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2011 Annual Survey: Recent Developments in Sports Law

SURVEY

2011 ANNUAL SURVEY: RECENT DEVELOPMENTS IN SPORTS LAW

INTRODUCTION

This survey covers sports-related cases that were decided between January 1 and December 31, 2011. It does not include every sports-related decision. Instead, it includes brief summaries of a wide range of cases that impact the industry so as to provide insight into the growth of the field thus far and to highlight recent sports law developments. To help the reader navigate, the survey is divided into sections based on specific areas of sports law addressed in each case.

ADMINISTRATIVE LAW

Administrative law concerns the various activities engaged in by federal, state, and local government agencies. These actions include everything from rulemaking to the enforcement of various regulatory schemes. Although administrative law touches on relatively few sports law cases, the following case illustrates administrative law concerns that result directly from the increased media coverage of major sports events.

CBS Corp. v. FCC[1]

The petitioner television broadcasting company sought review of orders of the respondent Federal Communications Commission (FCC) imposing a monetary forfeiture under 47 U.S.C.S. § 503(b) for the broadcast of indecent material in violation of 18 U.S.C.S. § 1464 and 47 C.F.R. § 73.3999. The sanctions stemmed from the petitioner's live broadcast of a Super Bowl Halftime Show, which resulted in the exposure of a bare female breast on camera, an act that lasted nine-sixteenths of one second. The petitioner transmitted the image over public airwaves, resulting in punitive action by the FCC. The petitioner challenged the FCC orders on constitutional, statutory, and public policy grounds.

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1. 663 F.3d 122 (3d Cir. 2011).

At the time of the incident, the FCC's policy was to exempt fleeting or isolated material from the scope of actionable indecency. However, the FCC sanctioned the petitioner under its new policy, which was implemented after the Super Bowl incident. The court noted that the FCC, like any agency, could change its policies without judicial second-guessing; however, it could not change a well-established course of action without supplying notice of and a reasoned explanation for its policy departure. Because the FCC failed to satisfy this requirement, its new policy was arbitrary and capricious as applied to the petitioner. Therefore, the court vacated the FCC's orders.

ANTITRUST LAW

Antitrust laws serve to protect consumers from conduct deemed to be anticompetitive and play a significant role in regulating the sports industry. At the federal level, such conduct is controlled through the Sherman Antitrust Act, which prohibits monopolistic behavior and conspiracies to restrain trade. Courts have recognized that the sports context presents unique antitrust issues that are not present in any other industry. That is, sports leagues and related organizations need a certain degree of cooperation in order to function; thus, to balance the unique context with the need to protect consumers, antitrust issues in the sports context are typically analyzed under a rule of reason analysis, where the courts will consider certain procompetitive justifications for alleged anticompetitive conduct.

Agnew v. NCAA[2]

The defendant National Collegiate Athletic Association (NCAA) filed a motion to dismiss the plaintiffs' complaint. The plaintiffs, former college athletes, challenged two NCAA bylaws as being anticompetitive and a form of price fixing. The plaintiffs argued that the restriction to one-year scholarships and the cap on the number of athletic-based discounts a school can offer a sport each year were anticompetitive. On their motion to dismiss, the NCAA argued that the plaintiffs failed to plead that the restrictions had any effect on a relevant market. The court determined the NCAA was subject to the rule of reason analysis, as opposed to per se violations of the Sherman Act, and therefore, the plaintiffs had to allege anticompetitive effects on a discernible market. The plaintiffs argued that they alleged sufficient geographic and product markets that are affected by the restraints on trade. The court found the pleading to be insufficient. Furthermore, the plaintiffs submitted two

2. No. 1:11-cv-0293, 2011 U.S. Dist. LEXIS 98744 (S.D. Ind. Sept. 1, 2011).

previous complaints, and the NCAA requested that the immediate complaint be dismissed with prejudice, as the plaintiffs made repeated attempts to properly plead, and had previously failed. Therefore, the court dismissed the complaint with prejudice.

In re NCAA Student-Athlete Name & Likeness Licensing Litig.[3]

The defendants filed a motion to dismiss the plaintiffs' suit. The plaintiffs brought suit against EA Sports, as well as the National Collegiate Athletic Association (NCAA), alleging that EA Sports participated in price fixing, and that EA Sports participated in a group boycott against the plaintiffs for failing to compensate for use of the athletes' images, names, or likenesses. The plaintiffs alleged that EA Sports agreed to abide by NCAA rules, which included not offering any compensation to current or former student-athletes. The court found that refusing to compensate former student-athletes, who no longer need to retain amateur status, could constitute price-fixing under the pleadings. Further, the court found that the NCAA rules contained no provision that prohibited compensation former student-athletes, and EA Sports refusal to do so could constitute a group boycott. For these reasons, the court found that the allegations were well plead, and denied defendant EA Sports motion to dismiss.

BANKRUPTCY LAW

Bankruptcy law has been at the forefront of many major sports issues this past year. Generally, these laws serve to aid debtors struggling to pay their creditors, through business reorganization plans and liquidation. As the following cases illustrate, bankruptcy laws have recently played a large role in the sports context, affecting even some of the most well-known sports teams in the country.

Fox Sports Net West 2, LLC v. L.A. Dodgers LLC (In re L.A. Dodgers LLC)[4]

The appellants Fox Sports Net West filed an Emergency Motion for Stay. The appellees, the Los Angeles Dodgers LLC, filed for bankruptcy protection under Chapter 11. The appellees have a licensing agreement with the appellants that extends through the end of the 2013 Major League Baseball

3. No. C 09-01967, 2011 U.S. Dist. LEXIS 82682 (N.D. Cal. July 28, 2011).

4. 465 B.R. 18 (D. Del. 2011).

season. Pursuant to their bankruptcy filings, the appellees filed a Motion for an Order Approving Market Procedures for the License of Telecast Rights, which seeks to end its current contract with appellants. The bankruptcy court granted the appellees' motion. The appellants opposed the motion and filed an Emergency Motion for Stay in the district court, appealing the bankruptcy court's grant of the appellees' motion. The court found that the appellants are likely to succeed on the merits because there is a substantial chance the appellants can prove the bankruptcy court's findings were clearly erroneous. The court further found that the appellants would likely suffer irreparable harm and that all other parties will likely be unaffected if the court grants the stay. Finally, the court found that was in the public's interest to grant the stay. Therefore, the court granted the appellants' Emergency Motion for Stay pending the appeal of the bankruptcy court's findings.

Adelphia Recovery Trust v. HSBC Bank USA
(In re Adelphia Recovery Trust)[5]

This case arises out of various bankruptcy proceedings involving the National Hockey League's (NHL) Buffalo Sabres (Sabres), and other various ownership entities, regarding certain fraudulent conveyance claims brought against the appellees, three banks. The central issues in this case 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."[6]

The three banks had granted loans related to the Sabres and their stadium, the HSBC Arena. Adelphia 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.

5. 634 F.3d 678 (2d Cir. 2011).

6. *Id.* at 682.

In re Dallas Stars, L.P.[7]

The debtors, a professional ice hockey club, sought to have the bankruptcy court approve its reorganization plan after it declared bankruptcy. The debtors filed petitions under Chapter 11 of the Bankruptcy Code and were allowed to operate their businesses as debtors in possession pursuant to 11 U.S.C.S. §§ 1107(a) and 1108. The debtors filed a disclosure statement and a joint prepackaged plan of reorganization and asked the court to approve their disclosure statement and confirm their plan. The court confirmed the debtors' plan. The court stated that the plan met all requirements imposed by 11 U.S.C.S. §§ 1123 and 1129 and was in the best interests of the debtors and their bankruptcy estates. The debtors and the Stalking Horse Bidder had negotiated the asset purchase agreement in good faith and had acted in good faith in connection with the development of the debtor's prepackaged plan. The debtors gave creditors and other interested parties timely and adequate notice of their motion seeking confirmation of their plan and a reasonable opportunity to object. Finally, the debtors had addressed and resolved all objections to the plan.

In re L.A. Dodgers LLC[8]

The debtors, Los Angeles Dodgers LLC, filed a motion to obtain post-petition financing. The debtors wanted to work with Highbridge Senior Loan Fund II (Highbridge), whom the debtors previously entered into a Credit and Security Agreement with. Major League Baseball (MLB) objected to this financing, and offered an unsecured loan on more favorable terms. The debtors disputed that MLB's loan offer was an unsecured loan. Further, MLB alleged that the debtors refused to negotiate terms in good faith. The debtors argued that the court should defer to the debtors' business judgment and allow them to obtain the Highbridge financing. The court rejected this argument and further found that MLB's loan offer was more favorable and constituted an alternative. The court held that as long as MLB could prove that the loan offer was unsecured and independent of MLB's oversight and governance of the debtors, the loan offer was sufficient. Further, the court ordered the debtors to negotiate with MLB in good faith. Therefore, the court denied the debtors' emergency motion to obtain post-petition financing.

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7. 2011 Bankr. LEXIS 4444 (Bankr. D. Del. Nov. 18, 2011).

8. 457 B.R. 308 (Bankr. D. Del. 2011).

In re Tex. Rangers Baseball Partners[9]

At issue in this proceeding was the Application of Perella Weinberg Partners, LP (Perella) for "Allowance of Compensation and Reimbursement of Expenses" in connection with its financial advising services related to the Texas Rangers' Chapter 11 Bankruptcy case. 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."[10] 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.

CONSTITUTIONAL LAW

Both the U.S. Constitution and state constitutions protect individuals from certain acts of the government. Constitutional claims are prevalent in the sports context because the state action requirement is likely met in many sports-related situations, such as issues involving public schools, cities and government agencies, and some athletic associations that are intertwined with the government. Longstanding judicial precedent has established that participation in sports is not a constitutionally protected right. This concept is addressed in some of the following cases—cases that range in coverage from the First Amendment, Fourth Amendment, Fourteenth Amendment, and other related claims.

Apilado v. N. Am. Gay Amateur Athletic Alliance[11]

During the championship game of the 2008 Gay Softball World Series in which the 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 the plaintiffs' team. The rule limited the number of

9. No. 10-43400, 2011 Bankr. LEXIS 1247 (Bankr. N. D. Tex. Apr. 6, 2011).

10. *Id.* at *12.

11. 792 F. Supp. 2d 1151 (W.D. Wash. 2011).

heterosexual players that a team could carry. Following a hearing, the protest committee determined that the plaintiffs were not 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 the plaintiffs from NAGAAA softball. Plaintiffs filed suit, alleging that NAGAAA is a public accommodation under Washington law and it unlawfully discriminated against the plaintiffs based on sexual orientation. At issue before this court was the plaintiffs' motion for partial summary judgment as to the unlawful discrimination claim and the defendant's motion for partial summary judgment as to the plaintiffs' request for injunctive relief. Although the court concluded that the defendant is a public accommodation under Washington law, it determined that issues of material fact remained regarding whether the NAGAAA rule is protected by the First Amendment's freedom of association. Similarly, the court concluded that the plaintiffs failed to demonstrate clear harm and imminent danger. As such, the defendant's motion for partial summary judgment regarding the plaintiff's requested injunctive relief was granted, and the plaintiff's motion for partial summary judgment was denied.

Awrey v. Gilbertson[12]

The 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 the defendants' determination that the plaintiff had violated National Collegiate Athletic Association (NCAA) rules. Specifically, the 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. The defendants filed a motion to dismiss. The court noted that the plaintiff did not have a constitutionally protected property interest in his continued eligibility to play football and concluded that even if the 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 the defendants' motion to dismiss.

12. No. 10-14738-BC, 2011 U.S. Dist. LEXIS 70613 (E.D. Mich. June 30, 2011).

Blasi v. Pen Argyl Area Sch. Dist.[13]

The plaintiff's children participated in basketball for their respective 7th and 8th grade teams. The plaintiff alleged that his children were discriminated against because they are one-half Chinese. The plaintiff claimed that the coaches encouraged discrimination against his sons, and furthermore, that his sons received lesser playing time, despite being more skilled. The plaintiff confronted the coaches via email and other means, which was a violation of the Athletic Code Guidelines. As a result, the plaintiff's sons were suspended for one game for violating the guidelines. The plaintiff subsequently filed suit against the defendant, challenging the Athletic Code Guidelines, as well as the Parental/Spectator guidelines, and challenging the suspensions as retaliation for exercising his constitutional rights. The court found that both guidelines were narrowly tailored, and served a legitimate purpose, such that they did not interfere with the plaintiff's constitutional rights. The court also found that the plaintiff and his sons were properly sanctioned pursuant to the guidelines, after agreeing to uphold the rules. Therefore, court found that the plaintiff's constitutional rights were not violated, and accordingly dismissed the complaint with prejudice.

Clayton v. Walton[14]

The defendants filed a motion to dismiss the plaintiff's action for violations of her constitutional rights. The plaintiff attempted to enter a Georgia Tech football game at Georgia Tech's Bobby Dodd Stadium and was turned away because she had food in her purse. The plaintiff threw the food away; however, when she attempted to re-enter, stadium workers asked to search her because they said they observed her putting something in the crotch of her pants. The defendants, two Georgia Tech police officers, were called to the scene. The plaintiff was searched and nothing was found. The plaintiff filed suit against multiple parties, alleging her civil rights under the Fourth and Fourteenth Amendments were violated as a result of an unlawful arrest, imprisonment, strip search, and conspiracy to cover up the conduct by an inadequate investigation and seeking money damages under 42 U.S.C. § 1983.

The plaintiff claimed that the defendants violated the Fourth and Fourteenth Amendments when the defendants held her for the purposes of a search because there was no probable cause that she violated the law.

The court stated that the plaintiff did not state a claim under the

13. No. 10-6814, 2011 U.S. Dist. LEXIS 112412 (E.D. Penn. Sept. 30, 2011).

14. No. 1: 11-CV-2437-TWT, 2011 U.S. Dist. LEXIS 145387 (N.D. Ga. Dec. 16, 2011).

Fourteenth Amendment because based on the facts, the Due Process Clause does not provide a remedy for the plaintiff. The court also stated that the plaintiff did not sufficiently state a claim under the Fourth Amendment, noting that a search did not occur because a reasonable person would realize she was free to decline the officers' requests to be searched so long as she did not attempt to enter the stadium. The court also stated that a reasonable person would know that smuggling food into a stadium was in violation only of stadium rules, and not state or federal law, and thus at worst could result in expulsion from the stadium. Finally, the court stated that the defendants were protected from all of the plaintiff's claims under qualified immunity. For these reasons, the court granted the defendants' motion to dismiss.

Doe v. Silsbee Indep. Sch. Dist.[15]

The plaintiffs appealed the district court's order awarding attorney's fees to the defendants. The plaintiff, who was a member of the cheerleading squad, alleged that two basketball players sexually assaulted her. After a grand jury declined to indict the two players, they were permitted to return to classes, and one was permitted to rejoin the basketball team. During a basketball game, the plaintiff refused to cheer for the player when he performed alone. As a result, the plaintiff was removed from the cheerleading squad. The plaintiff then filed this civil rights action against the defendant school district and other school officials. She alleged that the defendants violated her equal protection rights; deprived her of her liberty interests in freedom from psychological harm and stigmatization without due process; deprived her of her property right in participating in the cheerleading squad without due process; and violated her First Amendment rights. The defendants subsequently filed a motion to dismiss. The district court granted the motion and awarded the defendants attorney's fees and costs. The plaintiff appealed, arguing that the district court erred in awarding the defendants the attorney's fees. On appeal, the court held that the district court did not clearly err in finding that the plaintiff's equal protection claim and due process claims were frivolous. However, the court held that the plaintiff's First Amendment argument had some arguable merit and that the district court clearly erred in finding that the plaintiff's First Amendment claim frivolous. Therefore, the court reversed the district court's order awarding attorney's fees and remanded the order for further proceedings.

15. 440 Fed. Appx. 421 (5th Cir. Tex. 2011).

Florida State University Bd. of Trustees v. Monk[16]

Florida State University (FSU) petitioned for writ of certiorari. FSU conducted an investigation after learning about possible academic violations within FSU's Office of Athletic Academic Support Services. The investigation revealed substantial evidence purporting that Brenda Monk (Monk) perpetuated academic dishonesty. FSU issued a public report on the investigation, although Monk's name was not included. However, it was easily discoverable from the report that Monk was the person referenced. As a result, Monk resigned from her position and filed a defamation suit against FSU. FSU filed a motion to dismiss, alleging that it enjoys absolute immunity from defamation suits. The trial court denied the motion, and FSU asked for writ of certiorari.

The court of appeals granted the writ of certiorari because the trial court departed from essential requirements of law by refusing to dismiss the case on FSU's absolute immunity grounds. The court noted that FSU acted within its official duties when it conducted the investigation and released the report to the public, as required by the NCAA. Therefore, the court of appeals granted FSU's writ of certiorari and quashed the trial court's order that denied FSU's motion to dismiss.

Hayden v. Greensburg Cmty. Sch. Corp.[17]

The plaintiffs filed for a preliminary injunction on behalf of their minor son to prevent enforcement of the defendant school district's haircut policy for male, middle-school athletes. The plaintiff's son played middle-school basketball and was subject to the haircut policy. Upon suing the defendant, the plaintiffs argued that the defendant's policy violated their son's equal protection rights and his rights to procedural and substantive due process. The court found that it did not have jurisdiction to enjoin the defendant because the case was moot, as the basketball season was over, and any case brought for the upcoming season was not yet ripe. Therefore, the court denied the plaintiff's request for a preliminary injunction.

16. 68 So. 3d 316 (Fla. Dist. Ct. App. 2011).

17. No. 1:10-cv-1709-RLY-DML, 2011 U.S. Dist. LEXIS 78799 (S.D. Ind. July 19, 2011).

Immaculate Heart Cent. Sch. v. N.Y. State Pub. High Sch. Athletic Ass'n[18]

The plaintiff brought this declaratory action against the defendants, seeking to enjoin them from classifying private and public schools differently. Specifically, the plaintiffs alleged violations of the Fourteenth Amendment, First Amendment, the Religious Freedom Restoration Act of 1993, and § 1983 of the United States Code after the 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 and loss records, championships, and postseason appearances; public schools were reclassified based purely on enrollment figures. The defendants filed a motion to dismiss. Although noting that the defendants have a legitimate interest in maintaining competitive balance—their asserted interest—the court denied the defendants' motion to dismiss the plaintiff's Fourteenth Amendment Equal Protection Clause claim. However, the court granted the defendants' motion to dismiss the remaining claims.

J.K. v. Minneapolis Public Schs.[19]

J.K. filed a motion for a preliminary injunction to prevent the defendant school district from transferring him to another school in the same district. J.K. attended Southwest High School (Southwest) in Minneapolis for three years until the defendant Minneapolis Public Schools (the District) barred him from further attending Southwest because of misconduct that he allegedly committed near the end of his junior year. The District tried to transfer J.K. to another high school within the District. As a result, J.K. filed a motion for preliminary injunction, ordering the District to permit him to attend Southwest for the upcoming year. J.K. alleged that the District's actions violated his right to procedural due process under the Fourteenth Amendment of the United States Constitution. Specifically, J.K. asserted that the proposed transfer would deprive him of three distinct interests: (1) his property interest in his education; (2) his property interest in participating in interscholastic sports; and (3) his liberty interest in his reputation. The court, however, did not agree. First, the court held that J.K.'s transfer to a different high school would not impair his state-created property interest in a public education. Therefore, the court held J.K was not likely to prevail on the merits of this

18. 797 F. Supp. 2d 204 (N.D.N.Y. 2011).

19. No. 11-CV-1322, 2011 U.S. Dist. LEXIS 84195 (D. Minn. July 29, 2011).

claim. Second, the court held that J.K. was unlikely to show that the District, by transferring him, would impair his property interest in participating in interscholastic sports as part of his education. As such, the court would not enjoin the transfer on this basis. Finally, the court held that J.K. was unlikely to prove that his transfer deprived him of due process interest in his reputation. Because J.K. was not likely to prevail on the merits of any of his due process claims, the court denied his motion for a preliminary injunction.

Kirby v. Loyalsock Twp. Sch. Dist.[20]

The plaintiff was bullied by her high school basketball teammates, which led to the plaintiff quitting the basketball team during her senior year. After a rumor went around school that the plaintiff was pregnant, she made a formal complaint with the school against one of her teammates. The high school's assistant principal, Dr. Reitz, investigated the rumor, but could not find conclusive evidence as to who started it. Another complaint was filed after an incident occurred between the plaintiff and other students at school. The plaintiff filed this action and alleged that defendants violated her constitutional rights to freedom of association, substantive and procedural due process, and equal protection. The defendants filed a motion to dismiss. The court dismissed all claims against two defendants, the high school principal and District superintendent in their official capacity, because they were protected by the qualified immunity statute.

First, the court addressed her freedom of association claim. Intimate association and expressive association are the only types of protected association. The court ruled that even if the defendants' conduct was the cause of the plaintiff quitting the basketball team, the plaintiff failed to prove that the Constitution recognizes a right of social association. Therefore, the court granted the defendants' motion as to this claim.

Next, the court granted the defendants' motion for summary judgment on the plaintiff's equal protection claim. The court found that the plaintiff failed to identify any similarly situated student who had their complaint investigated by Dr. Reitz as opposed to the principal.

Lastly, the plaintiff argued that both her rights to procedural due process and substantive due process were violated. As endless case law suggests, a student has a legitimate claim only to public education, but no protected property interest in participating in extracurricular activities. Therefore, because she was not prohibited from receiving a public education, the court

20. No. 4:09-cv-01695, 2011 U.S. Dist. LEXIS 99669 (M.D. Pa. Sept. 6, 2011).

granted the defendants' motion for summary judgment as to procedural due process. Similarly, for the substantive due process claim, the defendants argued that the plaintiff failed to establish that any fundamental right existed as to which she was being deprived of by the defendants. Because the United States Constitution does not grant a fundamental right to public education, the court granted the defendants' motion for summary judgment.

Lanier v. Fresno Unified Sch. Dist.[21]

The plaintiff, James Lanier (Lanier), brought a civil action lawsuit against the Fresno Unified School District (FUSD) for alleged discrimination in relation to Lanier's bid on a sports officiating services contract. Evidence was presented that Lanier, an African-American, bid against others who were both black and white. In preparing his bid, Lanier inquired about the independent contractor status of the sports officials' pool, and whether he could use the entire pool. Lanier was informed by the purchasing department that only the current roster of officials could be used by Lanier. However, numerous white contractors bidding for the same job were permitted to use the entire pool of officials in his bid proposal and in performance of the contract. One of the white contractors was granted the contract.

First, the court dismissed the plaintiff's claims pursuant to 42 U.S.C. sections 1981, 1983, 1985, and 1986 because FUSD was an arm of the state, and therefore, is protected from such claims due to sovereign immunity granted by the Eleventh Amendment.

Next, the court denied FUSD's motion to dismiss Lanier's Title VI claim, because the alleged discrimination was conducted by those "high enough in FUSD's managerial hierarchy to constitute an allegation of discrimination against the entity receiving federal funds."[22] Lanier met his burden for establishing a Title VI claim by offering enough evidence to overcome the motion to dismiss, showing that FUSD may have engaged in racial discrimination and that FUSD did receive federal financial assistance. FUSD argued that the court should dismiss the claim because Lanier failed to offer proof that FUSD itself was discriminatory, and offered evidence showing that only individual employees were discriminatory. This led the court to determine whether Lanier's discriminatory conduct allegation was completed by managers high enough to institute corrective measures on Lanier's behalf.

21. No. CIV F 09-1779, 2011 U.S. Dist. LEXIS 111736 (E.D. Cal., Sept. 29, 2011).

22. Lanier v. Fresno Unified Sch. Dist., 2011 U.S. Dist. LEXIS 111736, 15–16 (D.C.E.D. Cal., Sept. 29, 2011).

Lanier offered evidence that FUSD's athletic director told the African-American contract bidders that they would not be considered for the opening unless they partnered with the white contractor who had no staff or certification to officiate (both of which Lanier did have). There was also proof that Lanier sent a letter notifying FUSD's board, which had necessary decision-making power, of the discriminatory conduct. Therefore, the court ruled that the alleged facts directly stated that FUSD was aware of Lanier's racial bias allegations, but failed to remedy the situation. The court also held that Lanier adequately alleged discriminatory conduct as required under Title VI.

Luzzi v. ATP Tour, Inc.[23]

ESPN filed a motion to unseal certain documents. The Association of Tennis Professionals (ATP) charged the plaintiffs, professional tennis players, with violating the ATP Official Rulebook for wagering on tennis matches. Following arbitration proceedings, each plaintiff was fined and suspended. The plaintiffs later filed suit in Florida District Court, alleging that they were not bound by the ATP Rulebook's antiwagering provisions, their arbitration proceedings were not binding, and ATP's targeting of the plaintiffs violated a fiduciary duty. During discovery in this suit, the parties entered into a Confidentiality Agreement and Stipulated Order in which the parties could designate certain documents as confidential and thus seal them as confidential. On Intervenor, ESPN filed a motion to unseal certain documents, arguing (1) that a right of public access attaches to documents submitted with a dispositive motion because they form the basis of a formal act of the court; and (2) ATP did not show an interest in the continued sealing of the documents sufficient to outweigh the public's and media's right of access. Without deciding the issue, the court first assumed that at least a limited presumption of public access applied to the sealed documents. Second, the court noted that legitimate privacy interests are an important factor to be considered, particularly the privacy interests of tennis players not involved in this dispute. As such, the court held that good cause existed for the records to remain sealed and denied ESPN's motion to unseal the documents.

Marcavage v. City of Chicago[24]

The plaintiffs appealed the trial court's decision to grant summary

23. No. 3:09-cv-1155-J-32MCR, 2011 U.S. Dist. LEXIS 74796 (M.D. Fla. July 12, 2011).

24. 659 F.3d 626 (7th Cir. 2011).

judgment in favor of the defendants in the plaintiffs' action asserting violations of their constitutional rights. The plaintiffs, members of a religious organization, were demonstrating at two stadiums during outreach activities during homosexual athletic and cultural events. Police officers ordered the demonstrators to change the locations of their activities and the plaintiffs refused to comply. As a result, two demonstrators were arrested. The plaintiffs subsequently sued the defendants, the city, police officers, and a municipal corporation, alleging violations of the First, Fourth, and Fourteenth Amendments. The District Court granted summary judgment in favor of the city and the police officers, and granted a motion for judgment on the pleadings in favor of the municipal corporation. The plaintiffs appealed.

On appeal, the court affirmed the summary judgment in favor of the city and the police officers with respect to the claims involving the stadiums because they were not permitted to use the main pedestrian thoroughfares at each of the venues because (1) under the First Amendment the restrictions were content-neutral, not overly broad, and sufficiently narrowly tailored to the significant goal of avoiding congestion and maintaining an orderly flow of traffic; (2) regarding equal protection, a reasonable fact-finder could not in good conscience find that the demonstrators were similarly-situated to other users of the sidewalks; and (3) officers had probable cause to arrest a demonstrator for disorderly conduct. However, the court remanded the First Amendment claim dealing with the park.

McGee v. Va. High Sch. League[25]

The plaintiffs filed a motion to preliminarily enjoin defendant from applying one of its athletic eligibility rules. Six public high schools were consolidated into three schools, which resulted in the end of the St. Paul Fighting Deacons (St. Paul). St. Paul served students residing in two counties, and the students, regardless of their county, were able to choose between the two remaining high schools in the two counties. The defendant's transfer rules applied whenever a student enrolled in one school then transferred to another school without a corresponding change in parental residence. Under the rule, if a student transferred to another high school and did not fall under one of the exceptions, the student was ineligible from participating in interscholastic competitions for one year. One of the exceptions addressed school closure and stated that the rule did not apply if the student transferred to the school serving the district in which the parent resided. The Mayor of the City of St. Paul

25. 801 F. Supp. 2d 526 (W.D. Va. 2011).

requested that St. Paul students be granted an eligibility exception should they choose to transfer to a high school not in their county. The request was denied. The plaintiffs, parents of the students that went to noncounty schools, sought a permanent injunction against the defendant's application of the transfer rule and sought a preliminary injunction allowing the students temporary eligibility while the lawsuit pended. The trial court addressed the preliminary injunction and held that the plaintiffs failed to demonstrate a likelihood of success on the merits of their lawsuit and failed to show irreparable harm. Therefore, the court denied the motion for a preliminary injunction.

Quintero v. Mariposa Cnty. Sch. Dist.[26]

The plaintiff filed suit against the defendant school district, alleging that school officials' racially discriminatory attitudes and conduct prevented him from equal access to sports officiating contracts. However, the court held that the plaintiff's complaint could not succeed because the Eleventh Amendment prohibits actions for damages against the state. As a public school district in the state of California, the defendant is an arm of the state, and is therefore shielded from suit in federal court. The court also held that the plaintiff's state law claims were barred for similar reasons. However, the court did grant the plaintiff an opportunity to amend his complaint to name the school board members in their individual capacities.

Seger v. Ky. High Sch. Athletic Ass'n[27]

The plaintiffs, parents of nonpublic school students, appealed a district court decision to dismiss their claims against the Kentucky High School Athletic Association (KHSAA), alleging that a KHSAA rule violated their constitutional rights. The contested bylaw concerned the eligibility of student athletes at nonpublic schools who received financial aid. The KHSAA enacted the bylaw to prevent and deter member schools from recruiting student athletes by restricting the amount and form of financial aid nonpublic school students can accept and remain eligible to play KHSAA-sanctioned sports. After the plaintiffs' children lost their eligibility through the application of this bylaw, the plaintiffs filed this action against the KHSAA, arguing that the bylaw was unfair, discriminatory, arbitrary and capricious, and violated their constitutional rights guaranteed by the First and Fourteenth

26. No. 1: 11-cv-00839, 2011 U.S. Dist. LEXIS 124532 (E.D. Cal. Oct. 27, 2011).

27. 453 Fed. Appx. 630 (6th Cir. 2011).

Amendment. The district court dismissed the plaintiffs' claims.

On appeal, the Sixth Circuit Court of Appeals determined that the bylaw was not discriminatory on its face because it did not discriminate against on a suspect or quasi-suspect class; therefore, the bylaw was subject to review under the rational basis standard. Furthermore, the court found the bylaw was rationally related to furthering the KHSAA's interest in deterring the use of financial aid as an improper athletic recruitment tool, an the bylaw did not violate any of the plaintiffs' constitutional rights. As such, the court affirmed the dismissal of the plaintiffs' federal constitutional claims. The court noted, however, that this decision did not affect any claims that the plaintiffs might wish to pursue under state law.

Wis. Interscholastic Athletic Ass'n v. Gannett Co.[28]

Gannett Company newspaper appealed the district court's order granting summary judgment to the Wisconsin Interscholastic Athletic Association (WIAA), holding that the WIAA had the right to grant exclusive licenses to broadcast WIAA games. In 2005, the WIAA contracted with the video production company, American-HiFi, giving American-HiFi exclusive rights to broadcast WIAA tournament events. The agreement did not prohibit media coverage, photography, or interviews before or after games. Believing that the exclusive license agreement violated the media's First Amendment right to report on events, Gannett streamed four WIAA tournament games without WIAA consent and without paying the required licensing fees. In response, the WIAA filed a declaratory judgment action against Gannet, asserting its right to grant exclusive licenses. The district court entered summary judgment in favor of the WIAA. Gannett appealed arguing that the WIAA's contract granting American-HiFi the exclusive right to stream tournament games and requiring consent and payment for third-party broadcasts of entire games violated the First Amendment. On appeal, the court determined that an exclusive contract for the transmission of an event does not interfere with the media's right to report or comment on events. Instead, the agreement prohibits the media only from appropriating the product without paying for it. Furthermore, because nothing in the First Amendment grants the media affirmative rights to broadcast entire performances, the WIAA had the right to package and distribute its performances. For these reasons, the Seventh Circuit Court of Appeals affirmed the district court's grant of summary judgment in favor of the WIAA.

28. 658 F.3d 614 (7th Cir. 2011).

CONTRACT LAW

Whether a contract involves certain product and sponsorship agreements, employment issues, major league, minor league, or collegiate sports, there is no doubt that contractual agreements touch on nearly every aspect of the sports industry. The following cases represent some of the plethora of contractual issues that arose in 2011 and highlight the significance of this particular area of sports law.

Action Grp. Int'l, LLC v. AboutGolf, Ltd.[29]

The plaintiff, Action Group International (AGI), entered into a series of three, one-year distribution agreements with the defendant, AboutGolf, whereby the 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 the defendant's liability regarding a host of issues such as defective products. Although the agreement required the defendant to provide the plaintiff with future product development information, among other things, most of these supposed developments never materialized. Additionally, the plaintiff allegedly repaired numerous defects following complaints regarding the defendant's products, and the defendant allegedly violated the exclusivity portion of the agreement by communicating with other potential distributors in South Korea. Eventually, the defendant notified the plaintiff it was terminating the agreement.

This suit followed, with the plaintiff asserting eight separate causes of action seeking damages and injunctive relief for the defendant's alleged breach of contract, fraud, unjust enrichment, and other related claims. At issue before the court was the defendant's motion to dismiss. Analyzing each claim in turn, the court granted the defendant's motion as to the plaintiff's claims for improper termination, breach of territorial exclusivity, unjust enrichment, and tortious interference with business relations. However, the defendant's motion was denied as to the plaintiff's claims for breach of warranty, fraud, promissory estoppel, and for violations of Ohio's Deceptive Trade Practices Act.

29. No. 3:10CV2132, 2011 U.S. Dist. LEXIS 46133 (N.D. Ohio Apr. 29. 2011).

Advanced Fluid Solutions, LLC v. Nat'l Assoc. for Stock Car Auto Racing, Inc.[30]

The plaintiff Advanced Fluid Solutions (AFS) and NASCAR entered into an agreement in July 2009 where NASCAR granted AFS the license to manufacture the official NASCAR high-performance additive. The agreement granted NASCAR the ability to terminate for AFS's failure to make a payment if, after proper written notice, AFS failed to cure such a default within thirty days. NASCAR delivered notice improperly by email in late October 2009. On December 1, 2009, NASCAR terminated the agreement with AFS. However, after sending the email in October, NASCAR assured AFS that it would perform the contract upon receiving the funding from AFS. After the termination letter was sent, NASCAR continued to deal with AFS, and later that month, AFS notified NASCAR that it obtained alternative financing and was able to perform the contract. However, NASCAR had already entered into an agreement with a different manufacturer.

NASCAR's conduct led to AFS filing its three claims, which NASCAR responded with a motion to dismiss. The district court held that specific performance is an inappropriate remedy because AFS is not clearly entitled to it and monetary damages would be an adequate remedy. Therefore, the district court dismissed AFS's claim for specific performance. The district court also dismissed AFS's claim for breach of contract. The court ignored AFS's argument that NASCAR continued discussions that gave the impression that AFS could continue the agreement upon payment. The court also found it unpersuasive that AFS suffered any damages because of NASCAR's improper notice. Finally, the district court dismissed AFS's declaratory judgment action. AFS argued that latent or patent ambiguities in the agreement led to doubting its rights under the contract. However, AFS failed to cite any specific provisions in the agreement that would demand declaratory relief. Therefore, because AFS failed to allege plausible facts that indicated some actual doubt as to a specific right under the agreement, the district court dismissed AFS's claim for declaratory judgment.

Bell v. Tampa Bay Downs, Inc.[31]

The plaintiff, a professional horse racing jockey, sued the defendants for tortious interference after being accused of fixing races and being banned from racing at a certain race. The plaintiff also claimed that the defendants violated

30. No. 6:11-cv-16-Orl-22KRS, 2011 U.S. Dist. LEXIS 98165 (M.D. Fla. July 26, 2011).

31. No. 8:10-cv-2835-T-30TBM, 2011 U.S. Dist. LEXIS 146931 (M.D. Fla. Dec. 21, 2011).

42 U.S.C. § 1983 because the ban was issued without a hearing or any due process. In the defendant's motion to dismiss, the defendants first claimed that the plaintiff could not bring a tortious interference claim because the plaintiff had no existing contractual right to employment, or the hope of future employment. The court rejected this claim and held that the plaintiff had existing and prospective contractual rights. The court also noted that although the defendants have a qualified privilege to interfere with the business relationship of jockeys, a plaintiff can recover if malice is shown. The court found that the plaintiff alleged malice because the defendants issued the ban without reason. With respect to the plaintiff's 42 U.S.C. § 1983 claim, the court held that the plaintiff did not state a claim because § 1983 does not cover private conduct, and thus as a private enterprise, the defendants had the right to exclude anyone they chose from their property.

Big East Conference v. W. Va. Univ.[32]

The defendant, West Virginia University, filed a motion to dismiss the plaintiff, Big East Conference's, complaint. The defendant announced that it planned to leave the plaintiff's conference for another conference and then sued the plaintiff for breach of contractual and fiduciary duties for allegedly failing to maintain the Big East as a viable collegiate football conference. The defendant sued the plaintiff in West Virginia. The plaintiff claimed the defendant breached bylaws of the conference and sued the defendant for breach of contract. The defendant subsequently filed a motion to dismiss.

First, after interpreting the state's long arm statute, the Rhode Island Superior Court held that the court did have personal jurisdiction over the plaintiff. Second, the court held that there was sufficient service of process because the defendant served the plaintiff in compliance with the rules of Civil Procedure. Third, the court refused to apply West Virginia's sovereign immunity law on the basis of comity because it would deprive the plaintiff of its ability to fully pursue a claim. Fourth, the court refused to dismiss the action under the first-to-file rule because the facts indicated that the defendant's first-filed lawsuit qualified as an anticipatory action. Finally, the court refused to dismiss the action on forum non conveniens grounds because the plaintiff would not get adequate relief in the defendant's suit because the defendant could claim sovereign immunity and the plaintiff may have no judicial remedy in West Virginia. Additionally, the court noted that private and public interest factors did not warrant dismissal. Therefore, the

32. No. PB 11-6391, 2011 R.I. Super. LEXIS 164 (R.I. Super. Ct. Dec. 27, 2011).

defendant's motion to dismiss was denied.

Can. Am. Ass'n of Prof'l Baseball, Ltd. v. Ottawa Rapidz[33]

The Ottawa Rapidz (Rapidz) appealed from the trial court's judgment granting a motion filed by the Canadian American Association of Professional Baseball (the League) to confirm an arbitration award. Rapidz had entered into a "League Affiliation Agreement" with the League, which entitled 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's 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 the 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 the 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 Haselwood v. Chi. Title Ins. Co.[34]

The defendant, Chicago Title Insurance Company (CTIC), filed a motion to dismiss plaintiff Haselwood's claim for insurance coverage. The plaintiffs loaned money to an ice arena for construction. This loan was secured by a deed of trust. The plaintiffs financed the loan by purchasing title insurance

33. 711 S.E.2d 834 (N.C. Ct. App. 2011).

34. No. 10-5464-RBL, 2011 U.S. Dist. LEXIS 77648 (W.D. Wash. July 18, 2011).

from CTIC. A year later, the ice arena stopped paying its lenders back. Haselwood filed a lawsuit against the ice arena to foreclose its deed of trust. Four years later, Haselwood sent CTIC a letter related to the foreclosure. However, CTIC responded two years later by denying it had any duty to defend Haselwood.

Haselwood brought this suit against CTIC, claiming it had wrongfully denied them coverage. CTIC's only argument was that Haselwood's claims accrued in 2003, and therefore, was barred by the six-year statute of limitations for contract disputes. However, Haselwood argued that the claim did not accrue until 2009, when CTIC refused coverage. Previous case law supported the plaintiffs' argument because an insurance claim accrues only once the insurer breaches the insurance policy contract. Therefore, because CTIC breached the contract in 2009 when it refused coverage to Haselwood, the claims did not expire, and the court denied CTIC's motion to dismiss.

Estate of Oshinsky v. N.Y. Football Giants, Inc.[35]

The issue before the court was a joint motion for summary judgment on behalf of the defendants, representing the New York Giants' and New York Jets' collective interests arising out of a dispute regarding season tickets. The 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. The plaintiff challenged this policy, arguing that it constituted a breach of the parties' longstanding contract that allegedly entitled him to automatic renewal rights. However, the defendants maintained that season tickets are revocable licenses. Finding that no automatic renewal rights to season ticket holders existed, the court granted the defendants' motion for summary judgment.

Fan Action, Inc. v. Yahoo! Inc.[36]

The plaintiff created a website dedicated to coverage of the University of Notre Dame sports teams. After the website was created, the defendant offered to enter into a partnership agreement with the plaintiff. During the term of the second partnership agreement, the plaintiff alleged that the defendant created a similar website and hired the plaintiff's employees and directed subscribers to the new website. The plaintiff subsequently sued the defendant for breach of contract, breach of implied duty of good faith, and

35. No. 09-cv-01186, 2011 U.S. Dist. LEXIS 11331 (D.N.J. Feb. 2, 2011).

36. No. 3:10CV75-PPS/CAN, 2011 U.S. Dist. LEXIS 134355 (N.D. Ind. Nov. 18, 2011).

unfair competition. The defendant moved to dismiss, stating that the plaintiff did not allege sufficient facts to be granted relief. The court found that the complaint was well plead under the facts, and therefore denied the defendant's motion to dismiss.

Gilbert v. Tulane Univ. of La.[37]

The plaintiff entered into an employment agreement with the defendants to serve as the Defensive Line Coach for the Tulane University football team. The plaintiff was subsequently fired for routinely engaging in unprofessional behavior and divisive conduct. As a result of these allegations, the plaintiff was not able to get another job with the National Collegiate Athletic Association (NCAA). The plaintiff filed suit against the defendants, alleging six claims; however, the plaintiff later voluntarily dismissed all but two of his claims—his breach of contract and abuse of rights claims. The defendants filed a motion to dismiss the plaintiff's abuse of rights claim. The defendants also urged the court to award attorney's fees incurred in connection with their motion to dismiss, contending that the plaintiff's voluntarily dismissed claims had no evidentiary support or were not warranted by existing law, and that the plaintiff did not dismiss the claims until after the defendants filed their motion to dismiss. The defendants also asked the court to order that the plaintiff's voluntarily dismissed claims be dismissed "with prejudice" so that the plaintiff could not later attempt to litigate them.

The court granted the defendants' motion to dismiss the plaintiff's abuse of rights claim because the plaintiff did not file this claim in time. However, the court denied the defendants' request for attorney's fees, because the defendants did not satisfy the "separate motion" requirement established by Rule 11(c)(2) of the Federal Rules of Civil Procedure; the plaintiff's amendment and dismissal appeared to be in compliance with Rules 15(a) and 41(a)(1)(A) and (B) of the Federal Rules of Civil Procedure relative to voluntary dismissals being without prejudice; and the defendants did not describe any less costly or time consuming efforts that they had undertaken in an attempt to bring about a voluntary dismissal of certain claims without the necessity of filing a formal adversarial motion.

Harmon v. Gordon[38]

The plaintiff sued the defendant for breach of contact. Ben Gordon

37. No. 10-2920, 2011 U.S. Dist. LEXIS 111801 (E.D. La. Sept. 29, 2011).

38. No. 10 C 1823, 2011 U.S. Dist. LEXIS 95320 (N.D. Ill. Aug. 25, 2011).

(Gordon) was drafted by the Chicago Bulls in 2004 and signed a three-year contract with the option to extend for a fourth year. Larry Harmon (Harmon) and Gordon entered into a consulting agreement after Gordon was drafted, the term of which was to cover the duration of Gordon's playing career. Gordon terminated the contract after his third year with the Chicago Bulls.

After Harmon sued Gordon for breach of contract, both parties moved for summary judgment. Harmon argued that the contract was valid to extend for the entirety of Gordon's playing career, whereas Gordon argued it could extend only for the length of his initial contract. The court found that the contract must have a term that was definite and certain, which Harmon's interpretation would not provide. Gordon also argued that he was entitled to terminate the contract for dissatisfaction in services. The court found that Gordon was entitled to terminate his contract after his playing contract with the Chicago Bulls expired, which he did, and therefore, the court granted Gordon summary judgment and accordingly denied Harmon's motion for summary judgment.

Haught v. U.S. Fid. & Guar. Co.[39]

Haught appealed the trial court's decision to enter summary judgment in favor of the defendant insurance company after the insurance company denied coverage under his policy. Haught was an amateur youth baseball coach. During a team meeting following a game, a dispute over how much the school's booster club was charging for parking became physical. Haught left the meeting in an attempt to diffuse the fight. However, during the fight, one of the booster members, Mr. Abrams, was fatally injured. In connection with his death, Haught was found guilty of assaulting Mr. Abrams, and the executrix of his estate filed a wrongful death action against multiple parties, including Haught. Haught filed a motion seeking declaratory judgment, claiming that the defendants, his insurers, owed him a defense with respect to an incident leading to Mr. Abrams's death and indemnification with respect to the same incident. The insurer filed a motion for summary judgment. The trial court granted summary judgment, and Haught appealed.

Haught asserted that the trial court erred in granting summary judgment to the insurer because he was entitled to coverage under the policy, that the incident that led to Mr. Abrams's death occurred within the scope of the policy, and that no exclusions were applicable. Because the fight occurred approximately eighty feet from where Haught was conducting a team meeting,

39. 2011 Ohio 4994 (Ohio Ct. App. 2011).

and because the argument grew heated and became violent causing the coach to leave the team meeting and run towards the fight, the court held that Haught was acting within his capacity as a coach when he ran into the crowd. Thus, the court held that trial court erred in its interpretation of the insurance policy. However, the court remanded the issue because the trial court denied coverage solely upon this basis, and had not yet considered the remaining issues.

HBCU Pro Football, LLC v. New Vision Sports Props., LLC[40]

The plaintiff, HBCU Pro Football, LLC (HBCU), produces television broadcasts of athletic contests involving historically black colleges and universities. In this capacity, the plaintiff met with the defendant Victor Pelt (Pelt) and executed an agreement whereby the plaintiff would provide broadcasts of three football games to the defendant New Vision Sports Properties (NVSP), an official broadcast agent of College Sports Television (CSTV), to be aired on CSTV and pay NVSP a broadcast fee for each game. In return, the plaintiff was guaranteed a certain minimum gross revenue payment for each game. A similar deal was reached regarding three other college football games. Although the 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 the 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 the 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.[41]

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 Dollar was not liable under either contract, and the Kansas

40. No. WDQ-10-0467, 2011 U.S. Dist. LEXIS 55976 (D. Md. May 24, 2011).

41. 251 P.3d 112 (Kan. Ct. App. 2011).

Court of Appeals affirmed the trial court's decision. 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 that "[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,"[42] and 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[43]

This decision arises out of the highly publicized Super Bowl XLV ticket incident in which the defendants allegedly "denied, relocated, or delayed the seating of over 2000 ticket holders."[44] The plaintiffs, ticket holders on behalf of themselves and other similarly situated people, sued the defendants, alleging fraud; breach of contract; fraudulent inducement; negligence; and negligent misrepresentation, in addition to seeking attorney's fees. Although the plaintiffs brought suit in the District Court of Dallas County, Texas, the 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 the plaintiffs' motion to remand the case back to the original court. To establish that the amount in controversy exceeded $5 million, the defendants relied on such information as the face value for a Super Bowl ticket and the approximate number of plaintiffs. Finding that the defendants established by a preponderance of the evidence that the amount in controversy would be over $5 million and that the plaintiffs arguments to the contrary were purely speculative, the court denied the plaintiffs motion to remand.

N.H. Speedway, Inc. v. Motor Racing Network, Inc.[45]

New Hampshire Speedway, Inc. (NHS) filed a motion for summary judgment on a claim for promissory estoppel. NHS operated an auto

42. *Id.* at *15.

43. No. 3:11-CV-0345-M, 2011 U.S. Dist. LEXIS 39688 (N.D. Tex. Apr. 12, 2011).

44. *Id.* at *2.

45. No. 217-2008-EQ-099, 2011 N.H. Super. LEXIS 43 (N.H. Super. Ct. July 19, 2011).

speedway track. Motor Racing Network, Inc. (MRN) was engaged in the business of radio broadcasting NASCAR events and racing-related programs. NHS and MRN executed a document entitled "Agreement Between Network and Promoter" in which NHS granted to MRN exclusive worldwide radio rights to broadcast and rebroadcast by AM, FM, shortwave radio or other nonvisual technology, all events that took place at the speedway. Speedway Motor Sports, Inc. (SMI) purchased NHS's stock and subsequently owned the Speedway. Consequently, SMI owned its own radio network, Speedway Properties Company, LLC d/b/a Performance Racing Network (PRN). After the purchase, NHS declared the agreement between it and MRN void and unenforceable and NHS refused to allow MRN to broadcast events from the Speedway. As a result, NHS and PRN brought a declaratory judgment claim against MRN. MRN filed a counterclaim, alleging, among other claims, promissory estoppel against NHS. NHS moved for summary judgment on the promissory estoppel counterclaim. The court held that MRN's promissory estoppel counterclaim raised genuine issues of material fact with respect to the issues of whether it acted on reasonable reliance on NHS's representations to its detriment. Therefore, the court denied NHS's motion for summary judgment.

Original Pizza Pan v. CWC Sports Grp., Inc.[46]

Original Pizza Pan, 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. The defendants moved to dismiss, stating that the endorsement agreement contained a valid forum selection clause, prohibiting suit against the defendants in Ohio. The trial court granted the defendants' motion and dismissed the complaints with prejudice because it found the forum selection clause to be valid. The appellate court affirmed stating that there was nothing in the record to establish that California would be so gravely difficult and inconvenient for Pizza Pan.

46. 194 Ohio App. 3d 50 (Ohio Ct. App. 2011).

Rosen v. Univ. of S.C.[47]

The plaintiffs appealed the trial court's order granting summary for the University of South Carolina (the University) 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 appellate court 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 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[48]

The appellant Ruffu, a horse trainer, brought an action against the 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. The respondents filed a motion to dismiss Ruffu's action on the basis of

47. No. 2011-UP-331, 2011 S.C. App. Unpub. LEXIS 401 (S.C. Ct. App. June 27, 2011).

48. No. B218864, 2011 Cal. App. Unpub. LEXIS 933 (Cal. Ct. App. Feb. 7, 2011).

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.

Simms v. Jones[49]

The defendants—Jerry Jones, owner of the Dallas Cowboys football club and stadium, and the National Football League (NFL)—filed a motion to dismiss the plaintiff ticketholders' breach of contract claims, which the plaintiffs filed after the defendants failed to ensure that there was proper seating for each ticketholder to Super Bowl XLV. Cowboys Stadium hosted Super Bowl XLV. To accommodate more spectators for the event, the defendants planned to add 13,000 additional temporary seats to the stadium. However, the NFL did not completely install the seats prior to the game. As a result, some ticketholders were placed in seats that had an obstructed view of the field, some were delayed in gaining access to their seats, and some never got a seat and were able to watch the game only on television monitors in the Miller Lite Club. Shortly after the game, the plaintiff ticketholders whom the failure to ensure proper seating affected filed this consolidated class action, alleging breach of contract, breach of implied covenant of good faith and fair dealing, fraud, and negligent misrepresentation. The defendants moved to dismiss all of these claims. The Super Bowl game ticket is a contract between the NFL and the ticket purchaser because the game in question was the Super Bowl. Therefore, the Texas district court held that Jerry Jones and the Dallas Cowboys were not parties to that contract, and therefore, were not liable for breach of contract and the court dismissed the breach of contract claims against Jerry Jones, the Dallas Cowboys, and Cowboys Stadium. However, the court did not dismiss the breach of contract claims against the NFL because taking the facts pleaded in plaintiffs' complaint as true, the NFL could be liable for breach of contract. The court dismissed the plaintiffs' remaining claims for failure to plead sufficient facts to state a claim upon which relief could be granted.

49. No. 3:11-CV-0248-M, 2011 U.S. Dist. LEXIS 137783 (N.D. Tex. Nov. 30, 2011).

Travelers Indem. Co. v. Crown Corr, Inc.[50]

The defendant filed a motion to dismiss the plaintiff's contract and negligence claims to recover damages following a rainstorm, which caused significant damage to the University of Phoenix Stadium (Stadium). At the time of this incident, the plaintiff had an insurance contract with Tourism and Sports Authority (the insured), the owner of the Stadium. Following a rainstorm in 2010, the Stadium suffered significant damage to its facade, roof, and sound system. The plaintiff alleged that the damage was a direct result of the defendant's negligent design of the Stadium's exterior enclosure system, which the defendant promised would be able to withstand wind speeds in excess of those that occurred during the storm. Consequently, the plaintiff brought this action on behalf of the insured owner of the Stadium to recover the damages that it had incurred as a result of the defendant's negligent performance under its contract to design the Stadium's exterior enclosure system. In its action, the plaintiff alleged breach of contract, breach of contractual indemnity, and negligence. However, because the insured had waived its subrogation rights in the design and build agreement, the waiver bound the plaintiff, and it could not recover any contract or indemnity damages. As for the plaintiff's negligence claim, the court determined that the economic loss doctrine barred the claim. As a result, the court granted defendant's motion to dismiss the plaintiff's claims.

Wasserman Media Group, LLC v. Bender[51]

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 NBPA Regulations. Bender was notified of the arbitration hearing, but he failed to respond or appear. 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

50. No. CV 11-0965-PHX-JAT, 2011 U.S. Dist. LEXIS 148529 (D. Ariz. Dec. 27, 2011).

51. No. 10 Civ. 8783 (SAS), 2011 U.S. Dist. LEXIS 52825 (S.D.N.Y. May 16, 2011).

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[52]

The NFL Players' Association (the Players) alleged that the National Football League (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.

52. 766 F. Supp. 2d 941 (D. Minn. 2011).

Similarly, the NFL also did not act in its best effort when it did not seek revenue modifications to the 2009–2010 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.

COURT OF ARBITRATION FOR SPORT

The Court of Arbitration for Sport (CAS) is an international arbitration body headquartered in Lausanne, Switzerland. Through agreement, many disputes involving the Olympic Movement are submitted first to the CAS; as such, the CAS represents a forum for various national and international sports organizations to resolve disputes in a consistent manner, which has allowed for the CAS decisions to develop a type of precedent known as lex sportiva. The following CAS decisions represent just some of the many areas that the CAS is involved in, including anti-doping violations, contractual disputes, and various disputes surrounding disqualifications and suspensions.

Blanco v. USADA[53]

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[54]

In January 2011, the Bulgarian Boxing Federation (BBF), the national governing body for the sport of boxing in Bulgaria, was awarded the right to

53. CAS 2010/A/2185 (Apr. 1, 2011).

54. CAS 2010/A/2401 (June 7, 2011).

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, the European Boxing Confederation (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 event in Turkey, which was 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[55]

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.

General Taweep Jantararoj & Amateur Boxing Fed'n of Thailand v. Int'l Boxing Ass'n[56]

General Taweep Jantararoj appealed the International Boxing Association (AIBA) decision to suspend him as president of the Amateur Boxing

55. CAS 2010/A/2090 (Feb. 7, 2011).

56. CAS 2010/A/2243, CAS 2011/A/2358, CAS 2011/A/2385; CAS 2011/A/2411 (Aug. 3, 2011).

Association of Thailand (ABAT) after Jantararoj tried to manipulate the AIBA Congress election procedure. On September 26, 2010, Jantararoj sent an email to several Asian national boxing associations encouraging the associations to fill out certain forms for an upcoming election. Jantararoj attached forged forms to the email. Moreover, some of the associations that received this email were not qualified to participate in the election based on AIBA criteria. Determining that this conduct violated the AIBA Ethics and Disciplinary Codes, AIBA suspended Jantararoj from any AIBA activity for a period of two years. Jantararoj appealed the suspension to the Court of Arbitration for Sport (CAS), arguing that he did not violate any AIBA rules. On appeal, CAS reversed the disciplinary action taken against Jantararoj because he could not be held responsible for the disciplinary infringements for which he was sanctioned—failure to respect AIBA decisions; disparagement of AIBA's reputation and interests; failure to respect AIBA statutes, bylaws and regulations; and failure to respect the principles of honesty, integrity, and sportsmanship. The only conduct for which the AIBA could discipline Jantararoj—failure to behave with respect—was never cited by the AIBA disciplinary bodies; therefore, the AIBA could not use it to discipline Jantararoj.

Oriekhov v. Union des Ass'ns Européennes de Football[57]

The Union des Associations Européennes de Football (UEFA), the governing body for soccer in Europe, decided to ban Oreikhov, 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.

57. CAS 2010/A/2172 (Jan. 18, 2011).

Sevilla FC SAD v. Udinese Calcio S.p.A.[58]

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.

Subirats v. Fed'n Int'l de Natation[59]

Venezuelan swimmer, Albert Subirats, appealed his sanction for an anti-doping rule violation after the Fédération Internationale de Natation (FINA) failed to receive his whereabouts form. Pursuant to FINA anti-doping rules, an athlete must keep FINA informed about where he or she can be located for unannounced anti-doping testing. Since 2006, Subirats has always submitted his whereabouts forms to the Venezuelan Swimming Federation (VSF). The VSF would then forward the whereabouts forms to FINA. However, in 2010 and 2011, the VSF failed to file Subirats's forms three times. Each time, FINA attempted to notify Subirats of the filing failure by sending a letter to the VSF. However, the VSF did not forward the letters to Subirats until after the third filing failure. Shortly after the third failure, FINA charged Subirats with an anti-doping rule violation and imposed a one-year suspension. Subirats appealed the anti-doping violation and the suspension to the Court of Arbitration for Sport (CAS), arguing that he did not commit any rule violations. On appeal, CAS determined that an athlete bears the responsibility to inform FINA of his whereabouts regardless of whether he delegates such responsibility to a third party. Therefore, he remains ultimately responsible if the third party fails to provide FINA with the athlete's whereabouts.

58. CAS 2010/A/2145; *see also* Sanctis v. Udinese Calcio S.p.A., CAS 2010/A/2146; Udinese Calcio S.p.A. v. de Sanctis & Sevilla FC SAD, CAS 2010A/2147 (Feb. 28, 2011).

59. CAS 2011/A/2499 (Aug. 24, 2011).

However, because FINA never sent a notice of the filing failures directly to Subirats, Subirats did not have knowledge of the filing failures; therefore, there could be no anti-doping rule violation and Subirats's sanction was overturned.

Tong v. Int'l Judo Fed'n[60]

The International Judo Federation (IJF), the international federation governing Judo, suspended 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.

United States Olympic Committee (USOC) v. International Olympic Committee (IOC)[61]

The United States Olympic Committee (USOC) and the International Olympic Committee (IOC) agreed to submit to ordinary arbitration a dispute regarding the enforceability of the IOC Regulation known as the "Osaka rule." The Osaka rule, which the IOC enacted in 2008, bans any athlete who has been sanctioned with a suspension of more than six months for an anti-doping rule violation from competing in the next edition of the Olympic Games, even if the suspension is set to expire before the start of the Olympics. Following the enactment of this rule, several American Arbitration Association (AAA) panel decisions suggested that the IOC should not enforce the Osaka Rule in certain cases because such enforcement would be manifestly unfair and grossly disproportionate. However, because these AAA decisions had no binding effect on the IOC, there was still a question concerning the validity

60. CAS 2010/A/2161 (Feb. 23, 2011).

61. CAS 2011/O/2422 (Oct. 6, 2011).

and enforceability of this rule. As such, the USOC requested the IOC to submit to ordinary arbitration in the Court of Arbitration for Sport (CAS) to resolve this issue prior to when the National Olympic Committees needed to submit their nominations for athletes to participate in the 2012 Olympic Games. The IOC voluntarily agreed to submit the matter to ordinary CAS arbitration. In the end, the CAS Panel determined that the Osaka Rule was invalid and unenforceable because it was a disciplinary sanction, rather than a mere condition of eligibility, since its nature was to punish prior undesirable behavior. Moreover, because the IOC's anti-doping rules do not permit the IOC to impose disciplinary sanctions additional to those already listed in the WADA Code, the Osaka Rule did not comply with the IOC's rules, and was therefore, invalid and unenforceable.

WADA v. Int'l Gymnastics Fed'n & Melnychenko[62]

The World Anti-Doping Agency (WADA) appealed the International Gymnastics Federation (FIG) decision to impose a two-month suspension on the fifteen-year-old gymnast, Anastasiya Melnychenko, after she tested positive for a prohibited substance. While competing at the European Team Championships, Melnychenko was selected to provide a sample for an anti-doping test. Analysis of her sample revealed the presence of Furosemide, a prohibited substance. In a hearing before the FIG Disciplinary Commission, Melnychenko argued that the substance was in her system because she was taking a prescription medicine. Determining that her degree of fault was minimal, the FIG Disciplinary Commission imposed a two-month suspension and invalidated Melnychenko's results from the competition where she tested positive. WADA then appealed the sanction to the Court of Arbitration for Sport (CAS), arguing that the FIG Disciplinary Commission should impose the mandatory two-year period of ineligibility. On appeal, the CAS Panel acknowledged that an athlete is strictly responsible for the presence of prohibited substances in her system. However, the sanction for such an offense should be proportionate to the seriousness of the offense. Given Melnychenko's age and lack of experience, the Panel determined that a suspension of four months was appropriate for her particular offense.

62. CAS 2011/A/2403 (Aug. 25, 2011).

WADA v. Jobson Leandro Pereira de Oliveira, Confederação Brasileira de Futebol (CBF) & Superior Tribunal de Justiça Desportiva de Futebol (STJD)[63]

The World Anti-Doping Agency (WADA) appealed the Superior Tribunal de Justiça Desportiva de Futebol (STJD) decision to suspend the football player Jobson Leandro Pereira de Oliveira for six months despite the fact that he tested positive for a prohibited substance. After competing in a football match, the player was selected to provide a urine sample for an anti-doping control test. Analysis of the sample revealed the presence of cocaine, which is a prohibited substance. Because of this anti-doping rule violation, the player was suspended for two years pursuant to anti-doping rules, namely the WADA Code. The player appealed his suspension to the STJD, the highest sports court in Brazil, arguing that the two-year suspension was disproportional to his degree of fault in committing the anti-doping rule violation because he ingested the cocaine because of peer pressure and he never intended for it to enhance his performance. Accordingly, the STJD reduced his suspension to six months because it believed that the reduced sanction was more proportional to the player's degree of fault in committing the anti-doping rule violation. WADA then appealed the player's reduced suspension to the Court of Arbitration for Sport (CAS), arguing that the WADA Code mandates a two-year period of ineligibility for a first anti-doping rule violation and that no circumstances existed in this case that would justify a reduction in the suspension. On appeal, the CAS Panel set aside the STJD decision reducing the player's suspension, holding that the player's degree of fault in committing the anti-doping rule violation was significant because the player voluntarily and knowingly ingested the prohibited substance, and the circumstances did not justify a reduction of his suspension.

CRIMINAL LAW

Although amateur and professional sports often appear to operate separate from the rest of society, athletes and others involved in the sports industry are subject to criminal laws just like the rest of society. As the following cases indicate, criminal laws can touch on issues both on and off the field of play, and recently, have reached some of Major League Baseball's most famous athletes surrounding the ongoing saga involving performance-enhancing drugs.

63. CAS 2010/A/2307 (Sept. 14, 2011).

In re Andrew D.[64]

A minor was playing flag football during high school physical education class when he collided with another student, physically injuring the student. The minor was questioned by a police officer and subsequently charged with assault after the minor told the officer that he tackled the other student on purpose. On appeal, the minor asserted two arguments: (1) that there was insufficient evidence to convict him of assault; and (2) that the juvenile court improperly admitted incriminating statements he made to the officer. The court held that, based upon the minor's statements to the officer, enough evidence existed to convict him of assault. The court also held that the incriminating statements the minor was referring to were said to parties other than the officer, including during the minor's testimony, so they were not improperly admitted. Therefore, the court affirmed the conviction.

United States v. Bonds[65]

Following a jury verdict convicting the defendant, Barry Bonds, on the count of obstruction of justice, Bonds moved for a directed verdict of acquittal, and in the alternative, moved for a new trial. The charges in this case arose from Bonds's testimony before a California grand jury that was investigating the distribution of anabolic steroids and other performance enhancing drugs by the Bay Area Laboratory Cooperative (BALCO). As part of the investigation into the possession and distribution of illegal substances, it was necessary to interview several professional athletes about their involvement with BALCO, including Bonds, who was a professional baseball player. While testifying under oath before the grand jury, Bonds allegedly gave testimony that was intentionally evasive, false and misleading. As a result, Bonds was charged with three counts of perjury and one count of obstruction of justice for impeding the investigation. The jury disagreed on the three counts of perjury, but unanimously agreed that Bonds was guilty of obstruction of justice. Bonds immediately moved for a directed verdict of acquittal, and in the alternative, moved for a new trial, arguing that the evidence was insufficient to sustain a conviction. In the end, the court determined that the verdict should stand because after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements for the crime beyond a reasonable doubt. Furthermore, the court held that literally true but evasive answers are

64. No. 1 CA-JV 11-0101, 2011 Ariz. App. Unpub. LEXIS 1365 (Ariz. Ct. App. Nov. 3, 2011).

65. No. CR 07-00732 SI, 2011 U.S. Dist. LEXIS 96051 (N.D. Cal. Aug. 26, 2011).

sufficient to uphold a conviction for obstruction of justice. For these reasons, the court denied Bonds's motions for acquittal and a new trial.

United States v. Clemens[66]

This decision arose out of the criminal case against the defendant Roger Clemens, a former Major League Baseball (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 the 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 the defendant's 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 the defendant demonstrated a substantial need for other portions of the requested information.

United States v. Dominguez[67]

The defendant sports agent Dominguez appealed his conviction for smuggling five Cuban baseball players into the United States, transporting the players from Miami to Los Angeles, and harboring them there until they applied for asylum in violation of immigration laws. Following the trial, Dominguez moved for judgment of acquittal, arguing that the evidence did not support a conviction; however, the court denied this motion, and a jury convicted Dominguez on all twenty-one counts and sentenced him to a five-year prison term. On appeal, the Eleventh Circuit Court of Appeals affirmed Dominguez's convictions for conspiring to, aiding and abetting the attempt to, and aiding and abetting the bringing of aliens to the United States for the purpose of commercial advantage and private financial gain. However, the court reversed the remaining convictions, holding that a reasonable jury could not have found that the evidence supported those convictions.

66. 793 F. Supp. 2d 236 (D.D.C. 2011).

67. 661 F.3d 10510 (11th Cir. 2011).

DISABILITY LAW

Disability laws, such as the Americans with Disabilities Act, protect those with certain disabilities and impose various compliance requirements on various sports organizations and facility owners. These laws protect not only qualifying disabled athletes, but also disabled spectators at various sporting events. In 2011, one major issue in this area of law—particularly in cases involving the National Football League—concerned retirement fund eligibility requirements based on differing degrees of the former athletes' disabilities. The following cases illustrate these fund issues and disability laws as applied to spectators.

Boyd v. Bert Bell/Pete Rozelle NFL Player Ret. Plan[68]

The plaintiff Brent Boyd, a former National Football League (NFL) offensive lineman qualified as a Vested Inactive Player under the Bert Bell/Pete Rozelle NFL Retirement Plan, filed suit seeking judicial review of the 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. The plaintiff was eventually approved for the "Inactive" plan, and both a district court and the Ninth Circuit held that the Retirement Board did not abuse its discretion by denying the plaintiff the more comprehensive "Football Degenerative" plan. Subsequently, the plaintiff requested reclassification to the "Football Degenerative" plan and was again denied, the denial of which is at issue before this court. After determining that the Retirement Board did not abuse its discretion in deciding not to reclassify the plaintiff due to a lack of changed circumstances, the court granted summary judgment in favor of the defendant.

Daubert v. City of Lindsay[69]

The plaintiff, Timothy Daubert (Daubert), used a wheelchair for mobility and resided in the defendant City of Lindsay (the City). The City owns a local sports facility, which houses basketball courts, laser tag arenas, and indoor soccer fields, among other amenities. Daubert alleged that the facility violated

68. 796 F. Supp. 2d 682 (D. Md. 2011).

69. No. 1:10-cv-0016 GSA, 2011 U.S. Dist. LEXIS 99949 (E.D. Cal. Sept. 6, 2011).

several sections of the Americans with Disabilities Act (ADA), namely for not providing wide enough wheelchair ramps and forcing wheelchair users to take excessively long routes to the second level. The City responded to Daubert's complaint and argued that it was in compliance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG). The ADAAG provides notice to the public that compliance with the ADAAG will satisfy the requirements of the ADA. Daubert conceded that the City technically complied with the ADAAG, but he argued that the City still violated the ADA. The court found that technical compliance with the ADAAG shielded the City from liability. Therefore, the court granted summary judgment in favor of the City and dismissed Daubert's complaint with prejudice.

Feldman v. Pro Football, Inc.[70]

The plaintiffs, deaf or hearing-impaired individuals who regularly attend Washington Redskins games at FedEx Field, sued the 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."[71] The district court agreed, holding that music lyrics are also included in the content requiring auxiliary access, and granted summary judgment for the plaintiffs. The defendants appealed. After concluding that the defendants provide football games 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.

Grant v. Bell[72]

The defendant filed a motion for summary judgment and the plaintiff appealed a denial of line-of-duty disability benefits. The plaintiff, former National Football League (NFL) player Willie Grant, applied for disability benefits under the NFL Player Retirement Plan (the Plan). The plaintiff sought benefits for multiple injuries sustained during his playing career. After being evaluated by a physician, his test results revealed that he did not meet the minimum requirements to be eligible for benefits under the Plan. Thus, the

70. 419 Fed. Appx. 381 (4th Cir. 2011).

71. *Id.* at 383.

72. No. 1:09-CV-1848-RWS, 2011 U.S. Dist. LEXIS 146401 (N.D. Ga. Dec. 16, 2011).

plaintiff was denied coverage and subsequently appealed. The plaintiff was then seen by a second physician, and those test results revealed that he did meet the minimum requirements to be eligible for benefits under the Plan. However, the defendant denied the plaintiff's appeal for benefits. The plaintiff then filed an action under the Employee Retirement Income Security Act (ERISA). The court noted that the defendant had discretion in applying the benefits, and remanded the case to the defendant for further consideration. The plaintiff appealed again to the court, citing that the initial physician's analysis was incorrect, and thus, denial of benefits was improper. The defendant moved for summary judgment, based on the court's initial finding that defendant had discretion in applying the benefits. The court granted the defendant's motion for summary judgment and denied the plaintiff's motion for judgment.

DISCRIMINATION LAW

Many state and federal laws work together to protect individuals from discrimination based on race, gender, age, religion, and disability, to name a few. Discrimination claims often center on the Equal Protection Clause of the Fourteenth Amendment, Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and the Americans with Disabilities Act. In the sports context, discrimination issues can affect athletes, coaches, and referees, alike, as demonstrated by the following cases.

Boyd v. Feather River Cmty. Coll. Dist.[73]

The plaintiffs, several African-American football players, sued the defendants, citing that the defendant's football program created a racially hostile environment. The plaintiffs complained that the defendant's coaches and athletic director cut them from the team, despite the plaintiffs' eligibility, both athletically and academically. The plaintiffs also stated that they were subject to name-calling, harassment, and physical attacks. The plaintiffs alleged six counts of a racially hostile environment, racial discrimination, and a claim under the Equal Protection Clause of the Fourteenth Amendment. The court found that each of the six counts against the defendants were well plead under Rule 12(b)(6) of the Federal Rules of Civil Procedure, and subsequently denied the defendant's motion to dismiss on all six counts.

73. 2011 U.S. Dist. LEXIS 121683 (E.D. Cal., Oct. 20, 2011).

Bull v. Bd. of Trs. of Ball State Univ.[74]

The defendants filed a motion to dismiss the plaintiff's action for multiple claims. The plaintiff, a former women's tennis coach at Ball State University (BSU) and vocal gender equity advocate, self-reported a possible National Collegiate Athletic Association (NCAA) violation to one of BSU's athletic directors. The plaintiff was subsequently terminated, and BSU, through its athletic director and others in the athletic department, made public statements that the plaintiff was fired for committing multiple NCAA violations.

As a result, the plaintiff filed suit against the defendants, two BSU athletic directors, the BSU President, and the Board of Trustees. First, the plaintiff brought official-capacity claims under § 1983 against all of the defendants. The court held that these § 1983 claims were barred by sovereign immunity because these are essentially claims against BSU, and for purposes of § 1983, BSU is equivalent to the State of Indiana. Second, the plaintiff brought individual Title IX claims against the defendant athletic directors and BSU President. The court dismissed these claims because under Title IX, only the actual recipient of federal fund can be held liable, not individual employees. Third, the plaintiff brought official-capacity defamation and breach of contract claims under state law against all the defendants. The court dismissed these claims, holding that they were barred by the Eleventh Amendment because such official-capacity claims are essentially claims against BSU, and the Eleventh Amendment prohibits a court from adjudicating state-law claims where, as here, the state agency objects. Finally, the plaintiff brought individual-capacity breach of contract claims under state law against the defendant athletic directors and BSU President. The court dismissed these claims without explanation.

Dent v. U.S. Tennis Ass'n, Inc.[75]

The plaintiff Marvin Dent, an African-American tennis instructor in his mid-60s employed by the 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, the defendants received approximately ninety applicants for the managerial position, of which they identified ten top candidates. The defendants claimed that the plaintiff was not identified as one of these top managerial candidates, but he was still

74. No. 1:10-cv-00878-JMS-TAB, 2011 U.S. Dist. LEXIS 147774 (S.D. Ind. Dec. 22, 2011).

75. No. 08 CV 1533, 2011 U.S. Dist. LEXIS 8341 (E.D.N.Y. Jan. 27, 2011).

given a chance to interview allegedly out of respect for his experience as a senior tennis instructor. In response to the plaintiff's suit, the defendants moved for summary judgment, urging that there was no evidence from which a reasonable juror could conclude that the decision not to promote the plaintiff was at all motivated by his age or race. The court granted the defendants motion.

Fuhr v. Sch. Dist. of Hazel Park[76]

The plaintiff was a teacher and athletic coach at the defendant Hazel Park School District. In October 1999, the plaintiff sued the defendant, alleging it had discriminated against her because of her gender, in violation of Title VII of the 1964 Civil Rights Act and Michigan's Elliott-Larsen Civil Rights Act, for failure to hire her as the head coach of the high school boys' varsity basketball team. In August 2001, a jury returned a verdict for the plaintiff, and in October 2001, the court ordered that she be instated into this position. For the next five years, the plaintiff worked as the coach for both the boys' and the girls' varsity basketball teams. Then, on June 1, 2006, the defendant removed the plaintiff as the coach of the girls' varsity basketball team. Following her removal, the plaintiff filed several discrimination and retaliation claims under Title VII, ELCRA, and Title IX. The essence of the plaintiff's discrimination claims was that the defendant treated her differently because of her sex. The essence of the plaintiff's retaliation claims was that the defendant's mistreatment of her was in retaliation for her current and prior lawsuits and complaints. The defendant filed a motion for summary judgment as to the plaintiff's discrimination and retaliation claims.

The court held that held that the defendants were entitled to summary judgment on the plaintiff's gender discrimination and hostile environment claims because the plaintiff did not provide any evidence suggesting that her gender had anything to do with the defendant's decision to remove her as the girls' varsity basketball coach or with any of the harassment she allegedly suffered. Essentially, the plaintiff did not state a prima facie case of gender discrimination, and thus, she could not sustain her hostile environment claim because it was based on the gender discrimination claim. For the same reasons, the court held that the defendants were entitled to summary judgment on the plaintiff's retaliation claims because the plaintiff failed to state a prima facie case of retaliation.

76. No. 08-CV-11652, 2011 U.S. Dist. LEXIS 105820 (E.D. Mich. Sept. 19, 2011).

Heike v. Cent. Mich. Univ. Bd. of Trs.[77]

Brooke Heike (Heike) and Beth Brown (Brown) filed a complaint against the Central Michigan University Board of Trustees (the Board) and Central Michigan University (CMU) claiming that they were discriminated against based on their race and sexual preferences when their scholarships were not renewed. Heike is of Caucasian and Native American descent, and Brown is of Caucasian descent. The plaintiffs were both members of the CMU women's basketball team. They claim they were harassed by the coach while on the team, and claimed they were not given reasons as to why their scholarships were not renewed. Heike participated in a hearing before the appeals committee to have her scholarship reinstated, which was unsuccessful. Heike also sued in state court regarding the same issue, and the defendants were granted a motion to dismiss. The defendants argued that Heike's claims were barred by res judicata, and further, that the defendants had sovereign immunity against the claims. The court found that the defendants could not be considered "persons" for the plaintiffs' civil rights claims. Therefore, the court granted the defendants' motion for judgment on the pleadings. However, the court denied dismissal of the plaintiffs' claims under the doctrine of collateral estoppel.

Smith v. N.Y. City Dep't of Educ.[78]

The defendant school district moved for summary judgment after softball coach Smith sued the school district alleging that the defendant had initiated disciplinary proceedings against him in retaliation for his complaints that there was a disparity in funding between girls' and boys' sports programs at DeWitt Clinton High School. In 2007, a female student reported to the school that Smith, who was a coach at DeWitt, told her to sit on his lap and winked at her several times. Around the same time, two local newspaper articles quoted Smith complaining that the women's softball program at DeWitt received disproportionately less money than the boys' sports programs. Subsequently, the school initiated disciplinary proceedings against Smith for his reported sexual misconduct.

Smith then filed this action against the school district, alleging that the school retaliated against him in violation of Title IX, the First and Fourteenth Amendments, and other state statutes. Following discovery, the defendant filed a motion for summary judgment on all claims. The district court granted

77. No. 10-11373-BC, 2011 U.S. Dist. LEXIS 71456 (E.D. Mich. July 1, 2011).

78. No. 09 Civ. 9256, 2011 U.S. Dist. LEXIS 125069 (S.D.N.Y. Oct. 28, 2011).

the defendant's motion, holding that the statute of limitations barred all of Smith's claims except one, which had already run. Smith's First Amendment claim of retaliation, which was not barred, also could not survive the motion for summary judgment because Smith did not provide any evidence to establish that his complaints constituted protected speech. Moreover, the court held that even if Smith's complaints were protected speech, he could not demonstrate a causal connection between any protected activity and the disciplinary proceeding initiated against him.

Wilson v. Lock Haven Univ.[79]

The plaintiff, the former men's head basketball coach at Lock Haven University, filed this action against the 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 a hearing, a magistrate judge filed a recommendation that the defendant's motion for summary judgment be granted in its entirety; in this subsequent decision, the court adopted the earlier recommendation.

The 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 the defendants based on his race. The plaintiff, however, did not dispute that he received numerous subpar performance reviews based on the team's win-loss record, documented National Collegiate Athletic Association 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 nondiscriminatory reasons, whereas the plaintiff made only 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. This court adopted the recommendation in its entirety.

79. No. 4:09-cv-2566, 2011 U.S. Dist. LEXIS 39639 (M.D. Pa. Apr. 12, 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).

Yonan v. U.S. Soccer Fed'n, Inc.[80]

Plaintiff Yonan is a lawyer and a soccer referee registered with the defendant, the governing body for soccer in the United States, 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. The defendant moved for summary judgment, urging that the ADEA claim could not stand because the plaintiff is an independent contractor not protected by the ADEA. The court employed a five-factor test to determine whether the 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 the plaintiff is an independent contractor, the court granted the defendant's motion for summary judgment.

EDUCATION LAW

Education law, like sports law as a whole, encompasses a wide variety of issues. In the sports context, the focus is mostly either on challenges to the various rules and regulations that govern student-athletes or challenges surrounding a coach's termination. Schools, athletic associations and conferences, and the NCAA all impose various rules and regulations that govern student-athletes. Although these rules and regulations may sometimes be challenged on constitutional or other grounds, those laws may not apply in a given situation. Under those circumstances, athletes challenge either the application of a particular rule in a given situation, or the rule itself, as arbitrary and capricious. Additionally, public and private schools may face legal challenges after a decision to remove a particular coach from his or her coaching duties. The following cases illustrate these and other issues in the education law context.

Arendas v. N.C. High Sch. Athletic Ass'n[81]

The plaintiffs, members and coaches of a basketball team, won their state basketball championship. After their victory, the defendant, a high school athletic association, conducted an investigation into residency issues and

80. No. 09 C 4280, 2011 U.S. Dist. LEXIS 66383 (N.D. Ill. June 22, 2011).

81. 718 S.E.2d 198 (N.C. Ct. App. 2011).

determined that at least two players on the championship team did not reside in the district during the time they participated on the team. As a result, the defendant vacated the plaintiffs as champions. The plaintiffs filed a complaint, alleging negligence and seeking a declaratory judgment to reinstate the championship. The defendant filed a motion to dismiss on the grounds that the plaintiffs lacked standing. The trial court granted the defendant's motion to dismiss.

On appeal, the court held that the plaintiffs' complaint was properly dismissed because the members and the coaches lacked standing. The court stated that the plaintiffs had no justification for judicial intervention because the plaintiffs had neither a legally protected interest nor a right in the championship. Rather, the defendant had granted the championship to the plaintiffs' school; therefore, when the championship was revoked, it was the school that sustained the loss rather than the plaintiffs. Therefore, the judgment of the lower court was affirmed.

Bd. of Dirs. of Jesup Cmty. Sch. Dist. v. Wall[82]

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

82. 801 N.W.2d 33 (Iowa Ct. App. 2011).

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.

H.W. v. E. Sierra Unified Sch. Dist.[83]

The defendant filed a motion to dismiss the plaintiffs' action against the school, which was filed after the defendant high school's assistant football coach allegedly sexually molested them. The plaintiffs, two minor females, alleged that the inappropriate sexual conduct occurred because of the defendant's failure to train and supervise the assistant football coach. As a result, the plaintiffs first alleged that the defendant violated Title IX by subjecting the plaintiffs to discrimination on the basis of sex. The court noted that under Title IX, an employer can be held liable for a teacher's misconduct only if they had actual knowledge of the misconduct and acted with deliberate indifference. The court dismissed the claim because the plaintiffs failed to sufficiently allege that an employee had actual knowledge of coach's misconduct and acted with deliberate indifference. Next, the plaintiffs brought equal protection and substantive due process claims. The court also dismissed these claims because the plaintiffs failed to adequately plead the necessary elements. Finally, the plaintiffs brought state tort law claims against the defendants. The court also dismissed these claims as well because they were barred by the Eleventh Amendment immunity exception.

Neily v. Manhattan Beach Unified Sch. Dist.[84]

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.

83. No. 2:11-cv-0531-GEB-GGH, 2011 U.S. Dist. LEXIS 117709 (E.D. Cal. Oct. 12, 2011).

84. 120 Cal. Rptr. 3d 857 (Cal. Ct. App. 2011).

Or. Sch. Activities Ass'n v. State Bd. of Educ.[85]

The Oregon School Activities Association (OSAA) appealed the State Board of Education's (the Board) decision to waive an OSAA eligibility rule. C. enrolled at Reynolds High School in Portland as a sixteen-year-old freshman. As a result, when C. started his senior year, he was nineteen. OSAA, a private organization that exercises authority by delegation from the Board, had an age requirement rule, barring students who are nineteen or older at the start of a school year from participating in interscholastic activities. C. asked for a waiver of the age requirement, and OSAA denied the request. C. appealed to the Board, which concluded that OSAA's application of its age rule, as applied to C., violated the McKinney–Vento Act. OSAA appealed the Board's decision, arguing that the Board misapplied the McKinney–Vento Act. The Board responded that the appeal was moot because C. had already graduated from high school, and alternatively, that it did not misapply the McKinney–Vento Act. On appeal, the court held that the appeal was moot, because OSAA was precluded from imposing any sanctions on Reynolds or C. for participation in interscholastic activities while ineligible, and because the Board's reversal of OSAA's decision did not have a preclusive effect on OSAA's future authority, as required to avoid mootness. Therefore, the court dismissed the appeal without reaching the merits.

S.B. v. Ballard Cnty. Bd. of Educ.[86]

The 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 (Alternative School). The plaintiff was placed in the Alternative School for ninety days due to the plaintiff's purchase of a prescription medication from another student. During her assignment to the Alternative School, the plaintiff could not participate in extracurricular activities; she argued that her hope of receiving a softball scholarship following her senior year will be greatly hindered by this punishment. The court concluded that the plaintiff's motion should be denied because the 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; the plaintiff does not have a general constitutional right to participate in extracurricular athletics.

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85. 260 P.3d 735 (Or. Ct. App. 2011).

86. 780 F. Supp. 2d 560 (W.D. Ky. 2011).

EMPLOYMENT LAW

Employment law is concerned with many aspects of the employment relationship, such as job security, compensation, benefits, and privacy issues, to name a few. These laws apply specifically outside the realm of unionized workplaces, where no collective bargaining agreement governs the employment relationship. Federal laws such as the Fair Labor Standards Act (FSLA) provide the basis for many employment-related claims. A threshold issue under the FSLA and most other employment-related claims is the appropriate status classification of a particular coach. That is, courts must often decide whether a coach in any given situation qualifies as an "employee" to bring a claim under a particular employment-related statute and whether a coach is more properly classified as terminable "at will" or only with just cause. The following cases demonstrate these classification challenges, as well as claims under the FSLA, whistleblowing issues, and other employment law areas.

Clark v. Univ. of Bridgeport[87]

The University of Bridgeport (UB) appealed a trial court decision to deny the UB's motion for summary judgment as to Clark's claim that her termination as UB's head volleyball and softball coach amounted to a breach of her employment contract. UB employed Clark as its head volleyball and softball coach. Her contract was renewed in July 2008, but Clark was terminated in April 2009. UB argued that the renewal letter sent to Clark in 2008 created an "at will" employment. Connecticut is an "at-will" state, which permits the employer and the employee to end the employment relationship at any time for any reason, without cause, unless otherwise agreed. Clark argued that the letter provided a definite term from July 1, 2008 to June 30, 2013. Alternatively, Clark argued that the letter was ambiguous on the "at-will" issue, and therefore, should be a question for the trier of fact to decide. The letter was ambiguous because it provided grounds for termination instituted by both the school and the National Collegiate Athletic Association, which suggested an intention by the university to create a contract for a definite term. However, the same letter also stated that the position was "at-will." Therefore, the court denied UB's motion for summary judgment because a genuine issue of material fact existed as to whether it was the contract's intent to create an "at-will" employment or employment for a definite term.

87. No. CV106010582S, 2011 Conn. Super. LEXIS 1977 (Conn. Super. July 29, 2011).

Galveston Indep. Sch. Dist. v. Jaco[88]

The plaintiff, Brent Jaco, while serving as the 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, the plaintiff was removed from his position as director of athletics. Subsequently, the 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. The plaintiff urged that the UIL's rules are "laws" such that the Whistleblower Act would apply. Although the trial court agreed with the plaintiff, the Court of Appeals of Texas reversed, concluding that a UIL rule is not a "law" as used in the Whistleblower Act.

Garcia v. N.Y. Racing Ass'n[89]

Jose Garcia (Garcia) worked as a seasonal employee for the New York Racing Association (NYRA) and claimed he was terminated in violation of his First Amendment rights after filing a report that implicated his supervisors for a rules violation. Garcia was terminated shortly after the report was filed with the NYRA integrity counsel. The NYRA filed a motion to dismiss Garcia's claim against it on the basis that Garcia did not plead a violation of his constitutional right to freedom of speech and because he did not plead that the NYRA was a state actor. The court assessed whether Garcia made any demonstrations in his complaint that the NYRA was a state actor under the "nexus" and "symbiotic relationship" tests. The court concluded that the NYRA did not meet the nexus test, but was a state actor under the symbiotic relationship test. However, the court found that the report Garcia filed was in the scope of his duties and did not raise a matter of public concern, and therefore, he was not entitled to relief based on a First Amendment retaliation claim. The court allowed Garcia to proceed with his remaining claims against the NYRA.

Purdham v. Fairfax Cnty. Sch. Bd.[90]

The plaintiff, a safety and security assistant employed by the Fairfax County School Board, filed this action, asserting a violation of the Fair Labor

88. 331 S.W.3d 182 (Tex. App. 2011).

89. No. 1:10-cv-01092, 2011 U.S. Dist. LEXIS 96614 (N.D.N.Y Aug. 29, 2011).

90. 637 F.3d 421 (4th Cir. 2011).

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 the defendant's motion for summary judgment. The appellate court affirmed, holding that the plaintiff 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 the plaintiff received for coaching, such work is exempt from the FLSA, and the public employee is deemed a volunteer.[91]

Sprochi v. Cleveland State Univ.[92]

The plaintiff, an assistant men's baseball coach at Cleveland State University (CSU), filed an action against the defendant CSU, alleging that CSU committed a breach of his employment contract and violated the Fair Labor Standards Act (FLSA). The 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, the plaintiff was notified that the director of athletics had recommended that the plaintiff's appointment not be renewed; the plaintiff's employment contract expired on June 30, 2006.

The plaintiff contends that the defendant's nonrenewal of his appointment violated the terms of his contract and the terms and conditions of the defendant's policies. After looking at the relevant policies and the actual language of his employment contract, the court concluded that the defendant's nonrenewal of the plaintiff's appointment was not a violation of either and that the plaintiff failed to prove his breach of contract claim. In regards to the FLSA claim, the defendant admitted liability as to the claimed FLSA violations, and the plaintiff sought compensation for certain unpaid wages. The 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; the defendant stipulated that the information reflected in those records had been accurately summarized. Judgment was entered in favor of the defendant on the plaintiff's breach of contract claim, but in favor of the plaintiff on the FLSA claim in the amount of $70,369.58.

91. *See id.* at 427.

92. No. 2007-05016, 2011 Ohio Misc. LEXIS 41 (Ohio Ct. Cl. Mar. 15, 2011).

Stewart v. Bert Bell/Pete Rozelle NFL Player Ret. Plan[93]

All parties to this case filed motions for summary judgment on Andrew Stewart's claim for denial of benefits under the Bert Bell/Pete Rozelle NFL Retirement Plan (the Plan). Stewart alleged the denial of benefits violated the Employee Retirement Income Security Act (ERISA). The Plan provides retirement, disability, and related benefits to eligible National Football League (NFL) players. The amount of benefits received under the Plan is contingent upon what causes the player to sustain the pertinent injuries, specifically whether the injuries arise out of NFL activities or non-NFL activities. Stewart is a former NFL player, who played in only sixteen NFL games because of injuries he sustained. After missing the entire 1993 season, Stewart joined the Canadian Football League (CFL) in 1994, where he stayed until 2000 when he retired. Stewart also suffered several injuries during his time in the CFL. After retiring, Stewart tried to find work, but was unsuccessful because his collective football injuries prevented him from being able to stand for long periods. In October 2008, Stewart applied to receive benefits from the Plan. The Plan's committee awarded Stewart "inactive" benefits because it determined that Stewart's disabling conditions did not arise out of NFL activities. This amount was less than if the committee determined that his injuries directly arose out of his NFL activities. Stewart appealed the committee's decision to the Plan's Retirement Board (Board), arguing that he qualified for greater benefits. However, the Board affirmed the decision that Stewart was eligible only for inactive benefits. Stewart then brought this suit alleging that the Plan violated ERISA because the committee abused its discretion in determining that Stewart's disability did not arise directly from his NFL football activities. The court denied the parties' motions for summary judgment on Stewart's denial of benefits claim because the issue of whether the committee abused its discretion presented material issues of fact that could not be determined on summary judgment.

Williams v. NFL[94]

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

93. No. WDQ-09-2612, 2011 U.S. Dist. LEXIS 78973 (D. Md. July 20, 2011).

94. 794 N.W.2d 391 (Minn. Ct. App. 2011).

banned substance. The NFL notified the players that they would be suspended for four regular-season games. The plaintiffs challenged the decision through arbitration, but the decision was upheld. The 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 the 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. The 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 the plaintiffs' assertion that injunctive relief be mandatory.

Williams v. Smith[95]

Defendants University of Minnesota (Minnesota) and coach Orlando Henry "Tubby" Smith appealed a trial court's decision to deny a motion for judgment as a matter of law on the plaintiff James Williams' (Williams) negligent misrepresentation action. In 2007, several people affiliated with Minnesota contacted Williams about coming to Minnesota to serve as an assistant coach. Following a conversation with the athletic director, Smith offered Williams an assistant coach position at Minnesota, which Williams accepted. Smith and Williams discussed Williams' salary and his first recruiting assignment. However, shortly after Williams tendered his letter of resignation from his former position, Smith informed Williams that Minnesota refused to hire Williams because Williams had previously committed several major violations of NCAA bylaws. Following these events, Williams was unable to find a new position in coaching college basketball.

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95. No. A10-1802, A11-567, 2011 Minn. App. Unpub. LEXIS 947 (Minn. Ct. App. Oct. 17, 2011).

As a result, Williams brought this action against Minnesota and Smith, asserting claims for breach of contract, promissory estoppel, equitable estoppel, intentional interference with contract, negligent misrepresentation, negligence, defamation, vicarious liability, and due process violations of his property and liberty interests. Defendants filed a motion to dismiss all claims for failure to state a claim upon which relief may be granted. The district court granted this motion on all claims except the negligent misrepresentation claim. That claim was tried before a jury, which found that Smith negligently misrepresented to Williams that he had final authority to hire assistant basketball coaches at Minnesota and that Williams' reasonable reliance on this misrepresentation caused him harm for $1,237,293. Minnesota and Smith moved for judgment as a matter of law, or alternatively, for a new trial. The trial court denied both motions. The Minnesota Court of Appeals held that the trial court appropriately denied the motion for judgment as a matter of law because there was sufficient evidence for a reasonable jury to find that there had been a negligent misrepresentation. Moreover, the trial court did not abuse its discretion in denying the motion for a new trial.

ENVIRONMENTAL LAW

Although they do not comprise a major portion of sports law cases, environmental laws do play a role in the field. Specifically as they relate to sports facility management, with increasing environmental awareness, these issues may become more prevalent in the future. The following two cases illustrate some of the unique challenges that environmental laws pose for those in charge of running a particular facility or planning a new sports facility.

Citizens for Cmtys. Pres., Inc. v. City of Indus.[96]

The plaintiffs opposed a redevelopment plan for a 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 a National Football League stadium and related facilities, yet did not include an updated WSA. The 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

96. No. B223648, 2011 Cal. App. Unpub. LEXIS 738 (Cal. Ct. App. Jan. 27, 2011).

resulted in the plaintiffs dismissing the CEQA claims, leaving only the Code violation as a cause of action. The 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 the defendants' motion for judgment on the pleadings. On appeal, the plaintiffs challenged the trial court, asserting that the CEQA exemption was to take effect only after preliminary findings were made, findings the 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.

Wild Equity Inst. v. City & Cnty. of S.F.[97]

The plaintiffs filed a motion requesting a preliminary injunction to stop the operation of a golf course to protect the wildlife that was allegedly harmed by golf course activities. Specifically, the plaintiffs claimed that the operation and management of the golf course threatened two endangered species, the California red-legged frog and the San Francisco garter snake. As a result, the plaintiffs filed this action seeking a declaration that the defendants were violating the Endangered Species Act by illegally taking the frog and the snake without an Incidental Take Permit. The plaintiffs also requested that the court enjoin the defendants from operating the golf course while this matter was pending. However, the plaintiffs failed to meet their burden of showing that absent the issuance of a preliminary injunction, the frog and snake species would suffer irreparable harm. Therefore, the court denied the plaintiffs' motion for a preliminary injunction.

GENDER EQUITY LAW

Title IX has played a significant role in shaping the face of athletics for women, particularly at the high school and college levels, since its enactment in 1972. The 1979 Title IX Policy Interpretation and various subsequent clarifications provide entities that receive federal funding with guidance as far as how to comply with Title IX's provisions. Specifically, the 1979 Policy Interpretation addressed compliance in the sports context in three distinct areas: financial assistance, program benefits and facilities, and compliance in meeting the interests and abilities of male and female students. Although enacted nearly forty years before, these 2011 decisions indicate that Title IX

97. No. C 11-00958 SI, 2011 U.S. Dist. LEXIS 137355 (N.D. Cal. Nov. 29, 2011).

compliance continues to be an issue.

Equity in Athletics, Inc. v. Dep't. of Educ.[98]

In 2006, James Madison University announced that it planned to cut ten of its athletic programs to comply with the proportionality prong of the Title IX three-part test. The 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 noneliminated 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, the plaintiff sought to require James Madison University to equalize scholarship payments to those student-athletes affected by the decision. The district court denied the plaintiff's motion for preliminary injunction and granted the defendants' motions to dismiss. On appeal, the Fourth Circuit first held that the plaintiff had standing to bring suit given those that comprised the entity. After conducting an in-depth analysis of each of the plaintiff's challenges to the Title IX three-part test, the Fourth Circuit affirmed the district court's decision.

Mansourian v. Bd. of Regents of the Univ. of Cal.[99]

The plaintiffs sued the defendants, seeking money damages and declaratory relief, for alleged failure to expand athletic opportunities for women. The plaintiffs claimed that the defendants deprived them of the equal opportunity to participate in varsity athletics while they were students at UC Davis, in violation of both Title IX and the Equal Protection Clause of the Constitution. Specifically, the plaintiffs asserted they were wrongly deprived of their opportunity to participate in intercollegiate wrestling. The defendants asserted that at all relevant times, the UC Davis athletic program and each individual defendant complied with constitutional and federal mandates regarding gender equity.

Under the Title IX claim, the plaintiffs asserted that the defendants violated Title IX's mandate to effectively accommodate the interests and abilities of members of both sexes. The defendants stipulated that during the time period relevant to the Title IX claim, the ratio of male and female participants in intercollegiate athletics was not always substantially

98. 639 F.3d 91 (4th Cir. 2011).

99. 816 F. Supp. 2d 869 (E.D. Cal. 2011).

proportionate to the ratio of male and female undergraduate enrollment at the university. UC Davis further stipulated that during that time period, there was at least one sport for women that was not offered at the intercollegiate level for which there was (1) an expressed interest in competing at the intercollegiate level; (2) sufficient ability among interested students to compete at the intercollegiate level; and (3) arguably sufficient intercollegiate competition for that sport in the geographic area in which UC Davis usually competes. Thus, the parties agreed that the defendants bore the burden of proving that the university was in compliance under the second prong during the relevant time period. The court held that the defendants failed to demonstrate a continued practice of program expansion that was demonstrably responsive to the developing interests and abilities of the underrepresented sex. Rather, evidence demonstrated that while the plaintiffs were students, the defendants eliminated more than sixty actual participation opportunities for women. This indicated program contraction, not expansion. As a result, the court concluded that the defendants did not have a continued practice of program expansion, and thus were not Title IX compliant. Thus, the court concluded that the plaintiffs were entitled to damages under their Title IX claim for the actual harm they suffered as female students because the defendants failed to demonstrate a continuing practice of program expansion under Title IX.

INTELLECTUAL PROPERTY

Intellectual property rights are of significant value in the sports industry. Trademarks, copyrights, patents, and publicity rights claims all play a significant role in shaping sports law as we know it today. Primarily through merchandising and licensing, sports entities are increasingly seeking to exploit the value of their intellectual property rights and simultaneously protect such value through adjudicatory processes, if necessary. For trademark disputes involving Internet domain names, the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center serves as an alternative forum to challenge an alleged trademark infringer. The following decisions illustrate this wide array of sports-related intellectual property disputes that challenge courts today and include court and WIPO decisions.

Aguirre v. Powerchute Sports, LLC[100]

Sergio Aguirre (Aguirre), the plaintiff, developed a concept for a golf swing training product. In September 2005, he applied for a patent with the

100. No. SA-10-CV-702-XR, 2011 U.S. Dist. LEXIS 86207 (W.D. Tex. Aug. 4, 2011).

United States Patent and Trademark Office (USPTO) for a "Physical Conditioning Aid for Golfers." The USPTO published the application in April 2006 and the patent was issued in June 2008. After spending time marketing the product online, Aguirre marketed his product, the Zswinger, at a PGA Merchandise Show, where James Sowerwine, president of Powerchute Sports, visited the booth. Powerchute was formed to manufacture and market the Powerchute, a product similar to the Zswinger, while TC Trust was formed to manufacture the same. Furthermore, Powerchute and Octagon entered into an agreement for Octagon to assist with the product's sales and marketing efforts. Aguirre sued Powerchute, Sowerwine, TC Trust, and Octagon for patent infringement, violation of the Sherman Antitrust Act, common law fraud, tortious interference with prospective business relations, and unjust enrichment. All of the defendants moved to dismiss.

In relation to the defendant Octagon, the court granted in part and denied in part its motion to dismiss count one of the complaint. First, the court denied Octagon's motion to dismiss the direct infringement claim because Aguirre plead all requirements for direct infringement. Alternatively, the court granted Octagon's motion to dismiss the indirect infringement claim because Aguirre failed to allege that Octagon had knowledge that the Powerchute's purpose was adapted for use in infringement of Aguirre's patent. As to the violations of the Sherman Act, Aguirre argued that the defendants attempted "to monopolize the market for portable, resistance-based training aids for golfers"[101] by attempting to enforce a patent unenforceable due to fraud. The court granted the defendants' motion because Aguirre failed to meet his burden. Furthermore, Aguirre failed to allege that the defendants engaged in anti-competitive conduct that had a dangerous probability of achieving monopoly power. The court also dismissed Aguirre's claim for common law fraud because he failed to allege any reasonable misrepresentation that intended to influence Aguirre's conduct in addition to any proof of reliance upon the nonexistent fraudulent misrepresentation. Next, the court dismissed Aguirre's claim for tortious interference with prospective business relations and economic advantage because he failed to claim that, but for the defendants' conduct, he would have entered into a business relationship. Lastly, Aguirre's claim for unjust enrichment was also dismissed because he failed to allege that the defendants benefited from Aguirre in such a way that would warrant the existence of an implied contract.

101. *Id.* at *17.

All Star Championship Racing, Inc. v. O'Reilly Auto. Stores, Inc.[102]

O'Reilly Automotive Stores, Inc.'s (O'Reilly) filed a request for a preliminary injunction to enjoin All Star Championship Racing, Inc. (All Star) from using or creating any materials containing O'Reilly trademarks or service marks. O'Reilly and All Star entered into a contract in which O'Reilly sponsored All Star's racing events for the 2007, 2008, and 2009 seasons. The parties continued their agreement under the contract for the 2010 season. O'Reilly decided to terminate the agreement for the 2011 season, and All Star argued that the contract was to continue under the same three-year term of the previous contract, and therefore, O'Reilly could not terminate. O'Reilly argued that the parties never made a written renewal of the contract, and therefore, it was free to cancel at anytime. O'Reilly also requested a preliminary injunction to stop All Star from using its marks in any future racing events, citing trademark infringement. The court found that because a new agreement was not entered into, O'Reilly would likely succeed on the merits of its claim for trademark infringement. The court also found that All Star would be unharmed should the court grant the injunction, and further that the public has an interest in protecting against trademark infringement. Therefore, the court granted the preliminary injunction in favor of O'Reilly.

Aqua Gear, Inc. v. RareNames, WebReg[103]

The complainant Aqua Gear filed this trademark infringement action against the respondent RareNames for registering the domain name "aquagear.com." The complainant owns the trademark registration for "AQUAGEAR," and argued that the respondent's domain name was confusingly similar to its registered trademark. As a result, the complainant filed a complaint with the World Intellectual Property Organization (WIPO), alleging that the respondent was infringing on its trademark. The WIPO Panel determined that because the domain name was identical to the complainant's trademark, it was confusingly similar. Moreover, the respondent had no rights to or legitimate interests in the AQUAGEAR mark. Finally, because the respondent registered the domain name to divert Internet users from complainant's website, the Panel found that the domain name was registered in bad faith. For these reasons, the Panel ordered that the respondent transfer the domain name to the complainant.

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102. No. 11-2160, 2011 U.S. Dist. LEXIS 112349 (C.D. Ill. Sept. 30, 2011).

103. WIPO Case No. D2011-1366 (2011) (Partridge, Arb.).

Arenas v. Shed Media US Inc.[104]

The plaintiff Gilbert Arenas (Arenas), an NBA player, and his ex-fiance (and codefendant), Laura Govan (Govan), entered into an agreement with Shed Media (Shed) to appear on the reality television show, *Basketball Wives: Los Angeles*. Govan was described on the show's press releases as the sister of Gloria Govan (fiancée of Los Angeles Lakers' Matt Barnes). The press releases did not mention Arenas. California's Anti-Strategic Lawsuits Against Public Participation (Anti-SLAPP) statute is a method to be used for dismissing "meritless lawsuits aimed at chilling expression through costly, time-consuming litigation."[105] Arenas sought injunctive relief for his misappropriation of likeness claim and his claim for trademark infringement. California common law grants a right of publicity that protects the appropriation of one's identity. The district court ruled that Arenas would likely succeed on the merits.

However, the district court also found that Shed had two valid defenses stemming from the First Amendment. First, the transformative use defense was successful because Shed offered proof that the show's value does not primarily derive from Arenas' celebrity status. The court was not persuaded by Arenas' argument that the show "uses his identity 'solely to attract attention to the show' because the show 'is not actually related to him'"[106] because the fact that Govan appears on the show creates an automatic connection. Shed also offered a public interest defense. The district court found this defense persuasive because a cause of action cannot be established when the public has a right to know certain published matters and the press has the freedom to tell it. Arenas argued that any discussion of his family life on the show would not be sufficiently related to his celebrity status to permit Shed's use of his identity a matter of public concern. The court also found this argument unpersuasive because of Arenas' use of his Twitter account to let his followers know about his personal life. Arenas also argued that the defense should fail because Shed acted with actual malice. The court was unconvinced by this argument because Arenas failed to identify any defamatory or false statements Govan was likely to make about him on the show, and therefore, Arenas failed to meet his burden of showing present actual malice. Lastly, Arenas argued that there was likelihood for irreparable harm if the court did not grant an injunction because he would suffer harm to his reputation. Shed

104. No. CV 11-05279, 2011 U.S. Dist. LEXIS 101915 (C.D. Cal. Aug. 22, 2011).

105. *Id.* at *4.

106. *Id.* at *15.

defended itself by arguing that Arenas caused his own disrepute when he drew a gun on a teammate in his team's locker room over a gambling dispute. Furthermore, Shed presented evidence that Arenas already tweeted about the show, which the court found to undermine any claim that he would be injured by an association with the show. Therefore, because the record showed insubstantial evidence that Arenas' reputation would be seriously affected by an association with the show, the court ruled that Arenas failed to show a likelihood of irreparable harm. The court dismissed Arenas' right of publicity claim and his motion for preliminary injunction and granted Shed's Anti-SLAPP motion to strike.

AVS Found. v. Eugene Berry Enter., LLC[107]

The plaintiffs filed a motion for summary judgment in their trademark infringement action. The plaintiffs, a foundation and the Pittsburgh Steelers, filed suit for infringement of their "Terrible Towel" trademark after the defendant produced and sold black and gold tee shirts with the words "The Terrible T-Shirt A Pittsburgh Original." Prior to selling the tee shirts, the defendant brought the design to a tee shirt printing company where an employee questioned whether the defendant was connected to the plaintiffs. The defendant subsequently produced a false letter indicating that he was connected to the plaintiffs and that he had authority to produce and sell the tee shirts. The tee shirts were printed and the defendant sold them.

The court, in deciding whether the defendant violated the Lanham Act, addressed three elements for trademark infringement of competing goods: (1) whether the marks are valid and legally protectable; (2) whether the marks are owned by the plaintiff; and (3) whether the defendant's use of the mark to identify goods or services is likely to create confusion concerning the origin of the goods or services. The court held that the first two prongs were satisfied because the "Terrible Towel" trademark had been a registered trademark in continuous use for more than twenty consecutive years and is undisputedly owned by the plaintiffs.

Under the third prong, the court looked at ten factors commonly considered when determining if a likelihood of confusion exists. First, the court found that marks illustrated the characteristics of both a fanciful distinctive mark and of a famous mark because the "Terrible Towel" does not describe the popular towel and the "Terrible Towel" is widely recognized by the general consuming public. The court also took judicial notice of the

107. No. 11 CV 01084, 2011 U.S. Dist. LEXIS 139827 (W.D. Pa. Dec. 6, 2011).

trademark's fame because the "Terrible Towel" trademark could be readily and accurately determined. Second, the court found that the tee shirt was very similar to the "Terrible Towel" trademark because it used the word "Terrible," similar colors, and a reference to Pittsburgh, which amounted to an apparent attempt to create confusion as to the tee shirt's source. Third, the court found that actual confusion existed because the printing company's employee saw the logo and design and immediately questioned whether the defendant was connected to the plaintiff. Fourth, the court found that the defendant intended to use the success and reputation of the plaintiff's product by creating the impression that the defendant's tee shirts contained an authorized version of the plaintiff's marks. Fifth, the court found that the defendant's use of black and gold, coupled with one of the plaintiff's marks, would be assumed by the average consumer to be one of the plaintiffs' products. Finally, the court found that the defendant targeted the same customers at the start of the NFL season. After considering all of the factors, the court held that defendant's tee shirts created a likelihood of confusion and thus the third prong was also satisfied. Therefore, the court granted the plaintiffs' motion for summary judgment.

Barclays Bank, PLC v. Barclaysatpworldtourfinal.com[108]

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, the 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, the 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.

108. WIPO Case No. D2010-2152 (2011) (Samuels, Jeffrey, Arb.).

Beachbody, LLC v. Hauangda[109]

The complainant Beachbody filed this trademark infringement action against the respondent Huangda for registering the domain name "p90xschedule.net." The complainant is a U.S. company that produces and sells weight loss and fitness products and services. The complainant owns several registered trademarks, including the internationally registered mark "P90X," which it has owned since 2008. In 2010, the respondent registered the disputed domain name to allegedly lead Internet users to an online marketplace where they could purchase counterfeit copies of the complainant's products. As a result, the complainant filed a complaint with the World Intellectual Property Organization (WIPO), alleging that the respondent was infringing on its trademark. The WIPO Panel determined that because the domain name was identical to the complainant's trademark, it was confusingly similar. Moreover, the respondent had no rights to or legitimate interests in the P90X mark. Finally, because the respondent registered the domain name to sell counterfeit copies of the complainant's products, the Panel found that the respondent registered the domain name in bad faith. For these reasons, the Panel ordered that the respondent transfer the domain name to the complainant.

Bouchat v. Balt. Ravens L.P.[110]

The plaintiff, creator of the Flying B drawing used by the defendants Baltimore Ravens (Ravens) and the National Football League, filed a complaint to permanently enjoin the defendant from publicly displaying his logo, which infringed his copyright, in season highlight films, video clips during home games, and in the Ravens' corporate lobby. The trial court held that the defendants made fair use of the copyright and thus had not infringed. The plaintiff appealed and the court of appeals affirmed the finding of fair use as to displays in the Ravens' corporate lobby but reversed with regard to the displays in films and video clips.

On remand, this court decided whether an injunction was appropriate. The court stated that although the defendants infringed the plaintiff's copyright in a drawing, a permanent injunction should not be issued because providing the plaintiff with reasonable compensation for use of an infringing logo in football highlight films would provide an adequate remedy at law. Additionally, the court held that enjoining the defendants' use of the films would cause a

109. WIPO Case No. D2011-1386 (2011) (Agmon, Arb.).

110. No. MJG-08-397, 2011 U.S. Dist. LEXIS 129530 (D. Md. Nov. 9, 2011).

hardship that exceeded the hardship that would be suffered by the plaintiff provided he received reasonable compensation. Finally, the court held that the public interest in the historical aspect of the films outweighed the public interest in granting a monopoly to the plaintiff. Therefore, the court denied the permanent injunction against future use of the plaintiff's logo in the films at issue but conditioned this denial on the defendants' payment of reasonable compensation to the plaintiff for such use.

Bugoni v. Kappos[111]

The plaintiff alleged that he had an idea for technology that would allow for a camera to be placed in a football, for a different game perspective. The plaintiff filed paperwork with the United States Patent and Trade Office (USPTO), but was unable to pay the requisite filing fee. He also registered a domain name known as "ballcam.com" to share a prototype of his invention. After the filing, an article was published, in which the defendant Kappos purportedly invented a device similar to the plaintiff's invention. Plaintiff sought to enjoin Kappos from using his intellectual property. The court found that the plaintiff had a claim for relief only if his original application was accompanied by the requisite filing fee. The court found that because the plaintiff did not pay the requisite filing fee, his USPTO application was incomplete, and he did not have grounds for relief.

Cleveland Browns Football Co. LLC v. Dinoia[112]

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, the 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.

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111. No. 11 1957, 2011 U.S. Dist. LEXIS 128419 (D.D. C. Nov. 7, 2011).

112. WIPO Case No. D2011-0421 (2011) (Trotman, Clive, Arb.).

DirectTV, Inc. v. Cory[113]

The plaintiff owned the exclusive rights to sublicense the broadcast of the 2010 NFL Sunday Ticket Program. The defendant did not purchase a commercial subscription to exhibit NFL Sunday Ticket at his bar. Instead, he purchased a residential subscription to save money. Despite not having the appropriate subscription, the defendant exhibited at least a portion of the broadcast of NFL Sunday Ticket on October 24, 2010. The defendant admitted he advertised the exhibition of NFL Sunday Ticket and "willfully received and exhibited the broadcast" for "direct financial benefit."[114] The plaintiff filed a copyright infringement suit against the defendant, alleging that the defendant willfully violated the Federal Communications Act, 47 U.S.C. § 605. The plaintiff filed this motion seeking summary judgment, and the defendant did not file a response.

The court stated that to state a claim for a § 605 violation, a plaintiff must allege that the defendant "intercepted or otherwise unlawfully appropriated [the plaintiff's] transmission."[115] The court held that the defendant violated § 605 because he did not respond to the motion and the request for admissions and was thus entitled to judgment as a matter of law. Additionally, the court noted that under a § 605 violation, if a plaintiff elects to collective statutory damages, the court has discretion to determine the specific amount of statutory damages and can increase those statutory damages if the court "finds that the violation was committed willfully and for purposes of direct or indirect commercial advantage or private financial gain."[116] Because the defendant admitted to willfully intercepting and displaying the broadcast for financial gain, the court held that the defendant violated § 605(e)(3)(C)(ii). Therefore, the court granted the plaintiff's motion for summary judgment.

Fancaster, Inc. v. Comcast Corp.[117]

The plaintiff, Fancaster, is a provider of online video content directed at sports fans. Fancaster's sole owner applied to register the trademark in 1989, and subsequently registered a domain name for a Fancaster website. The defendant, Comcast, has a large broadcasting market, and started a website for sports fans called "Fancast." Comcast lost money on the "Fancast" venture,

113. No. EP-11-CV-50-KC, 2011 U.S. Dist. LEXIS 136395 (W.D. Tex. Nov. 29, 2011).

114. *Id.* at *3.

115. *Id.* at *6.

116. *Id.*

117. 2011 U.S. Dist. LEXIS 147373, 2011 WL 6426292 (D.N.J. Dec. 22, 2011).

and changed the name of its sports video content website. Before Comcast changed the website name, Fancaster sued Comcast for trademark violations, among other charges. Both parties filed for summary judgment. The court granted summary judgment in favor of Comcast for all infringement-related claims, and also found that Fancaster was not entitled to corrective advertising for the money Comcast was paid by its advertisers. The court denied summary judgment in favor of Comcast as to a cyber-piracy claim, because Comcast did not respond to the claim in its initial brief. The court granted summary judgment in favor of Fancaster as to Comcast's claim of fraud, finding there was no evidence Fancaster did not intend to use the mark. The court denied Fancaster's motion for summary judgment for the cyber-piracy claim, citing that a finding of bad faith was required. Finally, the court granted Fancaster's motions in limine in part, as well as granted Fancaster's motion to strike Comcast's affirmative defenses.

Gilmour v. Parsa[118]

The complainant Doug Gilmour filed this trademark infringement action against the respondent Matt Parsa for registering the domain name "douggilmour.com." The complainant is a professional hockey player who is well-known in Canada. The complainant does not have a registered trademark in his name; however, he claims that he has common law trademark rights in his name because he is a well-known professional hockey player. The respondent registered the disputed domain name in 2002 to allegedly attract the complainant's fans and consumers who were seeking information about the complainant under the false impression that the site was sponsored by or affiliated with the complainant, and then refer them to sponsored links from which respondent collected a fee. As a result, the complainant filed a complaint with the World Intellectual Property Organization (WIPO), alleging that the respondent was infringing on his common law trademark rights. The WIPO Panel determined that the complainant has common law trademark rights in his name in relation to ice hockey entertainment. Because the domain name was identical to the complainant's common law trademark, it was confusingly similar. Moreover, even though the respondent argued that that he registered the disputed domain name for use as a fan site to share his appreciation of the complainant's talents, the WIPO Panel determined that he had no rights to or legitimate interests in the mark. Finally, because the respondent registered the domain name to derive income, the Panel found that

118. WIPO Case No. D2011-1712 (2011) (Carson, Arb.).

the respondent registered the domain name in bad faith. For these reasons, the Panel ordered that the respondent transfer the domain name to the complainant.

Hart v. Elec. Arts, Inc.[119]

The plaintiff Ryan Hart, a former college football player, brought a putative class action lawsuit against Electronic Arts, the producer of an annual video game series called *NCAA Football*. Hart alleged that Electronic Arts misappropriated his likeness and identity, as well as other college football players' likenesses, for a commercial purpose in connection with four of the defendant's NCAA Football video games. Electronic Arts filed a motion for summary judgment, alleging that the First Amendment barred Hart's claims under New Jersey law for misappropriation of his likeness. In analyzing this motion, the court concluded that the NCAA Football video game does not constitute commercial speech. Next, the court balanced the defendant's First Amendment rights against Hart's right of publicity. Under both tests it employed, the court found that there were no disputed issues of material fact that the defendant's First Amendment right to free expression outweighed Hart's right of publicity. Thus, the court held that the First Amendment was a defense to Hart's right of publicity claim and granted Electronic Arts' motion for summary judgment.

In re L.A. Dodgers LLC[120]

The debtors, the Los Angeles Dodgers LLC, filed for bankruptcy protection under Chapter 11. The debtors have a licensing agreement with Fox Entertainment Group, Inc. (Fox Group) that extends through the end of the 2013 Major League Baseball season. Pursuant to their bankruptcy filings, the debtors filed a Motion for an Order to Approve Market Procedures for the License of Telecast Rights, which seeks to end its current contract with Fox Group. The debtors filed the motion to allow any telecast rights to also be sold with the team, which would improve the team's market value and maximize the value of the estate. Fox Group argued that the telecast rights were not necessary for the estate value, and that the estate could get out of bankruptcy without those rights. However, the court found that allowing the estate to maximize its value was a top priority, and that granting Fox Group's request to delay negotiations would further hamper the estate. Therefore, the

119. 808 F. Supp. 2d 757 (D.N.J. 2011).

120. 457 B.R. 308 (Bankr. D. Del. 2011).

court granted the debtors' motion, and allowed the debtors to negotiate for better telecast terms.

Internetshopsinc.com v. Six C Consulting, Inc.[121]

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 the defendant began using the same term for its own golf mats in 2008. The plaintiff notified the defendant of its rights, and the defendant took action to stop use of the term "Dura Pro." However, the defendant's efforts failed, and the 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 the 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.[122]

The plaintiff, J&J Productions, Inc., is the exclusive commercial distributor of the broadcast of certain boxing matches and similar-type events. As the exclusive commercial distributor of these events, businesses were required to obtain a license from the plaintiff to transmit the events. Allegedly, many businesses failed to do so, and the plaintiff, seeking damages, filed lawsuits against these businesses based on these defendant businesses' alleged interception and transmission of these events.

Lane No. 1. v. Lane Masters Bowling Inc.[123]

The plaintiff Lane No. 1 brought this action against the defendant Lane Masters Bowling Inc., claiming patent infringement after the defendant made

121. No. 1:09-CV-00698-JEC, 2011 U.S. Dist. LEXIS 31222 (N.D. Ga. Mar. 24, 2011).

122. *See e.g.*, J&J Sports Prods., Inc. v. Allen, No. 1:10-cv-4258-WSD, 2011 U.S. Dist. LEXIS 25453 (N.D. Ga. Mar. 14, 2011).

123. No. 5:06-CV-0508, 2011 U.S. Dist. LEXIS 29231 (N.D.N.Y. Mar. 22, 2011).

two bowling balls with designs that are protected by a patent owned by the plaintiff. The defendant moved for summary judgment claiming that the plaintiff's patent was invalid for obviousness and that there is no infringement because the defendant's balls are not covered by the plaintiff's patent. The court rejected the obviousness argument because the 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 the defendant's motion for summary judgment on the plaintiff's infringement claim.

Mine O' Mine, Inc. v. Calmese[124]

The plaintiff Mine O' Mine, Inc. (MOM) filed a motion for partial summary judgment in its action for trademark infringement and other related claims. Former professional basketball player Shaquille O'Neal (O'Neal), nicknamed "Shaq," granted MOM the exclusive right to register and sublicense his name, image, and likeness. In February 2008, after O'Neal was traded to the Phoenix Suns, he was dubbed "The Big Cactus" and "The Big Shaqtus." While playing for the Suns, O'Neal wore an orange jersey with the number thirty-two. In March 2008, the defendant, Michael Calmese (Calmese), registered <Shaqtus.net> as a domain name, and registered "Shaqtus" as an Arizona trade name. Calmese also created an image of the Shaqtus, which looked like a cactus with the facial expression of a man wearing an orange basketball jersey bearing the name "Phoenix Shaqtus" and the number 32 and bouncing a basketball (Shaqtus Character). In 2009, counsel for MOM and O'Neal demanded that Calmese cease and desist from all use of the Shaqtus mark, transfer <Shaqtus.net> to MOM, and cancel his Arizona trade name registration for Shaqtus. However, Calmese failed to cancel his "Shaqtus" trade name registration or transfer <Shaqtus.net>.

As a result, MOM sued Calmese and True Fan Logo, asserting six claims: (1) federal trademark infringement; (2) unfair competition; (3) trademark dilution; (4) cybersquatting; (5) common law trademark infringement; and (6) violation of the right of publicity. Calmese asserted three counterclaims: (1) common law trademark infringement; (2) unfair competition; and (3) defamation of character. MOM filed a motion for summary judgment on its first, second, fifth, and sixth claims for trademark infringement, unfair competition, and violation of the right of publicity and on all of the counterclaims asserted by Calmese. Calmese sought summary judgment in his

124. No. 2:10-CV-00043-KJD-PAL, 2011 U.S. Dist. LEXIS 75236 (D. Nev. July 12, 2011).

favor for all of his counterclaims and for all of MOM's claims. MOM also sought to strike Calmese's opposition.

For MOM's federal trademark infringement claim, MOM claimed Calmese's use of Shaqtus caused a likelihood of consumer confusion. The court considered the eight factors to determine the likelihood of consumer confusion and determined that there was a high likelihood of confusion. Therefore, the court granted MOM's motion for summary for its trademark infringement claim. For MOM's unfair competition claims, the court stated that the test for unfair competition under common and federal law is identical to the test for trademark infringement. Because the court held that MOM was entitled to summary judgment on its trademark infringement claim, the court held that it was also entitled to summary judgment on its unfair competition claims. For MOM's violation of right of publicity claim, the court discussed the transformative use defense. Under this defense, a right to publicity action is defeated when cartoons depicting real persons are distorted for the purpose of parody or caricature. The court held that the Shaqtus character is sufficiently transformative to defeat a right to publicity action. Therefore, the court denied MOM's motion for summary judgment on this claim.

Finally, the court addressed Calmese's counterclaims. The court held that MOM was entitled to summary judgment on both counterclaims. First, the court held that Calmese could not prevail on his trademark infringement and unfair competition counter claims because Calmese's use of the Shaqtus name violated MOM's rights and he therefore had no rights in the Shaqtus name. Second, the court held that Calmese could not prevail on his defamation counterclaim because Calmese acted under a fictitious business name and True Fan Logo was no longer a valid or existing business entity.

Newark Morning Ledger Co. v. New Jersey Sports & Exposition Auth.[125]

The defendant, a state-owned sports and exposition center, responded to an Open Public Records Act (OPRA) request made by the plaintiff, a newspaper publisher. The plaintiff sought copies of the defendant's promoter licensing agreements. The copies originally provided to plaintiff redacted the financial information in the agreements. The defendant stated that the financial information was exempt from the OPRA. The plaintiff filed suit to require the disclosure of all information related to the agreements. The trial court found that the defendant did not give examples of how releasing the

125. 31 A.3d 623 (N.J. Super. Ct. App. Div. 2011).

unredacted copies of the agreements would cause any specific harm to the defendant. Therefore, the trial court granted the plaintiff's motion requiring defendant to release the unredacted agreements. The defendant appealed, and the court held that the agreements in question constituted government records under the OPRA statute. Therefore, the court found that the defendant could not deny access to the agreements as authorized by the law. The court also held that the common law doctrine of nondisclosure did not apply because nondisclosure was not in the public's interest, as the defendant claimed. Therefore, the court affirmed the order of the trial court requiring the defendant to release unredacted copies of the agreements.

NFL v. EE Nation[126]

The National Football League (NFL) sued EE Nation alleging trademark infringement after EE Nation registered the domain name "superbowlconcierge.com." The NFL owns several federally registered trademarks in the United States for the trademark "SUPER BOWL," which is the name of the league's championship game. The NFL has registered the same trademark in over fifty jurisdictions outside of the United States. Finally, since 1995, the NFL's official website for the Super Bowl game has been located at the registered domain name "www.superbowl.com." Long after the NFL had established its rights in the SUPER BOWL mark, EE Nation registered the domain name superbowlconcierge.com without the NFL's authorization. EE Nation's website prominently displays NFL logos and pictures of NFL teams. The website also provides links for users to book rooms at hotels near NFL stadiums and purchase tickets to NFL games. The NFL sent several cease-and-desist letters to EE Nation, objecting to the unauthorized use of the NFL's trademarks; however, EE Nation never responded to these letters and did not stop using the marks. As a result, the NFL filed a complaint with the World Intellectual Property Organization (WIPO), alleging that EE Nation was infringing on its trademarks. Particularly, the NFL argued that the superbowlconcierge.com domain name is confusingly similar to the NFL's famous SUPER BOWL trademark, that EE Nation has no rights to or legitimate interests in the domain name, and that EE Nation registered the domain name in bad faith. The WIPO Panel determined that because the domain name was identical to the NFL's trademark, it was confusingly similar. Moreover, EE Nation had no rights to or legitimate interests in the SUPER BOWL mark. Finally, because EE Nation registered

126. WIPO Case No. D2011-1228 (2011) (Gibson, Arb.).

the domain name even though it had no rights to the mark, the Panel found that EE Nation registered the domain name in bad faith. For these reasons, the Panel ordered that EE Nation transfer the domain name "superbowlconcierge.com" to the NFL.

Pac.-10 Conference v. Lee[127]

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 preeminent collegiate athletic conferences in the United States. Specifically, the 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. The 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, the 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.

Rugby World Cup Limited v. Andreas Gyrre[128]

The complainant Rugby World Cup Limited filed this trademark infringement action against the respondent Andreas Gyrre for registering the domain name "worldcup2011.com." The complainant is owned by the world governing body for the sport of rugby and has been assigned all rights in the Rugby World Cup tournament. In 2009, the respondent registered the disputed domain name to sell tickets to sporting events. Believing that the colors and fonts used on the respondent's side were similar to the complainant's site, the complainant filed a complaint with the World Intellectual Property Organization (WIPO), alleging that the respondent's website was confusing consumers. However, the WIPO Panel determined that the domain name was not confusingly similar because many sports use the

127. WIPO Case No. D2011-0200 (2011) (Sorkin, David, Arb.).

128. WIPO Case No. D2011-1520 (2011) (Badgley, Arb.).

phrase "world cup" to refer to their championship tournament. Therefore, because the word "rugby" was absent in the domain name, there was not a sufficient connection between the disputed domain name and the Rugby World Cup to cause confusion. For these reasons, the Panel denied the complaint.

Russell Brands LLC v. Cognata[129]

The complainant Russell Brands, LLC filed this trademark infringement action against the respondent Tony Cognata for registering the domain name "spalding.net." The complainant is a U.S. company that manufactures sporting goods. The complainant owns several registered trademarks, including the internationally registered mark "SPALDING," and the domain name "spalding.com," which it has owned since 1994. In 1998, the respondent registered the disputed domain name. As a result, the complainant filed a complaint with the World Intellectual Property Organization (WIPO), alleging that the respondent was infringing on its trademark. The WIPO Panel determined that because the domain name was identical to the complainant's trademark, it was confusingly similar. Moreover, the respondent had no rights to or legitimate interests in the SPALDING mark. Finally, the respondent did not contest the fact that it registered the domain name in bad faith. For these reasons, the Panel ordered that the respondent transfer the domain name to the complainant.

Silver Dream, LLC v. Yousuf Int'l, Inc.[130]

The defendant filed a motion to dismiss the plaintiff's copyright infringement suit, arguing that the court lacks personal jurisdiction. The plaintiff is a designer and marketer of jewelry. In 2009, the plaintiff applied for and received a copyright for a pendant that it designed in the shape of a fleur de lis, which included the image of a football, a football stadium, and the words "WHO DAT," "NOLA," and "BELIEVE DAT." Upon learning that the defendant was selling similar jewelry pendants, which included the same shape, images, and words, the plaintiff filed a copyright infringement claim in Louisiana district court. The defendant filed a motion to dismiss, arguing that the Louisiana district court did not have personal jurisdiction because the defendant had no contacts with Louisiana. However, the court disagreed, holding that because the pendant's design was particular to Louisiana,

129. WIPO Case No. D2011-1394 (Oct. 21, 2011).

130. No. 10-4247, 2011 U.S. Dist. LEXIS 82916 (E.D. La. July 28, 2011).

specifically the New Orleans Saints football team, much of the defendant's sales were in the Louisiana market; therefore, the defendant should have reasonably foreseen that it could be haled into court in Louisiana. As such, the court denied the defendant's motion to have the case dismissed.

Steele v. Bongiovi[131]

Samuel Bartley Steele (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 the 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 the defendants' advertisements.

In the case at hand, Steele alleged that the defendants intentionally concealed acts of copyright infringement, altered the TBS Promo logo by deleting the Major League Baseball Advanced Media copyright notice, and submitted false evidence to the federal courts in the form of that altered TBS Promo. The 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.

Syrus v. Bennett[132]

The plaintiff, Charles Syrus (Syrus), appealed a district court decision to dismiss his copyright infringement action against the defendant basketball team, the Oklahoma City Thunder (the Thunder). Syrus wrote a song for the Thunder and gave copies of the song to the one of the team's coaches and the team's head cheerleader. Although the team never played his song during

131. 784 F. Supp. 2d 94 (D. Mass. 2011).

132. 455 Fed. Appx. 806 (10th Cir. 2011).

Thunder games, Syrus claimed that the Thunder violated the copyright in his song by having the cheerleaders, mascot, and the crowd chant phrases such as "Thunder Up," "Go Thunder," and "Let's Go Thunder," phrases that were allegedly taken from his song's lyrics. As a result, Syrus filed this copyright infringement action to recover compensatory damages. The district court, however, dismissed Syrus's claim because he had not established a plausible claim. On appeal, the court affirmed the dismissal of Syrus's complaint. The court held that the phrases did not reflect the minimal creativity required for a work to receive copyright protection since these phrases were merely predictable variations on cheers that are widely used in sports. The fact that Syrus had obtained a copyright registration for his song did not automatically create protection for these phrases. Copyright protection extends "only to those components of a work that are original to the author," and the allegedly infringed phrases were not original enough for copyright protection. Because Syrus did not have a valid copyright in these phrases, the court affirmed the dismissal of his copyright infringement claims.

Unique Sports Prods. v. Ferrari Imp. Co.[133]

The plaintiff, a sporting goods manufacturer, filed an action for trademark infringement against defendant, a sporting goods retailer, for marketing a similar looking grip tape for use on tennis rackets. Since 1977, the plaintiff has manufactured and sold Tourna Grip, which is a light blue tape that provides additional cushioning and moisture absorption on tennis racket grips. In 2001, the plaintiff federally registered the color light blue used for "grip tape for sports rackets." Subsequently, the defendant began marketing and selling a gauze tape for tennis rackets, which was a light blue-green color. As a result, the plaintiff filed this action against the defendant for trademark infringement. The district court determined that the defendant's light blue-green gauze tape did not infringe the plaintiff's trademark light blue grip tape. Even though both products were used on tennis rackets, there was little likelihood of confusion between the two products. They were different products because one was absorbent while the other was not. The packaging of each of the products was so distinguishable from the other that it made it virtually impossible to confuse the two products. Finally, there was no evidence of actual consumer confusion. For these reasons, the court entered judgment in favor of the defendant.

133. No. 1:09-CV-660-TWT, 2011 U.S. Dist. LEXIS 124801 (N.D. Ga. Oct. 27, 2011).

W. Brand Bobosky v. Adidas AG[134]

The defendants, Adidas and National Basketball Association player Kevin Garnett, filed a motion for summary judgment against the plaintiff's trademark infringement and unfair competition claims. The plaintiff sued the defendants because of the defendants' use of the plaintiff's federally registered trademark: "We Not Me." In 2004, the plaintiffs registered its intent to use the phrase "We Not Me" in connection with men's, women's, and children's clothing. In 2007, Adidas began using the phrase "We Not Me" in its own marketing campaign. As a result, the plaintiff filed this trademark infringement action against the defendants. The defendants moved for summary judgment, arguing that the plaintiff's trademark registrations were void ab initio and because plaintiff procured them through fraud on the Patent and Trademark Office because the plaintiff failed to use the mark in a trademark manner. The district court concluded that the plaintiff's registrations were void ab initio because the plaintiff lacked a bona fide intention to use the mark in two of the three categories that it was registered. Therefore, the court granted partial summary judgment on the issue of trademark validity. However, because there was a genuine issue of material fact as to whether the plaintiff acquired valid and protectable rights in the mark through trademark use, the court could not grant summary judgment on the unfair competition claim.

Who Dat Yat Chat, LLC v. Who Dat, Inc.[135]

The defendants, NFL Properties and New Orleans Saints, filed a motion to compel discovery and for sanctions against the plaintiff, Who Dat Yat Chat, LLC, in a trademark infringement action. While making plans to open a coffee shop in Louisiana named "Who Dat Yat Chat," the plaintiff received a cease-and-desist letter from the defendants, stating that they were the sole owner of the trademark phrase "Who Dat." In response, the plaintiff filed a declaratory judgment action seeking a declaration that the phrase is a generic term in the New Orleans metropolitan area, and therefore, no one can own the phrase. In preparation for a trial, the defendants sent the plaintiff interrogatories and requests for documents. After receiving the plaintiff's initial responses, the defendants requested more detailed information. Over the next several months, the plaintiff and defendants exchanged discovery requests, and in the defendants' opinion, all of the plaintiff's responses were inadequate. Eventually, the defendants filed this motion to compel the

134. No. CV 10-630-PK, 2011 U.S. Dist. LEXIS 149611 (D. Or. Dec. 29, 2011).

135. No. 10-1333C/W10-2296, 2011 U.S. Dist. LEXIS 103692 (E.D. La. Sept. 9, 2011).

plaintiff to provide information more responsive to the defendants' requests. The defendants also requested that they be awarded attorneys' fees and costs incurred for bringing this motion. In the end, the court granted the defendants' motion to compel discovery because the information they were seeking was non-privileged and relevant. The plaintiff was ordered to immediately supplement its answers with more responsive information and documents or state specifically that the pertinent documents or information do not exist. The court further awarded the defendants with attorneys' fees and costs incurred for bringing this motion.

Woltmann v. Arena Football One, LLC[136]

The defendant, arena football team the Chicago Gridiron (the Gridiron), filed a motion to dismiss part of the plaintiff photographer's copyright infringement action. The plaintiff entered into a contract to be the exclusive photographer for the arena football team, the Chicago Rush (the Rush). Under this contract, all ownership rights in the images would revert to the plaintiff if the Rush filed for bankruptcy or ceased operations. The Rush subsequently ceased operations. However, the Arena Football League later bequeathed the trademarks and trade names of the former Rush team to the Gridiron team. After purchasing the assets of the former Rush team, the Gridiron repeatedly used the plaintiff's pictures of the Rush without his authorization. As a result, the plaintiff brought this action claiming copyright infringement, declaratory judgment, and unjust enrichment. The Gridiron filed a motion to dismiss the declaratory judgment and unjust enrichment claims. The parties mutually agreed that the court should dismiss the unjust enrichment claim because the copyright claim preempted it. However, the court held that it could not dismiss the declaratory judgment claim because there were genuine issues of fact as to whether Gridiron had a basis to use the plaintiff's images.

World Wrestling Entm't, Inc. v. Ramos[137]

The defendant moved to dismiss the plaintiff's breach of contract action that the plaintiff filed after defendant failed to pay money that it allegedly owed under a licensing agreement. The plaintiff World Wrestling Entertainment (WWE) and the defendant, J.F. Ramos (Ramos), entered into a license agreement, granting Ramos a license to manufacture and distribute products—such as t-shirts, hats, and gloves—bearing WWE trademarks. As

136. No. 11 C 5994, 2011 U.S. Dist. LEXIS 129470 (N.D. Ill. Nov. 7, 2011).

137. No. 3:10-cv-1399, 2011 U.S. Dist. LEXIS 97038 (D. Conn. Aug. 30, 2011).

part of the license agreement, Ramos was required to obtain WWE's preapproval before Ramos could sell and distribute any licensed products. In 2009, Ramos manufactured certain clothing bearing WWE trademarks, which WWE claimed Ramos never submitted to it for approval.

After WWE discovered that Ramos had sold the unauthorized clothing to a French company, WWE sent a cease-and-desist letter to the French company, informing it that the clothing was counterfeit. Then, after Ramos produced documents showing that WWE had approved the products, the French company filed suit in France against the WWE for unfair competition and unfair commercial practices, seeking over €17 million. Under the licensing agreement between Ramos and WWE, Ramos would be required to indemnify WWE for its losses, damages, attorneys' fees, and similar costs for any claim against WWE arising from Ramos's unauthorized use of the licensed products. However, because the litigation was still pending in France, Ramos refused to pay WWE. As a result, WWE terminated the license agreement and brought this action seeking a declaration that Ramos owed money under the indemnification provisions of the licensing agreement. In response, Ramos filed a motion to dismiss, arguing that WWE's claims were not yet ripe for judicial review because the litigation was still pending in France. The district court held that any declaration about the extent of Ramos's obligations under its licensing agreement would not substantially clarify who is obligated to pay the French company if it was to prevail in the French litigation. As such, the court declined to decide the indemnification issue, and the court dismissed the action.

LABOR LAW

Labor laws govern the relationship between employers and employees in unionized settings. As the major professional sports leagues are unionized industries, labor laws play a significant role in shaping the sports world as we know it. In general, labor law claims center on disputes concerning a particular sport's collective bargaining agreement. In 2011, labor laws were at the forefront of a highly-publicized dispute between the National Football League (NFL) and NFL players, as illustrated by the *Brady v. NFL* decisions that follow.

Bentley v. Cleveland Browns Football Co.[138]

The defendant Cleveland Browns (Browns) appealed a trial court's denial

138. 958 N.E.2d 585 (Ohio Ct. App. 2011).

of its motion to compel arbitration as per the collective bargaining agreement (CBA) that the plaintiff Bentley agreed to. In 2010, Bentley filed suit against the Browns claiming fraud and negligent misrepresentation. He alleged that he contracted a staph infection while in rehabilitation as a result of unsanitary conditions at the Browns' facility. Bentley further alleged that the Browns' head athletic trainer misrepresented the facility as a "world class facility with a strong track record for successfully rehabilitating other Browns' players."[139] Based on those representations, Bentley chose the Browns' facility to complete his postsurgical rehabilitation. Bentley was not required to choose the Browns' facility for his rehabilitation. To determine whether the trial court improperly denied the Browns' motion to compel arbitration, the appellate court had to decide whether the trial court's order constituted an abuse of discretion, and more specifically, whether Bentley's claims of fraud and negligent misrepresentation were subject to the CBA, which would then invoke the relevant arbitration clause. Bentley argued that the court cannot compel him to arbitrate such a dispute when he never agreed that an arbitrator must hear such claims. The court of appeals held that claims for fraud and negligent misrepresentation do not implicate the CBA. Furthermore, it held that nothing in the CBA required that Bentley use the Browns' facility for the post-surgical rehabilitation, which the Browns' counsel conceded. Because Bentley's post-surgical rehabilitation did not disobey any CBA provision (he could have chosen to go anywhere for his rehabilitation), it would be unnecessary to subject Bentley's claims to the CBA. Therefore, the court of appeals affirmed the trial court's ruling to deny the Browns' motion to compel arbitration.

Brady v. NFL[140]

The defendant National Football League (NFL) filed an appeal, challenging the lower court's granting of a preliminary injunction that enjoined the NFL owners from locking out the players because it was an unlawful concerted boycott causing irreparable harm to the players. The players filed an antitrust suit after they agreed to decertify as a union, which ended both sides' protection under the nonstatutory labor exemption that permits employers to bargain in concert with its employees' union. At trial, the NFL argued that the owners were still immune from antitrust liability under the nonstatutory labor exemption because the decertification of the

139. *Id.* at 587.

140. 644 F.3d 661 (8th Cir. 2011).

players' union was effectively a "sham." The NFL also argued that the district court lacked subject matter jurisdiction because the Norris-LaGuardia Act (NLGA) prevents the federal courts' power to grant injunctions in cases "involving or growing out of a labor dispute."[141] However, the district court ruled that the case did not grow out of a labor dispute. The district court also refused to stay the action until the National Labor Relations Board (NLRB) resolved the NFL's pending unfair labor practices charge against the players for "unlawful subversion of the collective bargaining process" by having a "sham" decertification only so the players could file an antitrust lawsuit.[142]

The Eighth Circuit determined that the NLGA applies to the case. The court was not persuaded by the players' contention that the NLGA applied to disputes specifically involving only organized labor. The court ruled that the NLGA does apply to cases where the employees are no longer unionized and that the controversy surrounding this case arose directly out of a labor dispute. Next, the Eighth Circuit ruled that the NLGA prevented the district court from granting a preliminary injunction. In its argument, the NFL pointed to Section 4(a) of the NLGA. Section 4(a), the NFL argued, forbids a court to prohibit the league from using a lockout as a labor weapon. Although the players counter-argued that Section 4(a) prohibits only injunctions against strikes and other such injunctions against employees, and not lockouts or the employers, the court found that such an interpretation would be in complete disregard for the NLGA's purpose to keep cases arising out of labor disputes out of the federal courts. Therefore, because the NLGA prohibits a federal court from enjoining a party to a labor dispute from using economic weapons permissible under the NLRA, the court vacated the district court's order granting a preliminary injunction to the players.

Brady v. NFL[143]

As part of the highly-publicized National Football League (NFL) labor dispute regarding CBA negotiations, in response to the threat of a lockout, the 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

141. *Id.* at 668.

142. *Id.* at 667.

143. 640 F.3d 785 (8th Cir. 2011); *see also* Brady v. NFL, 638 F.3d 1004 (8th Cir. 2011); Brady v. NFL, 779 F. Supp. 2d 1043 (D. Minn. 2011); Brady v. NFL, 779 F. Supp. 2d 992 (D. Minn. 2011).

generally prohibited Players from entering NFL facilities. However, the plaintiffs sought to enjoin the League from continuing the lockout. In an April 25 decision, the district court granted the 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.

Chi. Bears Football Club, Inc. v. Haynes[144]

The defendants, Michael Haynes (Haynes), Joe Odom (Odom), Cameron Worrell (Worrell), and National Football League Players' Association's (NFLPA, and collectively the defendants), filed a motion to vacate an arbitration award. Haynes, Odom, and Worrell were football players, employed by the Chicago Bears, at the time the dispute arose. Haynes, Odom, and Worrell filed claims for workers' compensation benefits with the California Workers' Compensation Appeals Board (WCAB). The plaintiff Chicago Bears Football Club, Inc. (the Bears) filed a grievance, arguing that the players should have filed claims in Illinois, where the Bears franchise is located. The Bears cited the Collective Bargaining Agreement (CBA) and the players' individual contracts as the source of the grievances. The NFLPA then initiated arbitration with the Bears on behalf of the players. The arbitrator upheld the Bears' grievances, and the players and the NFLPA appealed the award on the grounds that it violated California public policy. The court reviewed the award de novo because of the challenge based on public policy grounds. The court found that the agreement did not need to conform to California public policy because the agreements were governed under Illinois law, and the Bears are located in Illinois. The court found that the arbitrator did not err in applying Illinois law to the decision, and therefore granted the Bears' motion to enforce the arbitration award.

Kivisto v. NFL Players Assoc.[145]

Kivisto appealed the trial court's decision to dismiss Kivisto's contract dispute under the National Football League (NFL) Collective Bargaining

144. 816 F. Supp. 2d 534 (N.D. Ill. 2011).

145. 435 Fed. Appx. 811 (11th Cir. 2011).

Agreement (CBA). Kivisto, a former NFL agent, claimed he should not be forced to arbitrate under the CBA's arbitration agreement after his agent certification had expired. The trial court dismissed Kivisto's complaint and held that the contract dispute was within the scope of the CBA's arbitration agreement. On appeal, the Eleventh Circuit Court of Appeals held that the trial court did not err in dismissing the complaint because in signing his Application for Certification as an NFLPA Contract Advisor, Kivisto agreed to abide by the arbitration procedures set forth in the NFLPA Regulations. Section 5(A)(4) of the NFLPA Regulations requires arbitration to be the exclusive method for resolving any and all disputes arising out of "any other activities of a Contract Advisor within the scope of these Regulations." The court held that broad scope of section 5(A)(4) covers the revocation of Kivisto's agent certification under section 2G. As such, the court affirmed the trial court's decision to dismiss Kivisto's complaint.

PROPERTY LAW

Property law concerns the benefits ands rights associated with an interest in real property. In the sports law context, the issues generally surround challenges to a particular use of a given sports facility such as claims involving zoning or nuisance issues. The following cases illustrate these and other claims involving real property.

Asphalt Specialists, Inc. v. Steven Anthony Dev. Co.[146]

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 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

146. No. 295182, 2011 Mich. App. LEXIS 698 (Mich. Ct. App. Apr. 19, 2011).

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 to construction liens only 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.

Carb v. City of Pittsburgh[147]

The defendant City of Pittsburgh (the City) filed a motion for summary judgment. The plaintiff, Barry Carb (Carb), owned a piece of property adjacent to a City-owned baseball field. The plaintiff owned the property since 1985 and was aware at the time he purchased the property that it was used for baseball, softball, and kickball. During the plaintiff's ownership, the defendant erected two fences along the property line that divided the field and the plaintiff's property. The field has no lighting and has a sound system that does not exceed a reasonable volume. Plaintiff filed a complaint, alleging that the field constituted a nuisance. The City moved for summary judgment, which was granted by the trial court. The court found that summary judgment was improper as to the nuisance claim regarding the field's use for little league baseball. The plaintiff alleged that the crowds, traffic, and other incidental problems from the baseball games constituted a nuisance. The court found there were genuine issues of material fact and reversed summary judgment as to the use of the field for little league baseball. However, the court found that summary judgment was appropriate regarding plaintiff's complaint that the use of the field violated the permits. The court found that failure to enforce the permits could not constitute a nuisance. Therefore, the court affirmed in part and reversed in part summary judgment in favor of the City.

Town of Plattekill v. Ace Motocross, Inc.[148]

Ace Motocross appealed a trial court order, which enjoined them from operating a commercial racetrack on their property. Ace Motocross has operated a commercial motocross racetrack on their property in the Town of Plattekill (the Town) since 1987. In 2005, the Town enacted a law that

147. No. 2440 C.D. 2010, 2011 Pa. Commw. Unpub. LEXIS 863 (Pa. Commw. Ct. Oct. 19, 2011).

148. 87 A.D.3d 788 (N.Y. App. Div. 2011).

prohibits the commercial use of land for the operation of off-road motorized vehicles. The law, however, included a "grandfather" provision, which allowed property owners who had a nonconforming preexisting business to apply to the Town's Zoning Board to receive authorization to continue such operations for up to ten years. In 2006, because Ace Motocross never applied to receive authorization, the Town began issuing citations for Ace Motocross's violation of zoning laws. When Ace Motocross did not cease their activity, the Town sought a permanent injunction prohibiting them from operating the racetrack. The trial court granted summary judgment in favor of the Town, permanently enjoining Ace Motocross from operating a commercial motocross track on their property. Ace Motocross appealed. The appellate court affirmed the trial court's decision, finding that "a municipality may enact a zoning law that eliminates prior nonconforming uses in a 'reasonable fashion.'"[149] Moreover, the law contained a provision under which Ace Motocross could have received authorization to continue its prior nonconforming use for up to ten years. Because Ace Motocross did not avail themselves of this remedy, they were foreclosed from seeking such relief through the courts.

TAX LAW

Although tax law has a significant impact on the sports industry as a whole, particularly in the professional sports arena, this area of law rarely appears in the sports litigation context. However, the following case represents an example of a tax issue surrounding the use of a recreational facility.

The Chapel v. Testa[150]

The plaintiff, a nonprofit 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. The 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, the 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

149. *Id.* at 789.

150. 950 N.E.2d 142 (Ohio 2011).

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, the 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.

TORT LAW

Tort law represents the most-litigated aspect of sports law. It governs the duty of care owed to coparticipants in athletic events, spectators, and those using sports facilities in general. As a general matter, courts typically distinguish between those risks inherent in sports-related activities when determining whether to impose liability in a given situation. The cases that follow represent tort issues involving coparticipants, coaches, athletes, and spectators. In addition to the analyzing the various duties owed and possible breaches of those duties, some cases also illustrate the effect of contractual agreements purportedly waiving an injured party's ability to successfully sue for tort liability.

A.K.W. v. Easton-Bell Sports, Inc.[151]

The plaintiff appealed the district court's grant of summary judgment. The plaintiff, a minor and football player, was injured on a play during a team practice and was later diagnosed with a carotid artery tear. He is now partially paralyzed. His mother sued on his behalf, citing that the helmet the plaintiff was wearing during practice was defectively designed. The defendant filed a motion for summary judgment in the district court, which was granted. On appeal, the court reversed the grant of summary judgment, and remanded the case, stating that a product liability case in Mississippi has a three-element test that the plaintiff did not have the opportunity to prove. The court then noted if the plaintiff cannot prove the three elements, summary judgment at a later time would be appropriate.

151. 454 Fed. Appx. 244 (5th Cir. 2011).

Altman v. HO Sports Co.[152]

The plaintiff Jeffrey Altman, an expert wakeboarder, filed this product liability suit against the defendant HO Sports Co. following an injury the plaintiff sustained while wearing wakeboarding boots manufactured by the 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, the plaintiff did not read these warnings. While wakeboarding and wearing the boots at issue, the plaintiff suffered severe injuries to his right ankle and subsequently filed suit against the defendant, alleging defective warning and defective design.

The defendant moved for summary judgment. Notwithstanding any defective warning, it was undisputed that the plaintiff did not read the warnings. Noting this lack of causation relating to the 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 the defendant's boot design increased the risk of inherent injury and substantially contributed to the plaintiff's injury. Thus, the court denied the defendant's motion for summary judgment as to the defective design claim.

Ashburn v. Bowling Green State Univ.[153]

Aaron Richardson died as a result of a 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 that eventually resulted in a 9-1-1 emergency call. At some point, Richardson stopped breathing and eventually died. Richardson's estate sued BGSU arguing that the 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 the defendant BGSU.

On appeal, the 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

152. 821 F. Supp. 2d 1178 (E.D. Cal. 2011).

153. No. 10AP-716, 2011 Ohio App. LEXIS 1297 (Ohio Ct. App. Mar. 29, 2011).

have survived even without the delay. As such, the defendant could not be held liable for his death, and the trial court's judgment was affirmed.

Baker v. B&K Promotions, Inc.[154]

The plaintiffs appealed the trial court's grant of summary judgment. The plaintiffs were spectators at a race at the Morgan County Speedway. The plaintiffs entered the pit area, after first signing a release and waiver and paying an additional fee. While at the race, a car crashed and went into the spectator area, injuring the plaintiffs. The plaintiffs sued the defendant, the promoter of the race, for their injuries, citing negligence. The defendant contended that the release and waiver signed by the plaintiffs was a valid waiver of claims, and the defendant moved for summary judgment. The trial court granted summary judgment. On appeal, the plaintiffs contended that summary judgment was inappropriate because their injuries were not contemplated by the release and waiver, and additionally that the plaintiffs should be given more time to conduct discovery. The court found that the plaintiffs' injuries were almost indistinguishable from those contemplated by the release and wavier, and that they had ample time before the initial complaint in the trial court to conduct discovery. Therefore, the court affirmed the grant of summary judgment in favor of the defendant.

Beer v. La Crosse Cnty. Agric. Soc'y[155]

The 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, the plaintiffs sued, seeking damages, but the circuit court granted the defendants' motion for summary judgment based on a Speedway Release form signed by the plaintiffs releasing the defendants from any liability. On appeal, the 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 the defendants.

154. No. 4-10-0955, 2011 Ill. App. Unpub. LEXIS 262 (Ill. Ct. App. Oct. 26, 2011).

155. 797 N.W.2d 934 (Wis. Ct. App. 2011).

Begley v. Harkins[156]

The defendant appealed an order of the district court granting partial summary judgment to the plaintiff in the plaintiff's negligence action. The plaintiff and the defendant were golfing when the defendant's cart hit and injured the plaintiff. The plaintiff filed a complaint alleging that the defendant was negligent. The defendant filed a responsive pleading and raised the issue of contributory negligence because the plaintiff heard the defendant's cart approaching, observed the defendant talking on his cell phone, and observed that the defendant attempted to push the break but pushed the accelerator instead. The district court granted a motion for partial summary judgment on the issue of contributory negligence, finding that the plaintiff's conduct was, as a matter of law, not something a jury could find constituted contributory negligence. On appeal, the court held that the district court erred in granting summary judgment on the issue of contributory negligence because the record contained sufficient evidence from which the trier of fact could have concluded that the plaintiff had failed to protect himself from harm. Additionally, the court also vacated the district court's ruling on the sanctions motion. However, the court noted that its opinion should not be read as expressing the existence or nonexistence of grounds excusing the sanction. Therefore, the court reversed and remanded.

Bowling v. Asylum Extreme, LLC[157]

The plaintiff Bowling was a patron at the defendant Asylum Extreme's paintball center, which she attended with her youth group. Before the beginning of any paintball games, patrons were required to sign a waiver, which Bowling did. During the games, Bowling's protective mask slid down, and she was shot in the eye, causing permanent injury. Bowling then sued Asylum Extreme, stating that they did not properly instruct her about how to adjust her mask, which caused her injury. Asylum Extreme moved for summary judgment, on the basis that her claim was precluded by the signed waiver. Bowling argued that the waiver was not sufficiently clear to cover her injury. The trial court disagreed with Bowling, finding that the waiver was specific enough to cover her injury. This court agreed, finding that the only claim Bowling would have is if the conduct was willful or wanton. The court found that Asylum Extreme's requirement that Bowling wear a protective

156. No. A-11-204, 2011 Neb. App. LEXIS 193 (Neb. Ct. App. Dec. 27, 2011).

157. No. 2010-CA-001687-MR, 2011 Ky. App. Unpub. LEXIS 801 (Ky. Ct. App. Oct. 28, 2011).

mask and instruction that the mask not be removed was enough to prove that Asylum Extreme's conduct was neither willful nor wanton. The court affirmed summary judgment in favor of Asylum Extreme.

Butts v. Whitton[158]

The plaintiff, a minor, was injured during a snowboarding lesson taught by the defendant James Whitton. During the snowboarding lesson, the defendant signaled to the plaintiff to cross a hill; while crossing the hill, the plaintiff was struck by a reckless skier, a collision that fractured his leg. In the plaintiff's negligence suit against the defendant instructor, the trial court granted the defendant's motion for summary judgment, finding that the defendant did not have a duty to protect the 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 the plaintiff and the defendant that would give rise to such a duty. As such, the decision of the trial court granting summary judgment to the defendant was affirmed.

Combs v. Georgetown Coll.[159]

The plaintiff Combs appealed a trial court decision to grant the defendants' motion for summary judgment for a liability claim resulting from injuries the plaintiff sustained at the defendants' summer basketball camp. Combs brought suit against the defendants as a result of injuries sustained when she tripped on a platform's "lip" after watching her grandson participate at a basketball camp. The sole issue decided on review was whether Combs was an invitee or a licensee. If Combs was an invitee, the defendants owed her a duty of care to keep the gym in a reasonably safe condition and provide warnings of any obvious dangers. However, if Combs was a licensee, the defendants owed her a duty to not willfully or wantonly injure her and to warn about known dangerous conditions.

In affirming the trial court's holding, the court of appeals held that Combs was a licensee because the defendants did not impliedly invite Combs to enter the gym. Combs argued that she was given an implied invitation because one defendant admitted that spectators entered the gym during the camp, and

158. No. 296574, 2011 Mich. App. LEXIS 990 (Mich. Ct. App. May 26, 2011).

159. No. 2010-CA-000846-MR, 2011 Ky. App. Unpub. LEXIS 629 (Ky. Ct. App. Aug. 26, 2011).

because the participants played organized basketball with unlocked doors, which together created an implied invitation. However, because Combs watched from the gym's second floor, which the defendants never used, they had no knowledge that the lip would be a danger to potential spectators. The court affirmed because evidence showed that the gym's bleachers were not open for spectators, no advertising for spectators occurred, and spectators did not have to pay an entrance fee. Therefore, the appeals court affirmed the lower court's holding that Combs was a licensee and the defendants only owed her a duty of warning her of dangers actually known to them.

Davis v. Cumberland Cnty. Bd. of Educ.[160]

The plaintiff appealed the trial court's order granting summary judgment to the defendant. While attending a high school football game, the plaintiff fell through the bleachers and was injured on the defendant's premises. The plaintiff sued the defendant, alleging that it breached its duty to ensure that the bleachers were reasonably safe and also breached its duty to warn of the risk and danger associated with the bleachers. The defendant filed a motion for summary judgment and the trial court entered an order granting summary judgment in favor of the defendant. On appeal, the court held that the trial court properly granted summary judgment to the defendant because the plaintiff presented evidence that its bleachers complied with the North Carolina Building Code, and that their athletic director was unaware of anyone having ever fallen through the bleachers or of any other problems with the bleachers. Additionally, the court held that the plaintiff did not show that a reasonable defendant would have acted differently with respect to bleachers for a high school athletic field. Therefore, the trial court's judgment was affirmed.

DiBartolomeo v. N.J. Sports & Exposition Auth.[161]

The 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, the plaintiff filed suit against the stadium's owner, N.J. Sports

160. 720 S.E.2d 418 (N.C. Ct. App. 2011).

161. No. A-2716-09T2, 2011 N.J. Super. Unpub. LEXIS 345 (N.J. Super. Ct. App. Div. Feb. 16, 2011).

& 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 of the defendants, the plaintiff appealed.

Regarding the escalator mechanic, the plaintiff argued that res ipsa loquitor applied, providing an inference of the mechanic's negligence. As for the owner of the property, the 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.

Ditta v. Nesaquake Middle School[162]

The plaintiff was allegedly injured while performing a cheerleading maneuver at the defendant Nesaquake Middle School. The plaintiff sued the school and the school district, citing negligence in facility to provide proper mats and recklessly supervising cheerleading practice. The plaintiff alleged that the coach was improperly supervising because there was no spotter during the maneuver, and that only one mat was used, although regular practice called for two mats. The plaintiff fell out of the move, and on to the gym floor, with no mat beneath her. The defendants filed for summary judgment claiming that the plaintiff primarily assumed the risk of her injury. The court, however, found that inefficient supervision and the lack of proper mats raised genuine issues of triable fact. The court also found that the assumption of risk defense is improper if the defendants created an unassumed, concealed, or unreasonably increased risk, and therefore denied summary judgment in favor of the defendants.

Estate of Newton v. Grandstaff[163]

The defendants filed a motion to dismiss the plaintiff's wrongful death action. DeShawn Newton (Newton) died after he went into cardiac arrest while participating in an organized basketball tournament. Emergency medical personnel were unable help Newton until almost thirty minutes after he went into cardiac arrest. The representatives of Newton's estate brought claims for negligence and wrongful death. The defendants moved to dismiss for failure to provide sufficient facts from which the court could infer the

162. No. 10-10230, 2011 N.Y. Misc. LEXIS 5090 (N.Y. Sup. Ct. Oct. 20, 2011).

163. No. 3:10-CV-0809-L, 2011 U.S. Dist. LEXIS 73897 (N.D. Tex. July 8, 2011).

defendants owed a legal duty to Newton.

With respect to the negligence claim, Texas has used three different standards relating to sports-related injury cases: (1) reckless or intentional, (2) traditional negligence, and (3) inherent risk. The court found that the plaintiff's complaint asserted enough facts that support a plausible claim of relief under all three standards. First, under the reckless or intentional standard, the court found that the defendants' failure to take reasonable safeguards for a reasonably foreseeable injury was in reckless disregard for the safety of the participants' lives. Additionally, the court found that it is reasonable to have emergency medical personnel on site when running organized basketball tournaments similar to the defendants', and the defendants did not. Second, the court held that the traditional negligence standard was also met, for the same reasons under the reckless or intentional standard. Finally, under the inherent risk standard, the court held that Newton's injury was not one that is inherent to the sport of basketball. Therefore, the court found that the defendants would owe Newton an ordinary negligence duty. In conclusion, because the plaintiffs alleged plausible facts that could permit a trier of fact to reasonably infer that a legal duty was owed to Newton, and later breached, the court denied the defendants' motion to dismiss.

Faulkner v. Greenwald[164]

The 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. The plaintiff, a parent of a Seneca High School student-athlete, was injured when a concession stand door dislodged and hit her. Subsequently, the plaintiff sued the defendant, alleging the defendant was negligent as to the maintenance of the concession stand door. The trial court granted summary judgment in favor of the 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.

Fontaine v. Boyd[165]

Following a skiing collision between the parties, the plaintiff filed suit,

164. 358 S.W.3d 1 (Ky. Ct. App. 2011).

165. No. WC-200-0794, 2011 R.I. Super. LEXIS 27 (R.I. Super. Ct. Feb. 21, 2011).

alleging that the defendant acted negligently while skiing, causing the collision and the plaintiff's resulting injuries. The defendant responded, arguing that the doctrine of primary assumption of the risk applied and she owed no duty to protect the plaintiff from the inherent risks of skiing. The 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 the defendant had no duty to protect the 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 the defendant did not breach that duty, the court granted the defendant's motion for summary judgment.

French v. MacArthur[166]

While assisting in a youth-league softball practice, a parent hit a line-drive that struck the plaintiff's face. The parent was held to be a coparticipant, and thus subject to the recreational activities doctrine. Michigan uses a reckless misconduct standard for a coparticipant to be found liable for injuring another coparticipant during a recreational activity. The goal for such a standard is to encourage spirited participation in such activities while continuing to provide protection from egregious conduct. The trial court held a defendant coach can still be considered to be a coparticipant. As a result, the court denied the defendant's motion for summary judgment. On appeal, the court determined that the only question at issue was whether the defendant informed the players as to where he was intending to hit the ball on the field, as there was testimony that he intended to hit the ball to centerfield. However, even if the defendant had called out where he was intending to hit the ball, the court rejected the claim that a reasonable juror could find such a mistake as reckless misconduct.

Geeslin v. Bryant[167]

The plaintiff was a spectator at a professional basketball game between the Memphis Grizzlies and the Los Angeles Lakers. During the course of the game, the defendant Kobe Bryant (Bryant) fell into the stands while attempting a play, and landed on the plaintiff. The plaintiff alleged that as Bryant got up, he pushed his elbow into the plaintiff's chest and caused damage. A few days after the alleged incident, the plaintiff received medical

166. No. 296526, 2011 Mich. App. LEXIS 1330 (Mich. Ct. App. July 19, 2011).

167. 453 Fed. Appx. 637 (6th Cir. 2011).

treatment for a bruised lung cavity. The plaintiff then sued Bryant for assault, battery, and intentional infliction of emotional distress, which was cited as a proximate cause of the plaintiff's death. The district court granted summary judgment to Bryant on all counts. On appeal, the court found that the assumption of risk defense was improper for the intentional torts of assault and battery. Therefore, the court reversed summary judgment and remanded for further findings. However, the court found that Bryant's alleged behavior did not rise to the level necessary for a finding of intentional infliction of emotional distress and affirmed the district court's grant of summary judgment on that count.

Griffin v. Simpson,[168]

On behalf of their daughter, a minor, the 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 the plaintiffs' contentions that the trial court erred in granting the defendant volleyball coach and the 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 the defendant TIV and the defendant volleyball coach.

Guerra v. Howard Beach Fitness Ctr., Inc.[169]

The defendant filed a motion for summary judgment. Geraldine Guerra (Guerra) was on a treadmill at the defendant's gym when the tread came loose, causing plaintiff to fall off of the treadmill and sustain an injury. The plaintiff sued the defendant for failing to keep its equipment in proper working order. The defendant moved for summary judgment, citing that it had no knowledge or reason to know that the treadmill was not working properly, and that the plaintiff assumed the risk of using the treadmill. The court found that the defendant provided no evidence that the treadmill was inspected to determine that it was in working order; therefore, the defendant did not prove it was

168. 948 N.E.2d 354 (Ind. Ct. App. 2011).

169. 934 N.Y.S.2d 34 (N.Y. Sup. Ct. 2011).

entitled to summary judgment. Further, the court found that a malfunctioning treadmill was not an appreciated or foreseeable risk; therefore, the plaintiff could not have knowingly assumed the risk. As such, the court also denied the defendant's motion for summary judgment as to the assumption of risk defense.

Gvillo v. DeCamp Junction, Inc.[170]

The plaintiff appealed the trial court's decision to grant summary judgment in favor of the defendants in the plaintiff's negligence action. The plaintiff, a softball player, suffered fracture and nerve damage after he collided with one of the defendants during a softball game. The plaintiff alleged that the organizational defendants set up the softball field in an unreasonably dangerous manner, thereby causing the collision. The defendants filed motions for summary judgment, which the trial court granted. The plaintiff appealed, arguing that the contact sports exception to ordinary negligence as a basis for liability did not apply under the facts and circumstances of the case. On appeal, the court analyzed whether the contact exception applied to the organizational defendants. Under the contact exception, a participant in a contact sport is only liable for injuries caused to another participant if the injuries are caused by intentional or willful and wanton misconduct. The court held that there was a genuine question remaining as to whether the other player intentionally caused the collision, and thus summary judgment was precluded. Therefore, the court reversed and remanded the case for further proceedings.

Horan v. Reebok Int'l Ltd.[171]

The defendant filed a motion in limine to include a special jury instruction in the plaintiff's products liability action. The plaintiff, a college hockey player, wore a facemask manufactured by the defendant, Reebok International Ltd. During a game where the plaintiff was wearing defendant's mask, the butt of a hockey stick passed through a gap in the mask and hit his eye, permanently blinding him in that eye. The plaintiff sued the defendant, alleging design defect, inadequate warning, and a claim for punitive damages. The defendant then filed a motion for summary judgment, which was denied. Both parties subsequently filed motions in limine; however, the court only addressed the defendant's motion. The defendant sought to include a jury

170. 959 N.E.2d 215 (Ill. App. Ct. 2011).

171. No. 3:08cv663, 2011 U.S. Dist. LEXIS 111220 (D. Conn. Sept. 29, 2011).

instruction on the modified consumer expectation text in the pre-charge, rather than the ordinary consumer expectation test. The court held that the ordinary consumer expectation test was appropriate, and therefore, denied the defendant's motion.

Hyde v. N. Collins Cent. Sch. Dist.[172]

The 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 the defendant's summary judgment motion based on the plaintiff's daughter's assumption of risk, the 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."[173]

Johnson v. Royal Caribbean Cruises, LTD.[174]

The plaintiff was a passenger on one of the defendant cruise line's ships. While aboard the ship, the plaintiff participated on a simulated surfing and body boarding activity. The plaintiff signed a waiver; however, the instructor of the activity instructed the plaintiff to stand on a body board that was not approved for standing activities. The plaintiff suffered a fractured ankle and sued the cruise line. The district court granted summary judgment, finding that the waiver signed by the plaintiff immunized the defendant from liability. On appeal the court found that the instructor was negligent in instructing the plaintiff to stand on the board. The court further found that the defendant was unable to force the plaintiff to waive liability for personal injury caused by the negligence of one of the defendant's employees. Therefore, the court found that summary judgment was inappropriate, and remanded the case back to the district court for further proceedings.

Kim v. L.A. Fitness Int'l, LLC[175]

Kim appealed a trial court decision to grant L.A. Fitness' motion for

172. 83 A.D.3d 1557 (N.Y. App. Div. 2011).

173. *Id.* at 1558.

174. 449 Fed. Appx. 846 (11th Cir. 2011).

175. No. G044099, 2011 Cal. App. Unpub. LEXIS 5497 (Cal. Ct. App. July 25, 2011).

summary judgment stemming from Kim's lawsuit claiming L.A. Fitness was responsible for injuries suffered as a result of a weightlifting machine breaking and striking him in the head. Every new member at L.A. Fitness, including Kim, must sign a waiver that releases L.A. Fitness from liability for, among other things, a member's injury caused by active or passive negligence of L.A. Fitness and its agents. The waiver also addresses that the member assumes full responsibility of risk of injury involved in using the gym's facilities and equipment. Kim used the pulley machine at issue four-to-five times a week. During one of his workouts, a pulley detached from the machine and hit Kim in the forehead, which caused him to fall backwards onto the floor. As a result, Kim injured his head, neck, shoulder, and lower back.

Kim offered numerous arguments to prove L.A. Fitness' waiver was not valid, all of which were unpersuasive to the court. First, Kim argued that the waiver's language was ambiguous as to injury-producing accidents. However, the court held that the waiver was not ambiguous because the language specifically stated release of liability resulting from *any* injury resulting from use of L.A. Fitness' equipment. Furthermore, Kim offered no evidence showing an alternative interpretation of the release. Second, Kim argued that his injuries were caused specifically by L.A. Fitness' negligence in repairing and maintaining the machine, which was not a risk he assumed when signing the release. Again, the court was not persuaded by Kim's argument because a weightlifting machine breaking is an inherent risk of using the machine. The court's decision to grant summary judgment again relied on whether the release's language applied to Kim's claims, which it did. The court referenced prior case law that suggested that by signing a gym's waiver, the person could be found to have waived any liability resulting out of injuries suffered by malfunctioning exercise equipment. Therefore, because Kim failed to offer any evidence of more than negligent conduct by L.A. Fitness, the court granted L.A. Fitness' motion for summary judgment.

Marshall v. Booster Club of Smithtown, Inc.[176]

The plaintiff, Michelle Marshall, brought this negligence suit on behalf of herself and her minor son, Jeffery, against the defendants as a result of injuries Jeffery sustained while participating in a football camp operated by the defendants. Jeffery was allegedly injured when, during a practice drill, another participant disregarded the supervisor's instructions and hit Jeffery in the knee with his shoulder pad, lifting Jeffery up and throwing him to the

176. No. 09-1706, 2011 N.Y. Misc. LEXIS 4544 (N.Y. Sup. Ct. Sept. 14, 2011).

ground. The other participant was supposed to touch only Jeffery's shoulder pads. The other participant was also older, heavier, and more experienced. Jeffery testified that neither he nor his parents made a complaint during the first three days of the camp, and that he returned the fourth day even though he was uncomfortable about how the coaches paired up different-sized players in the drills. After Jeffery was hit, two coaches helped him get to an ambulance.

The plaintiff alleged that the defendants were negligent because: (1) they allowed Jeffery to participate in an excessively dangerous activity, (2) they failed to provide Jeffery with adequate supervision by putting him against older, heavier, and more experienced players; and (3) they failed to warn Jeffery or failed to prevent the foreseeable danger of participating in the practice drill.

The defendants moved for summary judgment to dismiss the case on the grounds that Jeffery assumed the risk of injury when he chose to participate in the camp. They also argued that the alleged lack of adequate supervision was not the proximate cause of Jeffery's injuries. One coach testified that the drill in which Jeffery was injured did not require players to tackle each other.

This court applied the reckless standard for nonparticipant liability. The court stated that the camps are not required to continuously supervise and control the participants and that they cannot be held liable for every careless act by one participant against another. Furthermore, the court found that when an incident, such as this one, occurs in such a short period of time without notice, and thus, preventing a coach from having a reasonable amount of time to prevent it, the defendants' alleged lack of supervision cannot be the proximate cause of Jeffery's injuries. Therefore, the court granted the defendants' motion for summary judgment and dismissed the plaintiff's claim.

McCarthy v. Connetquot Cent. Sch. Dist.[177]

The plaintiff, a high-school student, was injured while participating as a member of the cheerleading team at her school. The plaintiff fractured her left leg while performing a stunt, and her father sued the school on her behalf, claiming she was negligently supervised while performing the stunt. The defendant moved for summary judgment, on the basis that the plaintiff was aware of and assumed the risks involved with cheerleading. The court found that the plaintiff was an experienced cheerleader, and the school could only be liable if the school or the coach created a situation that was above the usual dangers involved with cheerleading. The court found that the conditions

177. No. 18959-10, 2011 N.Y. Misc. LEXIS 6278 (N.Y. Sup. Ct. Nov. 23, 2011).

present at practice contained only the risks generally associated with cheerleading, and therefore, granted summary judgment in favor of the defendant.

Montgomery v. Ohio State Univ.[178]

The plaintiff, a former football player for defendant Ohio State University, sued the defendant for negligent misrepresentation, medical malpractice, and defamation. While still a student, the plaintiff was under consideration for employment by the National Football League (NFL). A team physician employed by the defendant filled out a form for NFL employment stating that the plaintiff had high blood pressure and hay fever, even though the plaintiff contended he did not have either condition. When the plaintiff was employed by the NFL, his benefits were reduced for another medical condition because part of his condition was attributed to high blood pressure. The plaintiff also contacted the current team physician for an explanation of the form. The physician sent the plaintiff a letter explaining the initial form. The plaintiff then brought an action against the defendant seeking to recover the reduced benefits for the improperly filled form and for defamation for the contents of the explanatory letter. The plaintiff alleges he never authorized the defendant to release the letter, but that the defendant sent the letter to several of the plaintiff's employees, in violation of the plaintiff's rights. However, the court found that for a defamation suit to continue, the statements made in the explanatory letter had to be actionable. The court found that the contents of the letter were not capable of defaming the plaintiff; therefore, the court granted summary judgment in favor of the defendant.

Ormiston v. Cal. Youth Soccer Ass'n[179]

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 the 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. The plaintiffs

178. 2011 Ohio 6857 (Ohio Ct. Cl. Nov. 8, 2011).

179. No. C064002, 2011 Cal. App. Unpub. LEXIS 4226 (Cal. Ct. App. June 6, 2011).

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[180]

Emmanuel Pacquiao, a premier professional boxer, filed a complaint in federal court for defamation per se against the 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 the defendants stated publicly that he has used, and is using, performance-enhancing drugs, including steroids and human growth hormone. The defendants sought to dismiss the plaintiff's claims for failure to state a claim upon which relief can be granted. The court found that the 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 the defendants' motions to dismiss.

Patch v. Hillerich & Bradsby Co.[181]

Hillerich & Bradsby (H&B) appealed the trial court's decision denying its motion for summary judgment in a products liability action. An eighteen-year-old pitcher was struck in the head by a ball hit with an aluminum bat, and he subsequently died from his injuries. The parents of the estate sued H&B under strict products liability for survivorship and wrongful death damages, asserting manufacturing and design defect and failure to warn claims. The district court granted H&B's motion for summary judgment on the parents' manufacturing defect claim, but denied summary judgment on the design defect and failure to warn claims. The district court granted the parents' motion in limine, excluding H&B's assumption of the risk defense. A jury

180. 803 F. Supp. 2d 1208 (D. Nev. 2011).

181. 257 P.3d 383 (Mont. 2011).

found H&B liable in strict products liability for failing to warn the pitcher and his parents of the risks associated with the aluminum baseball bat. H&B appealed the district court's denial of summary judgment on the failure to warn claim and on its post-trial motion for judgment as a matter of law. On appeal, the court denied both motions. First, the court held that the district court properly denied the motion because H&B was subject to liability to all players for the physical harm caused by its bat's increased exit speed. Second, the court held that the district court properly denied the H&B motion for judgment as a matter of law because there was sufficient evidence to submit the failure to warn claim to the jury. The jury was permitted to infer that the player would have heeded the warning had one been given.

Perez v. Nassour[182]

The defendants moved for summary judgment to dismiss the plaintiffs' action to recover damages for personal injuries the plaintiff sustained during a little league baseball practice. On the date in question, the plaintiffs' ten-year-old son was practicing with his little league baseball team on a rainy day at his coach's house when his teammate threw a ball that hit him in the head. As a result, the plaintiffs' son suffered several serious injuries. To recover damages for their son's personal injuries, the plaintiffs filed this action against the coach, the player who threw the ball, and the league. The defendants then moved for summary judgment to dismiss the action, arguing that the plaintiffs' son had assumed the risk of injury. However, the court determined that the son could not have assumed the risk of injury because he was only ten years old at the time and participating in organized sports for the first time. Moreover, the plaintiffs established a material issue of fact as to whether the defendants' conduct created an unreasonable risk of injury to the plaintiffs' son. For these reasons, the court denied the defendants' motions for summary judgment to dismiss the plaintiffs' action.

Pfenning v. Lineman[183]

The 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 of the defendants, and the court of appeals affirmed. The

182. No. 13758/09, 2011 N.Y. Misc. LEXIS 4686 (N.Y. Sup. Ct. Sept. 30, 2011).

183. 947 N.E.2d 392 (Ind. 2011).

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.

Pugliese v. Grande[184]

The plaintiff Pugliese, a gym teacher, filed a six-count defamation claim against the defendants Grande and Maulucci in relation to four alleged instances where defamatory statements were made by the 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 through email, letter, and phone conversations; these communications were the basis of Pugliese's claims. The 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 the defendants' summary judgment motion.

Ramsey v. Gamber[185]

The plaintiff Austin Chaz Ramsey (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. The defendant Arnold Gamber (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

184. No. CV085003753S, 2011 Conn. Super. LEXIS 473 (Conn. Super. Ct. Mar. 7, 2011).

185. No. 3:09cv919-MHT, 2011 U.S. Dist. LEXIS 11893 (M.D. Ala. Feb. 7, 2011).

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 that neither Alabama law nor the Restatement of Torts recognizes a claim for interference with a physician-patient relationship.

Reilly v. Leasure[186]

The plaintiff claimed she was severely injured when the defendant Leasure's horse kicked her. At that time, the defendant and her horse were participating in the Wilton Pony Club Horse Trials, an event sponsored by the defendants, The Wilton Pony Club and The United States Pony Club (USPC). The event was held on Millstone Farm in Wilton, a property owned by the defendant Millstone Properties, LLC. The plaintiff filed a four-count complaint alleging that defendants Wilton Pony Club, USPC, and Millstone Properties were negligent. The defendants filed a motion for summary judgment, claiming that the recreational equestrian activity assumption of risk statute barred the plaintiff's action. The court held that the defendants established that no issue of material fact existed with respect to some of the allegations of negligence, but failed to address the remainder of the allegations. Therefore, with regard to the claims that the defendants asserted, the court granted the defendants' motion for summary judgment.

The defendant Millstone Properties claimed that the recreational use immunity statute protects it because it opened its property to the public without charge for the purpose of attending, participating in, and assisting at the Horse Trials. The court held that evidence established that the plaintiff entered defendant Millstone Properties' land to partake in recreational activities, namely watching an equestrian event and grooming. Furthermore, it is undisputed that Millstone Properties offered the land to the public free of charge. Thus, the court found that Millstone Properties has no liability to the plaintiff. Therefore, the court granted the defendant Millstone Properties' motion for summary judgment on this issue.

Finally, the defendant USPC claimed that it had no meaningful relationship to the Horse Trials that the plaintiff attended on the day of her

186. No. FSTCV085009675S, 2011 Conn. Super. LEXIS 1758 (Conn. Super. Ct. July 12, 2011).

injuries. The court held that no genuine issue of fact existed as to the lack of connection between the USPC and the Horse Trials because the defendants offered sufficient proof indicating such absence. Because the court found no connection, the court held that no duty could exist. Therefore, the court granted USPC's motion for summary judgment on this issue.

Rochford v. Woodloch Pines, Inc.[187]

The defendant filed a motion for summary judgment in the plaintiff's negligence action. The plaintiff, a patron at the defendant's golf course, was injured after he slipped and fell on stairs while playing golf during a rainstorm. The plaintiff sued the defendant, alleging that the defendant negligently maintained the stairs and failed to properly train and supervise its staff in proper maintenance of the grounds. The defendant subsequently filed a motion for summary judgment based on the plaintiff's alleged assumption of an open, obvious, and avoidable risk. In analyzing this motion, the court first found that both New York and Pennsylvania recognized the primary assumption of risk doctrine. Second, the court found that the plaintiff, as an experienced golfer, assumed the risks inherent in the game of golf. As a result, the court held that the plaintiff knew it was raining and that the steps appeared to be wet; thus, the plaintiff was, or should have been, aware of the risk of slipping. Furthermore, the court noted the fact that the stairs did not have a handrail was an open and obvious condition. For these reasons, the court granted the defendant's motion for summary judgment.

Rodriguez v. L.A. Fitness Int'l, LLC[188]

The plaintiff was playing basketball at the health club when he slipped and fell in a puddle of water that had leaked onto the gymnasium floor. The plaintiff sustained severe fractures to his right leg, which required surgery. Consequently, he filed this action against the health club, alleging that the health club's negligence caused his injuries because the health club did not warn him of the dangerous condition, it did not remedy the dangerous condition, and it failed to make reasonable inspections to discover the dangerous condition. Following a trial, the jury returned a verdict in favor of the plaintiff and awarded him both economic and noneconomic damages. Subsequently, the health club filed motions to set aside the verdict, order remittitur, and enter judgment in its favor notwithstanding the verdict. The

187. No. 10-CV-3190, 2011 U.S. Dist. LEXIS 96113 (E.D.N.Y. Aug. 26, 2011).

188. No. CV096001289S, 2011 Conn. Super. LEXIS 3139 (Conn. Super. Ct. Dec. 12, 2011).

court, however, found that there was sufficient evidence for the jury to conclude that the health club had constructive notice of the accumulated water, which caused the plaintiff's fall and injury. Moreover, the evidence supported the jury's finding that the health club failed to inspect the court within a reasonable amount of time to discover and remedy this dangerous condition. As such, the court denied the health club's motions to set aside the verdict and order judgment notwithstanding the verdict. Finally, the court concluded that while the jury's award of damages was generous, it was within the range of just compensation. Therefore, the court also denied the health club's motion to order remittitur.

Rosado v. Doe[189]

The defendants, baseball player and baseball league, filed motions to dismiss the plaintiff spectator's action for negligence, which the plaintiff filed after being injured while attending a middle-school baseball game. During the game, the player was taking practice swings with a weighted bat when the bat flew out of his hands and into the seating area where it hit the spectator in the face. Subsequently, the spectator filed this action against the player and the baseball league to recover damages for his personal injuries. Both the player and the baseball league moved for summary judgment to dismiss the action. The court found that a reasonable fact-finder could find that the player had been negligent. For example, the location where he chose to take his warm-up swings may be unreasonable and negligent. As such, he was not entitled to summary judgment. As for the baseball league, because the league was a voluntary unincorporated association, a fact-finder cannot consider it a separate legal entity that the plaintiff could sue. Therefore, the league was entitled to summary judgment dismissing the action against it.

Rubbo v. Guilford Bd. of Educ.[190]

The defendants filed a motion to strike three counts from the plaintiff's negligence action, which was filed after the plaintiff's daughter was injured during gym class. On the date in question, the daughter was participating in an indoor hockey game when the defendants' son struck her in the face with a hockey stick, which resulted in serious injuries. The plaintiff brought suit, alleging that the defendants' son was negligent when he forcibly swung the hockey stick in the plaintiff's daughter's immediate vicinity. The defendants

189. No. WOCV2010-01056, 2011 Mass. Super. LEXIS 175 (Mass. Super. Ct. Sept. 12, 2011).

190. No. CV116017699S, 2011 Conn. Super. LEXIS 1811 (Conn. Super. Ct. July 20, 2011).

filed a motion to strike the negligence counts against them, arguing that Connecticut law does not recognize negligence as a cause of action for injuries sustained while participating in a contact sport. After examining prior case law, the court determined that participants in contact sports have a legal duty to refrain from reckless or intentional conduct, but that mere negligence is insufficient to create liability. As such, the court granted the defendants' motion to strike the negligence counts against the defendants' son.

Sherry v. E. Suburban Football League[191]

Renee Sherry, mother of cheerleader Jessica Sherry, appeals from an order granting summary disposition in favor of the 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 the 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.

Stirgus v. St. John the Baptist Parish Sch. Bd.[192]

The plaintiffs sued the defendants following injuries the 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 the 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 the 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 the plaintiffs' appeal

191. 807 N.W.2d 859 (Mich. Ct. App. 2011).

192. 71 So.3d 976 (La. Ct. App. 2011).

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.[193]

Strauss commenced this 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. The 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 the 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 or that the defendants either created the condition or had actual or constructive notice of it, the court granted the defendants' motion.

Stoughtenger v. Hannibal Cent. School Dist.[194]

The plaintiff student and the defendant school district both appealed a trial court decision denying the parties' respective motions for summary judgment in the plaintiffs' suit for damages for injuries he sustained while participating in a wrestling unit in gym class. The plaintiff, who weighed approximately 125 pounds at the time of this incident, was wrestling with another student who weighed approximately 220 pounds. The defendants moved for summary judgment based on the affirmative defense of primary assumption of risk. The plaintiff also filed for summary judgment and filed to strike the defendant's affirmative defense. The trial court denied each of the motions in their entirety. On appeal, however, the court determined that the trial court erred in denying the plaintiff's motion to strike the affirmative defense of primary

193. No. 6587/09, 2011 N.Y. Misc. LEXIS 3561 (N.Y. Sup. Ct. June 20, 2011).

194. 90 A.D. 2d 1696 (N.Y. App. Div. 2011).

assumption of risk, because this complete bar to liability applies only to voluntary participation in sporting activities. In this case, the plaintiff was injured while participating in a compulsory physical education class, and his participation in the wrestling unit was mandatory. As such, it was proper for the trial court do deny the defendant's motion for summary judgment based on that affirmative defense. Finally, the trial court did not err in denying the plaintiff's motion for summary judgment on liability because there were triable issues of fact with respect to the plaintiff's negligent supervision claim.

Univ. of Tex. Health Sci. Ctr. at Houston v. Garcia[195]

University of Texas Health Science Center at Houston (UT Health) filed this interlocutory appeal from the trial court's order denying sovereign immunity to UT Health after Ricardo Garcia (Garcia) sued the center for injuries he sustained while playing on UT Health's outdoor sand volleyball court. In April 2008, Garcia was playing in an informal volleyball tournament at UT Health's Recreation Center when his big toe allegedly got caught on a piece of tarp that became exposed from beneath the sand on the court, causing him to trip and severely injure his toe. Garcia sued UT Health to recover damages for his injuries, alleging that UT Health knew or should have known of the unreasonable risk of injury. UT Health filed a motion to dismiss, arguing that UT Health was immune from liability based on the Texas Recreational Use Statute. The trial court denied UT Health's motion, and UT Health filed for an interlocutory appeal. On appeal, the Appellate Court reversed the trial court's ruling, holding that the Recreational Use Statute did apply and that Garcia's pleadings were not sufficient to establish that UT Health's actions were so grossly negligent as to create liability under the statute. However, because Garcia's pleadings did not affirmatively negate the possibility that UT Health's actions constituted gross negligence, the court remanded the case to give Garcia an opportunity to amend his pleadings.

Walker v. Iverson[196]

The defendant National Basketball Association (NBA) player, Allen Iverson (Iverson), moved for summary judgment in the plaintiff's action to recover damages for physical and emotional injuries following an altercation at a Detroit nightclub. On the night in question, the plaintiff and his friends were trying to take pictures of Iverson at the nightclub. One of Iverson's

195. 346 S.W.3d 220 (Tex. App. 2011).

196. No. 10-10428, 2011 U.S. Dist. LEXIS 131563 (E.D. Mich. Nov. 15, 2011).

bodyguards told them to stop trying to photograph Iverson. Following an exchange of unpleasant comments between the plaintiff and the bodyguard, the bodyguard punched the plaintiff in the face, causing severe injuries. Subsequently, the plaintiff brought this action against Iverson, alleging that Iverson was directly liable for assault, battery, and intentional infliction of emotional distress because the bodyguard was acting as Iverson's agent at the time. Iverson moved for summary judgment, arguing that he was not vicariously liable for the intentional torts of his bodyguard. The court agreed with Iverson, noting that in this case there was no evidence that Iverson had directed his bodyguard to commit the assault; therefore, the court found that Iverson was not liable for his agent's intentional torts and dismissed the claims against Iverson.

Williams v. Richland Sch. Dist. No. 400[197]

The 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 the defendant. She filed a complaint, alleging that the defendant negligently failed to provide a safe spectator area. The defendant filed a motion for summary judgment, arguing that Williams assumed the risk of injury. The trial court granted the motion; the plaintiff then appealed. Williams first argued that the school district waived its ability to assert the assumption of risk defense because the defense was not timely pleaded. The court explained that even though the 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 AGENCY

The United States Anti-Doping Agency (USADA) addresses positive drug tests for Olympic athletes and imposes sanctions on those athletes according to specified procedures for those anti-doping violations. The following decisions exemplify the type of anti-doping situations in which USADA is involved.

197. No. 28982-6-III, 2011 Wash. App. LEXIS 1332 (Wash. Ct. App. June 7 2011).

Graham v. U.S. Anti-Doping Agency[198]

The plaintiff, Trevor Graham, was sanctioned by the United States Anti-Doping Agency (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 United States Olympic Committee 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 the 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 the defendant's motion to dismiss.

U.S. Anti-Doping Agency v. Block[199]

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 (BALCO) 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-related activities for ten years.

UNITED STATES OLYMPIC COMMITTEE

The United States Olympic Committee (USOC) serves as the National Olympic Committee for the United States and exists to protect and develop the

198. No. 5:10-CV-194-F, 2011 U.S. Dist. LEXIS 34637 (E.D.N.C. Mar. 31, 2011).

199. AAA No. 771900015410 (Mar. 17, 2011).

Olympic Movement within the United States. The following American Arbitration Association decisions represent some of the issues related to the significant responsibilities and authority of the USOC.

Barry v. USA Boxing, Inc.[200]

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.

Craig v. USA Taekwondo[201]

Charlotte Craig, a U.S. taekwondo athlete, appealed USA Taekwondo's decision to select one weight class over another to participate in the selection process to nominate US athletes to compete at the 2012 Olympic Games. Under the rules of the international federation for the sport of taekwondo, only two men and two women may represent each country at the 2012 Olympic Games, even though there are four weight classes for each gender. According

200. AAA No. 77190E0004911JENF (Mar. 8, 2011) (Alperstein, Donald, Arb.); *see also* Barry v. USA Boxing, INC., AAA No. 77 190 E00049 11 JENF (Mar. 3, 2011) (Alperstein, Donald, Arb.).

201. AAA 77 190E 00144 11 (Aug. 21, 2011) (Benz, Jeffrey G., Arb.).

to the USA Taekwondo Athlete Selection Procedures for the Olympic Games, if two men and two women do not qualify for nomination based on certain objective criteria, then USA Taekwondo is to set up a Discretionary Selection Committee, which will determine the weight class from which it will choose one of the remaining nominees through a fight-off. The Selection Committee in this case held a fight-off in the women's Light/Welter weight division, which effectively ended Craig's chances of being nominated because she was in the women's Fin/Fly weight division. Craig appealed this decision to the American Arbitration Association (AAA), arguing that one of the members of the Selection Committee had a direct conflict of interest because he had coached one of the athletes in the weight class the Selection Committee selected for the fight-off. Ultimately, the AAA Arbitrator held that the coach's interest was not a "direct" conflict of interest as described in the Selection Procedures. Further, because USA Taekwondo properly followed its Selection Procedures, its decision to select the women's Light/Welter weight division to participate in the fight-off was valid and denied Craig's appeal.

Harrington v. U.S. Collegiate Archery Ass'n[202]

The complainants challenged a new procedural rule enacted by the respondents. In 2011, the United States Collegiate Archery Association (USCAA) adopted a new procedural rule to qualify for the 2011 World University Games-Team Trials (WUG Trials). Under the new procedures, athletes were required to turn in certain documents, forms and deposits before the qualifying tournament. The previous rule allowed athletes to submit the required documents after the qualifying tournament. Failure to comply with the new procedure would void an athlete's opportunity to be on the team. The procedure did not allow for any exceptions. Each of the three claimants performed well at the trials, finishing in one of the top three places in their respective divisions and qualifying for the WUG. However, after the trials it was discovered that each of the athletes had not provided one or more of the required documents before the WUG Trials. As a result, the athletes were not placed on the WUG team. The athletes then appealed to the American Arbitration Association, arguing that the USCAA should have given them an extension to provide the documents, which would have been consistent with past practice. With respect to two of the athletes, who each failed to provide the necessary academic eligibility forms, the arbitrator denied their requests for extensions because they did not attempt to comply with the document

202. AAA No. 77 190 E 00318 10 (2011) (Campbell, Arb.).

requirement. However, as to the third athlete, who failed to present a passport that would be valid through the specified date, the arbitrator granted an extension for her to present a valid passport. The extension was warranted because the athlete provided a receipt indicating that she renewed her passport prior to the deadline, which the USCAA led her to believe would be sufficient. It would have been unfair to enforce the policy against her when she made every effort to comply with the policy.

SWISS FEDERAL TRIBUNAL

The Swiss Federal Tribunal represents a forum whereby CAS decisions can be challenged under Swiss law. However, as illustrated in the following Swiss Federal Tribunal decisions, the scope of review is very limited and highly deferential.

Bundesgericht [BGer] [Federal Tribunal][203]

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.

203. Jan. 11, 2011, 4A_579/2010 (Switz.).

Bundesgericht [BGer] [Federal Tribunal][204]

This Swiss Federal Tribunal decision involved the appellant, a Swiss nonprofit, 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 2009–2010 season. In 2008, El Hadary then entered into an employment contract with the appellant through the end of the 2010–2011 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 2010–2011 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][205]

The Turkish football Club X. appealed the Court of Arbitration of Sport (CAS) award, which ordered that the professional football player A. did not owe Club X. any compensation for his refusal to rejoin the club after he was injured. In July 2005, Player A. signed an employment contract with Club X., which was to expire on May 31, 2009. In January 2007, while playing in a match, Player A. suffered a knee injury, which required surgery. Shortly after returning to competitive activity after his injury, Player A. was diagnosed with asthma, acute femoral thrombosis, and a pulmonary embolism. Because of these diagnoses, Club X. requested that Player A. return to Istanbul in order to continue his medical treatment and rehabilitation under the supervision of the club's medical staff. When Player A. refused to return to Istanbul, Club X. initiated proceedings with the Fédération Internationale de Football Associations (FIFA) Dispute Resolution Chamber (DRC), requesting that Player A. compensate the club €12 million, and that the DRC suspend him

204. Jan. 12, 2011, 4A_392/2010 (Switz.).

205. Feb. 17, 2011, 4A_402/2010 (Switz.).

from competition for six months. The DRC awarded Club X. compensation of €2,281,915. Club X. then appealed the DRC decision to CAS, arguing that the compensation award should be greater. Player A. also appealed to CAS, arguing that he should not be liable to pay any compensation because he had terminated his employment contract for just cause. In the end, CAS upheld Player A.'s appeal and ordered that Player A. was not liable to pay any compensation because Club X. had saved money due to the early termination of the player's employment contract. Club X. then appealed the CAS award to the Swiss Federal Tribunal, arguing that the award should be annulled because CAS violated Club X.'s right to be heard when it failed to address Club X.'s claims for restitution of salaries and the payment of a disciplinary fine. The Federal Tribunal ultimately rejected this argument, stating that CAS's failure to address such arguments in its award did not infringe on Club X.'s right to be heard. As such, the Swiss Federal Tribunal upheld the CAS award.

Bundesgericht [BGer] [Federal Tribunal][206]

The appellant, a professional football trainer, appealed a Court of Arbitration for Sport (CAS) award increasing his ban for violating anti-doping rules from two years to four years. The Cyprus Football Association (CFA) initiated disciplinary proceedings against the appellant after two athletes on the appellant's team tested positive for the same prohibited substance. After determining that the appellant gave the prohibited substances to the athletes, the Judicial Committee of the CFA found the appellant guilty of an anti-doping rule violation, but reduced the otherwise applicable four-year ban to a two-year ban in light of the fact that the appellant cooperated with the investigation. The World Anti-Doping Agency (WADA) and the Fédération Internationale de Football Association (FIFA) appealed this sanction to CAS. CAS determined that there were no grounds to reduce the appellant's sanction, and increased the appellant's ban to four years. Subsequently, the appellant filed this appeal with the Swiss Federal Tribunal, arguing that the CAS Panel did not have jurisdiction to alter the CFA decision because the CFA Statutes did not provide for a right to appeal the decisions of the Judicial Committee to CAS. However, the CFA Statutes explicitly refer to the FIFA Statutes, which provide for CAS jurisdiction of appeals against doping decisions of national football federations. As such, CAS had jurisdiction, and the Swiss Federal Tribunal rejected the appellant's appeal.

206. Apr. 18, 2011, 4A_640/2010 (Switz.).

Bundesgericht [BGer] [Federal Tribunal][207]

Soccer player, Omar Riza, appealed a Court of Arbitration for Sport (CAS) decision dismissing the appeal of his sanction for illegally terminating his contract with the soccer club Trabzonspor Kulubu Demegi (the Club). In 2006, Riza signed a three-year employment contract with the Club. However, two years into the contract, Riza terminated the relationship due to the Club's alleged breach of contractual obligations. Riza then filed a breach of contract claim with the Fédération Internationale de Football Association (FIFA) Dispute Resolution Chamber (DRC). The DRC rejected Riza's claim, ordered him to pay damages to the Club, and suspended him for four months for illegally terminating his employment contract. Riza appealed the decision to CAS; however, the CAS Panel dismissed the appeal, holding that it did not have jurisdiction to hear the appeal. Subsequently, Riza appealed this decision to the Swiss Federal Tribunal. After examining Riza's employment contract, the Swiss Federal Tribunal found that the CAS Panel correctly determined that it did not have jurisdiction over Riza's appeal because Riza's employment contract did not contain an arbitration clause providing for CAS jurisdiction. As such, the Swiss Federal Tribunal rejected Riza's appeal.

Bundesgericht [BGer] [Federal Tribunal][208]

The petitioner football club requested revision of a Court of Arbitration for Sport (CAS) award of training compensation to respondent football club. After playing for the respondent for eight seasons, the player signed a contract to play for Club V. A year later, the player was transferred to the petitioner. Subsequently, the respondent requested that the petitioner pay training compensation for the player. However, the petitioner refused to pay. The issue was submitted to the Fédération Internationale de Football Association (FIFA) Dispute Resolution Chamber (DRC). The DRC ordered the petitioner to pay €480,000 to the respondent as training compensation. The petitioner appealed this decision to CAS, but CAS confirmed the DRC decision. A year later, the petitioner requested the Swiss Federal Tribunal to revise the arbitral award because new facts came to light. However, under Federal Tribunal rules, a petitioner must file a request for a revision within ninety days after the petitioner discovers the ground for revision. In this case, the petitioner did not file its request within this ninety-day time limit; therefore, the petitioner forfeited the remedy.

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207. Apr. 19, 2011, 4A_404/2010 (Switz.).

208. Aug. 22, 2022, 4A_222/2011 (Switz.).

Bundesgericht [BGer] [Federal Tribunal][209]

The athlete appealed a Court of Arbitration for Sport (CAS) award confirming her lifetime ban for a second anti-doping rule violation. The athlete was selected for an unannounced out-of-competition doping control. However, according to the agents who conducted the test, the athlete attempted to distort the test at the time the agents took the sample, and threw the cup containing her sample into the sink. As a result, the Hearing Commission of the athlete's national federation sanctioned the athlete for refusing to submit to an anti-doping test, failure to appear for such a test or attempting to tamper with the results. Because this was her second anti-doping offense, the Hearing Commission imposed a lifetime ban. The athlete appealed the sanction to CAS, which confirmed the lifetime ban. The athlete then appealed to the Swiss Federal Tribunal, arguing that the Federal Tribunal should set aside the CAS Award because the athlete's right to be heard was violated during the arbitration proceedings. However, the athlete did not raise this issue immediately during the arbitration proceedings. Because she did not act timely, the Federal Tribunal considered the issue forfeited, and she was no longer entitled to raise the alleged procedural violation.

WORKERS' COMPENSATION

As professional athletes generally fall under the category of employees, injured athletes may be eligible for workers' compensation benefits. Under a workers' compensation scheme, a tradeoff occurs whereby athletes are eligible for benefits without the need to prove general tort requirements such as breach of duty; however, in exchange, the athletes give up their rights to sue under a tort theory of liability for an injury that occurs as a result of employment as a professional athlete. The following cases illustrate workers' compensation issues such as eligibility for workers' compensation benefits and the appropriate calculation of such benefits.

Hoffman v. New Orleans Saints[210]

The plaintiff, a former professional football player for the New Orleans Saints (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 the plaintiff's disagreement with the workers'

209. Oct. 3, 2011, 4A_530/2011 (Switz.).

210. 56 So. 3d 466 (La. Ct. App. 2011).

compensation court's judgment. Specifically, the 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 the 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 the plaintiff anything was arbitrary and capricious. Thus, the court amended the judgment to award the plaintiff compensation in the form of attorneys' fees and penalties and otherwise affirmed the judgment.

NFL Players Ass'n v. NFL Mgmt. Council[211]

The NFL Players Association (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 NFLPA argued that despite this judgment, management and several clubs continued to insist that the dollar-for-dollar offset applied. The NFLPA 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 NFLPA met their burden for an injunction, and enforced the judgment.

Nittel v. Workers' Comp. Appeals Bd.[212]

Adam Nittel (Nittel), a former hockey player for the National Hockey League's (NHL) 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

211. No. 08 Civ. 3658, 2011 U.S. Dist. LEXIS 37268 (S.D.N.Y. Mar. 25, 2011).

212. No. G044580, 2011 Cal. App. Unpub. LEXIS 4704 (Cal. Ct. App. June 22, 2011).

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 (the 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[213]

The appellants Pro-Football, Inc., a Maryland corporation that operates the Washington Redskins (Redskins), and Ace American Insurance Co. sought reversal of a workers' compensation award granted to Thomas Tupa (Tupa), Redskins punter from 2004–2006, for an injury sustained while employed as a professional athlete in the NFL. The 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.

MISCELLANEOUS

The following cases represent decisions that do not fall in any particular area of law. The highlights include decisions made by private associations, the value of broadcast rights for sports events, procedural issues, and a unique case surrounding the NCAA Men's Basketball Championship.

213. 14 A.3d 678 (Md. Ct. Spec. App. 2011).

Fédération Internationale de Football Association v. European Comm'n[214]

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 (the Secretary) 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). The inclusion of the World Cup on the Secretary's list meant that FIFA could not broadcast the event on an exclusive basis, effectively lowering the value of the broadcast.

FIFA subsequently challenged the new measures, bringing an action with the ECJ to annul the decision insofar as it concerned the World Cup. FIFA specifically argued that the entities involved in making the decision: (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 ECJ adopt the measures of organization of procedure to assess whether there was sufficient evidence to justify including all World Cup matches on the 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. For various reasons, the ECJ rejected all of FIFA's arguments and its request; thus, the Court dismissed FIFA's action and upheld the decision.

George v. NCAA[215]

The plaintiffs challenged the National Collegiate Athletic Association's (NCAA) 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

214. Case T-68/08, 2011 ECJ EUR-LEX LEXIS 41 (Feb. 17, 2011).

215. 945 N.E.2d 150 (Ind. 2011).

applicant. The 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.

Lidle v. Cirrus Design Corp.[216]

The defendant Cirrus filed a motion in limine to exclude the testimony of Corey Lidle's former teammates. The 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. The 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 firsthand 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 the defendant's motion in limine.

Tex. Racing Comm'n v. Marquez[217]

The Texas Racing Commission (the Commission) appealed a district court decision, which overturned the Commission Director's decision to disqualify Javier Marquez's (Marquez) horses from a race. Marquez owned two racehorses that ran in the same race. One of the horses finished in second place. However, both horses were later disqualified, and the race purse was redistributed when it was discovered that the horses were inadvertently wearing each other's saddle-cloth numbers in violation of commission rules. Marquez appealed the stewards' decision to disqualify the horses.

After the Commission refused to consider the appeal, Marquez filed this suit against the Commission and the Commission Director, arguing that pursuant to Texas law, he had a right to an administrative appeal. The trial court declared that the Commission Director acted in excess of her statutory

216. No. 08 Cv. 1253, 2011 U.S. Dist. LEXIS 46315 (S.D.N.Y. Apr. 25, 2011).

217. No. 03-09-00635-CV, 2011 Tex. App. LEXIS 6653 (Tex. Ct. App. Aug. 19, 2011).

authority by refusing to allow Marquez to appeal the stewards' decision and ordered that the second place purse be distributed to Marquez. The Commission appealed the trial court ruling, arguing that the court lacked jurisdiction over Marquez's claims because the Commission and its Director were immune under sovereign immunity.

On appeal, the Texas Court of Appeals held that the trial court had jurisdiction to consider whether the Director exceeded her authority by denying Marquez an appeal because that claim fell within the ultra vires exception to sovereign immunity. However, the court held that the trial court did not have jurisdiction to make a ruling on the merits because Marquez had not yet exhausted his administrative remedies. Therefore, the trial court's order that the second place purse be distributed to Marquez was reversed, and the case was remanded for further proceedings.

State ex rel. W. Va. Secondary Sch. Activity Comm'n v. Webster[218]

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 semifinal 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 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

218. 717 S.E. 2d 859 (W.Va. 2011).

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.

CONCLUSION

The cases decided by courts and arbitral bodies in 2011 are sure to have a strong impact in developing sports law and the sports industry as a whole. This survey does not include every sports-related case decided in 2011; rather, it includes brief summaries of some of the most interesting 2011 sports law decisions and attempts to provide insight into the broad reach of sports as it relates to the law. The most significant highlights from 2011 include the highly-publicized labor law issues in the National Football League as well as bankruptcy issues surrounding two Major League Baseball teams. The sports law field grows and becomes more intriguing each year, and like 2011, the interplay between law and sports will continue to develop in 2012.

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