2004 Annual Survey: Recent Developments in Sports Law

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2004 ANNUAL SURVEY:
RECENT DEVELOPMENTS IN SPORTS LAW

INTRODUCTION

This article is a survey of sports law cases during the period of January 1, 2004 to December 31, 2004. This article does not encompass every case from the past year but is an attempt to highlight those cases that have further defined the unique area of sports law practice. To provide clarity, this article is divided into topics based on a particular focus. With tens of cases having been decided in the past year, this survey demonstrates that the field of sports law is still thriving and continues to make a lasting impact on the legal system.

AGENTS

Sports agents play a considerable role in the field of sports law through their involvement in the negotiation of contracts and representation of athlete clients. Because agents often represent a number of players, jurisdictional issues can arise. In the following case, the court addressed the issues of jurisdiction over an athlete agent.

_Sportrust Associates International, Inc. v. Sports Corp._

In _Sportrust Associates International, Inc. v. Sports Corp._, the Eastern District of Virginia found that an agent who represented two Norfolk Admirals hockey players did not have the requisite contact with Virginia to create personal jurisdiction.

The plaintiffs, who represented NHL players, sued the defendants, who also represented NHL players, and claimed that the defendants defamed their reputations, conspired against them, and tortiously interfered with their representation. As their defense, the defendants contended that Virginia had no personal jurisdiction over them. As the defendants' only connection with

2. _Id_. at 794.
3. _Id_. at 790-91.
4. _Id_. at 791.
Virginia was their representation of two Norfolk Admirals hockey players, unrelated to this case and they spent only one day in the state, the court determined that this contact was not substantial enough to establish personal jurisdiction over the defendants. Accordingly, the court granted the defendants' motion to dismiss.

ANTITRUST LAW

Antitrust law is applied to create a more competitive market in an attempt to provide the optimal price and variety of products to consumers and to prevent monopolization. Antitrust law applies in a unique manner in the area of sports. Because sports, especially professional sports, are confined to a single league or association, these entities must be given special allowances in order to maintain production of sports, while further maintaining a balance and preventing abuse of consumers. In the past year a prolific antitrust lawsuit was decided involving Maurice Clarett's unsuccessful antitrust challenge to the NFL's age eligibility rule. What follows is an explanation of this case as well as a discussion of other applications of antitrust analysis, namely in the area of participation restrictions imposed on collegiate teams.

Clarett v. NFL

In Clarett v. NFL, the Second Circuit denied former Ohio State University running back Maurice Clarett's bid to enter the NFL a year early and upheld the NFL's age eligibility rule by concluding that the nonstatutory labor exemption applied to the rule.

During his freshman year, Clarett was a successful running back at Ohio State. His college career came to a halt when the NCAA suspended him from football after his first season for NCAA rules violations. Clarett sought to enter the NFL draft because he could not play college football, but was rejected due to the NFL's age eligibility rule that required three full college football seasons to have elapsed since his high school graduation. Clarett sued the NFL claiming that its age eligibility rule violated section one of the

5. Id. at 793-94.
6. Id. at 794.
8. Id. at 125.
10. Id. at 388.
11. Id.
Sherman Act. To consider Clarett's claim, the court first examined the NFL's collective bargaining agreement with its players. Initially, the circuit court determined that the nonstatutory labor exemption did not apply. The court then applied a quick look rule of reason antitrust analysis and concluded that the rule was anticompetitive in nature and that the NFL could not offer any legitimate procompetitive justifications for the rule. Furthermore, the court stated that even if the NFL could offer a legitimate procompetitive justification, less restrictive means were available to implement the rule. Accordingly, the court granted summary judgment to Clarett and denied the NFL's request for a stay of the decision until after the draft.

On appeal after granting the NFL's request for a stay, the Second Circuit Court of Appeals held that the nonstatutory exemption applied to the eligibility rule. Finding that the NFL had a collective bargaining relationship with the players' union, the court concluded that the rule was a mandatory subject of bargaining because it affected the wages and working conditions of current NFL players. Even though the rule was not expressly mentioned in the collective bargaining agreement, the court found that the provision in the collective bargaining agreement embodying the union's agreement not to challenge the league's constitution and bylaws - the documents which stated the rule - to be sufficient evidence that the two sides had considered the issue. Thus, because the court found that the nonstatutory exemption applied to the eligibility rule and that Clarett's claim subverted federal labor policy, the court upheld the eligibility rule and denied Clarett's entry into the 2004 draft.
Morris Communications Corp. v. PGA Tour, Inc

In *Morris Communications Corp. v. PGA Tour, Inc.*, the Eleventh Circuit Court of Appeals found that the PGA did not violate section two of the Sherman Act by requiring media organizations to follow certain regulations in distributing real-time scores.

To monitor golf scores during a tournament, PGA developed a real-time scoring system (RTSS). As the PGA forbids cell phones and other handheld devices because of the potential disruption to play, the RTSS is the only source of golf scores for all tournament participants and can be obtained only at the PGA media center. For media organizations to access the media center, they must obtain a free press credential and agree to delay publication of the scores until thirty minutes after the player's shot or the PGA publishes the score on its website. Additionally, they must agree not to sell the scoring information to a third party without buying a license from the PGA. Due to these regulations, Morris, a media company, alleged that PGA has an unfair advantage and violated section two of the Sherman Act by monopolizing the internet market, refusing to deal, and monopoly leveraging of the internet market. Agreeing with the district court, the Eleventh Circuit Court of Appeals held that even if PGA had monopoly power in the relevant market, a valid business justification existed for the PGA's actions because it was trying to prevent Morris from "free-riding" on the PGA's RTSS technology. Moreover, the court found that Morris could not prove that the PGA's business decision was pretextual. Accordingly, the court upheld summary judgment in favor of the PGA.

*Worldwide Basketball & Sport Tours, Inc. v. NCAA*

In *Worldwide Basketball & Sport Tours, Inc. v. NCAA*, the Sixth Circuit concluded that an antitrust challenge to an NCAA rule failed due to the

25. 364 F.3d 1288 (11th Cir. 2004).
26. *Id.* at 1298.
27. *Id.* at 1290.
28. *Id.* at 1291.
29. *Id.*
30. *Id.*
31. *Id.* at 1291-92.
32. *Id.*
33. *Id.* at 1298.
34. *Id.*
35. 388 F.3d 955 (6th Cir. 2004).
challengers having failed to define a relevant market.\textsuperscript{36}

Concerned that many big-name basketball schools were disproportionately entered into certified basketball tournaments, the NCAA enacted rule 98-92 which prevented teams from entering into more than one certified tournament in an academic year and more than two certified tournaments every four years.\textsuperscript{37} However, the promoters of certified tournaments claimed that this rule was designed to prevent them from making money at certified events and brought an antitrust suit against the NCAA.\textsuperscript{38} The trial court granted a permanent injunction to Worldwide, and the NCAA appealed.\textsuperscript{39} The relevant market was not readily apparent, therefore, the court determined that the trial court erred by using a quick-look analysis.\textsuperscript{40} Furthermore, because Worldwide had not defined the relevant market, the court ruled that Worldwide could not prevail on its antitrust claim.\textsuperscript{41} Accordingly, the court reversed the district court's judgment.\textsuperscript{42}

\textit{Metropolitan Intercollegiate Basketball Ass'n v. NCAA}

In \textit{Metropolitan Intercollegiate Basketball Ass'n v. NCAA},\textsuperscript{43} the Southern District of New York determined that the Metropolitan Intercollegiate Basketball Association (MIBA) brought a valid antitrust claim against the NCAA\textsuperscript{44} and that a full rule of reason analysis was necessary to determine whether certain NCAA rules violated the Sherman Act.\textsuperscript{45}

MIBA organized the National Invitational Tournament (NIT) each year.\textsuperscript{46} Although the NIT was popular for many years, its popularity had waned in recent years. MIBA felt much of the decrease in popularity was attributable to NCAA rules.\textsuperscript{47} Filing suit against the NCAA, the MIBA claimed that the NCAA's Commitment to Participate Rule, One Postseason Tournament Rule, the End of the Playing Season Rule, the automatic qualification of conference champions to the NCAA Tournament, and the NCAA's 65-team bracket were

\textsuperscript{36} \textit{Id.} at 963.
\textsuperscript{37} \textit{Id.} at 957.
\textsuperscript{38} \textit{Id.} at 957-58.
\textsuperscript{39} \textit{Id.} at 958.
\textsuperscript{40} \textit{Id.} at 961.
\textsuperscript{41} \textit{Id.} at 963.
\textsuperscript{42} \textit{Id.} at 964.
\textsuperscript{43} 337 F. Supp. 2d 563 (S.D.N.Y. 2004).
\textsuperscript{44} 339 F. Supp. 2d at 549-52.
\textsuperscript{45} 337 F. Supp. 2d at 573.
\textsuperscript{46} \textit{Id.} at 566.
\textsuperscript{47} \textit{Id.} at 566-68.
anticompetitive in violation of the Sherman Act. Finding that the Commitment to Participate Rule was an agreement between several entities and, therefore, subject to section one scrutiny, the court determined that a per se analysis was inappropriate because the NCAA needed some horizontal restraints to function. Furthermore, the court determined that a complete rule of reason analysis was needed because the rule's adverse effect was not blatantly obvious. Lastly, the court denied MIBA's summary judgment motion because a question of fact existed as to whether the rule was enacted with the specific intent to suppress competition.

Subsequently, the NCAA filed its own summary judgment motion on all five of the rules MIBA claimed were anticompetitive. Concluding that the rules were commercial and were not protected from antitrust scrutiny, the court examined the rules under the rule of reason. MIBA was able to show that the relevant market was Division I men's college basketball postseason tournaments, the NCAA had market power in that market, and that a genuine issue of material fact existed as to whether the rules were anticompetitive. Therefore, summary judgment was inappropriate. Similarly, the court found that a material issue of fact existed for MIBA's section two claim and the court denied the NCAA's motion for summary judgment.

**ARBITRATION**

Arbitration plays an important role in professional sports based on the authority provided to arbitrators under the collective bargaining agreements of most professional sports leagues. The following cases demonstrate the difference between decisions regarding the procedure of arbitration, which generally fall under the authority of the arbitrator, and decisions regarding whether a particular issues is of the substance to be decided by an arbitrator, which generally fall under the authority of the courts.

48. *Id.* at 568.
49. *Id.* at 569-71.
50. *Id.* at 573.
51. *Id.* at 573.
53. *Id.* at 547-49.
54. *Id.* at 549.
55. *Id.* at 549-52.
56. *Id.* at 552.
57. *Id.*
Dunkelman v. Cincinnati Bengals, Inc.

In Dunkelman v. Cincinnati Bengals, Inc., the Court of Appeals of Ohio determined that a dispute between season ticket holders and a football team was not arbitrable due to the season ticket holders never having agreed to arbitrate potential claims.

To obtain season tickets at their new stadium, the Cincinnati Bengals required fans to purchase a seat license. The team had patrons sign a "Charter Ownership Agreement" (COA) to purchase the seat license and then sent them another agreement to sign, a "Club Seat License Agreement" (CSLA). However, the CSLA added extra provisions, including an arbitration clause and a default and acceleration provision that required patrons to purchase season tickets during their lease, even if they did not wish to purchase the tickets. Some season ticket holders were dissatisfied with this default and acceleration provision and brought suit against the Bengals for negligent misrepresentation and fraud. Finding that the contract between the fans and the Bengals was formed when the fans signed the COA, the court found that the fans never agreed to arbitrate any disputes. Thus, the court found that arbitration was inappropriate and remanded the case back to the trial court.

Jacobs v. USA Track & Field

In Jacobs v. USA Track & Field, the Second Circuit declined to compel arbitration for a petitioner who refused to abide by the governing rules of the arbitration.

USA Track and Field accused world-class track athlete Regina Jacobs of violating doping rules and threatened various disciplinary actions, including banning her from the Olympics. The parties agreed to arbitrate, but disagreed on which rules controlled the arbitration and how the arbitrators...
could be chosen. The American Arbitration Association concluded that USA Track and Field's Supplementary Procedures should control, and Jacobs appealed contending that the Commercial Rules should apply. USA Track and Field had not refused to arbitrate; therefore, the court determined that Jacobs had no right to compel arbitration under the Commercial Rules because the American Arbitration had found these rules inappropriate and therefore, inapplicable to this arbitration. Accordingly, the court denied her petition.

Major League Umpires Ass'n v. American League of Professional Baseball Clubs

In Major League Umpires Ass'n v. American League of Professional Baseball Clubs, the Third Circuit upheld an arbitrator's decision regarding the employment of umpires.

In 1999, many umpires grew unhappy over how Major League Baseball (MLB) was supervising their employment. In an effort to force MLB to change its policies and comply with the no-strike clause in their collective bargaining agreement (CBA), the umpires resigned in mass. Nevertheless, this effort failed when MLB decided to hire replacement umpires. When the umpires realized their move was futile, many tried to rescind their resignation letters. However, MLB had begun hiring replacements and only nineteen open positions remained – all in the National League. MLB then proceeded to allow nineteen National League umpires to rescind their resignations based on their merit and skills, but accepted the resignations of thirteen National League umpires and all nine of the American League umpires. These twenty-two umpires then filed grievances under the CBA and demanded that the grievances be arbitrated. Denying MLB's motion to dismiss the arbitration due to the dispute not falling under the scope of the CBA's

69. Id.
70. Id.
71. Id. at 89.
72. Id.
73. 357 F.3d 272 (3d Cir. 2004).
74. Id. at 289.
75. Id. at 275.
76. Id. at 276.
77. Id.
78. Id. at 277.
79. Id.
80. Id.
81. Id. at 278.
arbitration provision, the arbitrator reinstated two American League umpires and seven National League umpires with full back pay and benefits, but denied reinstatement of the other umpires.82 Both sides appealed, and the district court upheld the majority of the arbitrator's decision.83 Finding that the case was arbitrable,84 the appellate court determined that the arbitrator had a basis to find that the umpires resigned,85 did not misapply the CBA's merit and skill criteria,86 and decided the case based on a logical reading that drew its essence from the CBA.87 Accordingly, the court upheld the arbitrator's decision.88

COLLEGE SPORTS ISSUES

College athletes and universities face a number of legal issues in their attempts to maintain the amateur status of collegiate athletics. For example, one of the most publicized decisions in the area of college sports this year was University of Colorado football player Jeremy Bloom's request for an injunction to receive endorsement money. The cases discussed below include Bloom's request as well as a number of other challenges to athletic conference, university and NCAA rules as well as allegations of legal liability to the same entities.

Bloom v. NCAA

In Bloom v. NCAA,89 the Court of Appeals of Colorado denied an amateur athlete's request to enjoin the application of NCAA rules to endorsement income related to his professional skiing career.90

Bloom, a professional skier and amateur football player at the University of Colorado, sought an injunction so that he could receive income from endorsements and modeling related to his skiing career while playing NCAA football.91 After establishing that Bloom had standing as a third-party beneficiary of the NCAA rules,92 the court found that NCAA rules clearly

82. Id.
83. Id.
84. Id. at 282.
85. Id. at 284.
86. Id. at 285.
87. Id. at 288.
88. Id. at 289.
90. Id. at 622.
91. Id.
92. Id. at 624.
forbid a professional athlete from receiving compensation from endorsements or paid media activities while competing in amateur contests. With regard to Bloom, the appellate court agreed with the trial court's conclusion that the application of NCAA rules as to Bloom was rationally related to the legitimate purpose of maintaining amateurism in intercollegiate athletics as compared to professional sports. Thus, because Bloom did not show a reasonable probability of success on the merits, nor did he show that the NCAA arbitrarily applied its rules to him, the court denied Bloom's request for an injunction.

Morris v. Administrators of the Tulane Educational Fund

In Morris v. Administrators of the Tulane Educational Fund, the Court of Appeal of Louisiana concluded that athletic trainers were not "health care providers," but remanded the case to determine whether they were "physical therapists." Julie Morris was a nationally-ranked tennis player at Tulane University. During the season, she injured her foot and received treatment from a Tulane athletic trainer, who diagnosed her with a foot strain. One month later, Morris still complained of pain; however, a Tulane athletic trainer cleared her to play in a tournament. Soon after, a doctor diagnosed a stress fracture in Morris's foot. Although Morris underwent several surgeries, her foot was permanently damaged, ending her career. She sued Tulane, alleging that the trainer was negligent in diagnosing her injuries. Tulane argued that its trainers fell under the coverage of the Louisiana Medical Malpractice Act (LMMA) with a dilatory exception of prematurity, and the trial court granted the exception. On appeal, the court determined that an athletic trainer was not included in the statutory definition of health care provider, and thus, was

93. Id. at 625-26.
94. Id. at 626.
95. Id.
97. Id. at 61.
98. Id. at 58.
99. Id.
100. Id.
101. Id.
102. Id.
103. Id. at 58-59.
104. Id. at 59.
not covered by the LMMA. However, the court needed more evidence to determine whether the athletic trainers could be considered physical therapists, who would be covered by the LMMA. Therefore, the court reversed the trial court's granting the dilatory exception of prematurity, but remanded the case to determine the trainers' qualifications.

University System of Maryland v. The Baltimore Sun Co.

In University System of Maryland v. The Baltimore Sun Co., the Court of Appeals of Maryland held that a university must disclose its coach's employment contract and other compensation information and that contracts between the coach and third parties must be reviewed separately to determine whether the coach received compensation because he was a coach and whether the compensation was intimately connected with the coach's duties.

Through the Maryland Public Information Act, Baltimore Sun sports reporter Jon Morgan requested copies of University of Maryland football coach Ralph Friedgen's employment contract and other documents regarding any incentives, bonuses, broadcast agreements, and monetary compensation. Although the university disclosed Friedgen's annual salary, it did not disclose any other information because it said the information was protected under the Public Information Act as personnel and financial information. To avoid a possible lawsuit, Coach Friedgen eventually disclosed the information the reporter sought; however, when the reporter asked similar information about the head basketball coach, Gary Williams, the university again gave the coach's salary information, but refused to give any information on other income or provide a copy of his university contract.

As the employment contracts, amendments, and side letters were essential to understanding how the university compensated the coaches, the court held that the university must disclose them. In contrast, as to records of contracts between the coach and third parties, the court determined that the lower court must view the documents, in camera, to determine whether Coach Williams received the compensation solely because he was the basketball coach and

105. Id. at 61.
106. Id.
107. Id. at 62.
108. 847 A.2d 427 (Md. 2004).
109. Id. at 431, 443.
110. Id. at 428.
111. Id.
112. Id. at 429-30.
113. Id. at 441.
whether the compensation was intimately related to his activities as coach.\textsuperscript{114} Only if the lower court found the documents to be so connected with his position as coach would the university have to disclose them.\textsuperscript{115}

\textbf{CONSTITUTIONAL LAW}

Sports involve an inherent conflict between the rights of athletes and the rights of the viewing public. Based on this conflict, there are occasions in which one or both of these groups may experience violations of their constitutional rights. In the following cases the free speech, due process, equal protection, and freedom of religion rights of athletes and sports fans are described.

\textit{Reid v. Kenowa Hills Public Schools}

In \textit{Reid v. Kenowa Hills Public Schools},\textsuperscript{116} the Court Appeals of Michigan upheld a school district's denial of participation in interscholastic sports to home-schooled children.\textsuperscript{117}

The plaintiffs, who were home-schooled for religious reasons, wanted to participate in the public school's interscholastic sports program.\textsuperscript{118} However, the school district denied their request due to Michigan High School Athletic Association (MHSAA) rules that required athletes to be enrolled in a public school for at least twenty hours a week.\textsuperscript{119} After being denied participation, the plaintiffs filed suit and alleged that the school's denial violated Michigan's statutes, the students' freedom of religion, and the students' equal protection.\textsuperscript{120} Courts have recognized a distinction between non-core programs, such as band, that do not need to be taught in nonpublic schools and extracurricular activities, such as football. Courts have also previously decided that participation in extracurricular activities is a privilege, not a right. As such, the court held that the Michigan statutes do not require public schools to grant home-schooled students access to their interscholastic sports programs.\textsuperscript{121} The court further held that the plaintiffs' religious freedom was not jeopardized because the plaintiffs were free to be home-schooled under the

\textsuperscript{114} \textit{Id}. at 443.
\textsuperscript{115} \textit{Id}.
\textsuperscript{117} \textit{Id}. at 65.
\textsuperscript{118} \textit{Id}.
\textsuperscript{119} \textit{Id}.
\textsuperscript{120} \textit{Id}.
\textsuperscript{121} \textit{Id}. at 66-68.
MHSAA's rule and the government did not coerce the plaintiffs into violating their religious beliefs. 122 Lastly, the court held that with regard to the Equal Protection claim, the enrollment rule was neutral on its face and concluded that the enrollment rule was rationally related to the legitimate governmental purpose of eliminating recruiting and preventing "ringers" from participating. 123 Thus, the home-schooled students could not be prohibited from joining the public school's sports teams.124

Angstadt v. Midd-West School District

In Angstadt v. Midd-West School District,125 the Third Circuit upheld a school district's declaration of a charter school student as ineligible for athletics because the regulations were rationally related to the school district's goals and did not affect the student's education.126

Although she was home-schooled, the Midd-West School District allowed Megan Angstadt to play interscholastic basketball during seventh and eighth grade.127 When she began high school at a special cyber charter school that did not have a basketball team, Midd-West allowed her to play basketball within its school district.128 However, in the middle of the season, Midd-West declared Angstadt ineligible for the rest of the season and the next season because she did not attend any "real time" courses and studied a curriculum that the State Board of Education had not approved.129 Her parents brought suit and claimed violations of freedom of association, due process, and equal protection.130 The court determined that there was no violation of the plaintiff's freedom of association because the requirements to play basketball did not affect Angstadt's education.131 Because no property interest exists in sports participation, the court determined that the Angstadts' due process claim failed.132 Finally, using a rational basis analysis, the court denied the Angstadts' equal protection claim because Midd-West's goals of ensuring good academics, attendance, and physical education were rationally related to its

122. Id. at 70.
123. Id. at 71.
124. Id.
125. 377 F.3d 338 (3d Cir. 2004).
126. Id. at 344-45.
127. Id. at 340.
128. Id. at 341.
129. Id. at 341-43.
130. Id. at 341.
131. Id. at 344.
132. Id.
regulations. Thus, the court upheld the school district's decision to prohibit Angstadt from playing on the school district's team.134

Priester v. Lowndes County

In Priester v. Lowndes County,135 the Fifth Circuit Court of Appeals held that a high school student who was injured in a racially-motivated attack failed to show that the school had violated his due process and equal protection rights.136 Priester, a black high school football player, suffered an eye injury when a white teammate intentionally poked him in the eye during a football drill.137 Additionally, Priester alleged he was subject to racial epithets from teammates and a coach and was assaulted by teammates who threw rocks at him.138 Although the high school principal investigated the incident, no one claimed to have seen anyone hit Priester, and the school refused to pay his medical expenses.139 Priester filed suit, alleging denial of his due process and equal protection rights and claiming negligence and intentional torts that resulted in emotional distress and physical injury.140 The court upheld the dismissal of Priester's intentional tort claim because Priester filed the case after the one-year statute of limitations had expired.141 The court upheld the dismissal of Priester's section 1983 claim due to his failure to allege a conspiracy between the coaches and teammate.142 Because no special relationship existed between Priester and the school during an extracurricular football practice and no conspiracy existed, the court found no state action had occurred, and thus, no due process claim existed.143 Finally, the court ruled that the school did not violate the Equal Protection clause because Priester failed to show that the school did not investigate his claims or that the school had treated him differently than other students, therefore, his claims failed.144

133. Id. at 344-45.
134. Id.
135. 354 F.3d 414 (5th Cir. 2004).
136. Id. at 423-26.
137. Id. at 417.
138. Id.
139. Id. 418.
140. Id.
141. Id. at 420.
142. Id.
143. Id. at 423-24.
144. Id. at 424.
In *Tun v. Fort Wayne Community Schools*, the Northern District of Indiana concluded that a school violated a wrestler's substantive due process rights when it expelled him for being photographed while showering in the school locker room.

While high school wrestler Brandon Tun was showering in the high school locker room, a teammate took his picture. The teammate later gave Tun the negatives, and when the school found out about this incident, it expelled Tun for allowing the teammate to photograph him, not reporting the incident, and for possessing the negatives. Although Tun's expulsion was later overturned, he brought suit and claimed that the school violated his procedural due process rights and substantive due process rights and claimed that the wrestling coaches were negligent in failing to properly supervise the locker room. The court determined that Tun's negligent supervision claim failed because it was not foreseeable that someone would take pictures and that the coaches could not prevent such behavior. Finding that Tun had no right to cross-examine the photographer or examine his statement and that the hearing examiner was not biased, the court concluded that the school had given Tun a fair hearing and had not violated his procedural due process rights. In contrast, the court found that the school had violated Tun's substantive due process rights when it expelled Tun in part for violating the rule against possessing pornography because expulsion was not an articulated option for a violation of this rule. Furthermore, the school violated Tun's substantive due process rights when it expelled him for participating in inappropriate sexual behavior or public indecency because he did not violate this rule. Lastly, the court determined that the school principal and hearing examiner were not entitled to qualified immunity because they knew or should have known that some evidence that Tun violated school rules was necessary before they could expel him. As a result, the court granted Tun's summary

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145. 326 F. Supp. 2d 932 (N.D. Ind. 2004).
146. *Id.* at 946-51.
147. *Id.* at 934.
148. *Id.* at 934-36.
149. *Id.* at 936-37.
150. *Id.* at 939-41.
151. *Id.*
152. *Id.* at 947.
153. *Id.* at 947-50.
154. *Id.* at 951.
judgment motion on his substantive due process claim.\textsuperscript{155}

\textit{Jennings v. City of Stillwater}

In \textit{Jennings v. City of Stillwater},\textsuperscript{156} the Tenth Circuit determined that a police department had not failed to adequately investigate her rape claim.\textsuperscript{157}

Oklahoma State University (OSU) student Alison Jennings reported to police that several OSU football players raped her at a party.\textsuperscript{158} The police investigated her claim, collected evidence, and interviewed witnesses. The district attorney did not file charges, however, based on his belief that the case could not be proved beyond a reasonable doubt, due to Jennings's reluctance to testify and her inability to specifically remember some events.\textsuperscript{159} Claiming that the police did not adequate investigate her allegations, Jennings filed a section 1983 action against the city and two police officers.\textsuperscript{160} Examining Jennings's procedural due process claim, the court concluded that her claim could not be sustained because she had no property interest in prosecuting the players.\textsuperscript{161} Jennings next claimed that she was denied access to the courts because the police destroyed the rape kit and did not investigate her allegations sufficiently.\textsuperscript{162} The court determined that Jennings's claim failed because the only remedy for this claim would be damages for her loss of a civil tort claim against the football players, and she had already received compensation from the university and players for that loss.\textsuperscript{163} As for Jennings's equal protection claim that she was singled out and treated unfairly because the police wanted to protect the football players, the court concluded that the non-prosecution was not discriminatory and Jennings failed to show that similar persons were treated differently; thus, the court affirmed the dismissal of Jennings's claims.\textsuperscript{164}

\begin{itemize}
\item \textsuperscript{155} \textit{Id.}
\item \textsuperscript{156} 383 F.3d 1199 (10th Cir. 2004).
\item \textsuperscript{157} \textit{Id.} at 1215.
\item \textsuperscript{158} \textit{Id.} at 1200.
\item \textsuperscript{159} \textit{Id.} at 1201-04.
\item \textsuperscript{160} \textit{Id.} at 1200.
\item \textsuperscript{161} \textit{Id.} at 1207.
\item \textsuperscript{162} \textit{Id.}
\item \textsuperscript{163} \textit{Id.} at 1209.
\item \textsuperscript{164} \textit{Id.} at 1215.
\end{itemize}
Pinard v. Clatskanie School District

In *Pinard v. Clatskanie School District*, the court found that a petition calling for a high school coach's resignation was not constitutionally-protected speech under section 1983.

The plaintiffs, a group of high school basketball players, were unhappy with their coach's use of intimidation and harsh language. To remedy this situation, the plaintiffs petitioned the coach to resign, however, the coach did not resign and gave the petition to the school administrators, who suspended the plaintiffs indefinitely. After unsuccessfully utilizing the school's grievance procedure, the plaintiffs brought this case under section 1983 alleging that the school district violated their First Amendment rights. To succeed on their First Amendment claim for retaliation, the plaintiffs had to show that they were participating in a constitutionally-protected activity, that the defendant's actions chilled an ordinary person from engaging in that protected activity, and the activity was the substantial motivation for the defendant's adverse action. Due to the plaintiffs' speech not being political or of public concern, the court concluded that the plaintiffs' speech was not constitutionally-protected and granted summary judgment to the school district.

Bellecourt v. City of Cleveland

In *Bellecourt v. City of Cleveland*, the Supreme Court of Ohio determined that the police's arrest of protestors did not infringe on their constitutional rights because the arrest was predicated on safety reasons.

On Opening Day of 1998, a group of protestors gathered near Jacobs Field to demonstrate against the Cleveland Indians' name and mascot. During the protest, several people burned an effigy of Chief Wahoo and Little Black Sambo. After extinguishing the fire, the police arrested the group, but

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166. Id. at 1219.
167. Id. at 1215-16.
168. Id. at 1216.
169. Id. at 1216-17.
170. Id. at 1217.
171. Id. at 1219.
173. Id. at 312-14.
174. Id. at 311.
175. Id.
prosecutors did not charge them.\textsuperscript{176} The group brought a section 1983 action and claimed that the arrests were baseless in violation of their right to free speech.\textsuperscript{177} Although the court found that the speech was protected, the court determined that because the protest occurred during windy conditions and the protestors used an accelerant to make the fire burn more rapidly, the police's duty to protect the public from a potentially dangerous fire outweighed the protestors' free speech rights.\textsuperscript{178} Thus, the police had a right to arrest the protestors.\textsuperscript{179}

\textit{Ward v. Santa Fe Independent School District}

In \textit{Ward v. Santa Fe Independent School District},\textsuperscript{180} the Fifth Circuit Court of Appeals concluded that the plaintiffs lacked standing for their First Amendment claim because they had already received a favorable judgment in the district court.\textsuperscript{181}

The Santa Fe school district implemented a rule forbidding students from praying or referring to a deity in pre-game football speeches.\textsuperscript{182} Before the first football game of the season, Marian Ward, who was chosen to be the student speaker for the football season, and her parents brought an action against the school district alleging that Marian's rights to free speech and free exercise of religion were violated.\textsuperscript{183} The trial court found that the school district had violated Marian's First Amendment rights and awarded her nominal damages of one dollar and attorney's fees.\textsuperscript{184} The Wards appealed because the district court did not address the merits of their constitutional claim.\textsuperscript{185} The court held that the Wards had received all the relief they had requested, therefore, the court determined that the Wards did not have standing to bring an additional claim and affirmed the trial court's judgment.\textsuperscript{186}

\begin{flushleft}
\textsuperscript{176} Id. \\
\textsuperscript{177} Id. \\
\textsuperscript{178} Id. at 312-14. \\
\textsuperscript{179} Id. at 314. \\
\textsuperscript{180} 393 F.3d 599 (5th Cir. 2004). \\
\textsuperscript{181} Id. at 603. \\
\textsuperscript{182} Id. at 601. \\
\textsuperscript{183} Id. \\
\textsuperscript{184} Id. at 602. \\
\textsuperscript{185} Id. at 602-03. \\
\textsuperscript{186} Id. at 608.
\end{flushleft}
Crue v. Aiken

In Crue v. Aiken, the Seventh Circuit found that a university violated the free speech rights of its faculty members when it prohibited them from contacting prospective student-athletes about the university's controversial mascot.

At the heart of this suit was the controversy over the University of Illinois's mascot Chief Illiniwek – whether the university should keep a Native American mascot or change its mascot to something more politically correct. A group of faculty members wanted to contact prospective student-athletes about this controversy and the racial stereotypes. However, when the university's chancellor, Michael Aiken, heard about this plan, he sent an e-mail to faculty and informed them that they could not contact prospective student-athletes without permission from the Director of Athletics because of possible NCAA rule violations. After the court granted the faculty members an injunction for the restraint on their free speech rights, Illinois appealed. Finding that the faculty members' free speech interest outweighed the university's fear of NCAA sanctions, the court granted a declaratory judgment to the faculty members. Additionally, the court rejected Aiken's claim of qualified immunity because case law clearly indicated that public employees could freely speak on matters of public concern. Thus, the court affirmed judgment in favor of the faculty members.

Bocachica v. Pennsylvania State Horse Racing Commission

In Bocachica v. Pennsylvania State Horse Racing Commission, the Commonwealth Court of Pennsylvania determined that a racing commission's ban of a jockey was not arbitrary, capricious, nor unreasonable and did not require the reading of the Miranda rights.
The plaintiff, a jockey, was accused of using an illegal battery during a horse race at Philadelphia Park.\textsuperscript{197} Although no battery was found on his person, a battery was found in his vicinity.\textsuperscript{198} One week later, the State Horse Racing Commission forced Bocachica to give an interview and subjected him to intense questioning for two hours.\textsuperscript{199} After two hours, Bocachica, in an attempt to leave, admitted to using a battery two years ago, but never during a race or at Philadelphia Park.\textsuperscript{200} Because he confessed, the commission banned him from racing at the Park and effectively ended his racing career.\textsuperscript{201} Later, Bocachica recanted and alleged that he did not know what he had signed and was never given his \textit{Miranda} rights; however, the commission still upheld the decision to ban him from the racing track.\textsuperscript{202} On appeal, the court found that Bocachica's self-incrimination rights were not violated because he was not subject to a criminal proceeding.\textsuperscript{203} Additionally, the court found that Bocachica's conduct was detrimental to the perception of horse racing as a whole and the commission sufficiently investigated the claim.\textsuperscript{204} Accordingly, the court determined that the commission's decision was not arbitrary, capricious, or unreasonable and upheld the commission's decision.\textsuperscript{205}

\section*{CONTRACTS}

Contracts are involved in every level of sports participation from recreational league waivers to multi-million dollar professional contracts. The following cases discuss the requirements necessary in order for such contracts to be upheld as well as the affect a contract may have on a party's ability to bring a lawsuit in a particular case.

\textit{Sweat v. Big Time Auto Racing, Inc.}

In \textit{Sweat v. Big Time Auto Racing, Inc.},\textsuperscript{206} a California appellate court determined that an express waiver did not apply to the claim of a spectator

\begin{itemize}
\item \textsuperscript{197} Id. at 451.
\item \textsuperscript{198} Id.
\item \textsuperscript{199} Id.
\item \textsuperscript{200} Id.
\item \textsuperscript{201} Id.
\item \textsuperscript{202} Id.
\item \textsuperscript{203} Id. at 453.
\item \textsuperscript{204} Id. at 454.
\item \textsuperscript{205} Id. at 455.
\item \textsuperscript{206} 12 Cal. Rptr. 3d 678 (Cal. Ct. App. 2004).
\end{itemize}
who was injured when the bleachers he was sitting upon collapsed during an auto race.\(^{207}\)

A spectator sitting in the pit area at an auto race sued the speedway owner for negligence after the bleachers he was sitting upon collapsed.\(^{208}\) At issue was whether the waiver he signed before being allowed to enter the pit area denied him recovery for his injuries.\(^{209}\) Examining the agreement, the court found the language excluding liability was ambiguous as it could apply to spectators in or out of the pit area.\(^{210}\) Turning to extrinsic evidence that people who had not signed the release were allowed into the pit area after the race, the court concluded that the agreement was for the purpose of assuming the risk of injury related to racing.\(^{211}\) As defective bleachers were not related to racing, the court found that the spectator had not assumed the risk of injury.\(^{212}\) Thus, the spectator could proceed with his claim.\(^{213}\)

*Franco v. Neglia*

In *Franco v. Neglia*,\(^{214}\) a New York appellate court determined that a material issue of fact existed as to whether a minor assumed the risk of his injuries from kickboxing and held the release signed by the minor unenforceable.\(^{215}\)

During his first kickboxing class, a fourteen-year-old boy was injured when his partner threw him during a maneuver.\(^{216}\) He brought a negligence suit against the martial arts academy, and the academy brought a motion for summary judgment on the basis that the student had signed a release and assumed the risk of his injuries.\(^{217}\) The court determined that the release was invalid because minors did not have the capacity to enter into such agreements.\(^{218}\) As for assumption of the risk, the court found that a material issue of fact existed as to whether the risks were foreseeable to the minor, how the minor was injured, and whether the martial arts academy exercised

\(^{207}\) *Id.* at 1308.

\(^{208}\) *Id.* at 1304.

\(^{209}\) *Id.*

\(^{210}\) *Id.* at 1305.

\(^{211}\) *Id.* at 1306.

\(^{212}\) *Id.* at 1308.

\(^{213}\) *Id.*


\(^{215}\) *Id.* at 691-92.

\(^{216}\) *Id.* at 691.

\(^{217}\) *Id.*

\(^{218}\) *Id.*
reasonable care. Thus, the court denied the martial arts academy's motion for summary judgment.

**Milicic v. Basketball Marketing Co.**

In *Milicic v. Basketball Marketing Co.*, the Superior Court of Pennsylvania upheld an injunction that allowed a professional basketball player to disaffirm an endorsement he signed as a minor and seek other endorsement contracts.

When he was sixteen, Serbian basketball player Darko Milicic entered into an endorsement agreement with the Basketball Marketing Co. After he turned eighteen and became eligible for the NBA draft, Milicic disaffirmed the agreement so that he could sign more lucrative deals. However, Basketball Marketing did not accept the disaffirmance and wrote letters to other companies that were negotiating with Milicic stating that Milicic was still under contract, thereby preventing Milicic from finalizing any deal. Milicic sought and received a temporary restraining order and injunction, and Basketball Marketing appealed. The court found that the injunction was proper due to Milicic's disaffirmance of the contract within a reasonable time, the significant harm to Milicic's ability to negotiate, the greater chance of injury to Milicic without an injunction, and the injunction's restoration of Milicic to his status before he signed the contract. Additionally, the court found that Basketball Marketing's letters were enough evidence to support a valid claim for intentional interference with prospective contractual relations. Thus, the court upheld the injunction.

**Frank v. Mathews**

In *Frank v. Mathews*, a Missouri appellate court allowed an injured

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219. *Id.* at 692.
220. *Id.*
222. *Id.* at 694-97.
223. *Id.* at 691.
224. *Id.* at 692.
225. *Id.*
226. *Id.*
227. *Id.* at 694-96.
228. *Id.* at 697.
229. *Id.*
horseback rider's claim to survive summary judgment because the waiver she
signed was invalid and the activity that caused her injuries was not an inherent
risk of horseback riding.231

During her eighth riding lesson, at her instructor's request, Melody Frank
used a riding crop on the horse she was riding.232 When she did so, the horse
jolted, and Frank fell off the horse.233 She brought a negligence suit alleging
that the riding instructor failed to use reasonable care in determining whether
she could safely use the riding crop and safely ride the horse in question.234 In
a summary judgment motion, the stables asserted that the release Frank signed
barred them from any liability and that the accident arose from activities that
were inherent risks of horse riding.235 Examining the language of the release,
the court determined that it was invalid because it merely restated the Equine
Liability Act and was not a clear and unmistakable waiver.236 According to the
court, the issue of negligence in providing the riding crop was related to
negligent supervision and not an inherent risk of horse riding so a material
issue of fact existed with regard to this issue and summary judgment was
denied.237

Gershon v. Regency Diving Center, Inc.

In Gershon v. Regency Diving Center, Inc.,238 a New Jersey appellate
court determined that a family could bring a wrongful death claim, even
though the decedent waived his right to it. The family did not waive its right
and the waiver was against public policy.239

An experienced scuba diver, Eugene Pietroluongo signed up for advanced
diving lessons with the Regency Diving Center.240 To determine the skill
levels of Pietroluongo and other students, a Regency instructor took them
scuba diving.241 During this test, some of the divers, including Pietroluongo,
became lost.242 Although the divers immediately searched for him, his corpse

231. Id. at 198-205.
232. Id. at 198.
233. Id.
234. Id.
235. Id. at 198-99.
236. Id. at 201.
237. Id.
239. Id. at 726-28.
240. Id. at 723.
241. Id.
242. Id. at 724.
was not found until the next day.\textsuperscript{243} The medical examiner ruled his death an accidental drowning.\textsuperscript{244} Subsequently, his family brought a wrongful death action against Regency.\textsuperscript{245} At issue was whether a release Pietroluongo signed that waived any wrongful death action arising from Regency's negligence precluded his family's claim.\textsuperscript{246} As Pietroluongo's heirs did not waive the right to bring a wrongful death action, the court determined that they could bring their claim.\textsuperscript{247} Furthermore, the court concluded that precluding the family's claim would be against public policy, and therefore, the family could continue with its claim.\textsuperscript{248}

\textit{Echols v. Pelullo}

In \textit{Echols v. Pelullo},\textsuperscript{249} the Third Circuit determined that a contract between a boxer and a promoter that did not state the amount of compensation the boxer would earn for each bout was not invalid for indefiniteness.\textsuperscript{250} Antwun Echols signed a promotional agreement with Arthur Pelullo for Pelullo to arrange and promote three boxing matches per year for Echols.\textsuperscript{251} As part of the agreement, Pelullo paid Echols a set minimum amount for each bout, depending on whether and where it was televised, but could renegotiate these amounts if Echols ever lost a bout.\textsuperscript{252} One month after signing the agreement, Echols lost a match, and Pelullo began negotiating the compensation on a match-by-match basis.\textsuperscript{253} Echols became dissatisfied with Pelullo's monetary offers, filed suit, and, among other things, claimed that the agreement was unenforceable because it was indefinite.\textsuperscript{254} Examining the agreement, the court determined that the purpose of the agreement was to establish a relationship between Echols and Pelullo.\textsuperscript{255} As such, the compensation for these bouts was not material and essential to the agreement and the indefinite amounts did not make the contract so indefinite as to be

\begin{itemize}
\item \textsuperscript{243} \textit{Id.}
\item \textsuperscript{244} \textit{Id.}
\item \textsuperscript{245} \textit{Id.} at 722.
\item \textsuperscript{246} \textit{Id.} at 724.
\item \textsuperscript{247} \textit{Id.} at 726.
\item \textsuperscript{248} \textit{Id.} at 729.
\item \textsuperscript{249} 377 F.3d 272 (3d Cir. 2004).
\item \textsuperscript{250} \textit{Id.} at 276.
\item \textsuperscript{251} \textit{Id.} at 273.
\item \textsuperscript{252} \textit{Id.} at 273-74.
\item \textsuperscript{253} \textit{Id.} at 274.
\item \textsuperscript{254} \textit{Id.}
\item \textsuperscript{255} \textit{Id.} at 276.
\end{itemize}
invalid. Therefore, the contract was upheld.

Adams v. Continental Casualty Company

In Adams v. Continental Casualty Company, the Eighth Circuit Court of Appeals interpreted an insurance policy clause that denied benefits to those "riding in a vehicle or device for aerial navigation" to include parachuting.

After Michael Adams died while skydiving, his wife, Brandee, submitted an insurance claim for benefits under the accidental death policy. However, Continental Casualty, the Adams' insurer, denied her claim because the policy forbade coverage for losses resulting from "riding in any vehicle or device for aerial navigation." Brandee claimed that a parachute was not "a vehicle or device for aerial navigation." The court determined that parachuting involved navigation because the parachuter has some control over direction and that Michael was "riding" in the parachute because he was harnessed to it. Thus, the court found that the policy applied to parachuting and Continental Casualty could deny benefits to Brandee under the policy.

Wright v. Sport Supply Group, Inc.

In Wright v. Sport Supply Group, Inc., the Court of Appeals of Texas dissolved a temporary injunction arising from a non-compete agreement, which prevented a salesman from selling sporting goods to any institutional customers in several counties, and remanded the case for further proceedings.

Dan Wright sold sporting goods to youth leagues and other groups for Sport Supply Group (SSG) in southeastern Texas. While employed, he signed a non-competition and confidentiality agreement. Approximately

256. Id.
257. Id. at 280.
258. 364 F.3d 952 (8th Cir. 2004).
259. Id. at 955.
260. Id. at 953.
261. Id. at 954.
262. Id.
263. Id. at 955.
264. Id. at 955-56.
266. Id. at 299.
267. Id. at 292.
268. Id.
two years later, Wright left SSG and began selling similar sporting goods to
the same groups in the same territory for one of SSG's competitors, Riddell. SSG sued for injunctive relief to enforce the non-competition and confidentiality agreement, and the trial court granted the injunction. Wright appealed claiming that SSG could show no adequate remedy or irreparable injury, the agreement had no consideration, and the agreement was unreasonable. With regard to the remedy and injury claim, the court found that although SSG's damages were not presently ascertainable, SSG had a remedy at law and Wright did not offer any evidence to rebut the presumption that SSG was irreparably injured. For the consideration claim, the court found that the agreement had consideration because in exchange for Wright's signing the agreement, SSG gave Wright access to computer programs, customer databases, and training. Conversely, on the final claim, the court held that the agreement's terms were unreasonable because they limited Wright from having any contact with any potential customers in the sporting goods market in several counties. The court stated that it could enforce the injunction if it knew who Wright's customers were when SSG employed him; the court dissolved the temporary injunction and remanded the case for further proceedings.

CRIMINAL

Unfortunately the areas of sports law and criminal law intersect on occasion. In the following cases, courts considered a wide variety of criminal issues, including sentencing enhancers, probable cause, and criminal liability for sports-related fights.

State v. Guidugli

In State v. Guidugli, the Ohio Court of Appeals upheld the assault conviction of an athlete who punched an opposing player in a fight during an intramural basketball game.

269. Id.
270. Id. at 291.
271. Id. at 293-97.
272. Id. at 293-94.
273. Id. at 297.
274. Id. at 298.
275. Id. at 299.
277. Id. at 572-77.
During an intramural basketball game, Gino Guidugli and his teammates got into a physical altercation with the opposing team. Witnesses testified that they observed Guidugli punching another player in the face. The police arrested Guidugli, and he was charged with criminal assault. At trial, because the evidence demonstrated that Guidugli had not acted in self-defense, but in retaliation, the court convicted him. He was sentenced to one year probation with sixty days of home incarceration, counseling, a minimal fine, and court costs. Guidugli brought a motion to mitigate the sentence to community service, but the court denied the motion. Guidugli then brought motions concerning the sufficiency of the evidence and the competency of counsel. Guidugli essentially waived his argument on the sufficiency of the evidence by asserting self-defense, therefore, the court denied his first motion. Similarly, the court denied his other motion finding that Guidugli's counsel was effective. As a result, the court affirmed Guidugli's conviction.

**Carlisle v. Ten Thousand Four Hundred Forty-seven Dollars in United States Currency**

In *Carlisle v. Ten Thousand Four Hundred Forty-seven Dollars in United States Currency*, the Hawaii Supreme Court determined that probable cause existed for a search of a participant in an illegal sports gambling operation, but ordered the state to return some of the seized money because it was not specifically related to gambling.

Using a pen register and trap and trace devices, police discovered that Matsuji Shimabuku placed several bets worth $3,200 with an illegal sports gambling operation. Thereafter, police executed a search warrant of Shimabuku's home and retrieved $9,997 from his pants pocket and $450 from...

278. *Id.* at 569.
279. *Id.*
280. *Id.* at 570.
281. *Id.*
282. *Id.*
283. *Id.*
284. *Id.* at 570-72.
285. *Id.* at 572.
286. *Id.* at 576-77.
287. *Id.* at 577.
288. 89 P.3d 823 (Haw. 2004).
289. *Id.* at 829-39.
290. *Id.* at 826.
his closet shelves, as well as expired World Series pool tickets. Shimabuku challenged the seizure, and the court found that the property was properly seized, but ordered the government to return $7,247. Shimabuku appealed and claimed that the search was unlawful because no probable cause existed, that the seizure exceeded the warrant's scope and that the seizure was unlawful because the state did not prove the money was involved with gambling. The court rejected Shimabuku's claims and found that probable cause existed and that the police's seizure of the World Series tickets did not exceed the warrant's scope because the tickets were related to gambling. In contrast, the court found that the state should have seized only $1,900 due to the fact that Shimabuku placed $3,200 in bets and lost $2,280. Thus, the court found the search warrant to be valid and ordered the state to return the excess of the seized money to Shimabuku.

State v. Neri

In State v. Neri, the Court of Appeals of Kansas determined that a sentencing enhancer was inappropriately applied to a man who forged checks from a youth baseball organization because the children were not the victims of the crime.

Don Neri was convicted of seven counts of forgery for stealing and forging checks from the Olathe Youth Baseball Program's bank account. Once the forgery became known, the bank reimbursed the program, and the children in the program never learned about the forgeries. Although Neri was eligible for presumptive probation under Kansas's sentencing guidelines, the court imposed the maximum sentence of thirty months. The court stated that the rationale for jail time was that the children of the youth program were particularly vulnerable to Neri's actions. On appeal, Neri argued that the organization, not the children, was the victim, and thus, the court should not

291. Id. at 826-27.
292. Id. at 827.
293. Id. at 827-28.
294. Id. at 829-33.
295. Id. at 835.
296. Id. at 838-39.
298. Id. at 124.
299. Id. at 122.
300. Id.
301. Id.
302. Id.
have enhanced the sentence. The court looked at the sentencing guidelines and determined that the vulnerability enhancer was to be applied when the vulnerability augments the facilitation of the crime. The money belonged to the program, not the children, and adults ran the program, thus, the court ruled that the sentencing court erred by applying the vulnerability factor to the sentence. The case was remanded for resentencing.

**Gender Equity Issues**

Title IX has played a significant role in the development of sports and the area of sports law in the past three decades. While female athletes are gaining a stronger position in a number of sports contexts, there continues to be disparities between the genders in some areas. The following cases address challenges brought both by women and men as a result of their attempts to further gender equality in sports. Specifically, in 2004, a number of challenges were brought regarding the scheduling of women's sports seasons and the effect of scheduling on women's opportunities for success, achievement, and participation.

*Communities for Equity v. Michigan High School Athletic Ass'n*

In *Communities for Equity v. Michigan High School Athletic Ass'n* (MHSAA), the Sixth Circuit Court of Appeals determined that a high school athletic association violated the Equal Protection Clause when it scheduled six girls' high school sports during non-traditional seasons.

A group of high school athletes and parents brought suit alleging that the MHSAA's scheduling of sports (i.e., basketball was played in fall while in forty-eight other states, it is played in winter) discriminated against girls based on their gender in violation of the Equal Protection Clause, Title IX, and Michigan law. They argued that this discriminated against girls by decreasing opportunities in to college recruiting, playing in club programs, and playing in poor weather conditions. After finding that the MHSAA was a

303. *Id.* at 123.
304. *Id.* at 123-24.
305. *Id.* at 124.
306. *Id.*
307. 377 F.3d 504 (6th Cir. 2004).
308. *Id.* at 506.
309. *Id.* at 506-07.
310. *Id.* at 507-09.
state actor, the court analyzed MHSAA's argument that its scheduling maximized girls' participation in sports. Determining that disadvantaging girls in the season schedules did not maximize participation, the court found that the scheduling did not further the governmental objective and therefore, that MHSAA violated the Equal Protection Clause.

McCormick v. School District of Mamaroneck

In a similar case, McCormick v. School District of Mamaroneck, the Second Circuit Court of Appeals determined that a high school was violating Title IX when it scheduled girls' soccer out-of-season to the girls' disadvantage.

While almost all of the New York high schools offered girls' soccer in the fall, the plaintiffs' high schools offered it in spring. The state championship playoffs were held only in the fall, and as a result, the plaintiffs were on the only teams that were not able to participate in the playoffs. Additionally, the girls faced conflicts with playing in the Olympic Development Program for soccer and with college recruiting, whereas the male soccer players at their high school did not face the same disadvantages. Under Title IX, the plaintiffs brought suit and requested an injunction to move the soccer season.

Finding that the girls were disadvantaged and that the disadvantage was significant, the court further concluded that the school could not justify the disparity. To accommodate the students, the court ordered the school either alternate the girls' and boys' soccer seasons in the fall or move the girls' soccer season permanently to the fall. Thus, the plaintiffs won their Title IX claim.
In *Jennings v. University of North Carolina at Chapel Hill*, the Middle District of North Carolina dismissed a former college soccer player's sexual harassment, Title IX, and invasion of privacy claims against and granted summary judgment for the defendants because the behavior of the coaches and the school did not constitute a violation of the plaintiff's educational opportunities.

Melissa Jennings played for the university soccer team, which was coached by Anson Dorrance. Throughout her career, Jennings claimed that Dorrance made several sexual comments about her and her teammates. After Jennings was cut from the team, she brought suit against Dorrance, other coaches, and the university for violation of Title IX, invasion of privacy, failure to supervise, and sexual harassment. As Dorrance's conduct was not so "severe, pervasive and objectively offensive" that it deprived Jennings of educational opportunities, the court granted summary judgment to the defendants for the Title IX and sexual harassment claims. Similarly, on the invasion of privacy claims, the court granted summary judgment to the defendants because Dorrance's comments did not influence Jennings's decision about procreation and Jennings was not forced to answer any questions about her sexual activities. Furthermore, Dorrance never intruded into her home or personal records. Finally, the court dismissed the failure to supervise claim because Jennings had been unsuccessful in demonstrating any violation of her constitutional rights. Accordingly, the court granted summary judgment to the defendants on all of Jennings's claims.

In another motion, the defendants moved to seal Jennings's deposition, her academic transcript, her parents' depositions, and the depositions of another soccer player and her parents. The defendants asserted that the depositions should be sealed because they contained potentially embarrassing and
irrelevant comments about other female students' private lives and bodies and that Jennings's academic record should be sealed because it was private and irrelevant. As Jennings had consented to her academic record's release and no compelling government interest outweighed the First Amendment right to access, the court denied the motion to seal the academic record. Similarly, the court denied the motion concerning the depositions because the students had no reasonable expectation of confidentiality regarding the comments. Thus, all records remained publicly available.

_Howell v. North Central College_

In _Howell v. North Central College_, the United States District Court for the Northern District of Illinois refused to amend a former college basketball player's claim to include Title IX retaliation and breach of contract.

While playing basketball for North Central College, Danielle Howell alleged that the coach and other team members sexually harassed her because she was heterosexual. In her complaint, she alleged that North Central violated Title IX, denied her due process, and caused her emotional distress. The court denied this complaint, and Howell sought to amend the complaint to include Title IX retaliation and breach of contract claims. The court dismissed the retaliation claim because the alleged harassment did not consist of gender stereotyping. In the contract claim, Howell alleged that she and North Central had a contract based on the student handbook and policies, and that through these documents North Central prohibited discrimination based on sexual orientation. The court dismissed this claim because it was a state claim, and with the federal claims having been dismissed, the federal court had no jurisdiction over the state claim. As a result all of Howell's claims were dismissed.

336. _Id._ at 681.
337. _Id._ at 683.
338. _Id._ at 683-84.
339. _Id._ at 684.
341. _Id._ at 726.
342. _Id._ at 718.
343. _Id._
344. _Id._
345. _Id._ at 723-25.
346. _Id._ at 725.
347. _Id._
348. _Id._ at 726.
Mercer v. Duke University

In Mercer v. Duke University, the United States District Court for the Middle District of North Carolina held that a plaintiff could receive attorney's fees after prevailing on her original Title IX claim. At issue in this subsequent case was whether Mercer was entitled to attorney's fees due to her prevailing on her original Title IX claim against the university. Mercer received only one dollar in compensatory damages, therefore, the court used a three-factor test to determine if Mercer was entitled to attorney's fees. First, the court considered the degree of success Mercer achieved. As her primary goal of holding Duke liable for its indifference to her discrimination claims was achieved, the court concluded that her success was not de minimus. Second, the court considered the significance of the legal issue. Finding that the issue – whether Title IX prohibits gender discrimination in cases of female athletes trying out for traditionally male contact sport teams – was novel and significant, the court found Mercer's victory satisfied the second factor of its test. Third, the court considered the public goal of Mercer's lawsuit. The court found that Mercer's suit furthered an important public goal because the Fourth Circuit had the chance to recognize that a cause of action exists under Title IX in a situation like Mercer's. Mercer's suit brought attention to Title IX's objective of fighting gender discrimination in federally-funded educational institutions. Thus, the court concluded that Mercer could receive attorney's fees and granted her a total of $349,243.96.

350. Id. at 470.
351. Id. at 456.
352. Id. at 458.
353. Id. at 459.
354. Id.
355. Id. at 461.
356. Id. at 462.
357. Id.
358. Id.
359. Id. at 465.
360. Id. at 466.
361. Id. at 470.
Mehus v. Emporia State University

In Mehus v. Emporia State University, the District Court of Kansas denied the university's motions to dismiss based on sovereign immunity and failure to state a claim under Title IX. Among other things, Maxine Mehus, head volleyball coach at Emporia State University (ESU), alleged that the university discriminated against her by paying her less salary and granting her fewer benefits, holding her to different performance and employment standards, and denying her team the same resources and financial assistance than similarly-situated male employees. Mehus brought these claims under Title VII of the Civil Rights Act, Title IX, and the Equal Pay Act (EPA). In response, the university brought motions to dismiss. On the issue of sovereign immunity, the court denied ESU's motion to dismiss and found that ESU was not immune because Congress had properly abrogated the state's immunity for the EPA and validly extended EPA claims to the states through the Fourteenth Amendment. The court denied ESU's motion to dismiss on the Title IX issue and determined that Mehus did not have to prove intentional discrimination under Title IX. The court held that Mehus had a right of action under Title IX and allowed her claims to proceed.

Simpson v. University of Colorado

In Simpson v. University of Colorado, the United States District Court of Colorado ruled on pretrial motions concerning a Title IX action. Lisa Simpson claimed the University of Colorado violated Title IX by knowingly and deliberately remaining indifferent to its football players and recruits' repeated acts of sexual harassment and in failing to take appropriate measures after she was sexually assaulted and sexually harassed by players and recruits. Deciding on several pretrial motions, the court examined Simpson's diary and decided to admit additional relevant diary entries, found

363. Id. at 1270-72.
364. Id. at 1260.
365. Id. at 1260-61.
366. Id. at 1261.
367. Id. at 1270.
368. Id. at 1274.
370. Id. at 361-66.
371. Id. at 357-58.
good cause to require Simpson to undergo a mental health examination, and determined that Simpson had to turn over the names of her therapists and therapy records from the three years before the assault occurred.\textsuperscript{372}

\textit{Doe v. Green}

In \textit{Doe v. Green},\textsuperscript{373} the District Court of Nevada found that a reasonable jury could infer that a school violated Title IX and the Nevada child abuse reporting statute with regard to a coach's sexual harassment and abuse of a high school student.\textsuperscript{374}

Doe, a high school student, mentioned to her teacher some concerns she had about the assistant soccer coach, Jeremy Green.\textsuperscript{375} These concerns included the way Green looked at Doe, the many sexually suggestive things Green said to Doe, Green's calling Doe at home, and Green's telling Doe that he had had sex with a former student.\textsuperscript{376} The teacher reported Doe's concerns to the principal, but upon the principal questioning her, Doe related that Green did not make her uncomfortable, had not inappropriately touched her, and had not engaged in sex with her.\textsuperscript{377} However, the principal met with Green and told him to act professionally with the students and not to communicate personal feelings to the students.\textsuperscript{378} Doe also told her parents about her concerns, and her parents met with the principal who told them that he would monitor Green and address the problem.\textsuperscript{379} After that meeting, the principal met with the athletic director and Green and reiterated that Green's actions were inappropriate, but did not report Green's actions to family services or the police.\textsuperscript{380} However, Green's behavior did not improve, and he and Doe eventually began having sex.\textsuperscript{381} A few months later, a school official caught the two having sex, and the police were notified.\textsuperscript{382} Green pleaded guilty to sexual seduction and open and gross lewdness charges and was sentenced to prison.\textsuperscript{383} Subsequently, Doe's family brought Title IX and negligence claims

\begin{itemize}
\item \textsuperscript{372} \textit{Id.} at 361-66.
\item \textsuperscript{373} 298 F. Supp. 2d 1025 (D. Nev. 2004).
\item \textsuperscript{374} \textit{Id.} at 1034-40.
\item \textsuperscript{375} \textit{Id.} at 1028.
\item \textsuperscript{376} \textit{Id.}
\item \textsuperscript{377} \textit{Id.}
\item \textsuperscript{378} \textit{Id.} at 1029.
\item \textsuperscript{379} \textit{Id.} at 1029.
\item \textsuperscript{380} \textit{Id.}
\item \textsuperscript{381} \textit{Id.} at 1030.
\item \textsuperscript{382} \textit{Id.}
\item \textsuperscript{383} \textit{Id.}
\end{itemize}
against the school.\textsuperscript{384} For the Title IX claim, Doe needed to prove that a school official had actual notice of the discrimination, the school's response failed to make the violator comply and amounted to deliberate indifference to discrimination, and the school consequently denied her equal access to education.\textsuperscript{385} The court concluded that a reasonable jury could find that the school had actual notice of the discrimination, that the school was deliberately indifferent to the discrimination, and that the discrimination had a negative effect on Doe's access to education\textsuperscript{386} Similarly, for the claim of negligence under Nevada's child abuse reporting statute, the court found that a reasonable jury could find that the school officials failed to adequately report Green's conduct.\textsuperscript{387} In contrast, the court granted summary judgment to the school for the failure to warn claim and negligent hiring claim due to the unforeseeability of the risk to Doe and no evidence of the school's knowledge of Green's dangerous propensities.\textsuperscript{388} Thus, Doe's Title IX claim and claim of negligence under the reporting statute survived summary judgment.\textsuperscript{389}

\textit{National Wrestling Coaches Ass'n v. Department of Education}

In \textit{National Wrestling Coaches Ass'n v. Department of Education},\textsuperscript{390} the D.C. Circuit rejected a challenge to the three-part Title IX test due to the appellants' lack of standing.\textsuperscript{391}

The appellants were a group of organizations that represented several collegiate male wrestlers, coaches, and alumni who had participated in wrestling programs before the universities eliminated them.\textsuperscript{392} They challenged the three-part Title IX test contained in the 1979 Policy Interpretation and 1996 Clarification alleging that it violated the Constitution, Title IX, the 1975 Regulations, and the Administrative Procedure Act.\textsuperscript{393} The court found the appellants had no standing because their claimed injury could not be redressed by the requested relief.\textsuperscript{394} As universities independently

\textsuperscript{384} \textit{Id.}
\textsuperscript{385} \textit{Id.} at 1032-33.
\textsuperscript{386} \textit{Id.} at 1034-38.
\textsuperscript{387} \textit{Id.} at 1038.
\textsuperscript{388} \textit{Id.} at 1039-40.
\textsuperscript{389} \textit{Id.} at 1040.
\textsuperscript{390} 366 F.3d 930 (D.C. Cir. 2004), \textit{reh'g denied} Nat'l Wrestling Coaches Ass'n v. Dep't of Educ., 383 F.3d 1047 (D.C. Cir. 2004).
\textsuperscript{391} \textit{Id.} at 933-34.
\textsuperscript{392} \textit{Id.} at 933.
\textsuperscript{393} \textit{Id.}
\textsuperscript{394} \textit{Id.}
decided to eliminate or reduce men's wrestling teams, the appellants could not show that a ruling in their favor would alter the universities' decisions.\(^{395}\) Additionally, even if the appellants had standing, the court stated that the appellants' claim was further barred because they could have brought a private action directly against the universities.\(^{396}\) Thus, the appellants were unsuccessful in their attempt to change Title IX.\(^{397}\)

The appellants appealed the decision and requested a rehearing en banc.\(^{398}\) Finding that the appellants had only "unadorned speculation" that the court could redress their injuries, the court concluded that the appellants had no standing.\(^{399}\) Moreover, the court stated that because the appellants had a private cause of action against the universities, a claim could not be brought against the Department of Education.\(^{400}\) Therefore the appellants' petition was denied.\(^{401}\)

**EMPLOYMENT DISCRIMINATION**

Despite the improvements in equality in the areas of gender, race, religion and the like, several of the cases involving employment discrimination were brought in the past year. The following cases discuss claims of discrimination through sexual harassment, racially discriminatory statements, retaliation, and Equal Pay Act violations.

**Reed v. Unified School District No. 233**

In *Reed v. Unified School District No. 233*,\(^{402}\) the District Court of Kansas found a triable issue of fact existed for a former high school coach's employment discrimination and retaliation claims, and therefore, denied the school district's motion for summary judgment.\(^{403}\)

Reed, a cross country and track coach, was disciplined by her employer, Olathe South High School, after she gave coaching advice to a competing school's athlete at a track meet.\(^{404}\) Although Reed felt her actions were

\(^{395}\) *Id.*

\(^{396}\) *Id.* at 933-34.

\(^{397}\) *Id.*

\(^{398}\) *Nat'l Wrestling Coaches Ass'n*, 383 F.3d at 1047.

\(^{399}\) *Id.*

\(^{400}\) *Id.*

\(^{401}\) *Id.*


\(^{403}\) *Id.* at 1219.

\(^{404}\) *Id.* at 1220-21.
acceptable because she knew the athlete in question and knew the athlete was not competing against any Olathe South runners, the school athletic director, who had received several complaints about Reed for other actions, informed her that she would be restricted in her coaching duties, she would not be returning as coach next year, and he would not give any references to future employers.\textsuperscript{405} Shortly afterward, Reed gave the athletic director a letter in which she informed him that he was discriminating against her because of her gender,\textsuperscript{406} and she later brought a suit alleging that the district's actions were unlawful employment discrimination and retaliation.\textsuperscript{407} Analyzing the summary judgment motion under the \textit{McDonnell Douglas} framework, the court stated that Reed had to prove a prima facie case of discrimination by showing that she was a member of a class that the statute protected, she suffered an adverse employment action, and that the employer treated her less favorably than others not in the protected class or that the action occurred under circumstances that inferred discrimination.\textsuperscript{408} The court found that Reed had a prima facie case because she was qualified for the position,\textsuperscript{409} the athletic director's failure to recommend her was adverse to her employment,\textsuperscript{410} and the district hired another coach for the job.\textsuperscript{411} The burden then shifted to the school to prove that it had a legitimate, nondiscriminatory reason for its actions.\textsuperscript{412} The school ended Reed's employment because she coached the other athlete and for other performance reasons, thus, the court found the school had met its burden.\textsuperscript{413} The burden then shifted back to Reed to prove that the school's reasons were pretextual.\textsuperscript{414} Reed met that burden by showing that the school did not bring some of the complaints to Reed's attention and did not assert the complaints were problematic until after she started the lawsuit.\textsuperscript{415} Accordingly, the court denied the school district's summary judgment motion.\textsuperscript{416}

Similarly, the court denied the school district's summary judgment motion

\begin{itemize}
  \item \textsuperscript{405} \textit{Id.} at 1221.
  \item \textsuperscript{406} \textit{Id.}
  \item \textsuperscript{407} \textit{Id.} at 1219.
  \item \textsuperscript{408} \textit{Id.} at 1223.
  \item \textsuperscript{409} \textit{Id.} at 1224.
  \item \textsuperscript{410} \textit{Id.} at 1227.
  \item \textsuperscript{411} \textit{Id.}
  \item \textsuperscript{412} \textit{Id.} at 1228.
  \item \textsuperscript{413} \textit{Id.}
  \item \textsuperscript{414} \textit{Id.} at 1229-30.
  \item \textsuperscript{415} \textit{Id.}
  \item \textsuperscript{416} \textit{Id.} at 1230.
\end{itemize}
on the retaliation claims.\textsuperscript{417} Using the \textit{McDonnell-Douglas} framework, the court concluded that a jury could find Reed engaged in protected opposition to discrimination, suffered an adverse employment action, and established a causal connection between the protected activity and adverse employment action with regard to the athletic director's refusal to recommend Reed to potential employers and the non-renewal of her contract.\textsuperscript{418}

\textit{Brooks v. Southern University}

In \textit{Brooks v. Southern University},\textsuperscript{419} the Court of Appeal of Louisiana upheld sexual harassment, gender discrimination, and retaliation claims made by a former coach against another coach and raised the award of damages and fees to the victim.\textsuperscript{420}

Jean Brooks was a basketball coach at Southern University for six years until the University informed her that it was not renewing her contract.\textsuperscript{421} As she had previously filed unsuccessful internal complaints alleging sexual harassment and gender discrimination claims against Earl Hill, another coach, she filed suit against Southern University for gender discrimination, sexual harassment, and retaliation.\textsuperscript{422} At trial, a jury found that Southern was guilty of Brooks's claims.\textsuperscript{423} On appeal, the court considered several issues from both parties.\textsuperscript{424} The court determined that the admission of prior sexual harassment complaints against Hill, a hearsay statement made by another sexual harassment victim, and that the questioning of another sexual harassment victim did not warrant a new trial.\textsuperscript{425} Further, the court found no error in the jury's verdict.\textsuperscript{426} While the court determined that a judgment notwithstanding the verdict was appropriate, it concluded that $65,000 was too low an award and granted Brooks $200,000.\textsuperscript{427} Finally, because the court increased the damages award, it also increased the attorney's fees to Brooks.\textsuperscript{428}

\textsuperscript{417} Id. at 1230-34.

\textsuperscript{418} Id.

\textsuperscript{419} 877 So.2d 1194 (La. Ct. App. 2004).

\textsuperscript{420} Id. at 1228.

\textsuperscript{421} Id. at 1198-99.

\textsuperscript{422} Id. at 1199.

\textsuperscript{423} Id.

\textsuperscript{424} Id. at 1199-1200.

\textsuperscript{425} Id. at 1202-04.

\textsuperscript{426} Id. at 1221-24.

\textsuperscript{427} Id. at 1227.

\textsuperscript{428} Id. at 1228.
In *Fuhr v. School District of Hazel Park*,\(^ {429}\) the Sixth Circuit Court of Appeals upheld a female coach's discrimination claim after a school district refused to hire her as the boys' varsity basketball coach.\(^ {430}\)

When the boys' varsity basketball coach retired, teachers Geraldine Fuhr and John Barnett applied for the job.\(^ {431}\) Although Fuhr had been coach for the girls' varsity basketball team for ten years as well as coach of the boys' junior varsity and assistant coach of the boys' varsity basketball teams for eight years, Barnett, who had coached the freshman boys' team for two years, received the job due to the school board's concern about a female being the boys' varsity coach.\(^ {432}\) Fuhr filed a Title VII claim and won damages and the job as boys' varsity basketball coach.\(^ {433}\) On appeal, the court found that Fuhr had suffered an adverse employment action due to the lower pay provided for the girls' coaching job in relation to the boys' coaching job. Further, the court affirmed the district court, stating that jury could find that the school intentionally discriminated against Fuhr based on the school board's statements and that the district court did not abuse its discretion by giving Fuhr the boys' varsity coaching position.\(^ {434}\)

*Horn v. University of Minnesota*

In *Horn v. University of Minnesota*,\(^ {435}\) the Eighth Circuit Court of Appeals found that a former women's hockey assistant coach, who was paid less than another assistant, did not suffer a Title VII or Equal Pay Act violation and did not suffer any retaliatory action or constructive discharge.\(^ {436}\)

For the inaugural season of the University of Minnesota's women's hockey team, the university advertised for two assistant coaches and used the same job description for both jobs.\(^ {437}\) Although the job title and description for both jobs was the same, so-called "first assistant" Elizabeth Witchger made $11,000 more and had an additional one month of employment on her contract than so-

\(^{429}\) 364 F.3d 753 (6th Cir. 2004).
\(^{430}\) Id. at 763.
\(^{431}\) Id. at 756.
\(^{432}\) Id. at 756-57.
\(^{433}\) Id. at 757.
\(^{434}\) Id. at 758-61.
\(^{435}\) 362 F.3d 1042 (8th Cir. 2004).
\(^{436}\) Id. at 1044.
\(^{437}\) Id.
called "second assistant" David Horn. Additionally, while Witchger and Horn had some similar duties, Witchger and Horn also had some distinct duties. Although Horn knew he accepted the position of "second assistant," he did not realize the difference in salaries and length of employment until the next season. When Horn realized the difference, he complained to the athletic department and soon after left his position. Eventually, Horn brought suit and claimed wage discrimination, retaliation, and constructive discharge in violation of Title VII and the Equal Pay Act. For the wage discrimination claim, the court found that Horn had not met his burden because his and Witcheger's jobs were not substantially equal in that Witcheger handled more of the recruiting and public relations duties while Horn was more involved in behind-the-scenes work. The court concluded that Horn had not suffered any adverse employment action because his terms of employment did not change and the University offered him a contract with extended terms and salary and therefore dismissed the retaliation claim. Finally, the court found that Horn could not succeed on his constructive discharge claim because the head coach's documentation of alleged performance problems and alleged unprofessional treatment of Horn in front of the players were not intolerable working conditions.

_Harris v. City of Montgomery_

In _Harris v. City of Montgomery_, the Middle District of Alabama denied a city's summary judgment motion and found that a reasonable jury could believe that the city had discriminated against an employee due to his military status.

Gregory Harris, a city recreational employee, coached the junior high football team. In 2002, he was called for an annual military leave, and when he showed his supervisors his orders, they demoted him from head

438. _Id._
439. _Id._
440. _Id._ at 1044.
441. _Id._
442. _Id._
443. _Id._ at 1045-46.
444. _Id._ at 1046.
445. _Id._ at 1047.
446. 322 F. Supp. 2d 1319 (M.D. Ala. 2004).
447. _Id._ at 1325-29.
448. _Id._ at 1321.
football coach to an assistant.\textsuperscript{449} While on military leave, the city docked Harris for vacation time and did not give him paid military leave.\textsuperscript{450} Additionally, Harris alleged that he was denied a merit raise due to his military duties.\textsuperscript{451} Harris brought an action against the city and his supervisors and alleged violations of the Uniform Services Employment and Reemployment Rights Act (USERRA) and the Fifth, Ninth, and Fourteenth Amendments.\textsuperscript{452} For the USERRA claim, the court concluded that a reasonable jury could find that the city discriminated against Harris because of his military status.\textsuperscript{453} The court found that the constitutional claims were without merit since Harris was not a federal employee and the Fourteenth Amendment claim was identical to the USERRA claim.\textsuperscript{454} Therefore, the court denied the city's motion for summary judgment.\textsuperscript{455}

\textit{Cowan v. Unified School District 501}

In \textit{Cowan v. Unified School District 501},\textsuperscript{456} the District Court of Kansas denied five racial discrimination claims by a coaching applicant, but found a triable issue of fact as to the plaintiff's sixth claim based on the school's inconsistent reasons for denying him a job interview.\textsuperscript{457} The plaintiff, an African-American, applied for six different coaching positions at Kansas public high schools within three years.\textsuperscript{458} When he did not obtain any of jobs, he sued the school district claiming violations of Title VII, the Kansas Act Against Discrimination, and section 1981.\textsuperscript{459} Using the \textit{McDonnell-Douglas} burden-shifting analysis, the court examined the reasons why the plaintiff was not hired.\textsuperscript{460} Dismissing one claim due to the statute of limitations,\textsuperscript{461} the court granted summary judgment to four of the plaintiff's claims because the hired applicants had superior or similar records of

\begin{itemize}
\item \textsuperscript{449} \textit{Id.}
\item \textsuperscript{450} \textit{Id.} at 1322.
\item \textsuperscript{451} \textit{Id.}
\item \textsuperscript{452} \textit{Id.} at 1321.
\item \textsuperscript{453} \textit{Id.} at 1325-28.
\item \textsuperscript{454} \textit{Id.} at 1329.
\item \textsuperscript{455} \textit{Id.}
\item \textsuperscript{456} 316 F. Supp. 2d 1061 (D. Kan. 2004).
\item \textsuperscript{457} \textit{Id.} at 1071.
\item \textsuperscript{458} \textit{Id.} at 1064-65.
\item \textsuperscript{459} \textit{Id.} at 1063.
\item \textsuperscript{460} \textit{Id.} at 1067-71.
\item \textsuperscript{461} \textit{Id.} at 1068.
\end{itemize}
experience and accomplishments as the plaintiff.\textsuperscript{462} However, the court denied summary judgment on the plaintiff's last claim because of the school's inconsistent reasons for denying the plaintiff the chance to interview first claiming the reason as experience-based, then as related to experience of the applicant within the particular school's program.\textsuperscript{463} Thus, only one of the plaintiff's six claims proceeded.\textsuperscript{464}

\textit{Lee v. United States Taekwondo Union}

In \textit{Lee v. United States Taekwondo Union},\textsuperscript{465} the District Court of Hawaii denied injunctive relief to the former coach of the U.S. national tae kwon do team who claimed the USOC fired him for racial reasons.\textsuperscript{466} In 2003, based on the recommendation of the United States Taekwondo Union (USTU), the United States Olympic Committee (USOC) chose Dae Sung Lee to be the tae kwon do coach for the 2004 Olympic Games.\textsuperscript{467} However, at the same time, the USTU was experiencing financial and managerial difficulties, and the USOC revoked its membership.\textsuperscript{468} Soon after, the USOC terminated Lee as head coach, citing the reason that the team had fewer credentials and wanted to give the credentials to the athletes' personal coaches to better the team's medal hopes.\textsuperscript{469} Based on comments the USOC made about Korea, Lee brought suit and alleged that he was terminated because he was Korean.\textsuperscript{470} For relief, Lee asked for an injunction and reinstatement as coach.\textsuperscript{471} After dismissing some of Lee's claims because they were precluded under the Amateur Sports Act,\textsuperscript{472} the court determined that the Amateur Sports Act did not preclude Lee's section 1981 claim.\textsuperscript{473} Using the \textit{McDonnell Douglas} burden-shifting analysis, the court examined the reasons behind Lee's dismissal.\textsuperscript{474} Finding that the USOC's reasons were legitimate and non-discriminatory, the court shifted the burden back to Lee to

\textsuperscript{462.} \textit{Id.} at 1068-70.
\textsuperscript{463.} \textit{Id.} at 1070-71.
\textsuperscript{464.} \textit{Id.} at 1071.
\textsuperscript{466.} \textit{Id.} at 1269.
\textsuperscript{467.} \textit{Id.} at 1263.
\textsuperscript{468.} \textit{Id.} at 1263-64.
\textsuperscript{469.} \textit{Id.} at 1264.
\textsuperscript{470.} \textit{Id.} at 1254, 1266.
\textsuperscript{471.} \textit{Id.} at 1261.
\textsuperscript{472.} \textit{Id.} at 1255-59.
\textsuperscript{473.} \textit{Id.} at 1260.
\textsuperscript{474.} \textit{Id.} at 1268.
demonstrate pretext. As Lee alleged no evidence of pretext, the court denied Lee's claim for injunctive relief.

HIGH SCHOOL LEGAL ISSUES

High school sports participation involves a number of issues that are addressed in other areas of law. However, the restraints placed on high school athletes and programs differ significantly from the restrictions on collegiate athletes and programs. The cases that follow examine these restrictions. An issue that has recently received more exposure, the treatment of learning disabled athletes, is also addressed.

Ingram v. Toledo City School District Board of Education

In Ingram v. Toledo City School District Board of Education, an Ohio federal court enjoined a high school athletic association from preventing a learning disabled student from playing football due to a failing grade. High school football player David Ingram was learning disabled and received a tutor's assistance and other help for his classes. Under the Ohio High School Athletic Association (OHSAA) rules, Ingram needed to pass five core classes to be eligible for football. However, Ingram failed English due, in part, because he was not provided with testing accommodations he should have received for his learning disability. Because he failed the exam, he was barred from playing football. Although the school allowed Ingram to retake the English class and obtain a passing grade, the OHSAA refused to allow Ingram to play because it did not allow students to make up coursework. Ingram filed a request for an injunction to allow him to play football and to prevent OSHAA from sanctioning his school. Because the school was at fault for not properly accommodating Ingram, the court determined that OSHAA's refusal to waive its rule was unreasonable.
court also found that Ingram would suffer irreparable injury due to his chances of obtaining a scholarship being lessened by not playing football. Moreover, the court found that a waiver would not substantially harm the OHSAA or any of its schools and that public policy would support granting Ingram a waiver.

*Breighner v. Michigan High School Athletic Ass'n*

In *Breighner v. Michigan High School Athletic Ass'n*, the Supreme Court of Michigan determined that the Michigan High School Athletic Association (MHSAA) was not a "public body" under the Freedom ofInformation Act. The MHSAA prohibited a high school skier from competing in a ski meet due to his previous violations of MHSAA rules. Under the Freedom ofInformation Act, the skier's parents requested information regarding MHSAA's decision. MHSAA rejected the request, stating that it was not a public body. Subsequently, the parents brought suit to compel the MHSAA to answer the request. To determine whether MHSAA was a public body, the court examined its make-up. The court found that the MHSAA was an independent, non-profit corporation that was primarily funded by ticket revenue from athletic events. Additionally, the court noted that schools paid no dues to MHSAA, the state provided no resources to MHSAA, and membership with the MHSAA was voluntary. For these reasons, the court determined that MHSAA was not a public body and, thus, did not need to disclose the information.

**INTELLECTUAL PROPERTY**

Intellectual property law continues to affect the sports market in a number

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486. *Id.* at 1006.
487. *Id.* at 1006-07.
489. *Id.* at 648.
490. *Id.* at 642.
491. *Id.*
492. *Id.*
493. *Id.*
494. *Id.* at 644.
495. *Id.* at 645.
496. *Id.* at 645-47.
497. *Id.* at 648.
of ways. Trademark protection, patent protection, athletes' right to privacy and cybersquatting are only a few of the areas that courts addressed with regard to the intersection of sports and intellectual property law in the past year. The cases below discuss this intersection and its impact on both the development of intellectual property law and sports.

*Nike, Inc. v. Circle Group Internet, Inc.*

In *Nike, Inc. v. Circle Group Internet, Inc.*, the Northern District of Illinois found that the owner of a internet domain name, which was similar to Nike's trademark "just do it," violated the Anticybersquatting Consumer Protection Act and found that a material issue of fact existed as to Nike's claim that the internet domain name diluted the "just do it" trademark. Since 1997, Circle Group Internet owned the intemet domain name "justdoit.net" and used that site to redirect visitors to its home page. Owning the trademark "just do it," Nike brought suit against Circle Group and alleged that the Circle Group's use of the domain name was cybersquatting, a violation of the Lanham Act, and a violation of Illinois common law. The court granted summary judgment to Nike on the cybersquatting claim because Nike established that its trademark was distinctive and famous, Circle Group's domain name was identical or confusingly similar to the Nike trademark, and Circle Group had registered the domain name in bad faith. In contrast, the court denied summary judgment on the issue of dilution because a material fact existed as to whether Circle Group was diluting Nike's trademark and further information was required for a determination by the trier of fact.

*Playmakers L.L.C., v. ESPN, Inc.*

In *Playmakers L.L.C., v. ESPN, Inc.*, the Ninth Circuit denied Playmakers' preliminary injunction motion against ESPN for using

499. *Id.* at 695.
500. *Id.* at 689.
501. *Id.*
502. *Id.* at 691-94.
503. *Id.* at 691-92.
504. *Id.* at 695.
505. 376 F.3d 894 (9th Cir. 2004).
"Playmakers" as the name of a television series.\textsuperscript{506}

Playmakers, L.L.C. (the "Agency") brought this suit at the beginning of the first season of the television program "Playmakers" (the "Program") to prevent ESPN from using the title for a second season, selling it to another network, or releasing videos or DVDs under that name.\textsuperscript{507} The Agency, which had two trademarks for its name, argued that ESPN's use of the name would devalue its trademark and goodwill of its business because professional or aspiring professional football players would associate the name with the controversial television show or believe that the Agency was infringing on the Program's mark to take advantage of ESPN.\textsuperscript{508}

Applying the "likelihood of confusion" test, the court determined that people would not be confused because "playmaker" is a common term, there are differences in marketing, and the degree of care that professional athletes use in choosing an agent would prevent such a decision from being made based on incomplete information.\textsuperscript{509} Thus, the court denied the Agency's request for a preliminary injunction because the Agency could not show that it could succeed on the merits.\textsuperscript{510}

\textit{KingVision Pay-Per-View, Corp. v. Belmont, Inc.}

In \textit{KingVision Pay-Per-View, Corp. v. Belmont, Inc.},\textsuperscript{511} the Third Circuit Court of Appeals determined that the Pennsylvania cable piracy statute was more analogous to the Federal Communications Act (FCA) and upheld the dismissal of the Plaintiff's claim due to the statute of limitations.\textsuperscript{512}

On March 13, 1999, the El Toro bar broadcast the pay-per-view boxing match of Evander Holyfield and Lennox Lewis, as well as other matches, without the permission of the matches' licensee, KingVision.\textsuperscript{513} KingVision sued El Toro for this violation in June 2001.\textsuperscript{514} However, the court dismissed KingVision's suit because it was filed after the Pennsylvania cable piracy statute's two-year limitation.\textsuperscript{515} KingVision appealed the decision and asked the court to apply the three-year limitation of the Copyright Act because it

\textsuperscript{506} Id. at 898.
\textsuperscript{507} Id. at 896.
\textsuperscript{508} Id.
\textsuperscript{509} Id. at 897.
\textsuperscript{510} Id. at 898.
\textsuperscript{511} 366 F.3d 217 (3d Cir. 2004).
\textsuperscript{512} Id. at 219.
\textsuperscript{513} Id.
\textsuperscript{514} Id.
\textsuperscript{515} Id.
more closely parallels the FCA. The court stated that because the FCA did not have a time limitation, the court had to look at analogous state statutes. Agreeing with the district court, the court concluded that the two-year limitation applied because the piracy statute was more similar to the FCA. Moreover, the court found that the two-year time limitation did not "frustrate the practicalities of litigation" because KingVision knew about the violation for two years. Accordingly, the court upheld the dismissal.

Weinstein Design Group, Inc. v. Fielder

In Weinstein Design Group, Inc. v. Fielder, a Florida appellate court determined that the propriety of a design company's use of a professional baseball player's name in a magazine and undistributed brochures was a question for a jury.

Weinstein Design Group (Weinstein) contracted with former professional baseball player Cecil Fielder and his wife Stacy Fielder to decorate their home. Later, Fielder filed suit and alleged that Weinstein misused his name for commercial purposes. Because Weinstein stipulated that he used Fielder's name without consent, the only issues at trial were whether a magazine article and undistributed brochures were an exception to liability, the amount of any compensatory damages, and the amount of any punitive damages. The court found that the trial court properly submitted the issue of the magazine and brochure use to the jury for consideration because neither publication was exempt from liability under the state statute as a matter of law. As for damages, the court found that the jury's award of compensatory damages was supported by evidence; in contrast, the court determined that Weinstein's level of culpability did not meet the level for punitive damages. Thus, the court affirmed the trial court's ruling on these motions, except for

516. Id.
517. Id. at 220.
518. Id. at 225.
519. Id.
520. Id.
522. Id. at 997-99.
523. Id. at 993.
524. Id.
525. Id. at 993-94.
526. Id. at 997-99.
527. Id. at 999-1003.
punitive damages.\textsuperscript{528}

\textit{Callaway Golf Co. v. Dunlop Slazenger Group Americas, Inc.}

In \textit{Callaway Golf Co. v. Dunlop Slazenger Group Americas, Inc.},\textsuperscript{529} the District Court of Delaware concluded that Callaway had not misappropriated Dunlop's trade secrets of its polyurethane golf ball when a former Dunlop employee designed a polyurethane golf ball for Callaway.\textsuperscript{530}

Through one of its inventors, Pijush Dewanjee, Dunlop had created three-piece, cast polyurethane-covered golf balls in 1996 and was in the process of developing new polyurethane blends to better improve the manufacturing process during 1997.\textsuperscript{531} In February 1997, based on Duwanjee's experimentation and notes, Dunlop filed for a patent for this new polyurethane blend, and Duwanjee signed a confidentiality agreement that stated any information related to the polyurethane golf ball, or any information received from Dunlop's vendors to design or develop products, was Dunlop's confidential and proprietary information.\textsuperscript{532} However, in June 1997, Duwanjee resigned from Dunlop and began working on developing a golf ball for rival Callaway.\textsuperscript{533} Shortly thereafter, Duwanjee received a patent for a polyurethane-blend golf ball that used the same polymer as his design at Dunlop.\textsuperscript{534} Once the golf ball reached the market, Dunlop filed suit and claimed Callaway violated the California Trade Secrets Act.\textsuperscript{535} Because Dunlop failed to show that it experimented with the polymer before Duwanjee left, the polymer had been mentioned in other previous patents, and Callaway submitted evidence that it discovered the polymer independently, the court held that Dunlop had not established a trade secret.\textsuperscript{536} Additionally, the court found that in regard to Duwanjee's February 1997 patent application and notes, although the contents may have been Dunlop's trade secrets, insufficient evidence existed that Callaway misappropriated them because Callaway's golf ball's ingredients were in the public domain and were not substantially similar to Dunlop's.\textsuperscript{537} Thus, the court granted partial summary judgment to Callaway

\begin{flushleft}
\textsuperscript{528} Id. at 1003.
\textsuperscript{529} 318 F. Supp. 2d 205 (D. Del. 2004).
\textsuperscript{530} Id. at 216.
\textsuperscript{531} Id. at 207-08.
\textsuperscript{532} Id. at 208.
\textsuperscript{533} Id.
\textsuperscript{534} Id. at 209.
\textsuperscript{535} Id.
\textsuperscript{536} Id. at 211-12.
\textsuperscript{537} Id. at 213-15.
\end{flushleft}
on the misappropriation of trade secrets claims. 538

MISCELLANEOUS LEGAL ISSUES

This category is meant to include those cases that do not fall within one of the delineated categories involved in this survey. These cases involved state open meetings laws, the Americans with Disabilities Act, standing, and duty rates.

Hartz Mountain Industries, Inc. v. New Jersey Sports & Exposition Authority

In Hartz Mountain Industries, Inc. v. New Jersey Sports & Exposition Authority, 539 a New Jersey appellate court determined that a state authority had not violated the open meetings law or deviated from the proper bidding process and hearing, but remanded the open records claim for an in-camera review. 540

The New Jersey Sports & Exposition Authority (NJSEA) was accepting bids to build a multi-use development near the Continental Arena known as the "Meadowlands Xanadu." 541 After the NJSEA decided to accept the Mills Corporation and Mack-Cali Reality Corporation bid, one of the unsuccessful bidders, Hartz Mountain Industries, brought suit alleging violations of the Open Public Records Act, the Open Meetings Act, the bidding procedure, and protest hearing. 542 Hartz requested documents from the NJSEA regarding the public bidding process, however, the NJSEA denied most of these requests. 543 The court determined that a lower court needed to conduct an in-camera review of the requested documents to determine whether the NJSEA's denial was proper. 544 Hartz argued that the NJSEA's holding of a closed meeting violated the state open meetings statute. 545 Because the meeting was about contract negotiation issues and real estate disposition, the court determined that NJSEA's closed session was lawful. 546 Lastly, Hartz asserted that it was

538. Id. at 216.
540. Id. at 803.
541. Id. at 795.
542. Id.
543. Id.
544. Id. at 798-99.
545. Id. at 799.
546. Id. at 800.
entitled to a contested case hearing in front of an administrative law judge.\textsuperscript{547} Rejecting this argument, the court stated that such a hearing was not required, especially because the NJSEA could choose the winning bidder based on several factors, not just price.\textsuperscript{548} Thus, the court remanded Hartz's open records claim but denied Hartz's open meetings and contested hearing claims.\textsuperscript{549}

\textit{Disabled Rights Action Committee v. Las Vegas Events, Inc.}

In \textit{Disabled Rights Action Committee v. Las Vegas Events, Inc.},\textsuperscript{550} the Ninth Circuit Court of Appeals reinstated a disabled advocates group's Americans with Disabilities Act (ADA) claim against a rodeo for discrimination in seating, ticket prices, and accommodations.\textsuperscript{551} The Disabled Rights Action Committee (DRAC), a group of advocates for disabled people, brought suit against Las Vegas Events (Events) alleging that the company violated the ADA by discriminating against disabled patrons' with regard to access, seating arrangements, and ticket prices at rodeos.\textsuperscript{552} DRAC sought an injunction that would prevent Events from holding rodeos until these disparities were addressed.\textsuperscript{553} At issue in this appeal was whether Title III of the ADA applied to private entities operating facilities owned by public entities, and if so, the circumstances of that application.\textsuperscript{554} Also at issue was whether the University and Community College System of Nevada (University System), the owner of the arena, needed to be joined to the action.\textsuperscript{555} After examining the applicable statutes, regulations, and cases, the court determined that whether Title III applied to Events depended on whether Events exercised enough control over the arena as to be the "operator" of the arena.\textsuperscript{556} Accordingly, the court allowed DRAC to develop a factual basis to that claim.\textsuperscript{557} In deciding the other issue, the court held that the University System was not a necessary party under Rule 19 of the Federal Rules of Civil

\begin{itemize}
\item \textsuperscript{547} Id.
\item \textsuperscript{548} Id. at 800-01.
\item \textsuperscript{549} Id. at 803.
\item \textsuperscript{550} 375 F.3d 861 (9th Cir. 2004).
\item \textsuperscript{551} Id. at 884.
\item \textsuperscript{552} Id. at 865-67.
\item \textsuperscript{553} Id. at 867.
\item \textsuperscript{554} Id. at 872.
\item \textsuperscript{555} Id. at 878.
\item \textsuperscript{556} Id.
\item \textsuperscript{557} Id.
\end{itemize}
Procedure. Thus, the court reversed the district court's dismissal of the action against Events and did not require joinder of the University System as a party.

*Bauer Nike Hockey USA, Inc. v. United States*

In *Bauer Nike Hockey USA, Inc. v. United States*, the Federal Circuit determined that ice hockey pants were to be considered ice hockey equipment for importation. Bauer makes hockey pants that are imported into the United States. In this suit, at issue was whether the United States should have classified the pants as garments with a sixteen percent duty rate or ice hockey equipment, which was duty-free. Concluding that the pants fell under the more specific description of ice hockey equipment, the court concluded that the pants should be reclassified. Thus, the pants were not subject to the sixteen percent duty rate.

**TAX**

Every American faces taxation issues and sports figures and organizations are no different. Because many sports organizations are non-profit entities, there are often tax challenges brought with regard to charity status and tax exemption. The following cases involve a charitable designation as well as the proper treatment of a personal seat license with respect to corporate tax treatment of dividends.

*Quad Cities Open, Inc. v. City of Silvis*

In *Quad Cities Open, Inc. v. City of Silvis*, the Illinois supreme court held that a charity golf tournament was not operated "for private gain," and thus, was not subject to a municipal tax.

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558. *Id.* at 883.
559. *Id.* at 884.
560. 393 F.3d 1246 (Fed. Cir. 2004).
561. *Id.* at 1252-53.
562. *Id.* at 1248.
563. *Id.*
564. *Id.* at 1252-53.
565. *Id.* at 1253.
566. 804 N.E.2d 499 (Ill. 2004).
567. *Id.* at 510.
The city of Silvis, Illinois, enacted an ordinance that imposed a three percent tax upon gross receipts from admission ticket sales issued for professional tournaments or other professional athletic events held "for gain." At issue was whether the city could tax the Quad Cities Open, a charitable golf tournament sanctioned by the Professional Golfers' Association (PGA). Because the term "for gain" was ambiguous, the court concluded that the legislature did not intend to tax "events organized and operated for charitable purposes." Furthermore, even though some of the profits were used for operating expenses and tournament purses, the court found that the Quad Cities Open was not held for private profit or gain and that the tournament donated several million dollars for charities. Accordingly, the court concluded that the Quad Cities Open was operated for charitable purposes, and the city could not impose its tax.

**Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance**

In *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, the Tax Court of Indiana determined that a sports club was not entitled to a charitable tax exemption. The Health Institute of Indiana operated a sports club and medical pavilion on the grounds of Westview Hospital. Consisting of seventy-four percent of the property, the sports club contained tennis courts, racquetball courts, pools, a track, aerobics rooms, fitness equipment, and other amenities. Among other things, at issue was whether the sports club qualified for a charitable purposes tax exemption. Because the sports club generated revenue and competed with other sports clubs, the court determined that the club did not qualify for the charitable tax exemption. Thus, the court denied the Health Institute's petition.

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568. Id. at 502.
569. Id. at 501.
570. Id. at 506.
571. Id. at 510.
572. Id.
573. 818 N.E.2d 1009 (Ind. T.C. 2004).
574. Id. at 1018.
575. Id. at 1011.
576. Id. at 1012.
577. Id. at 1013.
578. Id. at 1018.
579. Id.
Kerns v. Commissioner

In Kerns v. Commissioner, the United States Tax Court concluded that a company's payment to purchase a permanent seat license was a constructive dividend to its shareholders. The petitioners, who owned one hundred percent of the stock of InsurMark, Inc., bought a permanent seat license for Houston Texans football games in 1999 with InsurMark funds, but did not deduct the amount on their corporate income tax return. In the agreement to purchase the seat license, the petitioner indicated that the license was for personal use. However, the petitioners did not include the amount paid for the personal seat license as constructive dividend income on their federal tax returns. Because the shareholders benefited economically by obtaining the permanent seat license without any cost to themselves and the license was held in their name, not the company's, the court concluded that the company's payment for the seat license was a constructive dividend to the petitioners.

TICKET HOLDER ISSUES

The area of ticket holders' rights has become an area of much litigation recently. While past litigation has often involved challenges by ticket holders against the teams on the issue of right of revocation, current litigation involves other ticket-related issues. For example, individual ticket holders have faced challenges regarding their property rights in ownership of season tickets and ticket holders have contested the team's right to place their seating within certain areas of the stadium. The cases that follow discuss two of the ticket holder challenges that have occurred in the last year.

Lipton v. Donnenfeld

In Lipton v. Donnenfeld, a New York appeals court ruled that a season ticket owner who bought tickets for his friends held the tickets in a constructive trust and had to transfer the license to purchase two of the tickets

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580. 87 T.C.M. (CCH) 1082 (2004).
581. Id. at 1083.
582. Id.
583. Id.
584. Id.
585. Id.
to his friend due to his friend's status as beneficiary.\(^{587}\)

For over thirty years, under one account, Saul Lipton purchased eight season tickets to New York Jets games for himself and his friends, including Lawrence Brand and Norman Donnenfeld.\(^{588}\) In 1995, Lipton transferred the season ticket account to Donnenfeld.\(^{589}\) However, two years later, Lipton and Brand requested that Donnenfeld transfer the tickets into their names, but he refused.\(^{590}\) At trial, Brand won a constructive trust for his two tickets, and Donnenfeld appealed.\(^{591}\) The court found that the agreement between the friends was that each was the owner of his two tickets, and Lipton maintained only nominal title to the license to buy the tickets.\(^{592}\) When Lipton transferred the tickets to Donnenfeld's name, Lipton transferred the interest as a constructive trustee.\(^{593}\) Thus, because Brand was a beneficiary of the constructive trust, the court determined that Brand was the owner of the tickets, and Donnenfeld would be unjustly enriched if he were to keep the tickets as his own.\(^{594}\) The appellate court affirmed the trial court's decision allocating actual ownership of the tickets to Brand.\(^{595}\)

**Yocca v. Pittsburgh Steelers Sports, Inc.**

In *Yocca v. Pittsburgh Steelers Sports, Inc.*,\(^{596}\) the Supreme Court of Pennsylvania dismissed a breach of contract claim and other claims made by fans that were unhappy with their seat locations in the new stadium.\(^{597}\)

To encourage fans to buy seats in their new stadium, the Pittsburgh Steelers sent a brochure to season ticketholders for "stadium builder licenses."\(^{598}\) Among other information, the brochure provided a diagram of the seating locations in the new stadium.\(^{599}\) Once subscribers notified the Steelers that they were interested in the licenses, the subscribers needed to sign a

\(^{587}\) Id. at 357-58.

\(^{588}\) Id. at 357.

\(^{589}\) Id.

\(^{590}\) Id.

\(^{591}\) Id.

\(^{592}\) Id. at 358.

\(^{593}\) Id.

\(^{594}\) Id.

\(^{595}\) Id.


\(^{597}\) Id. at 439.

\(^{598}\) Id. at 427.

\(^{599}\) Id. at 428-29.
contract. When the stadium was completed, the Steelers notified the season ticketholders of their seat locations. The plaintiffs brought suit after they were dissatisfied with the location of their seats, specifically, that their seats were not within the twenty-yard line and were in the sixteenth row of the upper deck. They claimed that the Steelers had breached the contract because the seats were not in the same location as the original brochure had represented and alleged that through fraud and negligent misrepresentation, the Steelers violated the Unfair Trade Practices and Consumer Protection Law (UTPCPL).

Reversing the lower appellate court, the supreme court found that the brochure was not part of the agreement between the parties because the subsequent contract was unambiguous, detailed the terms and conditions of the sale, and stated that it represented the entire contract concerning the sale. Accordingly, the court dismissed the breach of contract claim. Similarly, the court dismissed the UTPCPL because the plaintiffs' reliance on the brochure was not justifiable. Therefore, the plaintiffs' claims were dismissed.

TORT LAW ISSUES

The most frequently litigated area of sports law in 2004 was tort law. Sports present a challenge in the application of tort law at times because of the contact and intensity involved in a number of sports. In the following cases, courts considered cases a number of torts issues between participants and leagues and between co-participants. The courts also addressed the application of recreational immunity statutes to entities that may otherwise be liable for negligence.

Kreil v. County of Niagara

In Kreil v. County of Niagara, a New York appellate court found that a spectator at a hammer throw competition assumed the risk of being struck and dismissed her claim.
At the Scottish Highland Games, during the hammer throw competition, a thrown hammer struck and injured a spectator. The spectator sued the county for negligence to recover for her injuries. The court concluded that being struck is an inherent risk of watching a hammer throw competition and that the spectator assumed the risk of being struck. Accordingly, the court granted summary judgment to the county and dismissed the spectator's claim.

**Peart v. Ferro**

In *Peart v. Ferro*, the Court of Appeals of California determined that operating a Sea-Doo watercraft constituted a sport, and thus, found that the doctrine of primary assumption of risk could be used as a defense. At issue in this case was whether using a Sea-Doo watercraft constituted a sport with regard to the principle of primary assumption of risk. The plaintiff, Peart, suffered injuries after his friend's Sea-Doo collided with his Sea-Doo while they were operating the watercraft recreationally. Subsequently, Peart filed suit and alleged that the other Sea-Doo operator was negligent. Relying on an earlier decision in which the court determined that primary assumption of risk applied to jet skiing, the court concluded that primary assumption of risk applied to using a Sea-Doo because it was fairly similar to a jet ski. Thus, the defendant could assert primary assumption of risk as a defense to the negligence.

**Higgins v. Intex Recreation Corp.**

In *Higgins v. Intex Recreation Corp.*, the Court of Appeals of Washington upheld a jury verdict that rendered a snow tube manufacturer

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609. Id.
610. Id.
611. Id.
612. Id.
613. 13 Cal. Rptr. 3d 885 (Ct. App. 2004).
614. Id. at 899.
615. Id. at 888.
616. Id. at 889-90.
617. Id. at 890.
618. Id. at 895-96.
619. Id. at 903.
strictly liable for its snow tube's unsafe design.  

While snow tubing, Dan Falkner collided with a seven-year-old boy and Tom Higgins, who was trying to move the boy out of Falkner's path. As a result of the collision, Higgins's spinal cord was severed and he was rendered a quadriplegic. Among others, Higgins sued Intex Recreation Corporation (Intex), the company that manufactured the snow tube, in a products liability claim; at trial, a jury found that the snow tube was not reasonably safely designed and held Intex strictly liable for thirty-five percent of the damages. On appeal, using the risk-utility test and the consumer expectation test, the court determined that an alternative, safer design existed, thereby supporting the jury's verdict. As for Higgins's assumption of the risk, the court concluded that no other reasonable safe option for rescue existed and that the trial court was correct in determining as a matter of law that Higgins had not assumed the risk of his injuries. Therefore, the court upheld the jury's verdict in favor of the plaintiff.

_Bunch v. Hoffinger Industries, Inc._

In _Bunch v. Hoffinger Industries, Inc._, a California appellate court upheld a twelve million dollar recovery to an eleven-year-old girl who was injured from diving into a pool. 

Eleven-year-old Leesa Bunch became a quadriplegic after diving into a four-foot-deep aboveground swimming pool. Among others, she sued Hoffinger Industries, Inc. (Hoffinger), the manufacturer of the pool liner, for negligence, products liability, failure to warn, and breach of warranty. A jury awarded her $12 million in damages, and Hoffinger appealed. Hoffinger's first issue of appeal concerned whether diving headfirst into an open pool constituted an open and obvious danger. Examining numerous

621. _Id._ at 431.
622. _Id._ at 423.
623. _Id._
624. _Id._ at 423-24.
625. _Id._ at 425-26.
626. _Id._ at 427-28.
627. _Id._ at 431.
628. 20 Cal. Rptr. 3d 780 (Ct. App. 2004).
629. _Id._ at 783.
630. _Id._
631. _Id._
632. _Id._
633. _Id._ at 789.
cases concerning the adequacies of warnings, the court determined that as a matter of law, an eleven-year-old could not appreciate the danger of diving into a shallow aboveground pool. The court also found that assumption of the risk was unavailable for Hoffinger because the defense did not apply to a product liabilities claim. Finally, the court found that evidence existed that the lack of adequate warnings on the pool liner was a substantial factor in causing Bunch's injuries. Thus, the court upheld the jury's decision.

_Unzen v. City of Duluth_

In _Unzen v. City of Duluth_, the Court of Appeals of Minnesota concluded that a city and its independent contractor were not immune from a personal injury lawsuit that arose from a patron falling down a staircase in a municipal golf course clubhouse.

At a municipal golf course clubhouse, Robert Unzen tripped over some metal "nosing" on a flight of stairs and fell down. To recover for his injuries, he sued the city and an independent contractor the city hired to maintain the clubhouse for negligence. Both defendants asserted that they were immune under Minnesota's recreational-use statute. Analyzing the statute, the court determined that because the clubhouse was used to provide tickets, lockers, and rental equipment, it was afforded recreational use immunity. However, the court determined that the city was not immune under the trespass exception to the statute because the condition of the stairs could not be readily seen and could cause death or great bodily harm. Furthermore, the court concluded that the city was not entitled to discretionary immunity because failing to warn about the previously known danger was an "operational-level" decision, not a discretionary decision. Finally, the independent contractor was not immune as an agent of the city because of his almost complete control over the clubhouse and golf course and his use of his

634. Id. at 796.
635. Id. at 797-98.
636. Id. at 798-800.
637. Id. at 800.
638. 683 N.W.2d 875 (Minn. Ct. App. 2004).
639. Id. at 883.
640. Id. at 877.
641. Id. at 878.
642. Id.
643. Id. at 879.
644. Id. at 881.
645. Id. at 882-83.
own inventory.\textsuperscript{646} Thus, both the city and the independent contractor were subject to liability proceedings.\textsuperscript{647}

\textit{Geiersbach v. Frieje}

In \textit{Geiersbach v. Frieje},\textsuperscript{648} the Indiana appellate court, upholding the grant of summary judgment to the defendants,\textsuperscript{649} concluded that in sports, the proper standard of care was recklessness or maliciousness or intentional injury.\textsuperscript{650}

Tri-State University baseball player William Geiersbach suffered severe and permanent damage to his eye when he was hit by an errant throw during a baseball drill.\textsuperscript{651} In his lawsuit, he alleged that the university, coach, volunteer coach, and Frieje, the teammate who threw the ball, were negligent and breached their duties of care.\textsuperscript{652} Although Geiersbach argued that a reasonable care standard should apply, the court decided that the proper standard of care was recklessness or maliciousness or intentional injury because sports were inherently dangerous in nature.\textsuperscript{653} Moreover, the court extended this standard of care to all participants in the sporting event.\textsuperscript{654} Because Geiersbach did not allege that Frieje acted recklessly, maliciously, or intentionally, the court upheld his summary judgment motion.\textsuperscript{655} With regard to the coaches, the court determined that because the drill was commonly used in baseball and players were commonly hit by baseballs, the coaches did not act recklessly and upheld their summary judgment motions.\textsuperscript{656} In regard to the university, the court upheld the summary judgment motion because Geiersbach made no direct claim against the university.\textsuperscript{657}

\textit{Davin v. Athletic Club}

In \textit{Davin v. Athletic Club},\textsuperscript{658} the Court of Appeals of Kansas determined

\begin{itemize}
\item \textsuperscript{646} \textit{Id.} at 882.
\item \textsuperscript{647} \textit{Id.} at 883.
\item \textsuperscript{648} 807 N.E.2d 114 (Ind. Ct. App. 2004).
\item \textsuperscript{649} \textit{Id.} at 122.
\item \textsuperscript{650} \textit{Id.}
\item \textsuperscript{651} \textit{Id.} at 116.
\item \textsuperscript{652} \textit{Id.}
\item \textsuperscript{653} \textit{Id.} at 118.
\item \textsuperscript{654} \textit{Id.} at 120.
\item \textsuperscript{655} \textit{Id.} at 121.
\item \textsuperscript{656} \textit{Id.} at 121-22.
\item \textsuperscript{657} \textit{Id.} at 122.
\item \textsuperscript{658} 96 P.3d 687 (Kan. Ct. App. 2004).
\end{itemize}
that a plaintiff, who had been accused of battery and negligence, was not entitled to $300,000 from his insurance company.\textsuperscript{659}

While playing basketball at the Athletic Club of Overland Park, Michael Davin was injured when his opponent, Sean Lance, picked him up and dropped him headfirst onto the floor.\textsuperscript{660} For his medical bills and lost wages, Davin sued Lance for battery and negligence.\textsuperscript{661} Because State Farm insured Lance under a homeowner's policy, State Farm hired an attorney to represent Lance under its reservation of rights.\textsuperscript{662} Against the attorney's advice, Lance agreed with Davin to waive a jury trial and allow Davin to take judgment against him for $300,000.\textsuperscript{663} To obtain the money, Davin brought a garnishment action against State Farm for $300,000 – the limit of Lance's policy.\textsuperscript{664} The trial court granted summary judgment to State Farm, and Davin appealed.\textsuperscript{665} The court found that because State Farm represented Lance under reservation of its rights, the court was correct in allowing State Farm to relitigate the merits of the case.\textsuperscript{666} Similarly, the court found that collateral estoppel did not apply because State Farm had no interest in the case when Lance settled with Davin.\textsuperscript{667} Finally, the court determined that the garnishment trial court's ruling that Lance acted intentionally and not within the scope of the policy was supported by the evidence.\textsuperscript{668} Thus, the court affirmed the dismissal of Davin's garnishment action.\textsuperscript{669}

\textit{Reeves v. Middletown Athletic Ass'n}

In \textit{Reeves v. Middletown Athletic Ass'n},\textsuperscript{670} the Superior Court of Pennsylvania determined that a material issue of fact existed as to whether a pitching coach negligently taught his pupil an illegal pitching style.\textsuperscript{671}

Twelve-year-old Cheryl Reeves played for a club softball team and took

\textsuperscript{659}. Id. at 690-92.  
\textsuperscript{660}. Id. at 689.  
\textsuperscript{661}. Id.  
\textsuperscript{662}. Id.  
\textsuperscript{663}. Id.  
\textsuperscript{664}. Id.  
\textsuperscript{665}. Id. at 690.  
\textsuperscript{666}. Id.  
\textsuperscript{667}. Id. at 691.  
\textsuperscript{668}. Id. at 691-92.  
\textsuperscript{669}. Id. at 692.  
\textsuperscript{671}. Id. at 1131.
private pitching lessons from her coach. During mid-season, the coach dismissed Reeves from the team for disruptive behavior during a tournament. Reeves sued the coach and league alleging that both had breached a contract by teaching her an illegal pitching style and were negligent concerning her dismissal from the team. On the breach of contract claim, the court concluded that Reeves's claim failed because she had not presented any evidence that she was a third-party beneficiary of an oral contract between her parents and the Middletown Athletic Association (MAA). In contrast, the court determined that a material issue of fact existed as to whether the coach and MAA negligently taught Reeves an illegal pitching style. Thus, the court reversed on summary judgment as to the negligence and upheld summary judgment for the breach of contract claim.

*Oberson v. United States*

In *Oberson v. United States*, a Montana district court determined that the United States was partially liable for a snowmobiler's injuries.

While snowmobiling, Brian Musselman suffered severe brain injuries when one of his companion's snowmobiles flew over a hill and struck him in the head. His guardian brought suit for his injuries under the Federal Tort Claims Act and alleged that the United States was negligent for "failing to correct or warn of an allegedly dangerous trail condition on the groomed snowmobile trail." The court first considered whether the United States was immune from suit. Because the government's failure to warn of the hazardous hill was not because of public policy concerns or competing policy considerations, the court found that immunity did not apply to this type of discretionary decision. Next, the court considered assumption of the risk under the Montana statutes. Examining the statute, the court concluded that

672. *Id.* at 1118.
673. *Id.*
674. *Id.* at 1119.
675. *Id.* at 1125-26.
676. *Id.* at 1131.
677. *Id.*
679. *Id.* at 959.
680. *Id.* at 923.
681. *Id.*
682. *Id.* at 952.
683. *Id.* at 956.
684. *Id.*
nothing eliminated the United States' duty to warn of risks of which it was aware. Apportioning the damage between the parties, the court found that the United States Forest Service was forty percent liable for Musselman's injuries. Thus, Musselman was able to recover damages.

*Patton v. United States of America Rugby Football*

In *Patton v. United States of America Rugby Football*, the Court of Appeals of Maryland found that a rugby tournament's organizers owed no duty to a player and spectator who were struck by lightning.

In an unusual case, the Patton family sued the U.S.A. Rugby Football Union, the rugby tournament's organizers, and the referees for negligence after lightning struck and injured their son, who was playing in the tournament, and killed the father, who was watching the tournament. The injuries occurred at the conclusion of a game that had been played during heavy rain and lightning. Finding that the two could have left the tournament at any time if they felt their lives were in jeopardy, the court concluded that the tournament organizers owed no duty to protect the father and son. Thus, the court affirmed the dismissal of the action.

*Stringer v. Minnesota Vikings Football Club, L.L.C.*

In *Stringer v. Minnesota Vikings Football Club, L.L.C.*, the Court of Appeals of Minnesota denied recovery to a professional football player's widow by concluding that team trainers were not grossly negligent in giving medical treatment to her husband.

Professional football player Korey Stringer died after suffering heat stroke during football practice. His wife brought a wrongful death suit against

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685. Id.
686. The court attributed fifty percent of the damages to one of Musselman's companions and ten percent to Musselman himself. Id. at 959-60.
687. Id. at 959.
688. Id. at 962.
689. 851 A.2d 566 (Md. 2004).
690. Id. at 575.
691. Id. at 567.
692. Id. at 568.
693. Id. at 575.
694. Id. at 576.
695. 686 N.W.2d 545 (Minn. Ct. App. 2004).
696. Id. at 553.
697. Id. at 547.
other Viking employees, including the head trainer, assistant trainer, and coordinator of medical services.\textsuperscript{698} The Vikings moved for summary judgment on the basis that the trainers and medical services coordinator were Stringer's co-employees and, therefore, immune under the worker's compensation laws.\textsuperscript{699} With the trainers having directly cared for Stringer and not being involved with general workplace safety or the removal of workplace hazards, the court held that the trainers were not immune and owed a duty to Stringer.\textsuperscript{700} In contrast, the court found that the medical services coordinator's actions were to ensure the Vikings provided a safe workplace and rendered him immune.\textsuperscript{701} To recover, the plaintiffs had to show that the trainers were grossly negligent in their treatment of Stringer.\textsuperscript{702} Because the trainers observed Stringer's condition, treated Stringer, attempted to rehydrate Stringer, and took him to the hospital, the court concluded that the trainers were not grossly negligent and upheld summary judgment against the plaintiff.\textsuperscript{703}

\textit{Maisonave v. Newark Bears}

In \textit{Maisonave v. Newark Bears},\textsuperscript{704} a New Jersey appellate court determined that a duty of care was owed to a baseball game patron who was injured by a foul ball when he was purchasing concessions.\textsuperscript{705} While Louis Maisonave was purchasing food at a vendor cart at a Newark Bears baseball game, a foul ball struck him in the eye.\textsuperscript{706} Maisonave sued the Bears and the vending company for negligence.\textsuperscript{707} Because the defendants knew that the area was unscreened and that a patron cannot simultaneously keep an eye on the game and buy concessions, the court found that the risk of injury was foreseeable and that a duty of care existed.\textsuperscript{708} To determine whether the defendants breached that duty, the court remanded the case for further proceedings.\textsuperscript{709}

\begin{itemize}
\item \textsuperscript{698} \textit{Id.}
\item \textsuperscript{699} \textit{Id.} at 548.
\item \textsuperscript{700} \textit{Id.} at 550-51.
\item \textsuperscript{701} \textit{Id.} at 551.
\item \textsuperscript{702} \textit{Id.} at 552.
\item \textsuperscript{703} \textit{Id.} at 553.
\item \textsuperscript{705} \textit{Id.} at 235-36.
\item \textsuperscript{706} \textit{Id.} at 234.
\item \textsuperscript{707} \textit{Id.}
\item \textsuperscript{708} \textit{Id.} at 235-36.
\item \textsuperscript{709} \textit{Id.} at 236.
\end{itemize}
Post v. Belmont Country Club, Inc.

In Post v. Belmont Country Club, Inc., the Appeals Court of Massachusetts upheld an indemnification clause that required a golf club member's homeowner's policy to cover any damages from a golf cart accident.

John Post drove a golf cart into a rope that Belmont Country Club and died when an iron pin that was holding the rope in place struck him in the head. His estate brought a wrongful death suit, and the club settled the claim, subject to indemnification from Post's homeowner's policy, as outlined in the club handbook. The estate appealed its requirement to indemnify the club for the club's losses. Because Post agreed to be a club member, the court concluded that he accepted all the club's obligations, including the indemnification clause in the member handbook. Furthermore, the court found that the contract was not adhesive and was not ambiguous. Therefore, the court determined that the indemnification was valid.

Roberts v. Timber Birch-Broadmoore Athletic Ass'n

In Roberts v. Timber Birch-Broadmoore Athletic Ass'n, the Superior Court of New Jersey held that a material issue of fact existed as to whether an athletic association was subject to charitable immunity.

The plaintiff attended a soccer tournament that the Timber Birch-Broadmoore Athletic Association (TBBAA) hosted. Although she volunteered as an equipment aide, she spent the majority of her time watching her daughter's and son's teams play. After one of her daughter's games, the plaintiff walked to the vendor stand to get something to eat and injured herself when she tripped and fell over a cooler. The trial court dismissed her
negligence claim because it was barred under the charitable immunity statute. On appeal, the court found that the TBBAA was a charitable institution and was engaged in its stated goals at the time the plaintiff injured herself. Nevertheless, for the TBBAA to be immune, the plaintiff must have been a beneficiary, and not a contributor to the organization. Here, the court found that a material issue of fact existed as to whether the plaintiff was a true volunteer or merely helped out while she was watching her children's games. Thus, because the issue was disputed, the court precluded summary judgment.

Fabend v. Rosewood Hotels & Resorts, L.L.C.

In Fabend v. Rosewood Hotels & Resorts, L.L.C., the Third Circuit Court of Appeals concluded that a campground, which had a limited license to use an adjacent beach, did not owe a duty to its guests to warn about dangerous water conditions.

Richard Fabend was a guest at a campground, which had an agreement with the National Park Service that allowed guests to use the government-owned beach next to the campground. While bodysurfing along that beach, Fabend injured himself when he tried to dive through a large wave. He brought a negligence suit against the campground and alleged that his accident occurred because of a dangerous shorebreak condition that the campground should have warned him about. Adopting the "sphere of control" test, the court concluded that the campground owners did not control the beach because the agreement was a limited license that did not give any authority to the campground owners to do so. Thus, the campground owners had no duty to warn Fabend, and the court affirmed the district court's grant of summary judgment to the campground owners.

723. Id.
724. Id. at 274.
725. Id. at 275.
726. Id.
727. Id. at 276.
728. 381 F.3d 152 (3d Cir. 2004).
729. Id. at 157.
730. Id. at 154.
731. Id.
732. Id. at 154-55.
733. Id. at 157.
734. Id. at 160.
In *Myers v. Levy*, the Appellate Court of Illinois concluded that a parent's statements about a football coach created a material issue of fact for defamation and false light invasion of privacy claims, but found that no material issue of fact existed for the coach's other defamation claim and prospective interference with economic advantage claim. Myers, a high school football coach, brought this lawsuit for defamation, false light, invasion of privacy, and tortious interference with prospective economic advantage, after Levy, whose son was competing with Myers's son at quarterback, made some negative accusations against Myers. These accusations were written in a letter to the school superintendent and athletic director and a petition letter signed by several parents—although some names were falsely reported—calling for Myers's dismissal as football coach. Shortly thereafter, the athletic director and superintendent removed Myers from his position, and *The Chicago Sun-Times* and *The Chicago Tribune* published quotations Levy made about Myers, including how discontented people were with Myers's coaching, how Levy led hundreds of people to have Myers dismissed, and how Myers was an incompetent coach. Because Levy had publicly praised Myers's coaching ability on occasions prior to this incident, the court found that a question of fact existed as to whether Levy acted knowingly or recklessly when he petitioned the school to fire Myers; thus, the court determined that summary judgment was inappropriate for the defamation and false light invasion of privacy claims concerning Levy's statements about Myers's talent as a football coach to the school and press. In contrast, the court found summary judgment appropriate for Myers's other defamation claim because Levy was able to show that many parents were truly dissatisfied with Myers's performance. Lastly, the court upheld summary judgment for Myers's interference with prospective economic advantage claim because the athletic director and school superintendent testified that Levy's conduct had nothing to do with their decision to fire Myers. Thus, the court affirmed the lower court's decision in part and reversed it in part.

736. Id. at 1152-54.
737. Id. at 1143-44.
738. Id. at 1144.
739. Id. at 1145.
740. Id. at 1152.
741. Id. at 1153.
742. Id. at 1153-54.
743. Id. at 1154.
Christopher v. Buss

In *Christopher v. Buss*, the Seventh Circuit dismissed a prisoner's claim that his being injured in a prison softball game violated the Eighth Amendment's prohibition on cruel and unusual punishment.

Dennis Christopher, a state prisoner, was injured during a prison softball game when a ground ball hit a "protrusive lip" on the field and struck him in the eye. Under the Eighth Amendment's cruel and unusual punishment provision, he sued the prison and argued that because another inmate had been injured previously in the same way, the prison owed him a duty to repair the field or warn him of its condition. The court rejected Christopher's claims based upon the "protrusive lip" not being serious enough to implicate the Eighth Amendment and Christopher choosing to play on the field. Thus, the court dismissed the case for failing to state a claim.

Workers' Compensation

Workers' compensation is only provided to professional athletes because of their status as employees of their particular league or organization. While workers' compensation releases the employer from negligence liability claims by the injured employee, it also requires only a showing of the injury as related to employment without regard for any intent requirement on the part of the employer. In the following case the court considered whether a former WNBA player was entitled to benefits.

*Burge v. District of Columbia Department of Employment Services*

In *Burge v. District of Columbia Department of Employment Services*, the D.C. appellate court denied workers' compensation benefits to a former professional basketball player who left the team for personal reasons.

Former professional basketball player Heidi Burge filed a workers' compensation claim for a hip injury she suffered while playing basketball for

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744. 384 F.3d 879 (7th Cir. 2004).
745. *Id.* at 883.
746. *Id.* at 880.
747. *Id.* at 880-81.
748. *Id.* at 881-83.
749. *Id.* at 883.
751. *Id.* at 664-67.
the WNBA's Washington Mystics.\textsuperscript{752} The injury occurred during a game when Burge jumped for a rebound and fell, landing on her hip.\textsuperscript{753} Due to the severity of her injury, Burge underwent treatment for several months and did not play professional basketball during that time.\textsuperscript{754} At the beginning of the next WNBA season, Burge had improved enough to try out for and make the team and did not complain of any pain.\textsuperscript{755} However, Burge later broke her finger, and the Mystics released her for "qualitative reasons."\textsuperscript{756} After being released, Burge turned down contracts for other basketball teams, began pursuing alternate careers, and expressed a desire to start a family.\textsuperscript{757} In his initial determination, the administrative law judge found that the hip injury Burge suffered while playing for the Mystics was the source of Burge's hip problems, but denied her benefits because her decision to quit professional basketball was based on personal reasons.\textsuperscript{758} Because Burge voluntarily left basketball and pursued other careers, the court found that the judge's decision was neither arbitrary nor capricious and denied Burge workers' compensation benefits.\textsuperscript{759}

\section*{CONCLUSION}

As the cases above demonstrate, the field sports law continued to grow throughout 2004. Sports law remains unique in the fact that it involves an intersection with a variety of areas of law, with the growth of each area shaping the growth of the sports law field and vice versa. While this survey does not attempt to encompass every change that has taken place in the sports law field over the past year, it is an attempt to demonstrate the important role that sports law has on the growth and development of the law overall as well as the development of sports as an institution in our society.

Jenna Merten, Executive Editor (2004-2005)
Susan Menge, Executive Editor (2005-2006)

\textsuperscript{752} Id. at 662.
\textsuperscript{753} Id.
\textsuperscript{754} Id. at 663.
\textsuperscript{755} Id.
\textsuperscript{756} Id.
\textsuperscript{757} Id. at 664.
\textsuperscript{758} Id.
\textsuperscript{759} Id. at 667.