alone should not be protected under federal trademark law.¹¹

And finally, perhaps no other legal concept has protected a sports entity more than the antitrust exemption that Major League Baseball (MLB) has enjoyed for the better part of the past ninety years. In an article that won the *National Sports Law Institute's 2010 National Sports Law Student Writing Competition*, Attorney Brittany Van Roo (L'10), Deerfield, Illinois, argues that MLB's recent five-year deal with StubHub leads to severe potential restraints on trade. Therefore, she argues that an antitrust analysis of the deal could persuade either Congress or the Supreme Court to refine or repeal baseball's antitrust exemption.¹²

This issue ends with student comments and book reviews written by current Marquette University Law School students. Alejandro Bautista (L'11), the current Managing and Survey Editor analyzes recent efforts within collegiate athletics to protect the health and safety of student-athletes by mandating sickle cell trait screening.¹³ Laurie Frey (L'11), the current

10. Scott R. Chandler, *Whose Right Is It Anyway?: How Recent Cases and Controversies Have Blurred the Lines between First Amendment Protection and an Athlete's Right of Publicity*, 21 MARQ. SPORTS L. REV. 315 (2010).

11. Kristen Knauf, *Shades of Gray: The Functionality Doctrine and Why Trademark Protection Should Not Be Extended to University Color Schemes*, 21 MARQ. SPORTS L. REV. 361 (2010).

12. Brittany Van Roo, *One Trilogy That Should Go Without a Sequel: Why the Baseball Antitrust Exemption Should Be Repealed*, 21 MARQ. SPORTS L. REV. 381 (2010).

13. Alejandro Bautista, *Comment: College Football's Serial Murderer: Sickle Cell Trait*, 21 MARQ. SPORTS L. REV. 403 (2010).

Executive Editor addresses the need for professional sports leagues to conduct genetic testing in order to avoid scandals related to players who falsify their age when signing player contracts.¹⁴ Senior Survey Members Jeremy Goff (L'11) and Andrew Medeiros (L'11) then provide interesting reviews of new books on Title IX¹⁵ and doping in horse racing.¹⁶

Overall, this symposium issue displays the wide range of interesting issues found in the study of sports law and the many interesting ways that the law impacts the sports industry. It also displays the abilities of those who have graduated from the Sports Law program at Marquette University Law School and how their keen understanding and analysis of these difficult legal topics will continue to impact the sports industry for years to come.

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14. Laurie Frey, *Comment: They Aren't Who We Thought They Were: The Importance of Genetic Testing in Major League Baseball to Prevent the Falsification of Players' Ages*, 21 MARQ. SPORTS L. REV. 425 (2010).

15. Jeremy Goff, *Book Review: Playing with the Boys: Why Separate is not Equal in Sports*, 21 MARQ. SPORTS L. REV. 449 (2010).

16. Andrew Medeiros, *Headless Horsemen: A Tale Of Chemical Colts, Subprime Sales Agents, And The Last Kentucky Derby On Steroids*, 21 MARQ. SPORTS L. REV. 445 (2010).