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2014 Annual Survey: Recent Developments in Sports Law

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SURVEY

2014 ANNUAL SURVEY: RECENT DEVELOPMENTS IN SPORTS LAW

INTRODUCTION

This survey highlights sports-related cases decided by courts between January 1, 2014 and December 31, 2014. While every sports-related case is not included in this survey, it briefly summarizes a wide range of cases that impacted the sports industry in 2014. The survey intends to provide the reader insight into legal issues affecting the sports industry and to highlight the most recent developments in sports law. To better assist the reader, this survey is arranged alphabetically by the specific substantive area of law associated with each sports law case.

ADMINISTRATIVE LAW

Administrative law concerns the various activities engaged in by federal, state, and local government agencies. These actions generally include rulemaking, enforcement of various regulatory schemes, and various other actions. Administrative law affects relatively few sports law cases, but there were a few that occurred in 2014.

City Press Communications, LLC v. Tennessee Secondary School Athletic Ass'n[1]

City Press Communications requested to inspect records related to TSSAA's investigation of Montgomery Bell Academy, a private school in Nashville that removed its head football coach for alleged misconduct. It was suspected that the misconduct related to financial aid provided to student-athletes in violation of TSSAA's bylaws. The Court determined that TSSAA is equivalent to a governmental agency because it directed and managed the extracurricular sporting activities of nearly every high school in Tennessee. It further determined that the records sought were public within the Public Records

1. No. M2013–01429–COA–R3–CV, 2014 WL 1778191 (Tenn. Ct. App. Apr. 30, 2014).

Act and not protected by any privacy law, education law, or ethical obligation, such as attorney work product.

Safari Club Int'l v. Jewell[2]

Plaintiffs, Safari Club International and the National Rifle Association, challenged two determinations issued by the United States Fish and Wildlife Service that suspended the importation of elephant trophies of sport-hunted elephants from Tanzania and Zimbabwe in 2014. Plaintiffs contended that the Service's determinations violate the Endangered Species Act and the Administrative Procedure Act. The regulatory requirements for importing sport-hunted elephants from Tanzania differ from Zimbabwe, so the Court addressed each claim differently. In regards to Tanzania, the Court granted the motion by the defendants to dismiss the claims for failure to state a claim as the plaintiffs have not applied nor been denied a permit to import a sport-hunted elephant from Tanzania. However, the Court denied Defendant's motion to dismiss the Zimbabwe claims. Plaintiffs' claims that the United States Fish and Wildlife Services (1) failed to provide a public notice and comment opportunity before issuing the findings and (2) improperly imposed an enhancement of survival finding requirement in the special rule governing sport-hunted African elephants are not procedurally time-barred.

ANTITRUST LAW

Antitrust law exists to protect consumers from unfair business practices and anticompetitive behavior. The Sherman Antitrust Act, along with various state antitrust laws, prohibits monopolistic behavior and conspiracies to restrain trade. The Sherman Antitrust Act is uniquely applied in the sports context. In recent years, there have been a multitude of antitrust claims in the sports industry, particularly against the NCAA.

In re NCAA Student-Athlete Name & Likeness Litigation[3]

This was a motion brought to challenge the NCAA rules restricting monetary compensation to current and former athletes who played for Division I men's football and basketball teams. The NCAA asserted five procompetitive justifications for the challenged restraint. The Court granted summary judgment to the plaintiffs with respect to the NCAA's fourth justification, which claimed the restraint provided increased support to women's sports and less prominent

2. No. 14-0670 (ABJ), 2014 WL 7367007 (D.D.C. Dec. 26, 2014).

3. No. C 09–1967 CW, 2014 WL 1949804 (N.D. Cal. May 12, 2014).

men's sports. The Court reasoned that the markets are separate and that this is "not a procompetitive justification" to the NCAA's restrictions on student-athlete pay. The NCAA moved for leave to file a motion for partial reconsideration of the Court's summary judgment order. Here, the Court denied the motion, asserting that there is a specific college education market for Division I men's football and basketball recruits. The Court also asserted that the NCAA could provide financial support to women's sports and less prominent men's sports through less restrictive means than limiting student-athlete compensation.

Laumann v. Nat'l Hockey League[4]

Plaintiffs were subscribers to television and Internet services that included live telecasts of professional hockey and baseball. The plaintiffs brought a putative class action against the NHL, MLB, and several broadcasters and distributors of hockey and baseball programming, alleging that the defendants violated Sections 1 and 2 of the Sherman Act. The challenged conduct was the professional leagues placing territorial restrictions on television and Internet broadcasts of games. The Court denied the leagues' motions for summary judgment after finding that baseball's antitrust exemption did not apply to territorial broadcasting restrictions; the rule of reason analysis was the appropriate standard for determining whether restrictions restrained trade; and fact issues existed as to (1) the impact on competition due to the restrictions, (2) whether the broadcasters or distributors engaged in concerted action, and (3) whether the broadcasters or distributors engaged in a tacit agreement among themselves.

Marucci Sports, L.L.C., v. Nat'l Collegiate Athletic Ass'n.[5]

Marucci Sports was a baseball bat manufacturer located in Louisiana that had four baseball bats that failed BBCOR compliance testing, thus they were not eligible to be used in NCAA or high school play. Marucci brought an action against the NCAA and the National Federation of State High School Associations (NFHS) arguing that both of these associations imposed regulations on bats that restrained trade in the market for non-wood baseball bats, thus violating the Sherman Act. The United States District Court of Louisiana granted the defendant's motion to dismiss Marucci's complaint. The issue was whether the District Court erred in dismissing Marucci's Sherman Act claim. The Court held

4. No. 12-CV-1817 SAS, 2014 WL 3900566 (S.D.N.Y. Aug. 8, 2014) *motion to certify appeal denied sub nom. Garber v. Office of the Com'r of Baseball*, No. 12 CIV. 3704 SAS, 2014 WL 4716068 (S.D.N.Y. Sept. 22, 2014).

5. 751 F.3d 368 (5th Cir. 2014).

that Marucci's complaint: (1) failed to allege how the NCAA and NFHS conspired to restrain trade in the non-wood baseball bat market, (2) failed to demonstrate how the BBCOR standard injures competition in the market for non-wood baseball bats, and (3) the BBCOR standard was entitled to procompetitive presumption.

Williams v. Nat'l Football League[6]

The plaintiff, John Williams, filed a complaint alleging various constitutional and statutory violations arising out of the Seattle Seahawks' restriction of primary-market ticket sales for the NFC Championship game between the Seahawks and the San Francisco 49ers to buyers with billing addresses in Washington and other nearby states. Williams is a 49ers fan and Nevada resident, so he alleged that the geographic restriction on ticket sales injured him because he was not allowed to purchase tickets in the primary market. Williams sought a declaration alleging that the geographic restriction was unlawful on the basis of economic discrimination and he also wanted damages for violations of the Washington Consumer Protection Act (WCPA), the Sherman Act, and for unjust enrichment. Here, the Court held that Williams: (1) failed to state a claim for economic discrimination, (2) failed to state a claim under the WCPA, (3) failed to state an anti-trust claim, and (4) could not allege unjust enrichment since he did not purchase a ticket on the secondary market.

CONSTITUTIONAL LAW

The U.S. Constitution and state constitutions serve to protect individuals from certain government acts. Constitutional claims are common in the sports industry because public universities and most state athletic associations are considered state actors and are bound to the Constitution. The following cases highlight claims for violations of the First Amendment and the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

Bartley v. Taylor[7]

Todd Bartley is a sports reporter and general manager at ESPN 1050, a radio station in Williamsport, Pa. Bartley reported negatively on the performance of Sharon Taylor, the Athletics Director (AD) of Lock Haven University. As a result, Taylor and Lock Haven did not allow ESPN 1050 to broadcast any of Lock Haven's athletic events. Bartley is alleged that Taylor engaged in specific

6. No. C14-1089 MJP, 2014 WL 5514378 (W.D. Wash. Oct. 31, 2014).

7. No. 4:11–CV–1458, 2014 WL 2604721 (M.D. Pa. June 11, 2014).

conduct to retaliate against him for his critical reporting of Taylor's performance as an AD, specifically bringing a First Amendment retaliation claim in right to Bartley's free speech. Here, the Court found that Taylor's actions were not retaliatory in the way that would have chilled Bartley's speech, thus there was no adverse impact on Bartley as a matter of law and final judgment was entered for Taylor.

Beattie v. Line Mountain Sch. Dist.[8]

The defendant school district had a policy that prohibited female students from participating on the all-male junior high and high school wrestling teams. The plaintiffs, Brian and Angie Beattie filed suit on behalf of their twelve-year-old daughter claiming that the defendant's policy constituted an unlawful discrimination on the basis of sex, violating the Equal Protection Clause of the Fourteenth Amendment, 42 U.S.C. § 1983, and the Equal Rights Amendment of the Pennsylvania Constitution. The Beatties moved for a preliminary injunction to prevent the school from enforcing its policy. The Court determined that the defendant could not show a genuine justification for the classification, which was undisputedly based on gender. In doing so, the Court reasoned that the defendant did not provide sufficient evidence that its reasons for the policy, which included student safety, the risk of inappropriate contact, prevention of sexual harassment and misconduct, and other moral concerns were exceedingly persuasive justifications for the classification. The Court granted the plaintiffs' motion for a preliminary injunction after the plaintiffs showed a likelihood of success on their Equal Protection claim and the claim that the defendants violated the Pennsylvania Equal Rights Amendment.

Chapman v. Pa. Interscholastic Athletic Ass'n[9]

Shonda Chapman, the mother of a home-schooled child who was enrolled in two classes at a private Christian school, allowed the child to play on the school's sports teams. However, the Pennsylvania Interscholastic Athletic Association (PIAA) ruled that the child was ineligible according to one of its bylaws. The PIAA Attendance Rule stated that a home-schooled student that is not enrolled full-time at a private school cannot play sports for the private school, but must rather play sports in the public school district in which he resides. Chapman filed a civil action seeking a declaratory judgement and injunctive relief, claiming this rule violated her Fourteenth Amendment rights of freedom of religion. The Court held that the PIAA Attendance Rule is facially

8. 992 F. Supp. 2d 384 (M.D. Pa. 2014).

9. No. 1:14–CV–00192, 2014 WL 2770699 (M.D. Pa. June 18, 2014).

neutral and is one of general applicability as it applies to all children, regardless of their religious beliefs. The burden on the plaintiff's free exercise of religion was minimal and as a result the claims were dismissed.

Donnelly v. Univ. of N. Carolina[10]

A University of North Carolina sports fan filed a petition for review of the university's decision, which banned the sports fan from entering any of the university's athletic facilities in the future after the lower court affirmed the university's final decision to uphold the ban. The fan appealed the decision, claiming that the ban violated his rights under the First Amendment. The ban arose after the fan displayed inappropriate behavior toward several UNC athletes, athletes' family members, and staff members of the Athletics Department, including sexually suggestive comments and harassment. The North Carolina Court of Appeals held that the fan failed to demonstrate that he engaged in any speech protected by the First Amendment, as harassing language was not protected by the First Amendment. Additionally, the court found that the university's decision was not arbitrary, capricious, or unsupported by substantial evidence, so there was no violation of Due Process. Finally, the court found that the fan could not support a retaliation claim and affirmed the lower court's judgment upholding the ban.

Hayden ex rel A.H. v. Greensburg Cmty. Sch. Corp.[11]

Parents filed suit on behalf of their minor son in order to challenge a policy that required boys' basketball players at a public high school to keep their hair cut short. The plaintiffs argued that the policy arbitrarily intruded upon their son's liberty interest in choosing his own hair length, which violated his substantive due process right, and that the policy constituted sexual discrimination because it only applied to boys who played basketball and not girls who played basketball. The district court granted judgment in favor of the Defendant school and the parents appealed. The Seventh Circuit reversed in part and ruled that the Plaintiffs failed to show proof that the policy lacked a rational relationship with a legitimate government interest and dismissed their substantive due process claim. However, the Court also ruled that the policy violated the Equal Protection Clause and Title IX, as it made a sex-based classification without providing a legally sufficient justification.

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10. 763 S.E.2d 154 (N.C. Ct. App. 2014).

11. 743 F.3d 569 (7th Cir. 2014).

Hurst v. Lee County, Miss.[12]

A corrections officer arrived at the jail to begin his shift and learned that Chad Bumphis, a Mississippi State University football player, had been arrested the night before by the Tupelo Police Department. Throughout the day, numerous media representatives telephoned the jail seeking information about Bumphis' arrest and Hurst fielded many of these calls. At one point during that day, a sports writer for the *Northeast Mississippi Daily Journal* traveled to the jail and questioned Hurst about the incident involving Bumphis. Later that day, the sports writer published an article in the *Northeast Mississippi Daily Journal*, in print and online, about the arrest of Bumphis, attributing certain quotes in the articles to Hurst. Hurst was terminated for speaking to the reporter without authorization because it violated the department's media policy. Hurst brought an action against the department, alleging that his firing violated his First Amendment right to free speech. The trial court granted judgment as a matter of law to the county and Hurst appealed. The Fifth Circuit Court of Appeals affirmed after finding that Hurst's First Amendment claim failed because he was not speaking to the reporter as citizen, as his statement was ordinarily within the scope of his employment duties.

Sacramento State Univ. Men's Rowing Club v. California State Univ., Sacramento[13]

The plaintiff, a men's rowing team, sought a declaration that the defendant university denied the plaintiff procedural due process by suspending the plaintiff without notice or an opportunity to be heard against the Student Conduct Procedures. Plaintiff was considered a Tier 1 club, which meant that only students were allowed to participate in training and competition.[14] However, Plaintiff alleged that it was common practice and custom to allow an alumnus or coach to occupy remaining seats in boats that were not filled with current student members. During one of these occasions, a coach occupied a vacant seat in a boat during the plaintiff's traditional Holiday Row and the Interim Assistant Director of Intramural and Sport Clubs suspended the plaintiff for failing to comply with the Tier 1 club requirements. After the plaintiff filed suit, the defendant filed a motion to dismiss, arguing that the plaintiff could not establish a protected property interest as required for a procedural due process claim. The Court granted the defendant's motion to dismiss for failure to state a claim because the plaintiff did not have a protected property interest in participating in

12. 764 F.3d 480 (5th Cir. 2014).

13. No. 2:13-CV-00366-MCE, 2014 WL 546694 (E.D. Cal. Feb. 11, 2014).

14. *Id.*

extracurricular activities.

Saltonstall v. City of Sacramento[15]

In 2013, the owners of the Sacramento Kings sold the team to a group of investors from Seattle. Seeking to keep the team in Sacramento, the City of Sacramento sought to build a new entertainment and sports center in downtown Sacramento at the current site of a shopping mall. The City developed a schedule that targeted October 2016 as the opening date for the downtown arena to meet NBA demands.[16] To facilitate timely completion of the project, the Legislature added Section 21168.6.6 to the Public Resources Code. Section 21168.6.6 modifies—only for construction of the downtown arena in Sacramento—several deadlines for review of the project under the California Environmental Quality Act (CEQA). Adriana Gianturco Saltonstall, the plaintiff, sued to challenge Section 21168.6.6's constitutionality as well as the project's compliance with CEQA requirements. Saltonstall moved for a preliminary injunction on grounds of imminent harm to the public caused by the demolition of the shopping mall due to construction of the downtown arena, but the trial court denied the motion for a preliminary injunction. Here, the Court held that the statute providing for expedited CEQA review of basketball arena construction project does not violate separation of powers: (1) in imposing allegedly unrealistic short deadlines for review, (2) in imposing higher standard for injunction, and (3) in requiring Judicial Council to implement a rule of court expediting judicial review.

Victory Through Jesus Sport Ministries Foundation v. City of Overland Park, Kan.[17]

The Victory Through Jesus Sport Ministries Foundation was prohibited from handing out its pamphlets promoting its camps on sidewalks outside the gates of an enclosed soccer facility owned and operated by the City of Overland Park. The City of Overland Park passed a resolution that prohibited the plaintiff from this behavior, citing that this area is not a public forum and the regulation was necessary to ensure the flow of pedestrian traffic and to prevent litter. The issue was whether this was a violation of Victory Through Jesus Sport Ministries Foundation's First Amendment guarantee of free speech. The Court held that the City of Overland's Resolution was an unconstitutional restriction on the plaintiff's First Amendment right of free speech. The City's enforcement

15. 180 Cal.Rptr.3d 342 (Cal. Ct. App. 2014).

16. *Id.*

17. No. 12–2534–KGG, 2014 WL 1775605 (D. Kan. May 5, 2014).

against these speech activities was permanently enjoined. The Court determined that the sidewalks outside the complex were a public forum and the City could not establish that the ban served a significant governmental interest.

CONTRACT LAW

Contracts play an important role in every facet of the sport industry as they are the foundation in the creation of sponsorships, construction of venues, and employment relationships. The following cases examine numerous contract issues that arose in the sports industry in 2014.

Companion Prop. and Cas. Group v. Consol. Agency Partners[18]

Sky High Sports operates an indoor trampoline center and their worker's compensation insurance coverage was issued under an "amusement" class code. An insurance broker representing Sky High Sports, the defendant, believed that Sky High's classification code should be that of "sports and fitness," a classification that would have cost Sky High 2.5 times less than a classification of "amusement." Sky High changed their workers compensation insurance coverage and ended up having to pay out of it when an employee was paralyzed. The plaintiff, Sky High's insurance carrier, paid the employee, but canceled the policy afterwards and asserted that the broker materially misrepresented the nature of Sky High's business when he claimed it was "sports and fitness." The Court held that the insurance carrier could not claim constructive fraud nor a breach of fiduciary duty because no special or confidential relationship existed between the broker, who is an agent of the insured, not the insurance company. Thus, summary judgment was granted to Sky High's insurance broker.

Duart v. Gugliuzza[19]

The plaintiff, Bonnie Duart, sought recovery on a promissory note and a list of business loans against the defendant, Ryan Gugliuzza, who owned Phoenix Sports Bar & Lounge. Duart was an employee of the Phoenix Sports Bar & Lounge and she sought recovery on a promissory note, dated May 3, 2011, for $20,000.00, with a flat fee of $5,000.00 for the borrowed monies. The note was prepared by Brenda Lee, an employee of Phoenix Sports Bar & Lounge, and was based on forms she found on the internet. The Court held that Gugliuzza, in his individual capacity, is not bound by the promissory note, based on the fact that his name was not listed as the borrower. However, Phoenix Sports Bar &

18. No. 3:12–cv–00595–HDM–VPC, 2014 WL 2863766 (D. Nev. June 24, 2014).

19. No. CV125014462, 2014 WL 6765156 (Conn. Sup. Ct. Oct. 14, 2014).

Lounge is listed as the borrower, and the Court held they are indebted to Duart in the amount of $43,775.56 with interest accruing at 8% per annum.

Irmer v. Reinsdorf[20]

Perri Irmer was the CEO of the Illinois Sports Facilities Authority (ISFA), which is a unit of local government whose purpose is to use public funds for the provisions of sports stadiums in Illinois. Irmer thought the White Sox were getting a better deal than the general Illinois taxpayers and constantly clashed with the White Sox. Eventually, under pressure from the White Sox and its owner Jerry Reinsdorf, ISFA fired Irmer. Irmer brought claims of violation of free speech, conspiracy, and tortious interference. The Court held that Irmer did not show that her protected speech was the proximate cause of her termination; provided insufficient evidence to establish a conspiracy; and failed to establish sufficient facts to demonstrate any conduct of intentional interference with her employment to cause her termination. Thus, the claims in Irmer's complaint were all rejected.

Laquila Group, Inc. v. Hunt Constr. Group, Inc.[21]

Hunt Construction was a general contractor for the construction of the Barclays Arena in Brooklyn. The defendant hired a subcontractor, Laquila Group, the plaintiff, to perform excavation work. There were an abundance of issues and complications regarding this project, which caused Laquila to complete the project later than planned. The issue arose when Hunt would not pay for additional costs that Laquila claimed were beyond its control and on which they had orally agreed. The Court held that Laquila had adequately pleaded a breach of contract cause-of-action in relying on oral modification, thus Hunt's motion for dismissal was denied.

Maniff v. Town of Saugus[22]

Nathaniel Maniff signed a sublease with the Town of Saugus to operate the Kasabuski Memorial Arena Ice Skating Rink. Some of the provisions in the sublease imposed fee restrictions and required public access. The sublease also contained a "default clause," which permitted the termination of the lease for defaults that were not cured within a specific time. Arguments ensued between the town and Maniff, which eventually ended with the town not providing insurance for the first three years of the lease and then terminating the sublease

20. No. 13-cv-2834, 2014 WL 2781833 (N.D. Ill. June 19, 2014).

21. No. 502732/13, slip op. (N.Y. Sup. Ct. June 25, 2014).

22. No. 13–P–831, 2014 WL 1758213 (Mass. App. Ct. May 5, 2014).

because of the defaults. The issue was whether the Town could properly terminate the sublease based on defaults or whether they had breached its contract with Maniff. The Court held that Maniff had not defaulted on the sublease and other minor breaches were not central to the lease and did not constitute a "material breach." The breaches were insignificant or accidental and thus the judge properly awarded Maniff damages equal to the cost of insurance.

Pollock v. Nat'l Football League[23]

Appellants, Richard Pollock, Cheryl Pollock, Paul Kutcher, and Cynthia Kutcher, appealed the district court's order dismissing all of their claims against the NFL and the Dallas Cowboys Football Club, LTD. Appellants claimed that they properly asserted tort, statutory fraud, and punitive damage claims that met the requirements for diversity jurisdiction, despite the district court granting the defendants' motion to dismiss for failure to state a claim and for lack of jurisdiction. The appellants filed suit after allegedly suffering damages when the NFL did not fulfill its obligation to give them access to certain seats at the 2011 Super Bowl. The Court deemed that the tickets were revocable licenses that were sound contracts. In doing so, the Court affirmed the district court's reasoning that the appellants had a remedy in contract law for any actual and consequential monetary loss, but did not have any remedies through tort, fraud, or punitive damages claims. The Court also affirmed the district court's assessment of the appellants' losses and that the losses were far below the statutory minimum.

Springob v. University of South Carolina[24]

The University of South Carolina distributed a brochure to high-level Gamecock Club members, offering them an opportunity to buy premium seating for upcoming basketball seasons over a five-year term. After the fifth season, the parties disagreed over the cost of a sixth year of premium seating, and Springob sued the University for breach of contract on a theory that the University was overcharging for the seating. The trial court granted summary judgment for the University, finding that the statute of frauds applied because the agreement could not be performed within one year. On appeal, the South Carolina Supreme Court agreed that the statute of frauds applied, but reversed the trial court's entry of summary judgment on Springob's equitable estoppel claim. That is, it determined a genuine issue of material fact precluded summary judg-

23. 553 F. App'x 270 (3d Cir. 2014).

24. 757 S.E.2d 384 (S.C. 2014).

ment on the issue of whether the University was equitably estopped from asserting its statute of frauds defense.

U.S. ex rel. Landis v. Tailwind Sports Corp.[25]

Floyd Landis was a cyclist on the United States Postal Service (USPS) sponsored cycling team. Landis and the United States (US) brought multiple claims against Lance Armstrong, a fellow former-USPS member, and Tailwind Sports, a company that he worked with. Landis and the US sought to recover damages based on the False Claims Act, alleging fraudulent claims made by Armstrong and his companies in connection with two sponsorship agreements made with the USPS sponsored team. The Court held that alleged doping activity constituted a breach of contract with the USPS and that its reputation was damaged. The anti-doping requirements were core terms of the contracts and Armstrong and Tailwind Sports breached both sponsorship agreements; thus, the US government and Landis sufficiently pled that the defendants owed money to the US government.

VICI Racing, LLC v. T-Mobile USA, Inc.[26]

The plaintiff, VICI Racing LLC, was a corporate owner of a racecar who sued the sponsor, T-Mobile, for a breach of the sponsorship agreement. T-Mobile appealed a $7 million judgment entered against it at the district court level. T-Mobile argued that it should not be liable for any damages, but should be entitled to damages. The sponsorship agreement was for $7 million in 2010 and an additional $7 million in 2011. T-Mobile did not pay its obligated fee after the racecar was damaged during a race and VICI Racing LLC informed T-Mobile that the car would not be able to race for 45-60 days. The district court stated that, although VICI Racing LLC did not race in as many events as obligated under the contract, this was remedied with the force majeure clause in the contract. Therefore, the district court awarded the VICI Racing LLC the $7 million from 2010. However, the district court did not award VICI Racing LLC the $7 million for 2011, finding VICI Racing LLC failed to mitigate and awarding the damages would result in an unfair windfall. On appeal, the Third Circuit Court of Appeals held that the agreement's force majeure clause excused the owner's nonperformance, because it included accidents to the car and affirmed the district court's award of $7 million. However, it remanded the case to reconsider the 2011 damages issue and the proper attorney's fees to VICI Racing LLC, as the district court improperly placed the burden on the owner to present

25. 51 F. Supp. 3d 9 (D.C. Cir. 2014).

26. 763 F.3d 273 (3d Cir. 2014).

evidence that it took reasonable efforts to mitigate its losses due to T-Mobile failing to plead mitigation of damages as an affirmative defense.

Walters v. YMCA[27]

A fitness club member sued the YMCA, alleging negligent maintenance, after he sustained injuries when he slipped and fell on a stair tread that lead into the fitness club's pool. The lower court granted the fitness club summary judgment based on the exculpatory clause the member signed in his membership agreement with the club and the member appealed. The appeals court reversed after finding that the exculpatory clause was void and unenforceable as against public policy because it was too expansive and was a contract of adhesion.

COURT OF ARBITRATION FOR SPORTS (CAS)

The Court of Arbitration for Sport (CAS) is an international arbitration body headquartered in Lausanne, Switzerland. The Olympic Charter mandates that all disputes connected to the Olympic Games must be submitted to CAS. In addition to the Olympics, CAS also hears disputes concerning various national and international governing bodies, so as to create uniformity and precedent known as lex sportiva. The following CAS decisions highlight some of the arbitrations that were heard in 2014.

Anderson Luís De Souza v. CBF & FIFA[28]

Deco was a Brazilian soccer player and his original drug test completed by LADETEC in Brazil found samples of a banned substance. Thus, Deco was suspended for a year by the Brazilian Soccer Federation. Deco argued that LADETEC had lost its WADA accreditation and asked for a re-test of his sample by a WADA-accredited lab in Lausanne, Switzerland. The re-test indicated that he had not used any banned substances. Deco and the Brazilian Soccer Federation entered into an agreement to drop the suspension and both parties declared themselves reciprocally settled. The issue was whether CAS would uphold this settlement and issue a Consent Award reflecting the terms of the agreement between the two parties. CAS ratified and incorporated the settlement agreement into a Consent Award, which embodied the terms of the parties settlement and both parties ended their dispute on this matter.

27. 96 A.3d 323 (App. Div. 2014).

28. CAS 2013/A/3395 (2013).

Dirk de Ridder v. International Sailing Federation[29]

Dirk de Ridder, the Appellant, is a Dutch professional sailor and former member of Oracle Team USA. The International Sailing Federation (ISAF) is the world governing body for the sport of sailing. The Appellant appealed an ISAF decision that found him liable for breach of the rules of sailing by illegally modifying the boat by adding weight. The ISAF did not allow de Ridder to participate in the remainder of the America's Cup sailing event and added an additional sanction of three years suspension. Here, CAS determined de Ridder gave instructions, either express or implied, to add weight to the forward king post of the boat. However, CAS believed the additional sanction of three years was excessive and reduced the sanctions to eighteen months.

International Tennis Federation v. Marin Cilic[30]

Marin Cilic, a professional Croatian tennis player, and the International Tennis Federation both appealed a decision rendered by the International Tennis Federation Independent Anti-Doping Tribunal regarding Cilic's doping violations. The Court of Arbitration for Sport set aside the decision and replaced it with its own. CAS disqualified Cilic's individual results from the BMW Open in Munich and also forced a forfeiture of his prize money and ranking points obtained at the event. The Panel further declared him ineligible to participate in activities and events sanctioned by ITF for four months. It left undisturbed all ranking points and prize money earned between May 2, 2013 and June 25, 2013.

Luis Suarez, FC Barcelona, & Uruguayan Football Association v. FIFA[31]

Luis Suarez, a Uruguayan football player who played for the Uruguayan National Team in the World Cup and who plays for FC Barcelona, bit a player during the a 2014 World Cup match and FIFA suspended him for Uruguay's next nine matches, as well as four months from any football related activity. Suarez appealed this decision. Here, CAS held that biting is a serious offense and FIFA had the power to investigate the events at the match and sanction Suarez.[32] CAS conceded that Suarez's suspension for nine consecutive official matches of Uraguay's national team and the ineligibility to play official matches at any level for a period of four months was a tough sanction. However, considering all relevant facts (and chiefly the attitude of the Suarez and the fact that

29. CAS 2014/A/3630 (2014).

30. CAS 2013/A/3335 (2013).

31. CAS 2014/A/3665, 3666 & 3667 (2014).

32. *Id.* ¶ 64.

he had already committed the same infraction on two separate occasions), the sanction was not excessive or disproportionate.

Saeed Abdevali v. United World Wrestling[33]

This claim arises out of a decision rendered by United World Wrestling, the respondent, which determined that Iranian athlete, Saeed Abdevali, the applicant, who participated in the 71kg Greco-Roman wrestling event during the XVII Asian Games, had lost the match. The referee concluded the match was over and Abdevali had won; however, the opposing coach objected late and the respondent reversed the decision. Abdevali appealed this decision to the Ad Hoc Division. Here, the Court held that the only way to address the applicant's request for relief would be for the Panel to alter the match decision and the result of the competition. In this regard, CAS does not have the power to grant such request because the Rules do not allow appeals from a decision of the official as it is a field of play decision. Thus, CAS emphasized that it had formed, on the available evidence, the clear view that Abdevali had been wrongly treated and should have progressed to the final round of the event for the gold medal. However, for the reasons set forth above, the Panel could not grant Abdevali the relief he wanted.

Veronica Campbell-Brown v. The Jamaica Athletes Administrative Association (JAAA) & The International Association of Athletics Federations (IAAF)[34]

Veronica Campbell-Brown, a Jamaican sprinter, appealed both an IAAF Doping Review Board's decision and JAAA Disciplinary Panel decision. CAS was asked to determine whether ample evidence existed to satisfy the Panel's decision that the athlete committed an anti-doping violation. It also had to determine whether exceptional circumstances exist to justify a lighter penalty than two years. CAS upheld her appeal and set aside both IAAF's and JAAA's decision.

World Anti-Doping Agency v. Mr. Juha Lallkka[35]

The World Anti-Doping Agency (WADA) is a Swiss private-law foundation created to promote, coordinate, and monitor the fight against doping. WADA appealed a decision of the Finnish Sports Arbitration Board, which found that some of the parameters of the test for human growth hormone abuse

33. AG/14/04.

34. CAS 2014/A/3487 (2014).

35. CAS 2014/A/3488 (2014).

(HGH) as validated by WADA were unreliable. Juha Lallkka, a Finnish cross country skier, was subject to an out-of-competition doping test and was suspended after testing positive for HGH. The Finnish Sports Arbitration Board held that the HGH test was inconclusive and the suspension was overturned. Here, CAS held that WADA has the burden of establishing whether an anti-doping violation had occurred and the analytical values of assay ratios relating to the athlete's samples revealed the presence of HGH. It is undisputed that HGH is a non-specified substance included on the 2011 WADA Prohibited List. Consequently and in conclusion, the Court considers that an anti-doping rule violation occurred and WADA won the appeal.

Zamalek Sporting Club v. Accra Hearts of Oak Sporting Club[36]

Zamalek Sporting Club, the appellant, is a football club from Egypt and Accra Hearts of Oak Sporting Club, the respondent, is a football club from Ghana. This claim is over payment of $82,600 for training compensation that Accra asserts they are owed from Zamalek for a player that left Accra and went to Zamalek. FIFA decided that Zamalek had to pay Accra for 33 months for the training costs of for the player and Zamalek appealed. Here, CAS determined that the player was not fully trained when he joined Accra, so they were entitled to training compensation. However, Accra is only entitled for training compensation for the first year, so the amount of costs owed by Zamalek were reduced from $82,000 to $30,000.

CRIMINAL LAW

While individual athletes have been known to run afoul of criminal laws, it is rare that criminal law affects the sports industry as a whole. However, as the following cases illustrate, certain issues such as gambling and sexual harassment can affect the sports industry.

State v. Nicoletto[37]

A high school basketball coach appealed a jury verdict finding him guilty of sexually exploiting another school employee. On appeal, Nicoletto argued that he was not a school employee under the statute he was charged under, and, therefore, he was not subject to criminal prosecution under it. The Supreme Court of Iowa determined his coaching position, without a teaching or professional license, is not enough to trigger application of the sexual exploitation

36. CAS 2014/A/3518 (2014).

37. 845 N.W.2d 421 (Iowa 2014).

statute. It then overturned the jury's verdict and remanded it for the lower court to dismiss the charges against him.

United States v. Lyons[38]

Defendants, Todd Lyons and Daniel Eremian, worked for Sports Off Shore, which was a gambling business based in Antigua. The defendants were convicted after a jury trial of two counts under the Wire Act, 18 U.S.C. § 1084, two counts under RICO, 18 U.S.C. §§ 1962(c) and 1962(d), and one count under 18 U.S.C. § 1955 for conducting an illegal gambling business. Lyons was also convicted on eighteen other counts. The defendants appealed, arguing that (1) the district court improperly denied them a safe harbor instruction on the Wire Act violation charge; (2) the Wire Act did not apply to the internet; (3) the government did not prove the defendant had the necessary mens rea to violate the Wire Act; (4) the defendants' convictions came out of an inappropriate extra-territorial application of the Wire Act; (5) the defendants' Wire Act convictions should be overturned because the government failed to prove all relevant bets were on sporting events; (6) the district court improperly admitted evidence of a SOS agent directory; and (7) both punishments were unreasonable and violated the Eighth Amendment. SOS was a bookmaking business that centered its operations in Antigua because some forms of bookmaking were legal there. SOS had many U.S. based customers and took bets over the phone or Internet, most of which were on sports teams. SOS agents, like Eremian and Lyons, met with bettors in person in public to collect cash or receive checks. Lyons was originally a bettor with SOS, but became an agent and provided customers with the information they needed to make bets, collected losses, distributed winnings, and served as the "bank" for SOS in Massachusetts by collecting money from, and disbursing it to, other SOS agents. Eremian also worked as an agent and recruited customers in Florida, trained Antiguan employees, settled up with customers, and provided bettors with the information needed to place bets. The Court affirmed the convictions and sentences. Lyons was sentenced to 48 months imprisonment and Eremian was sentenced to 36 months imprisonment for their roles in the multi-million dollar sports gambling business.

DISABILITY LAW

The Americans with Disabilities Act (ADA) prohibits discrimination against those with disabilities in terms of employment, education, and access to public services. In the sports context, the ADA requires sports organizations to also make reasonable accommodations to allow disabled athletes to participate.

38. 740 F.3d 702 (1st Cir. 2014).

The following cases highlight instances in which the ADA was applied to sports entities.

Halprin v. Lakeside Inn, Inc.[39]

Martin Halprin, a former race and sportsbook writer at the Lakeside Inn, alleged that he had a disability and needed to sit for extended periods of time. So, Halprin brought in a personal chair to work that he used daily. One day, there was another employee sitting in his chair, which led to a dispute and his eventual termination from Lakeside Inn. Halprin brought a claim against Lakeside Inn, alleging disability discrimination under the ADA. The Court held that there were disputed issues that went to the heart of whether Halprin quit his job at Lakeside Inn or whether Lakeside failed to acknowledge Halprin's disability and engaged in activities that prevented him from performing his duties. Thus, Lakeside's motion for summary judgment was denied based on these adverse employment actions under the ADA.

Steines ex rel. Steines v. Ohio High Sch. Athletic Ass'n.[40]

The plaintiff, Charles Steines, was a ninth grade student who resides in Kentucky, but attended a specialized school in Ohio for students who had learning disabilities. Steines wanted to play high school soccer at his school in Ohio; however, the Ohio High School Athletic Association (OHSAA) refused to grant a waiver of their instate residency requirement. Steines argued that the OHSAA's refusal to grant the waiver request violated the ADA. The Court held that OHSAA is a public entity subject to Title II of the ADA and found that OHSAA failed to provide a reasonable modification of the instate residency requirement rule. The Court held that an order allowing Steines to participate would not force the OHSAA to adopt a broad exception for all disabled nonresident students. Thus, there would be irreparable injury to Steines by not allowing him to compete, so the Court enjoined OHSAA from enforcing the instate residency requirement rule against Steines.

DISCRIMINATION LAW

Federal and state anti-discrimination laws are intended to protect individuals from discrimination on the basis of race, gender, age, religion, and various other protected attributes. Discrimination claims generally center around the Equal Protection Clauses of the Fourteenth Amendment and Title VII of the

39. No. 3:13–cv–0220–LRH–WGC, 2014 WL 2772312 (D. Nev. June 18, 2014).

40. No. 1:14CV525, 2014 WL 5818823 (S.D. Ohio Nov. 10, 2014).

Civil Rights Act. In the sports context, discrimination can affect athletes, coaches, and other employees, as illustrated by the following cases.

Minnis v. Bd. Of Sup'rs of La. State Univ. and Agric. and Mech. Coll.[41]

The plaintiff, Anthony Minnis, was the head women's tennis coach at Louisiana State University (LSU). Minnis, an African-American, was fired in 2012 after twenty-one years at LSU. Minnis brought an employment discrimination action under Titles VII and IX and the Louisiana Employment Discrimination Law. Here, the Court held that claims of disparate treatment related to evaluations and earlier reprimand did not represent adverse employment action. The Court also held that LSU's reasons for his termination were legitimate and nondiscriminatory and were not shown to be pre-textual. Minnis failed to establish a case of disparate compensation, and LSU's offered reasons for disparity in pay were legitimate and nondiscriminatory. Minnis also failed to establish a case of racial harassment under Title VII or a case of Title VII retaliation. Lastly, Minnis did not establish a case of Title IX retaliation, and in any event LSU's offered reasons for his termination were legitimate and non-retaliatory.

Tate v. Rocketball, Ltd.[42]

Plaintiff, a gay male, alleged that he was hired by a restaurant as a "Private Event Catering Server" at the Barclays Center, a Brooklyn indoor arena used for basketball games and other events. The restaurant assigned the plaintiff to serve food and beverages to visiting teams using Barclays' locker rooms. In February 2013, the plaintiff was directed by the restaurant to deliver refreshments to the Houston Rockets' players in a Barclays' locker room during a NBA game between the Brooklyn Nets and the Rockets. After plaintiff entered the locker room, a number of Rockets' players laughed and said with taunting voices: "Get this faggot out of here!" and "He's trying to catch a sneaky peaky!" Such comments were repeated a number of times by the Rockets' players and staff.[43] A representative of the Brooklyn Nets witnessed the episode and he instructed plaintiff to "just leave," and he would "take care of it."[44] The restaurant and Rocketball, the company that owned the Rockets, were promptly notified of the incident. Plaintiff allegedly suffered adverse employment consequences including serious harm and loss of income, as a result of this incident and filed suit against the restaurant and Rocketball, LTD. After the incident,

41. No. 13-00005-BAJ-RLB, 2014 WL 5364049 (M.D. La. Oct. 21, 2014).

42. 45 F. Supp.3d 268 (E.D.N.Y. 2014).

43. *Id.*

44. *Id.*

the plaintiff was not sent to regular locations at Barclays Center, including dressing rooms and locker rooms, and he was not employed in any shift that accrued overtime; however, heterosexual employees, some with less seniority, were given these assignments. Plaintiff also claimed that he was improperly singled out for not following instructions, inappropriately "written up" by his supervisors, and completely taken off the work schedule. The court granted Rocketball's motion for summary judgment because there was no evidence that Rocketball aided and abetted the restaurant's conduct; however, the court stayed the dismissal for sixty days to allow discovery as to the relationship between Rocketball and its employees and the restaurant and its employees.

FAMILY LAW

While family law usually is not an issue within the sports industry, there are some instances, as illustrated by the following case, where sports can affect divorce proceedings and child custody cases.

Jaggers v. Magruder[45]

This was an appeal of a Chancery Court decision that denied Wesley Jaggers, the noncustodial parent, modification of custody. Jaggers wanted to modify the custody agreement by arguing that the extracurricular activities of his children interfered with his visitation. The Chancery Court denied the modification of custody and maintained the requirement that Jaggers allow the children to participate in their scheduled extracurricular activities, specifically baseball, but changed Jaggers' visitation schedule to allow Jaggers to make up visitation for when his children's baseball activities prevented such visitation. The Mississippi Court of Appeals found no error in the Chancery Court's decision and affirmed.

GENDER EQUITY/TITLE IX

Title IX of the Education Amendments of 1972 had a significant impact on female athletes' ability to gain equal rights to their male counterparts in collegiate and high school settings. Despite the implementation of Title IX more than forty years ago, it continues to be contentious issue as demonstrated by the following cases.

45. 129 So. 3d 965 (Miss. Ct. App. 2014).

McCully v. Stephenville Indep. Sch. Dist.[46]

Plaintiffs, female junior high students, filed a complaint against Stephenville Independent School District and two of its employees alleging a violation of Title IX against the school and retaliation against all defendants. The plaintiffs alleged that they were denied athletic opportunities, facilities, coaching, and services equal to male students, specifically with regards to the scheduling of practices. In a prior motion, the court had dismissed the retaliation claims. The school district filed for summary judgment on the Title IX violation and the court granted the school district's motion after determining that the plaintiffs never objected to a set of admissions that the plaintiffs were served, so the admissions, which stated that the school district did not discriminate against females or provide males with better opportunities, were deemed admitted. Additionally, the court found that even if the admissions would not have been admitted, the plaintiffs would still lose because the plaintiff failed to establish that the school intended to treat males and females differently and the school took steps with its athletic program to accomplish whatever it realistically could to ensure equal athletic opportunity for members of both sexes.

Roe v. St. Louis University[47]

Roe, a field hockey player at St. Louis University, sued the university under Title IX for deliberate indifference and disparate treatment, after she was allegedly raped at a fraternity Halloween party. She claimed that the university was deliberately indifferent to her alleged rape and was "liable under a theory of disparate treatment because male athletes with health issues received better care than their female counterparts."[48] She specifically alleged that the university "failed to inform its Title IX coordinator, [Roe's] professors, or her parents about the alleged rape; failed to provide subsequent academic assistance to her; and failed to begin a prompt investigation."[49] She also claimed the university's sexual assault policy was inadequate and underreported sexual assaults. After assessing the trial record, the appellate court determined that the university did not act with deliberate indifference with respect to Roes rape and aftermath.

HEALTH & SAFETY

Considering the inherent risk of injuries in sports health and safety have always been an issue in the sports industry. In recent years, the National Football

46. No. 4:13-CV-702-A, 2014 WL 4060255 (N.D. Tex. Aug. 14, 2014).

47. 746 F.3d 874 (8th Cir. 2014).

48. *Id.* at 880.

49. *Id.* at 881.

League, specifically, has experienced significant legal issues relating to health and safety. The latest legal issues for the NFL revolve around concussions and prescription medications.

Dent v. Nat'l Football League[50]

Richard Dent is one of ten named plaintiffs who played for a number of National Football League's (NFL) clubs. On May 20, 2014, the plaintiffs sued the NFL and are now on their second amended complaint. Their complaints alleged that NFL team doctors and trainers distributed medications without prescriptions, as well as distributed medications in ways that violated federal laws and the American Medical Association's Code of Ethics. After years of taking such medication without proper disclosure about the medical side effects and risks, plaintiffs suffer from debilitating physical and mental health issues, including drug addiction. Here, the NFL argued that the plaintiff's negligence and fraud based claims are preempted by Section 301 of the Labor Management Relations Act. The Court held that it is impossible to determine the scope of the NFL's duties in relation to misrepresentation of medical risks and whether the NFL breached those duties, without reference to specific CBA provisions. Therefore, it would be impossible to apply new and supplemental state common law duties on the League without taking into account the adequacy and scope of the CBA duties already set in place. Thus, the plaintiffs' claims are preempted by Section 301 of the Labor Management Relations Act.

In re Nat'l Football League Players' Concussion Injury Litigation[51]

A group of retired professional football players brought various, separate actions against the NFL, including a putative class action alleging that the NFL breached its duties by failing to take reasonable actions to protect its players from the chronic risks that occur as a result of concussive head injuries and by concealing such risks.[52] The plaintiffs negotiated and agreed to a class action settlement that would have resolved all claims against the NFL; accordingly, the plaintiffs filed a motion for preliminary approval and class certification that was unopposed by the NFL.[53] The proposed settlement agreement created three types of claimants, comprising of over 20,000 individuals. Under the terms of the proposed settlement, the NFL was to make payments totaling $760 million over a twenty-year period that would create three potential sources of benefits

50. No. C 14-02324 WHA, 2014 WL 7205048 (N.D. Cal. Dec. 17, 2014).

51. 961 F. Supp. 2d 708 (E.D. Pa. 2014).

52. *Id.* at 710.

53. *Id.* at 711-12.

for settlement class members: (1) a $75 million baseline assessment program that would offer eligible retired NFL players baseline neuropsychological and neurological evaluations to determine the existence and extent of any cognitive deficits; (2) a $675 million monetary award fund that would award cash to retired NFL players who already had a qualifying diagnosis or would receive one in the future; and (3) a $10 million education fund to fund educational programs promoting safety and injury prevention in football.[54] The district court denied the plaintiffs' motion for preliminary approval and class certification due to concerns about fairness, reasonableness, and the adequacy of the settlement.[55]

INTELLECTUAL LAW

Intellectual property rights are important in the sports industry, as trademarks, copyrights, and patents generate billions of dollars in revenue for every kind of sports entity. Accordingly, these entities take every measure to protect their intellectual property, as highlighted in the following cases.

Adidas AG v. 2013jeremyscottxadidas.com[56]

Plaintiff, owner of a number of Adidas marks registered through the United States Patent and Trademark Office, sought an entry of default final judgment against the defendants in an action that alleged trademark counterfeiting and infringement, false designation of origin, cybersquatting, and common-law unfair competition. Plaintiffs requested that the Court (1) enjoin the defendants from producing or selling goods that infringed on their trademarks, (2) disable or transfer the domain names at issue to the plaintiffs, and (3) award statutory damages and costs. Plaintiff's complaint alleged that the defendants were promoting, advertising, distributing, offering for sale and selling counterfeit and infringing Plaintiffs' branded products within the Southern District of Florida through interactive commercial Internet websites. Plaintiffs asserted that the Defendants' unlawful activities caused and would continue to cause irreparable injury to the Plaintiffs for four reasons: (1) Defendants deprived the Plaintiffs of their right to determine the manner in which their trademarks were presented to the public through merchandising; (2) Defendants defrauded the public into thinking Defendants' goods were authorized by Plaintiffs; (3) Defendants deceived the public as to Plaintiffs' association with Defendants' goods and the websites that Defendants used to market and sell the goods, and (4) Defendants wrongfully traded and capitalized on Plaintiffs' reputation and goodwill, and on

54. *Id.*

55. *Id.* at 716.

56. No. 13-61867-CIV, 2014 WL 799132(S.D. Fla. Feb. 28, 2014).

the commercial value of Plaintiffs' trademarks. The Court determined that the plaintiffs properly alleged trademark counterfeiting and infringement under 15 U.S.C. § 1114; false designation of origin under 15 U.S.C. § 1125(a); cybersquatting under 15 U.S.C. § 1125(d); and common law unfair competition. The Court also ruled that default judgment was appropriate and fashioned injunctive relief by ordering the cancellation or transfer to the plaintiffs of the domain names at issue. The Court also awarded statutory damages for the use of the counterfeit marks in the amount of $18,000 per trademark infringed, totaling $2.18 million. Further, the Court awarded statutory damages for cybersquatting in the amount of $10,000 for each of the infringing subject domain names. Finally, the Court awarded the plaintiffs $750 in costs.

Baseball Quick, LLC v. MLB Advanced Media, L.P.[57]

The plaintiff, Baseball Quick, was the assignee of the rights to a patent to an invention called Baseball Quick, which was a method of shortening a baseball game to around fifteen minutes through editing. In August of 2000, the owners of Baseball Quick approached MLB in an effort to license their invention to MLB. MLB informed the owners that it was not interested in a business arrangement and, in March 2001, MLB announced its own "Condensed Games" product that also sought to condense baseball game action. Baseball Quick subsequently filed for patent infringement against MLB and MLB moved for summary judgment to dismiss the infringement action after asserting that Baseball Quick could not prove infringement. The court denied MLB's motion for summary judgment on the patent infringement because material issues of fact existed. However, the court did grant MLB's motion for summary judgment with regards to condensed games that were filmed prior to the issuance of the patent for Baseball Quick.

Boehm v. Zimprich[58]

Plaintiffs Scott Boehm and David Slutka are professional photographers who specialize in sport photos, which they then license on an exclusive basis through a variety of agencies. The plaintiffs brought a claim of copyright infringement against defendants Dan and Ciara Zimprich and Legends of the Field. The plaintiffs claimed the defendants created photo and print canvases of their photos without authorization, and then sold these through their sports memorabilia shops. The plaintiffs have moved for summary judgment on two

57. No. 11CIV1735TPG, 2012 WL 1071230 (S.D.N.Y. Mar. 30, 2012).

58. No. 14-cv-16-jdp, 2014 WL 7217380 (W.D. Wis. Dec. 17, 2014).

motions: (1) that the Zimpriches and Legends of the Game infringed their copyrights and (2) that the Zimpriches' infringement was willful. The Court granted summary judgment on both motions holding that (1) the Zimpriches' did not offer any support evidence and (2) the Zimpriches' lack of reading the editorial license was not grounds that the infringement was not willful.

Denimafia Inc. v. New Balance Athletic Shoe, Inc.[59]

Denimafia, Inc., a clothing and denim line, owns the trademark registration for the following design mark: <=>. Denimafia sued New Balance for trademark infringement after New Balance used its own version of the <=> mark on shoe tongues and sock linings as part of its new line of footwear called "Minimus." After assessing eight different factors to determine whether a likelihood of confusion exists between the two marks, the court found that five factors weigh in New Balance's favor, one factor weighs in Denimafia's favor, and two factors are neutral. The court concluded that Denimafia "failed to raise an issue of fact as to the likelihood of confusion" and granted New Balance's motion for summary judgment. [60]

Dryer v. Nat'l Football League[61]

John Dryer, the plaintiff, is a former professional football player, who, along with other former players, brought this action against the National Football League (NFL). The plaintiffs allege that NFL Films' use of video footage of them playing football violated their publicity rights, caused consumer confusion, and unjustly enriched the NFL. Here, the Court held that NFL Films productions were not commercial speech. The First Amendment protections outweighed the plaintiffs' publicity rights, along with the NFL sufficiently establishing the consent defense. The Court held that the Copyright Act preempted the state publicity rights claims and that the NFL had the right to exploit their own copyrighted game footage in expressive works. Lastly, Plaintiffs' Lanham Act claims failed as a matter of law because, as previously determined, the NFL's use of their images is not commercial speech. However, even if the challenged productions were commercial speech, the plaintiffs cannot show that the use of their likeness was in any way false or misleading.

59. No. 12 Civ. 4112, 2014 WL 814532 (S.D.N.Y. Mar. 3, 2014).

60. *Id.* at *25.

61. No. 09-2182 (PAM/FLN), 2014 WL 5106738 (D. Minn. Oct. 10, 2014).

Fuel Clothing Company, Inc. v. Nike, Inc.[62]

Fuel, a manufacturer and marketer of apparel and accessories for action sports (e.g., skateboarding, snowboarding, surfing, motocross, and auto racing), uses the "Fuel" mark with its products and protects the mark with federal trademark registration. Fuel sued Nike, a global marketer of sports apparel, for federal unfair competition and false designation of origin, and federal trademark dilution claims, as well as common law trademark infringement and unfair competition, after Nike used names such as "NIKE+FUELBAND" and "NIKEFUEL" with its new sports products and related apparel. On Nike's motion for summary judgment, the court used multiple factors to determine whether a likelihood of forward or reverse confusion existed. Determining that "no reasonable trier of fact could find likelihood of forward or reverse confusion," the court granted summary judgment for Nike on all of Fuel's claims except the federal trademark dilution, which it allowed Nike to address in a new motion within thirty days of the court's order.

Hubbard/Downing Inc. v. Kevin Heath Enters.[63]

Plaintiff filed an action for patent infringement against Kevin Heath Enterprises ("KHE") and Kevin Heath, asserting infringement of U.S. Patent No. 6,009,566, which pertained to a head and neck support device used by drivers of race cars and other high-performance vehicles. The plaintiff alleged in the Complaint that KHE and Heath infringed the ′566 patent by selling and offering for sale the DefNder G70, a similar head and neck support device. The parties elected to end the litigation by entering into a confidential settlement agreement to "settle, compromise, and resolve the action."[64] Within the agreement, KHE agreed to permanently cease "making, using, selling or offering for sale the DefNder G70, or devices no more than colorably different from the DefNder G70."[65] The defendant, Kevin Heath, then created another company, NeckGens Incorporated, and began selling a device similar to the DefNder G70. The Court decided to hold the Defendant in contempt for failing to abide by the previous confidential settlement agreement and sanctioned the defendant $301,967.00 and an additional $129,170.04 in attorney's fees.

62. 7 F. Supp. 3d 594 (D.S.C. 2014).

63. No. 1:10-CV-1131-WSD, 2014 WL 32314 (N.D. Ga. Jan. 6, 2014).

64. *Id.* at *2.

65. *Id.*

Oban US, LLC v. Nautilus, Inc.[66]

Oban is the manufacturer of a heart rate monitor. Oban alleged that Sports Beat created an imitation product that is a virtual copycat of the Oban monitor. Nautilus has a license with Sports Beat, so Oban brought claims of copyright, trademark, and trade dress infringement against Nautilus for their use of Sports Beat's monitor. Nautilus sought a dismissal of Oban's complaint, alleging that Oban failed to state a valid claim of these allegations. The court held that Nautilus did not have direct control and monitoring of the manufacturing of Sports Beat's monitor; did not have the ability to supervise and control the direct infringement; and Oban failed to show any description of alleged trade dress. Thus, Nautilus' motion was granted and all three claims against them were dismissed.

Professional's Choice Sports Med. Prod. Inc. v. Eurow & O'Reilly Corp.[67]

The plaintiff was a purveyor of specialty equine products and has used the mark AIR RIDE in conjunction with the sale of equine saddle pads since 1999. Plaintiff attempted to protect its marks by filing trademark applications with the United States Patent and Trademark Office in 1999 (what became known as the '620 Application) and in 2003 (Plaintiff filed for two marks, the '777 Application and the '639 Application). The '620 Application did not proceed to registration and was abandoned in 2000; the USPTO refused to register the '777 and the '639 Applications due to a likelihood of confusion with a prior registration and the plaintiff eventually abandoned both of those applications as well. The defendant was a leading wholesaler of top quality products in its field and Equine Comfort Products (ECP), a division of the defendant's company, manufactured equine products. Plaintiff claimed that despite knowledge of the plaintiff's superior rights to the AIR RIDE marks, the defendant, through ECP, filed trademark applications with the USPTO for the three AIR RIDE Marks: AIR RIDE, ECP AIR RIDE, and AIR RIDE by ECP, all of which matured to registration in 2011. The plaintiff brought action for declaratory judgment, trademark cancellation based on fraud, civil liability for false or fraudulent registration under 15 U.S.C. § 1120, trademark infringement under 15 U.S.C. § 1125(a)(2), and unfair competition under California Business and Professions Code § 17200 *et seq.* The defendants filed a motion to dismiss Plaintiff's second, third, and fifth causes of action by arguing the plaintiff "did not ever 'clearly established trademark' rights sufficient to transform defendant's non-

66. No. 3:13cv1076 (JBA), 2014 WL 2854539 (D. Conn. June 23, 2014).

67. No. 13CV1484 AJB KSC, 2014 WL 524007 (S.D. Cal. Feb. 10, 2014).

disclosure into a fraudulent trademark application," and the plaintiff did not allege plausible grounds for scienter, which was an essential element in the three causes of action.[68] The court denied the defendant's motion to dismiss the second, third, and fifth causes of action because the plaintiff was not required to show clearly established rights; the plaintiff adequately alleged that the plaintiff had rights superior to the defendant; the plaintiff established enough facts to infer that ECP had knowledge of the plaintiff's products and use of the mark AIR RIDE; and the plaintiff properly alleged damages in terms of lost market share, sales decline, and damage to reputation caused by the assertion or use of the defendant's fraudulently procured registration.

Varsity Brands, Inc. v. Star Athletica, LLC[69]

Varsity Brands, Inc., a sports apparel designer, manufacturer, and seller, sued Star Athletica, LCC, another sports apparel designer, for copyright infringement. Varsity claimed, "Star copied, reproduced, displayed, and distributed infringing images of [copyrighted cheerleading uniform] designs in its 2010 catalog and internet website, and . . . incorporate[ed] the designs onto the surface of Star's cheerleading uniforms."[70] Since "[c]lothing possesses both utilitarian and aesthetic value," the court assessed whether Varisty's cheerleading uniform designs could be both conceptually and physically separated from the utilitarian features of the cheerleading uniforms and, thus, receive protection.[71] The court answered the inquiry in the negative and granted Star's motion for summary judgment.

LABOR & EMPLOYMENT

The National Labor Relations Act (NLRA) governs the relationship between employees and employers and is significant in the professional sports context since most American professional sports leagues are unionized. In addition to the NLRA, federal and state employment laws regulate employment relationships in the sports industry, as illustrated in the following cases.

Beckwith v. Duluth Lawn & Sport, Inc.[72]

The plaintiff, David Beckwith, was an employee who was fired from Duluth

68. *Id.* at *2.

69. No. 10-2508, 2014 WL 819422 (W.D. Tenn. Mar. 1, 2014).

70. *Id.* at *2.

71. *Id.* at *3.

72. No. A14-0850, 2014 WL 6863310 (Minn. Ct. App. 2014).

Lawn & Sport. Beckwith petitioned that he was entitled to unemployment benefits because he was not given warnings by Duluth Lawn & Sport that his behavior was inappropriate and other employees who were not terminated exhibited similar inappropriate behavior. Beckwith challenged a decision by an unemployment law judge that he was discharged for employment misconduct and is ineligible for unemployment benefits. Here, the court held that Beckwith was terminated based on his cumulative conduct of using his cell phone at work after being told to stop, not punching out for lunch after being told to punch out for lunch, throwing a shovel at a customer's snowmobile, leaving work early and missing a day of work without prior approval, and making derogatory remarks in front of a customer. Thus, the court affirmed that Beckwith was ineligible for unemployment benefits based on employment misconduct.

Chen v. Major League Baseball[73]

John Chen, who worked as an unpaid volunteer at the MLB All-Star Game, sued MLB Properties and the Office of the Commissioner of Baseball under the Fair Labor Standards Act (FLSA) claiming violations of his right to receive minimum wage. Defendants argued that the court should dismiss Chen's complaint because he was not an "employee" as defined under the FLSA and, even if he is an "employee," he worked for an "amusement or recreational establishment" that is exempt under the act. Without reaching the question of whether Chen was an "employee," the court determined that the "amusement or recreational establishment" exception applied to the fan festival and granted the defendant's motion to dismiss Chen's FLSA claims.

Grant v. National Football League Players Ass'n[74]

This is an appeal of the district court's entry of summary judgment in favor of the National Football League Players Association (NFLPA). Grant attempted to establish an agency relationship exists between the NFLPA and retired players. The court found that the plaintiffs "were not NFLPA members during the period covered by this lawsuit because they neither paid dues nor received formal due waivers."[75] It also determined that they "produced [no] evidence showing that they had a right to control the NFLPA's alleged activities on their behalf."[76] The court affirmed the lower court's grant of judgment in favor of the NFLPA, because simply "offering help" does not create an agency relationship,

73. 6 F. Supp. 3d 449 (S.D.N.Y. 2014).

74. 566 F. App'x. 569 (9th Cir. 2014)

75. *Id.* at 570.

76. *Id.*

which, according to the court, is all the evidence from the record suggested.

Tamburino v. Madison Square Garden, L.P.[77]

Plaintiffs were all members of a union and all previously worked as food and beverage servers at Madison Square Garden, which was owned by the defendant, MSG Holdings, LLC. Plaintiffs filed suit pursuant to Labor Law § 196-d, which prohibited employers from demanding or accepting gratuities received by an employee, on behalf of themselves and a class of similarly situated individuals and claimed that the defendant retained a portion of a mandatory service charge that should have been allocated to the plaintiffs as a gratuity. The defendants argued that the plaintiffs' claims were preempted by federal law and subject to mandatory grievance and arbitration procedures under a collective bargaining agreement. The lower court denied the defendant's motion to dismiss. The appellate court affirmed the lower court's decision after finding that nothing in the CBA waived the employee's right to gratuities; nothing in the CBA clearly and unmistakably stated that disputes shall be governed through a mandatory grievance and arbitration process; and federal law did not preempt the plaintiffs' state law claims.

Wolfe v. AGV Sports Grp.[78]

The plaintiff, Ross Wolfe, filed this class action on behalf of himself and others against the defendant, AGV Sports Group. Wolfe alleged that AGV, a company that develops and produces motorcycle safety gear, violated the FLSA. Wolfe argues that AGV has a policy of classifying the majority of its program participants as unpaid interns. However, AGV used these unpaid interns to perform AGV's core business functions and AGV had no paid employees. Thus, Wolfe argued that the intern program is a sham intended to circumvent federal and state wage and hour laws. Wolfe contended that AGV misclassified Wolfe and others like him as unpaid interns when they were actually employees entitled to wages. Here, the court held that Wolfe had pled more than enough facts to show AGV was the primary beneficiary of his labor, not Wolfe. Therefore, the court determined plausibility in that AGV violated the FLSA, thus Wolfe's claim survived AGV's motion to dismiss.

PROPERTY LAW

Property law may involve rights and benefits in personal or real property.

77. 115 A.D.3d 217(App. Div. 2014).

78. No. CCB-14-1601, 2014 WL 5595295 (D. Md. Nov. 3, 2014).

In the sports context, property law claims generally revolve around zoning, taking, or nuisance issues involving sports facilities. The following cases demonstrate these issues involving real property.

Bargo v. Kuhns[79]

Two members of a sporting club appealed the ruling of a lower court, which held that the two members could not partition a parcel of property that was purchased to be held in a trust for all members of a hunting club because the members were not co-tenants. The two members claimed that other members committed oppressive acts, but failed to allege any specific acts. The appeals court affirmed the lower court after finding that the two members were not entitled to partition the land held by the sporting club, which was an unincorporated association, because, according to the express language of the deed, the members of the club held the property as trustees for the benefit of the membership, and were not tenants in common with the other members.

Keystone Sports and Entm't, LLC v. City of Chester Zoning Hearing Bd. of Comm'rs[80]

Keystone Sports was the owner and operator of a soccer stadium in Chester, PA. The Zoning Board of Chester granted use variances to two businesses to operate parking facilities on three parcels of land located near the soccer stadium. Parking lots are not usually permitted in this zoning district and Keystone Sports argued that these lots caused significant delays in leaving the stadium, created traffic jams at various intersections, and hindered traffic flow while compromising the safety of patrons. Keystone Sports sought an appeal of the Zoning Board's granting of variances to these parcels of land. The court held that these variances would not alter the character of the neighborhood, impair adjacent properties, or be a detriment to public welfare, thereby affirming the ruling of the Board in allowing the use variances.

Rodman v. Commonwealth[81]

The plaintiff, Donald Rodman, owns property across from Gillette Stadium and fourteen acres of his property has been used as a temporary parking lot. The Commonwealth of Massachusetts, the defendant, took by eminent domain

79. 98 A.3d 687 (Pa. Super. Ct. 2014).

80. No. 1017 C.D.2013, 2014 WL 2527518 (Pa. Commw. Ct. June 3, 2014).

81. 17 N.E.3d 479 (Mass. App. Ct. 2014).

nearly five acres of his property and awarded Rodman a pro tanto award. Rodman commenced this action seeking a greater damages award.[82] Originally, the jury awarded a sum lower than the pro tanto amount and ordered Rodman to pay the difference, leading to Rodman appealing the verdict. Here, the Massachusetts Appellate Court held that Rodman was entitled to bring up facts showing what type of development could occur on the land. This excluded testimony impacted the credibility of Rodman and should have been allowed to be heard by the jury. Thus, the judgment was vacated and there was enough to warrant a new trial.

Santa Fe Pac. Trust, Inc. v. City of Albuquerque[83]

Santa Fe Pacific Trust (SFPT) owned land in downtown Albuquerque, New Mexico, which two mayors viewed as a potential location for an events arena. However, this potential condemnation of the land generated significant publicity and the City of Albuquerque never fully developed this plan. SFPT claimed it lost potential sales and leases on the property and brought a claim of inverse condemnation against the City.[84] The Court held that SFPT failed to show that the City of Albuquerque took any action that substantially interfered with SFPT's use and enjoyment of the property. Thus, the court affirmed summary judgment entered in favor of the City.

TAX LAW

Tax law involves rules that regulate federal and state tax obligations. Tax law plays a significant role in the professional sports industry, particularly regarding sports facilities and the importation of goods.

Akey v. C.I.R.[85]

During the tax calendar year, the petitioner, Terry Gene Akey, engaged in an activity involving sports memorabilia. The court was trying to determine whether Akey's activity was engaged in for profit, ultimately finding that he was not engaged in profit based activity on a variety of factors. Akey did not carry out this activity in a businesslike manner as he failed to maintain complete and accurate books and records, nor did he change his operating methods to increase profitability. Akey did not maintain a separate bank account for his

82. *Id.*

83. 355 P.3d 232 (N.M. Ct. App. 2014).

84. *Id.*

85. T.C. 2014-211 (2014).

sports memorabilia activity, nor did he prepare any financial analysis for this business. Akey is not an expert in the field nor did he consult with anyone who had expertise. Akey did not devote personal time and effort to carry on this activity, did not realistically expect that the assets used in this activity would appreciate, and had a history of substantial losses and minimal profits in this field. Thus, the court concluded that none of the factors supported the existence of a profit motive, and his allowable deductions should be limited to the amount of gross income generated from his sports memorabilia activity.

Chicago Bears Football Club v. Cook Cnty. Dep't of Revenue[86]

The Chicago Bears brought an action for judicial review of an administrative decision that was ruled in favor of the county's department of revenue, which assessed delinquent amusement taxes and interest. Cook County's Amusement Tax Ordinance imposed an "amusement tax" of "three percent of the admission fees or other charges paid for the privilege to enter, to witness or to view such amusement."[87] From February 2002 through April 2007, the Bears calculated and paid the amusement tax on the value of a seat for home football games, without including the value of the other amenities available to the ticket holder that are charged to the ticket holder as part of the ticket price. The Cook County Department of Revenue contended that the value of such amenities is subject to the amusement tax and issued an assessment charging the Bears with a tax deficiency, and an administrative law judge agreed with the County and assessed delinquent amusement taxes and interest at $4.14 million. The court reversed the circuit court and confirmed the administrative decision after concluding that the Bears should have included the price of the other amenities included with the price of a ticket for tax purposes.

Deckers Corp. v. U.S.[88]

Deckers is a company that imports Teva Sports Sandals from Hong Kong for sale in the United States. United States Customs classified the sandals under a very broad classification of "other footwear," which is subject to a 37.5% tax. Decker argued that the Sports Sandals should have been classified under a more specific category of "sports footwear," subject to only a 20% tax. The United State Court of International Trade held the classification under the Harmonized Tariff Schedule of the United States was correct. Here, the court of appeals held

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86. 16 N.E.3d 827, 829 (Ill. App. Ct. 2014) *appeal denied*, No. 118221, 2014 WL 6886110 (Ill. Nov. 26, 2014).

87. *Id.*

88. 752 F.3d 949 (D.C. Cir. 2014).

that the sandals classification was valid. Deckers presented the same issue of law here as before the Court of International Trade, so the court was bound by the principles of *stare decisis* to affirm the decision of the Court of International Trade.

Harry & Rose Samson Family Jewish Cmty. Ctr. Inc., v. City of Mequon[89]

The plaintiff, Harry and Rose Samson Family Jewish Community Center, Inc., owned a recreation facility and claimed that the facility should be tax exempt under Wis. Stat. § 70.11(4), which allowed for property tax exemptions for property "owned and used exclusively by . . . religious, educational or benevolent associations."[90] The issue was whether a taxpayer was entitled to a property tax exemption under Wis. Stat. § 70.11(4) for property that the taxpayer used for recreational community activities and children's programs under the benevolent associations category of the statute. The court ruled that the statutory term "benevolent" meant something more than merely well-wishing, doing good, or having an inclination to perform kind acts and that the property owner was required to show that the property was clearly within the terms of the exemption and any doubts were resolved in favor of taxability. The court found that the taxpayer failed to meet its burden of establishing with clarity that the activities had a benevolent purpose, which meant the City's denial of the exemption had to be upheld, regardless of whether the activities on the taxpayer's property could be considered benevolent in nature.

Red Bull Arena v. Town of Harrison[91]

Red Bull Arena filed a complaint seeking to vacate local property tax assessments on lands owned by the Town of Harrison's redevelopment agency. Red Bull Arena also sought to vacate local property tax on a stadium that the taxpayers had constructed on the land. The Tax Court granted summary judgment to the Town, ruling that the agency owned the land, Red Bull Arena owned the stadium, and that neither the land nor stadium were tax exempt because they were not used for a public purpose. Red Bull Arena appealed this decision, arguing that the Redevelopment Law must be liberally construed to exempt the land and stadium as devoted to an essential public purpose. Here, the court held that Red Bull operated the stadium privately which was not in furtherance of the statutory mandate of the Redevelopment Law. Therefore, the property was not used for a public purpose and the land and stadium were not tax exempt.

89. 855 N.W.2d 493 (Wis. Ct. App. 2014).

90. *Id.*

91. Nos. 10999–2010 & 6832–2011, 2014 WL 1875318 (N.J. Super Ct. App. Div. May 12, 2014).

Riddell, Inc. v. U.S.[92]

Riddell is an importer of football apparel and it challenged the Court of International Trade, which upheld the classification of Riddell's imported jerseys and football pants as "articles of apparel" under the Harmonized Tariff Schedule of the United States. Riddell claims that the merchandise should have been classified as "sports equipment," which would have lowered the tariffs Riddell would have to pay on the merchandise. Here, the court held that "sports equipment" does not include items that would be understood as clothing, or something that was seen as a garment and covered the skin. Jerseys and pants are worn on the body and composed of textile materials, so they are classified as "articles of apparel," not "sports equipment;" thus, the ruling of the Court of International Trade was affirmed.

Zierdt v. C.I.R[93]

The petitioner claimed that he was a professional gambler who spent approximately 45 hours a week gambling, attending seminars, and reading books on how to improve his gambling skills. The petitioner tried to claim reported gambling incomes of $7,780.00 and $41,173.00 for his 2009 and 2010 tax returns, but he mislabeled and comingled his gambling and stockbroker—his other job—expenses on his tax returns. The Commissioner of Internal Revenue issued a notice of deficiency to petitioner for 2009, disallowing $7,295.00. The Commissioner further disallowed $22,626.00 in 2010 for a lack of substantiation. The court found that the petitioner was not entitled to deductions for the gambling expenses he claimed in 2009 and 2010 because he failed to prove that his sports gambling activity was engaged in for profit, he did not conduct the activity in a businesslike manner, he did not attempt to gain expertise in gambling, he had a history of losses, and he derived personal pleasure from the activity. The court sustained the C.I.R.'s determinations that the petitioner was not entitled to any deductions for his gambling-related expenses that he reported in 2009 and 2010.

TORT LAW

Tort law is, by far, the most litigated issue in sports. Tort law governs the duty of care to participants, coaches, and spectators. Generally, courts must balance the inherent risks associated with sports with the degree of safety due to others. The following cases illustrate how courts analyze tort claims against

92. 754 F.3d 1375 (D.C. Cir. 2014).

93. No. 14337-12S, 2014 WL 4066257 (T.C. Aug. 18, 2014).

sports entities.

City of Corpus Christi v. Ferguson[94]

The plaintiff, a sailboat owner who leased a boat slip at the city marina, sustained injuries when she slipped on ice as she walked from the marina's shower facility to her boat. The plaintiff brought an action against the defendant, the City of Corpus Christi, for premises liability. The defendant filed a plea to the jurisdiction after asserting governmental immunity applied due to the recreational use statute. The district court denied the plea and the defendant appealed. The appeals court affirmed the circuit court decision after deciding that the plaintiff's actions at the time of her fall constituted recreation under the state recreational use statute, meaning the City owed the plaintiff a duty of care not to injure the plaintiff willfully, wantonly, or through gross negligence. Further, the appeals court determined that the evidence showed disputed facts as to whether the defendant had actual knowledge of the icy conditions at the marina, as required for a showing of gross negligence.

Coomer v. Kan. City Royals Baseball Corp.[95]

The Kansas City Royals baseball mascot throws hot dogs in the stands as a promotion during games. John Coomer was hit in the eye with a hotdog and claimed the Royals were responsible for the mascot's negligence and the damages it caused. The issue was whether the risk of being injured by the mascot throwing hotdogs was one of the inherent risks of watching a Royals home game. The court held that the risk of being injured by a hotdog toss is not an inherent risk when watching a Royals game. While certain risks are unavoidable, like baseballs entering the stands, this court determined that the risk of being injured by a hotdog toss is not an unavoidable part of watching a Royals game, thus Coomer's claim was not barred by the assumption of risk doctrine.

Dann v. Family Sports Complex, Inc.[96]

The plaintiff, Andrew Dann, was an experienced soccer player who was injured while playing in a recreational soccer game inside a dome operated by Family Sports Complex. The dome contains multiple soccer fields and its inflated fabric walls are anchored to a concrete footer that rises ten inches above ground level. Dann lunged for a ball and slid into the raised footer, which was located approximately fifty-five inches from the goal line and was concealed by

94. No. 13-12-00679-CV, 2014 WL 495146 (Tex. App. Feb. 6, 2014).

95. 437 S.W.3d 184 (Mo. 2014).

96. 997 N.Y.S.2d 836 (N.Y. App. Div. 2014).

the inner vinyl of the dome, causing Dann to shatter his kneecap. Dann appealed a motion of summary judgment in favor of the defendant, and the appeals court held that an issue of fact existed with respect to whether the plaintiff assumed the risk of injury. The court held that Dann did not see the concrete footer and did not know it was underneath the vinyl liner, thus finding a triable issue of fact as to whether the assumption of risk doctrine applies.

FCHI, LLC v. Rodriguez[97]

Respondent Enrique Rodriguez sued the Palms Casino Resort to recover damages for the knee injury he suffered while sitting in its Sportsbook bar watching Monday Night Football. The injury occurred when another patron dove for a sports souvenir that a promotional actor, paid by the Palms, tossed into the crowd. Rodriguez sued the Palms on a theory of negligence and won a monetary judgment, which the Palms appealed. Rodriguez's claim was based on a theory of premises liability, mainly stating that the Palms had increased the risk to Rodriguez by not stopping the promotional actor's souvenir tossing. The Palms argued that tossing souvenirs to an audience at a sporting or entertainment venue is common and the risk cannot be eliminated without altering the fundamental nature of the event. However, the court stated that they could not find any risk of injury inherent in the underlying activity Rodriguez engaged in here, namely attending a televised sporting event at a casino sports bar. Thus, the district court did not err by declining to find that the Palms owed no duty as a matter of law.

Fleury v. IntraWest Winter Park Operations Corp.[98]

The plaintiff was the wife of a skier who was killed by an avalanche while skiing at the defendant's ski resort. The plaintiff sued the defendant, individually and on behalf of her minor children, for negligence and wrongful death. The plaintiff appealed after the district court granted the defendant's motion for determination of law and judgment on the pleadings after determining that avalanches were an inherent risk or danger of skiing as provided under the Ski Safety Act. The Colorado Court of Appeals affirmed the district court's decision after finding the avalanche that killed the plaintiff's husband was an inherent risk or danger under the Ski Safety Act, and that the defendant was not required to close the runs or post warning signs about possible avalanche dangers.

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97. 335 P.3d 183 (Nev. 2014).

98. No. 13CA0517, 2014 WL554237 (Colo. App. Feb. 13, 2014).

Goins v. Family Y[99]

James and Jennifer Goins sued Family Y (the YMCA) for negligence and fraud after their 16-year-old son collapsed and died while walking on a treadmill at the YMCA's facility. With regards to the negligence claim, the court determined that the YMCA undertook only one duty, which was to provide Goins with a personal trainer. Further, it determined that no YMCA employee had reason to interfere with the medical care rendered by the emergency medical technician and deputy sheriff who were present at the time of Goins' collapse. With regards to the fraud claim, the court, "assuming . . . [the] Goins could establish the other elements of their fraud claim," determined that they could not "show . . . damage as [a] result of th[e alleged] fraud," because the facility's most highly trained people administered CPR and stated that "a defibrillator [is] not . . . used on someone with a pulse who was still breathing."[100]

Mitre Sports Int'l Ltd. v. Home Box Office[101]

Mitre is a sporting goods brand headquartered in the United Kingdom that sells soccer balls worldwide as one of their sporting goods products. HBO aired a segment on the show Real Sports that focused on child labor issues in India. The segment discussed how these children made soccer balls for several companies, one of them including Mitre. Mitre brought a defamation action against HBO alleging that the Real Sports program falsely portrayed Mitre as employing child labor in the manufacturing of soccer balls in India. The issue was whether HBO's actions and statements in this segment constituted defamation against Mitre and both parties moved for summary judgment. The court held that questions of material fact remained as to whether the segment was susceptible to a defamatory meaning, whether the segment was substantially true, and if HBO was grossly irresponsible. Therefore, the court stated that determining a level of fault on HBO requires an evaluation of the factual evidence and an assessment of witness credibility that is only appropriate for a jury.

Packard v. Darveau[102]

A wife brought a negligence and wrongful death action against those involved with hosting an annual demolition derby and tractor pull, including the event sponsor, the owner of property on which the event was held, and the lessee of the property, after her husband was killed when his motorcycle collided with

99. 757 S.E.2d 146 (Ga. Ct. App. 2014).

100. *Id.*

101. 22 F. Supp. 3d 240 (S.D.N.Y. 2014).

102. 759 F.3d 897 (8th Cir. 2014).

a motorist who was entering the property to attend the event. The appeals court affirmed the trial court's finding that the landowner and event organizers had no duty to control traffic on the Nebraska public roadways because that rested with the government, and the defendants owed no duty to the driver. Private entities do not have a duty to control, regulate, direct, guide, or warn of dangers presented by traffic on public highways.

Palmer v. U.S. Amateur Boxing, Inc.[103]

In March 2012, the estate of deceased Marine, Libardo Jimenez, brought negligence, wrongful death, and breach of fiduciary duty claims against United States Amateur Boxing, Inc. and the coach of the boxing team, Ronald Simms, who was later replaced by the United States Government as defendant. The plaintiff asserted that, during an "intensive training session," Simms forced Jimenez to continue training, even after Jimenez informed Simms he was having trouble breathing, Jimenez collapsed twice during the training session, and other Team members complained and raised concerns about Jimenez's health to Simms. Later during the training session, Jimenez lost vision and consciousness, was airlifted to a local hospital, and eventually died from a closed-head injury. Since the plaintiff failed to file an administrative claim with the Department of the Navy, the court determined it lacked jurisdiction to hear the claims against the government for plaintiff's failure to exhaust his administrative remedies.

Patterson v. Mut. of Omaha Ins. Co.[104]

Plaintiff was a cheerleader at a university and was paralyzed while practicing a tumbling maneuver during a gymnastics class. The plaintiff sued the defendant insurance company seeking coverage under an insurance policy the defendant issued to the university as a member of the National Collegiate Athletic Association. The defendant's policy covered student cheerleaders who were injured during practice sessions. The district court denied the defendant's motion for summary judgment and granted the plaintiff's motion after determining that the gymnastics class was considered a practice session and was covered under the policy. The Eighth Circuit affirmed the district court's ruling because the class fit the definition of a practice session under the policy. The court found: (1) the class was a meeting or period that was devoted to the systematic exercise of gymnastic skills that were regularly used in cheerleading; (2) the fact that it was a class did not mean it could not also be a practice session; (3)

103. 4 F. Supp. 3d 779 (E.D.N.C. 2014).

104. 743 F.3d 1160, 1162 (8th Cir. 2014).

the Plaintiff's cheerleading coach authorized the cheerleading practice and taught the class; and (4) the cheerleading activities performed during the class were performed in preparation for a qualifying intercollegiate sport team competition under the policy.

Pierson ex rel. Pierson v. Serv. Am. Corp.[105]

Trenton Gaff attended an Indianapolis Colts game at Lucas Oil Stadium and consumed alcoholic beverages pre-game, during the game, and post-game. After the game, Gaff was intoxicated when his vehicle struck and killed a twelve-year-old girl, Tierra Pierson. The Pierson family filed a complaint against Centerplate, the vendor of alcoholic beverages at Lucas Oil Stadium, arguing that Centerplate "negligently failed to train, instruct, monitor, and restrict the sale of alcoholic beverages to visibly intoxicated persons, including Gaff."[106] The trial court found summary judgment in favor of Centerplate, concluding there was no evidence that a Centerplate employee or designee served alcohol to Gaff while he was visibly intoxicated or that alcohol served by Centerplate was a proximate cause of the accident. The issue was whether the trial court improvidently granted summary judgment to Centerplate and did not view evidence in the light most favorable to the non-movant. The court held that there was a genuine issue of material fact as to whether a Centerplate agent served Gaff even a single drink with actual knowledge of his visible intoxication, thus precluding summary judgment and reversed the decision.

Singh v. PGA Tour, Inc.[107]

Plaintiff, a professional golfer and lifetime member of the defendant organization, an entity that organizes men's professional golf tournaments and events, began using deer antler spray for his knee and back problems. Later, an article on *Sports Illustrated*'s website suggested that the plaintiff used a banned substance in using the deer antler spray. The plaintiff called the defendant about the allegation and after testing the deer antler spray, the defendant determined the plaintiff committed a doping violation because the spray contained a banned substance listed in the defendant's anti-doping manual, thus suspending the plaintiff for ninety days and holding his earnings in escrow. The plaintiff appealed pursuant to the procedure in the anti-doping manual and commenced an arbitration proceeding. The defendant ceased its disciplinary action when

105. 9 N.E. 3d 712 (Ind. Ct. App. 2014).

106. *Id.*

107. No. 651659/2013, slip op. (N.Y. Sup. Ct. Feb. 13, 2014).

WADA determined that the deer antler spray should be removed from its prohibited substances list. The plaintiff filed suit alleging the defendant recklessly administered its anti-doping program—causing the plaintiff ridicule and humiliation. The defendant placed the plaintiff's prize money in escrow without legal authority; and the Defendant inconsistently disciplined golfers who admitted using deer antler spray. The Plaintiff asserted causes of action for breaches of fiduciary duty; and implied covenant of good faith and fair dealing; intentional infliction of emotional distress; conversion; and negligence. The Defendant moved for dismissal claiming that the Anti-doping manual's release provision and arbitration clause provided that the Plaintiff waived his right to bring an action before the court, that dismissal was proper based on the doctrine of judicial noninterference, and that the Plaintiff failed to sufficiently plead each cause of action in the complaint. The Court ruled that the release provision, the provisions of the Anti-doping manual that addressed arbitration or waiver of judicial review, and the doctrine of judicial noninterference did not provide a basis for dismissing the complaint. However, the Court dismissed the Plaintiff's negligence claims because the Plaintiff failed to allege a breach of a duty to speak with care. The Court denied the Defendant's motion to dismiss the Plaintiff's implied covenant of good faith and fair dealing claim because the Plaintiff sufficiently pled a cause of action after showing that other golfers who had taken the deer antler spray were not disciplined the same way. The Court granted the Defendant's motion for dismissal on the Plaintiff's breach of fiduciary duty claim because the Plaintiff could not show a fiduciary relationship. Similarly, the Court granted the Defendant's motion to dismiss the Plaintiffs intentional infliction of emotional distress claim because the Defendant's conduct was not extreme and outrageous. Finally, the Court denied the Defendant's motion to dismiss on the Plaintiff's conversion claim because the Plaintiff alleged that some of his prize money was held in escrow before he was given notice of such as required under the Anti-doping manual.

Tarantino v. Queens Ballpark Co.[108]

The plaintiff, Vincent Tarantino, allegedly sustained injuries when struck by a foul ball during a New York Mets baseball game at Citi Field. Tarantino alleged that he was sitting at a table in a luxury suite with the windows open when he was hit. Tarantino brought a negligence action against a multitude of parties, including Queens Ballpark, alleging that his injures were due to the defendant's negligence. The Court held that in the exercise of reasonable care, the ballpark must only provide screening for the area behind home plate, where the

108. 123 A.D.3d 1105 (N.Y. App. Div. 2014).

danger of being struck is the greatest. Here, the plaintiff was sitting in a luxury suite, not behind home plate, so his complaint lacked an actionable cause of action. Thus, the Court held that the defendants did not owe a duty to protect Tarantino.

Woods v. H.O. Sports Co. Inc.[109]

Plaintiff appealed lower court's decision that granted summary judgment in favor of the defendant, the plaintiff's father, based on the parental immunity doctrine. Plaintiff was injured when he was ejected from an inner tube that his father was pulling behind his boat. The Washington Court of Appeal held that the parental immunity doctrine was inapplicable and reversed the trial court's decision because the father's actions did not involve parental control, discipline, or discretion; and the father's actions did not involve negligent supervision, parental discretion, or decision-making in how to raise his child.

UNITED STATE ANTI-DOPING AGENCY

The United State Anti-Doping Agency (USADA) processes drug violations for Olympic athletes and imposing sanctions based on specified procedure. USADA decisions are usually appealed to the American Arbitration Association (AAA) The following decisions demonstrate how USADA and AAA adjudicate doping violations.

USADA v. Drummond[110]

The Respondent, Jon Drummond, was a personal coach for track athlete Tyson Gay and the coach of the U.S. Olympic Relay Team in for the 2012 London Olympic Games. Drummond was required under the Coaches Code of Conduct not to commit a doping violation and to protect his athletes from the harm of doping offenses. Gay tested positive for a banned substance and the United State Anti-Doping Agency (USADA) charged Drummond with violations of International Amateur Athletic Federation (IAAF) rules for his confidence in and use of chiropractor, Dr. Gibson, who gave Gay the banned substance. Here, the American Arbitration Association (AAA) found that Drummond violated the rule of possession when he kept the crèmes received from Dr. Gibson for Gay. The AAA also found that Drummond transported and delivered the crèmes to Gay, violating the rules against trafficking. Lastly, Drummond violated the rules against administration of a banned substance when he refused to

109. 333 P.3d 455 (Wash. App. 2014).

110. AAA 01-14-0000-6146 (Dec. 17, 2014).

warn or tell Gay to avoid Gibson. Thus, the AAA determined that Drummond did not act in the manner expected of a coach in the Olympic movement and suspended him from coaching for a period of eight years.

USADA v. Trafeh[111]

The United States Anti-Doping Agency (USADA) is the Claimant and Mohamed Trafeh, a member of USA Track and Field, is the Respondent. USADA alleged that Trafeh attempted to use a prohibited substance known as EPO when he purchased it, thereby committing a violation of International Amateur Athletic Federation (IAAF) rules. USADA also alleged that Trafeh trafficked substances in violation of IAAF rules, when he attempted to smuggle six syringes of EPO into the United States. Here, the American Arbitration Association (AAA) determined that Trafeh was subject to and violated numerous provisions of the IAAF. Thus, the AAA determined Trafeh to be ineligible to participate in sport related activities for a period of four years.

CONCLUSION

The cases and arbitral decisions adjudicated in 2014 are sure to have a significant impact on the sports industry and sports law. This survey does not include every sports related case in 2014, but does briefly summarize the most interesting and insightful sports law cases of the past year.

Krista D. Brown, Articles & Survey Editor (2014-2015)
with contributions from Timothy D. McPeters, Andrew Sanchez, and Ethan Sebert

111. AAA 01-14-0000-4694 (Dec. 2, 2014).