2006 Annual Survey: Recent Developments in Sports Law

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2006 ANNUAL SURVEY: RECENT DEVELOPMENTS IN SPORTS LAW

INTRODUCTION

This survey reports on sports-related cases that were decided between January 1 and December 31, 2006. The survey is not intended to include every case related to sports law decided in the past year; instead, it provides a summary of some of the more important cases that have been decided within the past year. In order to provide further clarity for the reader, the survey is divided into subsections based on particular areas of sports law.

ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute Resolution is a method of resolving conflicts outside of the court system through mediation and arbitration. The Court of Arbitration for Sport (CAS) provides a means to facilitate the settlement of sports-related disputes through arbitration and mediation. CAS is able to provide a quicker form of relief, especially at the Olympic Games where it sets up an ad hoc division and eligibility decisions are made immediately. As a result of CAS, there have been many developments within Alternative Dispute Resolution in the context of sports. Most major league Collective Bargaining Agreements require arbitration in certain disputes. If a court determines that arbitration is required, it will dismiss the case. Many of the following cases discuss decisions made at the 2006 Turin Olympic Games.

*Australian Olympic Comm. (AOC) v. Fédération Internationale de Bobsleigh et de Tobogganin (FIBT)*

The Brazilian and New Zealand four-man bobsled teams qualified for the Olympic Games by finishing first and second in the North American Challenge Cup. The Australian team finished third. The Brazilian Olympic Committee (BOC) conducted an out-of-competition doping test, and one of the members of the bobsled team tested positive for the prohibited substance nandrolone. The BOC announced the positive result to the press, withdrew the

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1. The cases are listed in alphabetical order within each section.
2. CAS ad hoc Division (O.G. Turin 06) 010, award of Feb. 20, 2006.
bobsledder’s accreditation and sent him home. The AOC appealed to CAS to declare the Brazilian team ineligible, thereby allowing the Australian team to qualify. According to CAS, because the positive result was announced without confirmatory analysis, it was considered an adverse analytical finding and not a doping violation. Therefore, because there was no doping violation, the Brazilian team could not be disqualified, and the AOC’s appeal was denied.

*Canadian Olympic Comm. (COC) v. Int’l Skating Union (ISU)*

In the Olympic short track speed skating final A, the Canadian skater finished third. After the official result sheet was signed, the Canadian team leader discussed the event with members of the team and concluded that the second place athlete violated the kicking out rule. The team leader approached the head referee to protest and was informed that the decision was not appealable. The COC did not formally protest to the ISU, but it appealed to CAS. CAS rejected the appeal because if there was a right to file a protest, then it had to have been filed in writing with the ISU with the required deposit.

*Cañas v. ATP Tour*

Cañas, an Argentinean tennis player, tested positive for hydrochlorothiazide after a sample was taken at an ATP tournament. The Anti-Doping Tribunal suspended him for two years, and he appealed. CAS upheld the suspension but suspended the requirement that Cañas repay any money he won. He requested that the case be reopened due to new facts and claimed that the new evidence would show no fault or negligence. Because he relied on the tournament doctor and did not double check what he was putting into his body, CAS held the athlete bore no significant fault or negligence. CAS required Cañas’ results obtained at the Tournament to be disqualified, according to ATP Rule L.1, which included Canas returning the prize money. However, the suspension was reduced from two years to fifteen months.

*Cole v. Football Ass’n Premier League (FALP)*

Cole played soccer for Arsenal Football Club, a FALP team. Cole met with representatives of another club without Arsenal Football Club’s approval, which was a violation of FALP rules. The Disciplinary Committee fined Cole and he appealed to the Appeals Committee, which reduced the amount of the

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3. CAS ad hoc Division (O.G. Turin 06) 006, award of Feb. 17, 2006.
fine. Cole appealed to CAS. CAS requested that the parties present submissions regarding CAS's jurisdiction. CAS held that it did not have jurisdiction to arbitrate the case because there was no arbitration agreement, CAS was not recognized for appeals under FALP regulations, and FIFA regulations did not require FALP to recognize CAS's jurisdiction.

_Dal Balcon v. Comitato Olimpico Nazionale Italiano (CONI) & Federazione Italiana Sport Invernali (FISI)_

Dal Balcon was an Italian snowboarder who competed for one of the four Italian Olympic snowboard slots. The trainer informed the competing athletes that the selection would be based on the World Cup results and three competitions prior to the Olympics, following the October 2005 Criteria. In January 2006, two days prior to the final competition, the trainer changed the criteria so that the selection would be based on the two best results and not what was determined in the October 2005 Criteria. Dal Balcon was notified by FISI that she did not make the team, and both FISI and CONI notified her that the selection could not be changed. Dal Balcon appealed to CAS claiming that changing the criteria was unfair and arbitrary, and she asked CAS to place her on the team since she would have qualified under the October 2005 Criteria. CAS held that changing the criteria and not communicating it properly was unfair and arbitrary; therefore, CAS held that CONI had to place Dal Balcon on the Italian snowboard team.

_Deutscher Skiverband (German Ski Association) & Sachenbacher - Stehle v. Int'l Ski Fed'n (FIS)_

Sachenbacher - Stehle was a cross-country skier on the German Olympic ski team. FIS tested her blood prior to the Games, and she was found to have an elevated hemoglobin value, which was the highest her hemoglobin had been in her four-year profile. She was prohibited from competing for a four day period, which would have made her miss her first Olympic competition. She appealed to CAS so that she could compete, claiming she had a naturally high hemoglobin level. CAS held that there was no reason to grant the appeal because it accepted FIS's conclusion that the elevated level was not natural and that FIS rules allowed for the prohibition.

6. CAS ad hoc Division (O.G. Turin 06) 008, award of Feb. 18, 2006.
7. CAS ad hoc Division (O.G. Turin 06) 004, award of Feb. 12, 2006.
Hamilton v. United States Anti-Doping Agency (USADA) & Union Cycliste Internationale (UCI) 8

Hamilton was an American cyclist who competed in a UCI event. He underwent a blood test and tested positive for a blood transfusion. Hamilton was suspended for two years, and his competition results were disqualified. Because CAS found the test was reliable and the sample taken from Hamilton showed there was blood doping, CAS rejected Hamilton’s appeal.

Int’l Ass’n of Athletics Fed’n (IAAF) v. Hellebuyck 9

Hellebuyck was a distance runner and member of USA Track and Field. He tested positive for human erythropoietin (r-EPO) in an out-of-competition testing program. According to IAAF regulations, USADA recommended a two year suspension, but Hellebuyck opted to have a hearing and was able to compete between having the sample taken and his hearing. The North American CAS (NCAS) imposed the two year suspension; however, there was some confusion as to the start date of the sanction because of the delay between taking the sample and the hearing. According to NCAS, the suspension was to start as of the taking of the sample. IAAF appealed the suspension to CAS and requested that the two year suspension begin as of the hearing. Hellebuyck claimed there was no doping offense. CAS held that the athlete committed a doping offense and overturned the NCAS ruling so that the suspension began with the hearing, following IAAF rules.


In the FEI Endurance World Championship, Lissarague finished second to Al Nahyan. There were rumors that Al Nahyan’s horse was doped. The Organizing Committee awarded Lissarague the gold, but the official results were recorded with Al Nahyan winning. The horse’s A sample tested positive for a prohibited substance, and Al Nahyan requested to be present for the Sample B analysis. Because Al Nahyan was not given the opportunity to be

present, FEI decided that the procedural error was enough to terminate the Judicial Committee proceedings. FEI then allowed Al Nahyan to retain his standing and determined that he should be awarded the gold medal given to Lissarague. The Appellants challenged the decision and requested that Al Nahyan be disqualified. CAS held that Al Nahyan’s right of due process was not violated when he was not present for the Sample B test, and he did not have the right to be present under FEI rules. Therefore, because there was a prohibited substance found and the chain of custody to test the horse’s samples was not broken, CAS found reason to disqualify Al Nahyan from the Championship. CAS did not impose a fine or suspension.


Fuller was a teacher who coached the boys’ baseball and basketball teams at Overton High. On April 9, 2002, the Metropolitan Board of Education (Board) placed Fuller on administrative leave and then assigned him as a roving substitute aide in Nashville elementary schools. Fuller and the Metropolitan Nashville Education Association filed a grievance and requested a transfer back to Overton High. The matter went to arbitration, and the arbitrator decided that Fuller was to be returned to his position at Overton High. The Board returned Fuller to his teaching position but not his coaching position. The Board argued that the arbitrator exceeded his authority by requiring the school to reinstate Fuller to his coaching position. The court ruled that under the arbitration agreement the teacher’s entire dispute with the Board was subject to arbitration, and therefore, the arbitrator did not exceed his authority.

Moscow Dynamo v. Ovechkin\(^{12}\)

The Washington Capitals selected Ovechkin as the first overall pick in the 2004 NHL draft, but the 2004–2005 NHL season was cancelled. Ovechkin then signed a contract to play hockey for Moscow Dynamo, which is a member of Russia’s Professional Hockey League (PHL). Dynamo sent Ovechkin a qualifying offer for the 2005–2006 season, but Ovechkin did not respond. On June 20, 2005, Ovechkin signed a one-year PHL contract with the Avangard Omsk for the 2005–2006 season. The contract contained a null and void clause in case Ovechkin signed a contract with a NHL team prior to July 20, 2005. Under PHL regulations, a team that extends a valid qualifying offer retains matching rights to a player if the player signs a contract with another

The Avangard contract was voided when Ovechkin agreed to terms with the Capitals. Dynamo commenced arbitration claiming it had exclusive rights to Ovechkin’s services. The Arbitration Committee of the Russian Ice Hockey Federation entered an award in favor of Dynamo. Dynamo filed suit to enforce the arbitration award pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which requires an arbitration agreement to be in writing. The court found no evidence that Ovechkin expressed his affirmative acceptance of an agreement to arbitrate; thus, there was no binding arbitration agreement.

**PSV N.V. v. Fédération Internationale de Football Ass'n (FIFA) & Federação Portuguesa de Futebol & Bomfim**

PSV N.V. (PSV) is a football club and member of FIFA. Bomfim signed an employment contract with PSV for four and a half years. Bomfim contacted FIFA in the middle of the contract to claim the contract was void and requested to change teams or be a free agent. FIFA allowed the player to do so, and he signed an employment contract with FC Porto. PSV challenged FIFA’s decision. FIFA rendered two judgments that Bomfim could play for the club of his choice, one by a Single Judge and another by the Player Status Committee. PSV appealed both decisions, and CAS combined the appeals into one hearing. CAS held that the decisions applied the correct FIFA regulations; therefore, CAS dismissed the appeals.

**Rosenhaus v. Star Sports, Inc.**

Star Sports alleged that it entered into a marketing agreement contract with Anquan Boldin, an NFL player, and that Jason and Drew Rosenhaus interfered with the contract by soliciting Boldin to have Rosenhaus Sports Representation represent him in his marketing endeavors. Rosenhaus filed a motion to dismiss and compel arbitration because Section five of the NFL Players Association Agent Regulations required arbitration for a dispute between two contract advisors. The court ruled that the parties are bound by the agent regulations and must resolve the claims through arbitration.

**Russian Badminton Fed’n (RBF) v. Int’l Badminton Fed’n (IBF)**

The Ministry of Justice of the Russian Federation declared that RBF...
ceased to exist as a legal entity because it did not submit the required
time to the Federal Registration Office. The IBF informed the RBF that
it needed the Russian Olympic Committee’s (ROC) endorsement to compete
under the IBF, and the ROC submitted the endorsement to the IBF. However,
the IBF received a letter from the ROC withdrawing its endorsement and
endorsing the National Badminton Federation of Russia. The RBF appealed
for the right to be recognized. CAS ordered the IBF to recognize and reinstate
the RBF because the IBF failed to follow its governing rules regarding
terminating members.

United States Olympic Comm. (USOC) \& Hamilton}^{16}

In a cycling event at the Athens Olympic Games, Hamilton, a member of
the United States team, won the gold, and Ekimov, a member of the Russian
team, won the silver. Hamilton’s blood test sample A showed two red blood
cell types, and it appeared that there was a blood doping infraction. A letter
was sent to Hamilton, who requested that his B sample be tested. Because
there were not enough intact red blood cells in his B sample, the
\textit{IOC} chose
not to sanction him. The appellants requested that Hamilton be disqualified
and that the gold go to Ekimov. CAS dismissed the appeal because the
appellants had no standing according to IOC and WADA regulations.

\textit{Saqlain v. Int’l Hockey Fed’n (FIH)}^{17}

Saqlain, who was on the Pakistani national field hockey team, was
suspended from Pakistan’s team by the FIH following three matches in a
world event because he allegedly lifted his stick and intentionally harmed an
opponent on the Australian team. Saqlain claimed that the injuries his
opponent suffered occurred when he tackled Saqlain, which did not include a
mens rea of criminal intent. \textit{CAS held that Saqlain’s act of raising his stick
was responsible for his opponent’s injuries, regardless of criminal intent, and
the FIH’s suspension was appropriate and unbiased. Saqlain’s appeal was
dismissed and FIH’s sanction was upheld.}

\textit{Schuler v. Swiss Olympic Ass’n}^{18}

Schuler was a member of the Swiss Ski Federation and competed to

\begin{itemize}
  \item[16.] CAS 2004/A/748, award of June 27, 2006.
  \item[18.] CAS ad hoc Division (O.G. Turin 06) 002, award of Feb. 12, 2006.
\end{itemize}
qualify for one of the five Swiss snowboarding slots for the 2006 Winter Olympics. Six snowboarders met the criteria, and Schuler was the only athlete not chosen for the team. Schuler appealed the selection decision to CAS. Because the selection decision was not arbitrary or discriminatory, CAS dismissed the appeal.

**Siebert v. Amateur Athletic Union**¹⁹

Jeff Siebert and his two daughters are deaf. One of Siebert’s daughters was recruited to play AAU basketball, but the AAU refused to hire a sign language interpreter. Siebert sued, claiming that the refusal to hire an interpreter was a violation of the Americans with Disabilities Act and the Minnesota Human Rights Act. The AAU moved to dismiss the complaint, claiming that Siebert was required to submit all claims to arbitration because all members of the AAU are required to bind themselves to the AAU Codebook, which contains mandatory arbitration and forum selection clauses. The court ruled that the Sieberts must resolve their claims through arbitration.

**Sports at Work Entm’t, v. Silber**²⁰

Howard Silber and Steve Weinberg entered into an oral agreement to represent Washington Redskins running back Stephen Davis. Silber and Weinberg agreed to equally share all expenses and commissions. When the joint venture dissolved, Weinberg filed suit, but the parties agreed to arbitration. The arbitrator ordered Silber and Weinberg to split all fees. Silber filed a motion to confirm the arbitration award, and Weinberg filed a motion to vacate the award. A Texas state court vacated the award, but the federal district and appellate courts confirmed the award. Silber filed a garnishment action against Sports at Work, but Sports at Work filed a suit against Silber in Texas to preclude him from enforcing the federal judgment. Silber removed the case to federal court. Sports at Work claimed that the case should not be removed to federal court because there were no claims arising under the Constitution or laws of the United States. The court ruled that removal to federal court was correct because this was an action brought in state court to nullify a prior federal judgment.

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¹⁹. 422 F. Supp. 2d 1033 (D. Minn. 2006).
World Anti-Doping Agency (WADA) v. United States Anti-Doping Agency (USADA), United States Bobsled & Skeleton Fed’n (USBSF), & Lund

Lund, a member of the United States Skeleton Team competing in the 2005 World Cup, tested positive for the prohibited substance Finasteride. The substance had become a prohibited substance in the beginning of 2005, and Lund did not have a Therapeutic Use Exemption (TUE) to use it. However, it was known Lund had been using medication that included the prohibited substance for over five years, and he included it on his Doping Control Forms. USADA sanctioned Lund with a Public Warning and disqualified his performance results from the World Cup. A TUE was filed on behalf of Lund by his doctor after hearing the results from the drug test, and the United States Bobsled and Skeleton Federation (USBSF) chose Lund for the Olympic Skeleton team. WADA appealed USADA’s sanction. Because Lund did not check the 2005 prohibited substance list and was responsible for the substance’s presence in his sample, CAS held that a suspension would need to be included in Lund’s sanction and overruled USADA’s sanction. However, CAS held that Lund had no significant fault or negligence because it was known to anti-doping organizations that he was using the substance. Consequently, the sanction imposed on Lund was lessened from two years to one year.

AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act attempts to prohibit discrimination against disabled persons. Title I deals with private employers, Title II addresses state and local governments, and Title III applies to private entities operating places of public accommodation. During the past year, cases focused on Title I and III. The following cases deal with the application of the Americans with Disabilities Act to a Big Ten football official, a college wrestler, and a spectator at a NASCAR race.

Filson v. Big Ten Conference

Filson was a Big Ten football official from 1992–2004. In 2000, Wilson lost his right eye and had a prosthesis put in, but was able to return to
officiating. During the five seasons following the accident, his performance reviews were substantially better than those prior to the accident. After being contacted by the University of Michigan’s coach about Filson officiating with one eye, the Big Ten Commissioner instructed Filson’s supervisor to terminate him. Filson’s supervisor told him that the Commissioner did not want to deal with the backlash he would have to face if the public knew about Filson’s condition. Filson sued the Big Ten Conference, claiming employment discrimination under Title I and III of the Americans with Disabilities Act, and the defendants moved to dismiss the Title III claim. The court dismissed the Title III claim because such claims apply to places of public accommodation rather than to work-related disability discrimination claims.

Gardner v. Wansart\textsuperscript{23}

Gardner was a student and member of the wrestling team at Hunter College of the City University of New York (Hunter) and claimed he was schizophrenic. In 1999, Gardner sent an email to Hunter’s president, and shortly after he was confronted by the wrestling coach and removed from the wrestling team’s roster. Gardner approached the wrestling coach and athletic director and allegedly threatened them. He received a hearing from Hunter’s disciplinary committee and was formally removed from the team. Gardner appealed, but the decision was upheld. Gardner sued, claiming that the defendants failed to provide him with due process and that he was discriminated against because of his schizophrenia. The court ruled that New York’s three-year statute of limitations for personal injury claims applied to the case; therefore, the claim was barred because the incident happened over three years earlier. The due process claims were dismissed because Gardner failed to show that the defendants deprived him of any property right.

Miller v. The Cal. Speedway Corp.\textsuperscript{24}

Robert Miller, who is disabled and uses a wheelchair, attended three to six NASCAR races a year from 1997 to 2006 at the California Speedway, which has wheelchair spaces located in the upper level. The plaintiff claimed the Speedway violated the Americans with Disabilities Act (ADA) because he could not see the race track when other spectators stood up. The Department of Justice (DOJ) wrote interpretations about what was required to comply with the ADA. The DOJ’s original interpretation did not mention sight lines in regards to standing spectators, but a subsequent interpretation stated that

\begin{itemize}
  \item No. 05 Civ. 3351 (SHS), 2006 U.S. Dist. LEXIS 69491 (S.D.N.Y. Sept. 26, 2006).
  \item 453 F. Supp. 2d 1193 (C.D. Cal. 2006).
\end{itemize}
wheelchair locations should provide a line of sight over standing spectators. However, the second interpretation had been adopted without the notice and comment period required by the Administrative Act. The court granted summary judgment for the defendants because it followed the original DOJ interpretation.

**ANTITRUST LAW**

Antitrust laws are enforced in the United States to provide a more competitive business environment, which benefits the consumer. However, within the sports context some agreements that may normally be considered to violate antitrust laws are considered legal. Allowing some degree of cooperation amongst teams in sports leagues provides consumers with a better product. National governing bodies are also allowed to make certain rules that might otherwise be considered illegal in order to provide for more competitive events.

*Hamilton County Bd. v. NFL*\(^25\)

The Hamilton County Board negotiated a lease with the Cincinnati Bengals beginning in 1995 because Mike Brown, owner of the Bengals, threatened to move the Bengals if a new stadium was not built. The Hamilton County Board claimed that Brown, the Bengals, and the NFL (the defendants) fraudulently concealed information about the Bengals' profits and used that to their advantage in negotiating a lease for a new building. The court found that the Hamilton County Board failed to show affirmative facts of concealment by the defendants.

*In re NCAA I-A Walk-On Football Players Litigation*\(^26\)

NCAA bylaw 15.5.5 prohibits Division I football programs from issuing more than eighty-five scholarships per year. Several walk-on Division I players brought suit against the NCAA, claiming antitrust violations. The football players claimed that they, and the class of players they represented, would have received scholarships but for bylaw 15.5.5, and bylaw 15.5.5 is an anticompetitive agreement between Division I-A members. The court denied the plaintiffs' motion for class certification because the representatives could not adequately represent all members of the class due to conflicting interests. If the players were able to prove that NCAA bylaw 15.5.5 was an antitrust

violation, they would then have to prove who would have received the additional scholarships. This would be a conflict of interest because for each athlete to prove he would have been in that group, he would also have to prove that others were not.

*JES Props., Inc. v. USA Equestrian, Inc.*

USA Equestrian was the predecessor of United States Equestrian Federation (USEF), the national governing body of equestrian in the United States. USEF sanctions certain equestrian competitions called recognized competitions. All recognized competitions are subject to General Rule 214.7, which is known as the Mileage Rule. The Mileage Rule requires any A-rated competitions held on the same date to be held at least 250 miles away from each other. The required distance diminishes as the rating decreases. The plaintiffs were unable to secure any dates between December and March in Florida because other promoters had already secured those dates. The plaintiffs claimed that the Mileage Rule violated the Sherman Antitrust Act. The district court granted summary judgment in favor of the defendants, and the plaintiffs appealed. The court applied the Amateur Sports Act (ASA), which gave the defendants immunity from antitrust laws because the ASA requires National Governing Bodies such as USEF to create rules that minimize scheduling conflicts.

**CONSTITUTIONAL LAW**

When student-athletes choose to participate in athletics some constitutional protections are given up because participating in high school athletics is not a protected interest. There is a necessary balance between allowing associations and schools to enforce their own rules and providing constitutional protection. The following cases provide an analysis of high school recruiting and transfer rules, team prayer prior to a high school basketball game, due process rights, and an anti-scalping ordinance.

*Bd. of Regents v. Houston*

Houston was a student and member of the football team at Georgia Tech. He was suspended on June 22, 2005 because he was charged with conspiracy to distribute marijuana. On August 24, 2005, Georgia Tech allowed him to resume taking classes. On August 30, Houston received a hearing before the
Undergraduate Judiciary Cabinet (UJC) and was suspended. Houston appealed, but the suspension was affirmed. Houston sought a temporary restraining order requiring his reinstatement as a student. The trial court ordered Georgia Tech to readmit Houston on November 15, 2005. The Board of Regents appealed. The court reversed the trial court’s decision because the trial court was required to defer to Georgia Tech’s administrative decision unless deprivation of a substantial right was at issue, and there was not evidence that his suspension prejudiced any substantial right.

_Brentwood Academy v. Tenn. Secondary Sch. Athletic Ass’n_\(^\text{29}\)

Tennessee Secondary School Athletic Association (TSSAA) fined Brentwood Academy for violating its recruiting rule when the school sent out letters to prospective students inviting them to participate in athletic practices prior to the students being enrolled in school. The court found that TSSAA’s actions violated Brentwood’s First Amendment rights. The court also said that the executive director was entitled to qualified immunity and that TSSAA was not immune from antitrust claims.

_Carroll v. City of Detroit_\(^\text{30}\)

Wayne Schreck attempted to purchase two tickets at face value to a Detroit Lions football game at Ford Field, and police cited him for violating a city ordinance preventing the sale of tickets to sporting and entertainment events in certain areas. Schreck brought a class action suit challenging the constitutionality of the ordinance because the tickets were sold at face value. The City of Detroit challenged the class action suit. The court ruled that a class action suit was proper and that the ordinance violated the First Amendment and the Equal Protection Clause.

_Cohane v. Greiner_\(^\text{31}\)

Timothy Cohane was the head basketball coach at State University of New York at Buffalo (SUNY-Buffalo) from 1993 to 1999. After Cohane objected to one of his assistant coaches being fired, the athletic director planned to fire him. The athletic director wrote a letter to the Director of Compliance of the Mid America Conference (MAC) asking for the compliance director’s assistance in investigating alleged violations by the men’s basketball program,

\(\text{29. } 442\text{ F.3d } 410\) (6th Cir. 2006).
\(\text{30. } 410\text{ F. Supp. } 2d \text{ 615} \) (E.D. Mich. 2006).
but the athletic director did not inform Cohane of the investigation. The athletic director, assistant athletic director, and director of compliance for the MAC threatened SUNY basketball players with loss of their scholarships and forfeiture of their degrees if they did not testify against Cohane and sign false affidavits. As a result of the investigation, the NCAA banned Cohane from coaching for four years. Cohane claimed that SUNY-Buffalo violated his rights to due process, and the defendants moved to dismiss the claim for failure to state a claim. The court denied the motion to dismiss.

Coll. Sports Council v. Gov’t Accountability Office

The College Sports Council claimed the Government Accountability Office and the United States of America made material misstatements in a 2001 report relating to the opportunities for men’s and women’s participation in intercollegiate athletics. The College Sports Council claimed that the misstatements violated Section 805 of the Higher Education Amendments of 1998, the United States Constitution, and federal ethical standards and professional duties. The court dismissed the complaint because the Act did not allow a private right of action.

Hudson v. Tex. Racing Comm’n

James Hudson was an owner and trainer of a horse named St. Martin’s Cloak, which finished first in a race at Lone Star Park. St. Martin’s Cloak tested positive for Torsemide during a post-race urine test. The Texas absolute insurer rule required a trainer to ensure that the horse was free from all prohibited drugs. Hudson participated in a hearing conducted by the Board of Stewards at Lone Star Park. Following the hearing, Hudson was suspended for sixty days, the horse was declared unplaced in the race, and the prize money was redistributed. Hudson appealed, and a second hearing was conducted before an administrative law judge. Hudson then filed a petition in Texas state court seeking judicial review of the Commission’s decision, claiming that the absolute insurer rule violated the due process clause. The Commission removed the case to federal court. Hudson argued that the rule created an irrefutable presumption that the trainer administered the substance, and it subjected the trainer to disciplinary action without a showing of wrongdoing. Hudson was able to prove that he had a property interest in his horse training license. However, he was unable to prove a violation of substantive due process because the rule required the trainer to bear

33. 455 F.3d 597 (5th Cir. 2006).
responsibility rather than assign fault, and due process does not require proof of guilty knowledge before being punished.

King v. City of Independence\textsuperscript{34}

King volunteered as a coach for a Pop Warner football team. The city required King to pass a confidential background check prior to volunteering. The results indicated that King had been involved in the sexual maltreatment of a child. King alleged that his disqualification was aired publicly, and he sued Pop Warner and two members of the Pop Warner Board of Directors (BOD) for defamation. He also sued the city for violation of his civil rights. King entered into a settlement with Pop Warner and the two BOD members and signed a waiver that released him from all claims connected in any way with King’s relationship with Pop Warner. King argued that this settlement did not prevent him from suing the city because he only settled with Pop Warner and two board members. However, the appellate court affirmed summary judgment in favor of the defendant because the language in the release was unambiguous about releasing all parties related to King’s relationship with Pop Warner, which included the city.

Lee v. Pocahontas Area Cmty. Sch. Dist. Bd. of Dirs.\textsuperscript{35}

Lee was hired as a science teacher and coach in the fall of 2001. After parents and the superintendent addressed concerns about Lee’s coaching philosophy, he requested a closed session with the School Board. Following the School Board meeting, Lee claimed that board members called him and told him that they would not vote against him. When the superintendent met with him a few days later, the superintendent learned that Lee had lied about the phone calls from the board members. At a board meeting a week later, the School Board decided to fire Lee. Lee filed a petition for judicial review in the district court, claiming that the School Board violated his due process rights. The court upheld the Board’s decision to fire Lee because it found that the School Board gave Lee a fair hearing.

Ledney v. KHSAA Bd. of Control\textsuperscript{36}

Ledney attended a private college prep school for his first three years of high school. Ledney did not perform as well as he had hoped and transferred

\textsuperscript{34} No. 05-2915, 2006 U.S. App. LEXIS 12028 (8th Cir. May 15, 2006).
\textsuperscript{35} No. 6-244/05-1150, 2006 Iowa App. LEXIS 785 (July 26, 2006).
to Highlands High School in Kentucky and enrolled as a freshman in 2003. Ledney did not compete in athletics at Covington Latin, but he wanted to play football at Highlands. The Kentucky High School Athletic Association (KHSAA) allows students only four years to compete in high school athletics once enrolled in ninth grade. The Highlands principal requested that KHSAA allow Ledney to compete in athletics all four years, but the request was denied. Ledney appealed and a hearing officer decided that because of the unfairness, Ledney should be eligible to compete in interscholastic athletics. The KHSAA Board met to consider the hearing officer's recommendation. The Board voted to reject the recommendation and sent a letter to the principal in April, but the Board did not copy Ledney or his attorney. In August, Ledney's attorney requested reconsideration, which was denied because the time in which to file a judicial appeal had expired. Ledney sued, claiming his constitutional rights had been violated. The court ruled that the appeal of the KHSAA final order was untimely; therefore, the court would not review it. The court ruled that the KHSAA rule was facially neutral, there was no evidence race played a part in the decision, and due process was not violated because there was not a protected interest in playing high school sports.

*Moschenross v. St. Louis County, Mo.*\(^\text{37}\)

The Missouri Development Finance Board agreed to issue bonds to finance a new major league baseball facility. After the financing program was in place, an amendment to the county charter passed that required a majority of the voters to approve any assistance provided by the county for the development of professional sports facilities. The plaintiff contended that the amendment applied to the new major league baseball facility financing. The appellate court affirmed the trial court's decision that the amendment could only be applied prospectively; therefore, it did not apply to the financing of the baseball facility.

*Perry v. Ohio High Sch. Athletic Ass' n*\(^\text{38}\)

Perry transferred from Brookhaven High School to Africentric High School, both of which were in the Columbus Public Schools (CPS) district. CPS is a member of the Ohio High School Athletic Association (OHSAA). OHSAA bylaw 4-7-3 allowed the superintendent to transfer students within the system, but the transfers were eligible only after receiving approval from the Commissioner. The Africentric athletic director was required to send a

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\(^{37}\) 188 S.W.3d 13 (Mo. Ct. App. 2006).

request for approval of Perry's transfer to the OHSAA office, but the athletic director failed to do so, and Perry was declared ineligible. Perry sued the OHSAA, claiming CPS failed to provide due process and that CPS was negligent by failing to properly train and supervise Africentric's athletic director. Summary judgment was granted in favor of the defendants because Perry did not have a protected interest in competing in athletics, and CPS was granted immunity on the negligence claim.

*Pinard v. Clatskanie Sch. Dist.* 640

The plaintiffs were former members of the 2000–2001 Clatskanie High School varsity boys basketball team. The students claimed that the head basketball coach was verbally abusive. During a team meeting, the basketball players signed a petition requesting that the head coach resign because they no longer felt comfortable playing for him. All but one of the players who attended the meeting signed the petition. The players turned in the petition the same day that a game was scheduled. The athletic director gave the students the choice of participating in a mediation process and boarding the bus, or adhering to their petition and not playing in the scheduled game. All but one of the players who signed the petition decided not to attend the basketball game that evening. The high school principal permanently suspended all the players who did not board the bus or play in the game. All of the players appealed their decision, but the decision was upheld by the school board. The plaintiffs alleged a violation of the First Amendment. The court held that the petition was protected speech, but failure to board the bus was not protected speech because it substantially disrupted and materially interfered with the operation of the varsity boys' basketball team.

*Pinard v. Clatskanie Sch. Dist.* 639

The plaintiffs were former members of the 2000–2001 Clatskanie High School varsity boys' basketball team. The students claimed that the head basketball coach was verbally abusive. During a team meeting, the basketball players signed a petition requesting the head coach to resign because they no longer felt comfortable playing for him as a coach. The players turned in the petition on the same day that a game was scheduled. The athletic director gave the students the choice of participating in a mediation process and boarding the bus, or adhering to their petition and not playing in the scheduled game. The high school principal permanently suspended all the players who

39. 446 F.3d 964 (9th Cir. 2006).
40. 467 F.3d 755 (9th Cir. 2006).
did not board the bus or play in the game. The players appealed the decision, but the decision was upheld by the school board. The plaintiffs alleged a violation of the First Amendment. The district court granted summary judgment for the defendants because the students’ speech did not involve a matter of public concern. The court ruled speech that is not vulgar or school-sponsored is protected speech if it does not substantially disrupt or interfere with a school activity. The students’ petition and complaints against the coach were protected, but failure to board the bus prior to the game was not protected because it interrupted school activities. The case was remanded to the district court to determine whether the petition and complaints against the coach were motivating factors in the decision to suspend the students.


Ridpath was the compliance director at Marshall University. During 1999, Ridpath received information that several Marshall football players were involved in academic fraud. Ridpath informed the NCAA about the allegation. During the investigation, the NCAA learned of other rules violations, but Ridpath did not have any prior knowledge of this information. Marshall University agreed to reassign Ridpath to a different position within the university. As an inducement for the transfer, Ridpath was told that the NCAA and the public would be told that the reassignment was not a result of any wrongdoing. The final NCAA Report stated that Ridpath’s reassignment was a corrective action. Ridpath refrained from commenting publicly about this statement because he was threatened by Marshall University’s president. Ridpath sued Marshall University and several university officials, alleging violations of due process and his right to free speech. After filing suit, Ridpath began applying to other colleges and universities as a compliance director, but was unable to procure employment. The defendants moved to dismiss on the basis of qualified immunity. The court affirmed the decision not to grant immunity to the Board of Governors but dismissed the coach’s complaint against the university on the basis of qualified immunity.

*Ross v. Pittinger*  

Tanya Ross’s son, Antonio, slipped and fell while at high school basketball practice. Ross had given written permission for Antonio to be able to participate in practice for the freshman team, but she had not given written permission for him to compete with the varsity team. Tanya Ross sued,

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41. 447 F.3d 292 (4th Cir. 2006).
claiming that the defendants violated her Fourteenth Amendment right to manage and control her child. The court found that the defendants’ alleged interference with parental decision-making authority did not amount to a constitutional violation.

*Smalkowski v. Hardesty Public Sch. Dist.*

Chester and Nadia Smalkowski are the parents of N.S., a Hardesty High student and a member of the girls’ basketball team. The plaintiffs alleged that N.S. was dismissed from the basketball team and suspended from school because she refused to participate in a team prayer prior to and after games and was falsely accused of threatening another student. The defendants claimed that N.S. took other players’ shoes, was consistently late to practice, and made derogatory statements about the team, which affected team chemistry. The plaintiffs requested a temporary restraining order to prevent the defendants from allowing employees to promote, lead, or permit prayer with or among students during or after school. The plaintiffs also demanded the school district to advise students they have a constitutional right not to participate in religious activities and to reinstate N.S. into the school. The plaintiffs alleged that the coach was the one who required N.S. to recite the prayer; however, he was no longer employed by the school district. Therefore, the court found no evidence that the plaintiffs would be irreparably harmed.

**Contract Law**

In a multi-billion dollar industry such as the sports industry, contracts are necessary in numerous contexts. Athlete and coach contracts are necessary to bind them to a specific team as well as to outline instances in which the athlete, coach, or team may be in breach of the contract. Contracts are also used for TV or sponsorship deals and define the responsibilities and rights of an athlete when registering for an event or membership with an association. The following cases discuss coaching contracts at the high school and collegiate level, sponsorship rights, following association rules, and exculpatory clauses.

*Bassett v. NCAA* & *Basset v. NCAA*

The University of Kentucky’s athletic director, Larry Ivy, told Bassett that

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44. 428 F. Supp. 2d 675 (E.D. Ky. 2006).
Bassett resigned, but the day after he resigned the University of Kentucky decided to conduct an internal investigation of its football program for possible NCAA rules violations. Bassett alleged antitrust violations, fraud, civil conspiracy, and tortuous interference with prospective contractual relations against the NCAA, SEC, and the University of Kentucky Athletic Association (UKAA). The court dismissed all claims against the SEC and held that only the fraud claim against the UKAA and the tortuous interference with prospective contractual relations claim against the NCAA survived the motion to dismiss. UKAA moved for summary judgment on the remaining two claims, and Bassett moved for additional discovery. The NCAA also moved for summary judgment. The court granted the summary judgment in favor of UKAA and the NCAA and denied plaintiff’s motion for additional discovery.

CoxCom, Inc. v. Okla. Secondary Schs. Athletic Ass’n

In June 2002, CoxCom and Oklahoma Secondary Schools Athletic Association (OSSAA) signed a contract regarding the telecast rights for the OSSAA state championships. The agreement included a right of first refusal for CoxCom beyond August 2005. Once the contract expired, CoxCom submitted a new contract on September 2, 2005. The Family Broadcasting Group (FBG) presented OSSAA with a proposal to telecast OSSAA’s games, and the OSSAA Board of Directors voted to accept the proposal. CoxCom was given a chance to exercise its right of first refusal, but was told that it would have to match the coverage area of forty-seven counties that FBG was willing to provide. CoxCom presented a proposal that stated the coverage area would be detailed at a later date. OSSAA signed the contract with FBG, and CoxCom sued OSSAA and FBG, claiming breach of contract, unfair competition, wrongful interference with contractual relations and specific performance. CoxCom also sought an injunction to prevent OSSAA from breaching the terms of the CoxCom contract. The trial court denied the injunction, and the appellate court affirmed that decision because CoxCom was not able to show that it suffered any harm that could not be adequately compensated with monetary damages.

Harrick v. NCAA

The plaintiffs, Jim Harrick, Sr. and Jim Harrick, Jr., were basketball

coaches at the University of Georgia. Both had contracts that were subject to termination if the coaches did not comply with NCAA or SEC rules. On March 27, 2003, Jim Harrick, Sr. voluntarily resigned as head basketball coach. On February 26, 2004, the plaintiffs sued the NCAA claiming it tortiously interfered with their contractual business relationships. The NCAA moved for summary judgment, and the court granted it because the defendants were not strangers to the contract, which is required for tortious interference with contractual business relations claims.

*In re 2005 United States Grand Prix*48

The plaintiffs were spectators at the 2005 United States Grand Prix Formula One automobile race. The plaintiffs claimed economic injury from the withdrawal of the Michelin Teams and their fourteen drivers immediately prior to the start of the race because of tire failure, leaving only three teams and six drivers to compete. The plaintiffs sought to recover their ticket costs, travel expenses, food they consumed, and punitive damages. However, the tickets explicitly stated that no refunds would be allowed, and the holder of the ticket assumed all risks incident to the event. The defendants moved to dismiss the claim for failure to state a claim. The court granted defendants’ motion to dismiss because the defendants were not a party to a contract with the plaintiffs, and the plaintiffs assumed the risk.

*Johnson v. Amerus Life Ins. Co.*49

Johnson played football at the University of Miami and then for the Houston Texans. Prior to playing for the Texans, Johnson claimed that Amerus Life Insurance made false representations to induce him to purchase unnecessary insurance, and that Amerus agents lied to him and took advantage of their superior knowledge to receive large commissions on the sale of his insurance policies. Both Johnson and Amerus filed a third party complaint alleging that Melton, who served as Johnson’s financial adviser, made material misrepresentations regarding Johnson’s financial status, which led to the litigation between Johnson and Amerus. The court dismissed the third party claims against Melton because Johnson’s and Amerus’s negligent misrepresentation claims were not alleged with sufficient particularity.

Kaczkowski was the head football coach at Ohio Northern University. In 2003, numerous football players began volunteer practice sessions several days prior to the official opening of Ohio Northern’s football camp. Kaczkowski attended some of these volunteer sessions, which was a violation of NCAA rules. Ohio Northern conducted an internal investigation, which led to Kaczkowski being put on administrative leave. Kaczkowski received a hearing before a five-person faculty committee. The committee determined that sufficient evidence existed to find just cause to terminate Kaczkowski. Kaczkowski asked to appeal the decision to a grievance committee and was given a week to make a written grievance, but he failed to do so. Kaczkowski sued Ohio Northern, alleging breach of contract, intentional interference with contract, defamation, intentional infliction of emotional distress, and age discrimination. The district court granted summary judgment in favor of Ohio Northern. Kaczkowski appealed, claiming that the trial court granted summary judgment prior to him concluding discovery. The appellate court vacated the summary judgment because summary judgment was granted prior to the completion of requested discovery.

Kaiser v. Bowlen

Kaiser sold his majority interest in the Denver Broncos to Bowlen in 1983. Bowlen then transferred his interest to a United States subsidiary to avoid tax liability in Canada. The agreement between Bowlen and Kaiser included a right of first refusal that provided Kaiser the right to repurchase any part of the franchise that Bowlen might offer to sell to a third party and a warranty clause that stated Bowlen was purchasing the team for himself. Subsequently, Bowlen offered stock in the corporation to John Elway. Kaiser sued Bowlen claiming that he violated the breach of warranty clause and the right of first refusal clause. The court held that Bowlen did not breach the warranty and was acting for himself, not as an agent, when he transferred his interest to a United States corporation. The court also held that the right of first refusal clause did not apply to the offering of stock.

Kurz v. Fed’n of Petanque, U.S.A.

Kurz and Carter were umpires for Federation of Petanque, U.S.A.
ANNUAL SURVEY

(FPUSA). An entry form for a FPUSA tournament in Sacramento included language prohibiting smoking and drinking of alcoholic beverages on or off the court while playing. Kurz noticed the language and posted a message on an internet website. Carter responded and told him it was not a FPUSA rule and then Kurz responded saying that if Carter were to umpire the tournament he should not enforce the rule. The FPUSA Disciplinary Committee notified Kurz and Carter that they were looking into whether they violated a rule that stated every umpire is to conduct themselves in a manner that reflects well on all FPUSA umpires. Kurz and Carter were allowed to provide a written defense. FPUSA suspended their umpire credentials for one year after which they were to undergo a two-year probationary period. Kurz and Carter sued claiming that Corporations Code section 7341, which addresses how non-profit corporations may expel or suspend members, applied and FPUSA had to follow its own rules. The court ruled that FPUSA was not required to follow its rules regarding discipline imposed on members because the decision involved only the suspension of umpire credentials.

_{Mastercard Int'l, Inc. v. Fed'n Internationale de Football Ass 'n}^{53}_{53}

FIFA is the international governing body of soccer and the organizer of the FIFA World Cup. Mastercard sponsored the World Cup for the last sixteen years, and its most recent contract included the right to acquire the FIFA World Cup sponsorship for the next four years. Mastercard claimed that FIFA breached the contract when it signed an agreement with VISA. The court granted a permanent injunction against FIFA preventing it from proceeding with its agreement with VISA and granted Mastercard the sponsorship rights the two parties had previously agreed to because Mastercard would have been irreparably harmed without a permanent injunction.

_{McBryde v. Ritenour Sch. Dist.}^{54}_{54}

McBryde was an assistant basketball coach at Ritenour High School. When McBryde was hired, he was told by the head basketball coach that he needed an African American coach that could relate to his players. McBryde was the only African American on the basketball coaching staff. All other assistant coaches received full time teaching positions at the school, received contracts before the start of the basketball season and received only verbal warnings as a result of misconduct. McBryde was offered a position as a

54. 207 S.W.3d 162 (Mo. Ct. App. 2006).
teaching assistant only during the basketball season, always received his contracts after the start of basketball season, and was suspended as a result of misconduct without first receiving a verbal warning. McBryde sued Ritenour claiming racial discrimination. The trial court awarded damages and attorneys' fees for McBryde, and Ritenour appealed, claiming the jury instructions were incorrect. Ritenour claimed that the Eighth Circuit Model Instructions should have been used. The court affirmed the circuit court's decision because the court had used Missouri Model Instructions, and a Missouri court is not bound to follow Eighth Circuit case law.

_Nat'l Fire & Marine Ins. Co. v. Adoreable Promotions, Inc._55

Adoreable Promotions held Toughman Competitions at the defendant gym. During one of these competitions, a participant was injured and another died as a result of competing in the Toughman Competition. National Fire issued a policy of commercial general liability insurance to Adoreable, but the insurance included a clause that read, "this insurance does not apply to bodily injury to any person while practicing for or participating in any sports or athletic contest or exhibition that you sponsor." The defendants claimed that National Fire was required to defend and pay for any of the damages assessed against them in the litigation involving the injured athlete and the deceased athlete. Summary judgment was granted for National Fire because the clause in the insurance contract was not ambiguous and did not cover accidents that occurred while competitors were competing in Toughman Competitions.

_O'Brien v. The Ohio State Univ._56

O'Brien was the head basketball coach at The Ohio State University (OSU). O'Brien and his staff recruited Alex Radojevic despite knowing that he had previously played professional basketball in Yugoslavia. While O'Brien continued to recruit Radojevic, he sent Radojevic's mother $6,000 for humanitarian reasons. OSU fired O'Brien because he broke NCAA rules, which was a breach of his contract. The court said the breach was not a material breach; therefore, Ohio State could not terminate O'Brien for cause. In addition, OSU breached the contract by not paying O'Brien the remainder of his contract.

55. 451 F. Supp. 2d 1301 (M.D. Fla. 2006).
56. 2006-Ohio-1104 (Ct. Cl. 2006).
O’Brien v. The Ohio State Univ.\textsuperscript{57}

O’Brien was the head basketball coach at The Ohio State University (OSU). He was fired for committing a NCAA violation. O’Brien’s contract stated that if he was fired, other than for cause, he would be paid what his normal salary was as well as an amount three and one-half times his base salary for the loss of collateral business opportunities. OSU argued that it did not have to pay O’Brien’s damages because his misconduct and NCAA violation constituted for cause termination. The court ruled that the termination was not for cause because OSU knew about this misconduct prior to firing O’Brien. Therefore, the misconduct was not the reason why it fired him, and OSU had to pay the damages, which were reasonable in light of the anticipated salary.

Southeastern Sports Mgmt. v. Baker\textsuperscript{58}

Southeastern Sports Management (SSM) entered into an operations agreement with defendant City of Southaven (City) to promote baseball tournaments on the City’s baseball fields. The agreement allowed either party to terminate at any time other than from April to August, and any games that were already scheduled could not be cancelled. The agreement covered the 2002-04 seasons. Defendant Baker was Vice President of Operations for SSM, and his contract included a two-year non-compete and non-solicitation agreement. The City board ended the relationship with SSM on November 2, 2004. Baker resigned on November 12, 2004, and he registered a web domain for JBJ Sports Productions that same day. On November 15, 2004, the City entered into a contract with JBJ. SSM claimed that the City breached the Operations Agreement when it terminated the agreement without allowing SSM to manage the tournaments, which SSM alleged were already scheduled for the 2005 season. SSM also claimed that Baker breached his employment contract and the duty of good faith and loyalty. The court granted summary judgment for the City because the term of the agreement did not include the 2005 season. Summary judgment was not granted for Baker because there was a question of fact as to whether he made plans with JBJ while still employed with SSM.

\textsuperscript{57} 859 N.E.2d 607 (Ohio Ct. Cl. 2006).

\textsuperscript{58} No. 2:05CV61-B-B, 2006 U.S. Dist. LEXIS 53893 (N.D. Miss. Aug. 1, 2006).
Matt White, a Devil Rays player, injured his rotator cuff while pitching for the U.S. Olympic Team in September 2000. Namely Baseball Enterprises had issued an insurance policy to the Devil Rays to cover him. The Devil Rays claimed that Matt White was totally disabled for a period of at least twelve months, and the Devil Rays were entitled to fifty percent of the amount of benefit. Namely Baseball Enterprises claimed that White was not completely disabled because White pitched in seven games for a minor league baseball team during the twelve month period and claimed that the Devil Rays did not give timely notice as soon as reasonably possible. Namely Baseball Enterprises moved for summary judgment, but the court denied the request because the question of whether White was in fact totally disabled and whether the Devil Rays gave notice as soon as reasonably possible should be decided by a jury.


Paine was the head golf professional at Legacy Golf Corporation and taught a golf class at the prep school adjacent to the Legacy golf course. During the class a student was hit by a golf ball, suffered a permanent brain injury, and sued the school and Paine. Paine was insured by Travelers Insurance while teaching golf for or on behalf of the PGA. Regent was Legacy’s insurer, but it denied coverage claiming that he was not acting within the scope of his employment with Legacy. Travelers loaned him sufficient funds to defend the lawsuit against the student. Travelers and Paine sued Regent, claiming that Regent had a duty to defend him in the lawsuit against the student. The district court granted summary judgment in favor of Regent. The appellate court affirmed the judgment for Regent because Paine was not acting within the scope of his employment with Legacy.

**CRIMINAL LAW**

Occasionally, people involved in the sports industry are involved in criminal acts. One of the most serious scandals in the past year was the alleged gambling ring involving Wayne Gretzky’s wife, Operation Slap Shot. One of the following cases deals with the arrest of a New Jersey State Trooper involved in the scandal. Another case deals with an anti-ticket-scalping statute.

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60. 465 F.3d 900 (8th Cir. 2006).
The New Jersey State Police conducted an investigation called Operation Slap Shot, which allegedly involved a multi-million dollar sports bookmaking enterprise. State Trooper Harney was arrested as a part of the investigation. Deputy Attorney General Dowdell stated that State Trooper Ruczynski had been captured on a wiretap discussing gambling with Harney. As a result, the Superintendent of State suspended Ruczynski without pay. The hearing officer said that Ruczynski’s suspension was warranted and justified, but he appealed and claimed that the New Jersey Wiretapping and Electronic Surveillance Control Act precluded the use of intercepted communications by the Superintendent in a disciplinary matter. The court ruled that the Superintendent properly exercised his disciplinary authority because he had the power to suspend a subordinate pending investigation of possible charges against him.

Wilson v. Lexington-Fayette Urban County Gov’t

Wilson was arrested for violating an anti-peddling statute when he tried to sell two tickets under face value to a Kentucky basketball game to undercover police officers. The ordinance that Wilson violated defined a peddler as one “who carries his merchandise with him while traversing the streets, sidewalks or alleys of Fayette County for the purpose of exhibiting and selling such merchandise.” Wilson sued claiming that he was not a peddler and that the ordinance violated his free speech. Wilson also filed a motion for a preliminary injunction to prevent the defendant from enforcing the ordinance. The court did not grant a preliminary injunction because Wilson had pleaded guilty and admitted he was a peddler. The ordinance included numerous specifics, and therefore, was not unconstitutionally vague. The ordinance also did not violate his free speech.

EDUCATION LAW

Sports have become an increasingly important aspect of the educational process for many students. However, courts have consistently held that students have no protectable constitutional right in competing in high school athletics. Conflicts of interest can often arise between high school student-athletes and the high school athletic associations, but because there is not a property right in competing in athletics, courts often give substantial deference

to the athletics associations’ rules and decisions. The following cases discuss
the application of high school athletic associations’ rules to student athletes
and the application of qualified immunity to government officials when
performing a discretionary function.

**DelBuono v. Mass. Interscholastic Athletic Ass’n**[^63]

Nicholas DelBuono and Kyle Murphy were both disqualified from the
2006 Central Massachusetts Hockey Tournament for fighting and spearing.
They alleged that there was nobody at the tournament to entertain appeals.
They sought a temporary restraining order to enjoin the Massachusetts
Interscholastic Athletic Association from enforcing the disqualification and to
overrule the disqualification penalty assessed. The court denied the motion for
a restraining order because the plaintiffs could not prove irreparable harm.

**Jones v. Green**[^64]

Ryan Jones’s basketball team played a game against Jay High School.
Green, a highway patrol officer who attended the game in street clothes, asked
the on-duty security officer if he needed any help because it was an emotional
game. During the game, Jones fouled a player hard, followed him to the other
side of the court, and knocked him down. The on-duty security officer and
Green attempted to diffuse the situation. Green reached Jones first, grabbed
him, but he was able to get away. Jones then pushed the on-duty security
officer and knocked Green’s hat off. Jones claimed Green used excessive
force. Green moved for summary judgment because he was entitled to
qualified immunity as a government official who performed a discretionary
function. The court granted his motion.

**Kanongata’a v. Wash. Interscholastic Activities Ass’n**[^65]

Plaintiff was a high school student in Washington with learning
disabilities and Attention Deficit Hyperactivity Disorder. Plaintiff completed
five years of high school, but still had at least one more to go. Plaintiff moved
out of state for one year and was ineligible to compete in varsity athletics. The
Washington Interscholastic Activities Association (WIAA) only allows
students to compete in interscholastic athletics for a period of four consecutive
years beginning the year they enter high school. Plaintiff was unable to apply

for a hardship waiver for his fifth year because he was caught cheating three times, and his grades were too low to be able to compete. He alleged violations of equal protection, deprivation of a property right, and violation of the Americans with Disabilities Act, in not allowing him to compete in interscholastic athletics. The court dismissed the equal protection and deprivation of a property right claims because the plaintiff did not have a property interest in competing in high school athletics. The court held that the WIAA’s decision that the plaintiff had an opportunity to compete for four years even though he was not allowed to compete when he moved out of state was arbitrary and capricious. The court did not grant summary judgment on the ADA claims because there was an issue of material fact as to whether WIAA’s hardship rules violated the ADA.


M.P. filed a second restraining order to restrain defendants from refusing to certify the eligibility of M.P. to play in the Minnesota State High School League (MSHSL) soccer games. M.P. could not prove that service was effective because he did not provide evidence as to whether individuals were qualified to receive service at the school or the MSHSL. The court also ruled that M.P. did not have standing because the injury was not redressable due to the fact that he was no longer enrolled in school and had no right to play on the school’s soccer team.

**EMPLOYMENT DISCRIMINATION LAW**

Employment discrimination claims continue to lead to a significant amount of litigation. Employees often claim they were discriminated against in the employment setting because of their race, ethnicity, or sex. The following cases discuss employment discrimination at the high school and collegiate level.

*Brian v. Westside Cnty. Sch. Dist.*

John Brian, a New Zealand native, was a coach and a tenured teacher at Westside High School. In 2002, Brian was placed on performance probation, which included a prohibition from coaching, without explanation. The athletic director told him that the official reason he was placed on performance probation was so that he could spend more time in the classroom, but the

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unofficial reason was because Brian had embarrassed him. Prior to being placed on probation he received excellent performance evaluations, but during the fall of 2002, he found an evaluation that he had never seen nor signed. In 2003, it was recommended that he be removed from performance probation and allowed to coach, but the athletic director did not allow him to return at that time. Brian alleged that Westside’s officials continually referred to his New Zealand speech and mannerisms as rude and sarcastic and that the defendants’ actions constituted a violation of his civil rights. He also alleged tortious interference with a business relationship against the athletic director. The court granted summary judgment for the defendants because Brian did not show how he was treated differently from similarly situated American teachers. Brian also could not prove tortious interference with a business relationship because the athletic director was acting as his employer, and therefore, was a party to the contract.

Brown v. Unified Sch. Dist. 501  
Brown, an African American male, was a physical education teacher and a basketball coach for the school district from 1980 to 1996. While working for the school district he received several critical teacher evaluations and was reported to have engaged in inappropriate conduct while he was the girls’ basketball coach. He was fired as the boys’ basketball coach because of the evaluations and inappropriate misconduct. Brown sued the school district in 1991, but he lost the lawsuit. Brown applied for a job with the school district in 2001, but it refused to hire him because of his past employment record with the district. In March 2002, the plaintiff filed a complaint with the EEOC and received a right-to-sue letter in April 2002. In order to sue under Title VII, a plaintiff must file suit within ninety days of receiving the right to sue letter from the EEOC. The plaintiff failed to file suit within that time, but claimed that a letter in May 2003 constituted a subsequent related act. The court disagreed because the May 2003 letter stated the same reasons for the lawsuit as the 2001 letter and thus did not qualify as a subsequent act.

Bryce v. George W. I.S.D.  
Bryce was a Hispanic woman working for the defendant as a coach and a teacher with a temporary license. While Bryce was coaching a track meet, Cathy Taylor, the head coach, requested the starter’s pistol from someone and said she wanted to shoot Bryce. Taylor then shot the pistol in the air and said

68. 465 F.3d 1184 (10th Cir. 2006).
she would feel better if she could shoot the plaintiff and put the pistol on Bryce’s chest. Other coaches said “that Mexican does not know what she is doing.” Bryce reported Taylor’s conduct to the police. After the incident, Bryce applied for positions with the defendant as a physical education teacher, but was not hired. Bryce claimed that the defendant retaliated against her for filing a complaint with the police. The court granted summary judgment for the defendants because Bryce’s complaint to the police department did not allege that she was assaulted because of race, sex, or any other protected category under Title VII. The defendants also had a legitimate reason for not hiring Bryce because she was not a fully certified teacher.

*Burch v. Bd. of Regents*70

Michael Burch was terminated as the head wrestling coach at the University of California at Davis when his contract was not renewed. The defendants claimed that Burch was terminated because he was unable to work with people within the athletic department or follow athletic department rules, made unreasonable demands for more pay, and was involved in at least two possible NCAA violations. Burch claimed that the defendants were retaliating against him because he advocated for women wrestlers to be reinstated and informed the women wrestlers that the athletic department may have committed illegal sex discrimination by eliminating their participation in the men’s wrestling practices. The defendants’ motion for summary judgment was denied because there was a genuine issue of material fact as to the reason Burch’s contract was not renewed.

*Easterling v. Sch. Bd. of Concordia Parish*71

Sue Ann Easterling was a teacher who coached basketball, track and field, volleyball, gymnastics, and softball in the Concordia Parish School District. Easterling applied for the head coaching position of the high school girls’ basketball team, but a male applicant with a temporary teaching certificate was hired. Easterling filed a discrimination claim with the Equal Employment Opportunity Commission (EEOC). After she filed a complaint with the EEOC, the school district assigned her to two inferior working offices ten miles apart without increasing her compensation, forced her to work outdoors, hindered her coaching efforts, and excluded her from school-oriented social activities. Easterling resigned from her employment with the school district and claimed it retaliated against her, which resulted in a constructive

70. 434 F. Supp. 2d 1110 (E.D. Cal. 2006).
discharge. The district court granted summary judgment in favor of the school district on both claims. The appellate court remanded the retaliation claim to determine if decision was an employment decision. Summary judgment regarding the constructive discharge claim was affirmed because Easterling was unable to show that the school district's actions were intended to encourage her to resign.

Holcomb v. Iona Coll.72

Craig Holcomb was an assistant basketball coach at Iona College from 1995 to 2004. During the early 2000s the athletic and academic performance of the men's basketball program declined significantly. As a result, the athletic director fired Holcomb. Before Holcomb was fired, he was told that he could no longer bring his wife, who is African American, to alumni functions. Another assistant coach was also told that he could not bring his girlfriend, who was also African American. Further, the Vice President for Advancement and External Affairs, Pettriccione, used derogatory language when talking about African American players. Holcomb sued Iona College, claiming his marriage was a factor in Iona's decision to fire him. The court granted summary judgment for the defendants because Holcomb was unable to show that Pettriccione influenced the board's decision to fire Holcomb and the other assistant coach.

Leuellyn v. Curators73

Leuellyn was the head golf coach and assistant manager of the golf course at the University of Missouri-Rolla. In 2001, a white male from a different department within the university was assigned as Leuellyn's direct supervisor, contrary to the university's policy that direct promotions are only available to employees presently employed within the department. Leuellyn filed four grievances with the Affirmative Action Office at the university about not being considered for his supervisor's position. In 2003, the athletic department dropped the tennis and golf programs in order to save money. As a result, Leuellyn was fired from his coaching position and assistant manager position. Leuellyn sued the university claiming racial discrimination and retaliation when it eliminated his positions. The university moved for summary judgment on all claims, but the court only granted the motion in regards to Leuellyn's discrimination claims for being fired as head golf coach. The university claimed that Leuellyn was fired because of budget cuts and moved for

summary judgment. Leuellyn argued pretext by showing that other things could have been done to reduce the golf course’s operating costs, but he was unable to show pretext in regards to his head coaching position. The court ruled that a reasonable jury could find both pretext and discrimination and allowed the discrimination claim regarding his assistant manager position and retaliation claims to survive summary judgment.


Diane Marshall was the principal at Daleville High School when she applied for the athletic director position. Kelley, the superintendent, hired a white male as athletic director. Marshall claimed that a parent of a student told her that Kelley said he would never have a female as an athletic director. Marshall sued the Daleville City Board of Education, claiming that she was denied the position based on her gender and race, and she was not allowed to participate in decision making following her complaint about gender and race discrimination. The Board of Education argued that it hired the white male instead of the Marshall because the white male had coaching experience and interviewed better than Marshall. While these were both subjective reasons, the court ruled that subjective reasons can be sufficient as a legitimate non-discriminatory reason.

*Moore v. Greenwood Sch. Dist. No. 52*

Moore was a basketball coach and math teacher at Ninety Six High School. Moore supported the women’s athletic program and was interviewed by the Office of Civil Rights (OCR) during a Title IX investigation. OCR concluded that the school district did not provide equal benefits, opportunities, and treatment to female students at Ninety Six High School. Following the investigation, Moore’s contract was not renewed, and he claimed it was based on his comments to OCR. OCR determined that by not renewing his contract, the school retaliated against him. Almost two years later, Moore sued the school district claiming Title IX retaliation, a violation of his First Amendment, and a violation of his process rights. The district court dismissed the claims, and Moore appealed. The court affirmed the dismissal of the Title IX retaliation claim because the statute of limitations was the same as the State Human Affairs Law, which was only one year. The court remanded the free speech claim because there was a question of fact as to whether his free speech rights were violated. The court affirmed the district court’s order in all other

Richardson v. Sugg\textsuperscript{76}

Nolan Richardson, an African American, was the head basketball coach at the University of Arkansas from 1985 to 2002. During a frustrating 2002 season, Richardson made comments to the press that if the university was not happy with his performance as the head basketball coach then it could buy his contract out. The athletic director, the chancellor, and the university president, all Caucasian individuals, agreed the public comments were so damaging that they should terminate Richardson. The chancellor sent a letter to Richardson informing him that he was terminated. He appealed, but the president confirmed the decision to terminate Richardson. He sued the president, the chancellor, the athletic director, and the University of Arkansas Board of Trustees alleging racial discrimination and free speech claims. The court ruled that the discrimination claims failed because Richardson was unable to show pretext. The freedom of speech claims failed because the statement was not a matter of public concern, and it had a detrimental effect on the university.

Webb v. Wilson County Bd. of Educ.\textsuperscript{77}

Kim Webb, an African American woman, was a physical education teacher at a high school operated by the Wilson County Board of Education. Webb often complained that the girls' locker room and her office were not kept up to date, which caused her to miss a significant amount of work. In response to Webb's complaints, the principal of Lebanon High School made sure the locker room and office were cleaned and that a new ventilation system was installed, but Webb continued to miss a significant amount of work. Webb was then reassigned to teach health in a new wing of the school to see if this would help her health problems. Webb continued to miss a significant number of days prior to her resigning from her teaching position. Webb alleged racial and sexual discrimination. The court granted summary judgment in favor of Wilson County Board of Education because Webb was unable to show that she suffered an adverse employment action. The court stated that the change from physical education teacher to health teacher was a de minimum change alteration to her job responsibilities because there was no change in title, salary or benefits, and she was responsible for the same number of children.

\textsuperscript{76} 448 F.3d 1046 (8th Cir. 2006).
The plaintiff was the track and field and cross country coach at Humboldt State University (HSU) from 1980 to 2004. In 1999 the plaintiff complained to the athletic director about possible Title IX violations, but they were not addressed. The plaintiff and other coaches met with female student-athletes about Title IX concerns and eventually three student-athletes filed a complaint with the Office for Civil Rights. HSU agreed to implement a Voluntary Resolution Plan to resolve Title IX issues raised in the complaint. In 2002 HSU was faced with funding issues, and the athletic department was required to reduce its expenditures. As a result, the track and field and cross country coaching positions were reduced to a 0.6 total time base and a national search for a new coach began. Plaintiff applied for the position, but he was not hired because of complaints about lack of participation and ability to work within the athletic department. The plaintiff claimed that HSU violated his right to free speech, retaliated against him for reporting Title IX non-compliance and fiscal irresponsibility, violated the prohibition against the discharge of whistleblowers and intentional infliction of emotional distress. The court granted summary judgment for the defendants on all claims except those regarding the plaintiff’s reporting fiscal irresponsibility.

GENDER EQUITY LAW

Title IX of the Education Amendments was passed over thirty years ago, but there continues to be litigation about the application to athletics at both the high school and collegiate level. While the amount of opportunities for women and girls in athletics has increased significantly over the past thirty years, many female college athletes claim that they have not been provided an equal opportunity to compete. There also continue to be problems at the high school level in providing female athletes comparable facilities. The following cases discuss equal opportunities at the college level, comparable facility issues at the high school level, and retaliation claims.

Atkinson v. Lafayette Coll.79

Atkinson was hired as the director of athletics and a professor at Lafayette College in 1989. Atkinson often raised issues about Title IX compliance within the athletic department. She claimed that she was not fired for cause, which was needed to terminate her as a tenured professor. Atkinson claimed

79. 460 F.3d 447 (3d Cir. 2006).
that the school violated Title IX by retaliating against her for speaking up about Title IX compliance, breached her contract, and discriminated against her because of her sex. The defendants claimed that she was not a tenured professor and therefore could be terminated without cause. The trial court granted summary judgment for the defendants on all claims. The appellate court affirmed summary judgment on her breach of contract and discrimination claims because she was not tenured and could not show that the reason she did not have tenure was pretextual. The court reversed and remanded her Title IX claim because it allows a private right of action for those individuals who have claimed retaliation.

*Barrett v. West Chester Univ.*\(^{80}\)

Westchester University eliminated its women’s gymnastics and men’s lacrosse programs, but at the same time added women’s golf. Members of the women’s gymnastics team sued and sought a preliminary injunction. Following a settlement between the parties, the plaintiffs requested attorney’s fees pursuant to 42 USC § 1988 and 28 U.S.C. § 1821. The defendants claimed that the hours and rate for attorney’s fees were excessive. The court reduced the hours and fees charged by the plaintiffs’ attorneys because the plaintiff was not a private client.

*Choike v. Slippery Rock Univ. of Pa.*\(^{81}\)

The plaintiffs were female student-athletes who attended Slippery Rock University (SRU). SRU eliminated eight varsity sports, which included women’s swimming and women’s water polo. The plaintiffs sued SRU, its president, and its athletic director, claiming SRU violated Title IX’s equal participation requirement and Title IX’s requirement to treat female student-athletes substantially equal to the male student-athletes. The plaintiffs also requested a preliminary injunction, seeking the immediate reinstatement of the women’s swimming and water polo teams. Alden & Associates performed a Title IX compliance report, and it reported that SRU did not satisfy the substantial proportionality test, it did not have a history and continuing practice of program expansion, and it was not compliant with respect to accommodating the interests and abilities of its female students. However, an internal audit conducted prior to SRU dropping eight teams found that the athletic needs and interests of female students were being met. The court granted the plaintiffs a preliminary injunction because the plaintiffs were able

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to show a likelihood of success on the merits, that the probability of the
plaintiffs sustaining irreparable harm was high, there was a minimal amount of
harm to SRU, and that the public interest favored the granting of injunctive
relief.

*Cobb v. U.S. Dep't of Educ. Office for Civil Rights*

The Office of Civil Rights (OCR) received a complaint in 2000 that
female high school hockey players were subjected to discrimination because
the boys and girls were not provided with equal access to comparable facilities
during the final round of the state hockey tournament. The boys played in the
Xcel Center, which seated 18,000 people, while the girls played in the
Minnesota State Fair Coliseum, which held only 5200 people. In 2003, in
response to an OCR investigation, the MSHSL moved the girls' hockey
tournament to Ridder Arena, which has a seating capacity of 3100. Plaintiffs,
parents of girls who play high school hockey, complained that this was not
comparable to the boys' facility because the Xcel Center seats over 18,000
people. The OCR ruled it comparable because attendance in the past years
never exceeded capacity at Ridder Arena. The plaintiffs alleged that MSHSL
engaged in sexual discrimination and alleged that the OCR aided and abetted
sex discrimination caused by MSHSL. The defendants moved to dismiss the
claims for lack of standing and failure to state a claim. The court found no
injury in fact to the plaintiffs and gave the plaintiffs thirty days to amend the
complaint to explicitly state that they were pursuing the action on behalf of
their minor children or to allow their daughters to intervene or join the action.


The College Sports Council claimed that the Title IX policy interpretation
and subsequent clarifications violated the Constitution, Title IX, and the
Administrative Procedure Act. It filed a petition requesting that the
Department of Education initiate rulemaking in order to repeal the Three-Part
Test and to clarify whether the Department's regulations purported to create
private rights of action. The plaintiffs brought many of the same claims that
were brought by the National Wrestling Coaches Association against the
Department of Education, but that lawsuit had not included the challenge to
the denial of its petition for rulemaking. The court ruled that the statutory and
constitutional issues were precluded by res judicata because they were
conclusively settled in the National Wrestling Coaches Association case, but

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the case was remanded to the district court to determine the plaintiffs’ challenge regarding the Department of Education’s refusal to institute rulemaking procedures.

_Cmtys. for Equity v. Mich. High Sch. Athletic Ass’n_\(^{84}\)

The plaintiffs were a group comprised of parents and high school athletes that advocated on behalf of Title IX compliance and gender equity in athletics. They sued the Michigan High School Athletic Association (MHSAA), claiming that MHSAA scheduled the girls’ seasons in nontraditional seasons, which violated the Equal Protection Clause and Title IX. The case was remanded from the United States Supreme Court in light of its _Rancho Palos_ decision. The defendants claimed that the plaintiffs’ exclusive remedy was Title IX, but the court concluded that the plaintiffs could seek remedies under 42 U.S.C. section 1983 as well as under Title IX. The court ruled in favor of the plaintiffs on the equal protection and Title IX claims because MHSAA failed to justify its discriminatory scheduling practices, and a motive was not required to violate Title IX.

_Jennings v. Univ. of N.C._\(^{85}\)

Melissa Jennings and Debbie Keller played soccer at the University of North Carolina. At the time, Dorrance was the head soccer coach, and Palladino was the assistant soccer coach. Jennings and Keller claimed that the coaches often made offensive remarks regarding the women’s sex lives during practice and at meetings. Jennings and Keller alleged the University of North Carolina violated Title IX, Dorrance violated their privacy, Dorrance and Palladino sexually harassed them, and several university officials failed to supervise Dorrance and Palladino. The defendants moved for summary judgment and the court granted summary judgment in favor of the defendants because Jennings and Keller failed to raise a genuine issue of material fact about whether the comments were sufficiently severe or pervasive enough.

_Miller v. Univ. of Cincinnati_\(^{86}\)

The plaintiffs claimed that the women’s rowing team at the University of Cincinnati was discriminated against because it did not have enough equipment to train together as a team, it was given the least desirable times for

\(^{84}\) 459 F.3d 676 (6th Cir. 2006).  
\(^{85}\) 444 F.3d 255 (4th Cir. 2006).  
weight training, it did not have adequate transportation to their outdoor training area, and the scholarship awards were not substantially proportionate to men’s and women’s respective rates of athletics participation. The plaintiffs tried to certify the class as all present, prospective, and future participants in the women’s athletics programs at the University of Cincinnati. The court did not certify the proposed class because compliance with Title IX could have been achieved by shifting the resources from the women’s rowing team to another women’s team, which the representatives would most likely not agree with. The court agreed to certify a class of all current and future members of the University of Cincinnati women’s rowing team conditioned upon the filing and granting of the motion.

Williams v. Bd. of Regents

Tiffany Williams was invited to University of Georgia (UGA) basketball player Tony Cole’s room, where the two engaged in consensual sex. When Cole went to the bathroom, UGA football player Brandon Williams came out of the closet and attempted to rape Tiffany. Cole also invited a teammate, Steven Thomas, to enter the room and rape Tiffany. Tiffany filed a complaint with the UGA police and withdrew from school. Tiffany sued claiming violations of Title IX by UGA, the Board of Regents, and the University of Georgia Athletic Association. Tiffany also sued the head basketball coach, the athletic director, and the president of UGA under 42 U.S.C. § 1983 as state actors who violated federal constitutional provisions. Tiffany also sought injunctive relief to require UGA to implement policies to protect students from sexual harassment by other students. The district court dismissed all claims. The appellate court remanded the Title IX claims but affirmed the district court’s decision with regard to all other claims.

INTELLECTUAL PROPERTY LAW

As endorsement deals, licensing agreements, sports related internet sites, and fantasy sports leagues continue to grow in popularity in the sports industry, intellectual property law has becomes an increasingly important area of sports law. The following cases discuss the impact of licensing agreements, trademarks, patents, and publicity rights on collegiate and professional sports.

87. 441 F.3d 1287 (11th Cir. 2006).
Bd. of Supervisors v. Smack Apparel Co.88

Louisiana State University, the University of Oklahoma, The Ohio State University, the University of Southern California, and their licensing agent, Collegiate Licensing Company, sued Smack Apparel Company alleging that Smack engaged in unfair competition by selling shirts that had university colors and symbols identifying the universities. The court ruled that there was a likelihood of confusion, that the schools were able to show that their school color schemes, logos, and designs were not functional, and that the fair use defense was not applicable because the plaintiffs showed a likelihood of confusion. Smack argued that the claims were barred by laches because the plaintiffs delayed in filing suit. The court ruled that the laches defense did not apply because Smack did not demonstrate any undue prejudice from the plaintiffs' alleged delay. The court granted summary judgment for the plaintiffs.

C.B.C. Distribution & Mktg., Inc. v. Major League Baseball Advanced Media, L.P.89

CBC distributes and sells fantasy sports products, including fantasy baseball games accessible over the Internet. CBC's website also provides up-to-date information on each player, which is used by game participants to select players. CBC entered into an agreement with the MLB Players Association, which expired in 2004, to use trademarks and player data. In 2005, Advanced Media entered into a similar agreement with the MLB Players Association. After being contacted by Advanced Media, CBC filed an action for declaratory judgment to be able to continue to operate its fantasy baseball games. The court granted summary judgment for CBC because CBC's use of the players' names was not meant to gain a commercial advantage, did not affect the players' ability to earn a living, and therefore, did not violate a right of publicity. Furthermore, the First Amendment took precedence over publicity rights, and the First Amendment protected CBC's speech because it educated and entertained its users with facts already in the public domain.

Cent. Mfg. Co. v. Brett90

Central Manufacturing, Stealth Industries, and Leo Stoller (plaintiffs) filed suit against George Brett and Brett Brothers Sports International (defendants)
for trademark infringement, false designation of origin, and unfair trade practices. The plaintiffs and defendants both claimed that they were the senior users of the Stealth mark placed on baseball bats. Both parties filed for summary judgment. The court granted summary judgment in favor of the defendants. The plaintiffs appealed. The court found that the defendants used the mark two years before the plaintiffs began using the mark and affirmed the award for attorney’s fees and costs.

Doe v. McFarlane

The plaintiff, Tony Twist, was a former professional hockey player. The defendant created Spawn, a comic book series that had a character named Tony Twist, and told fans that he named the character after the hockey player. Twist brought a right of publicity claim, which he won. McFarlane appealed claiming that the evidence used to prove that the predominant purpose for using Twist’s name was commercial, and expert testimony regarding Twist’s lost profits should not have been allowed. The court found that the evidence and expert testimony used in the case was the type reasonably relied upon by experts in the field.

ESPN, Inc. v. IMCO Corp. Pty Ltd.

IMCO, an internet outsourcing corporation, registered the domain name espn.com.au. The website would redirect users to a sweepstakes promotion that lured people into subscribing to a horoscope service. ESPN claimed its mark was famous, the domain name was identical to its mark, and users would not know that ESPN was neither an affiliate nor a sponsor of the site. Because the WIPO panel found that the marks were identical, there was no legitimate interest in the domain name, and the name was registered and used in bad faith, the domain name was transferred to ESPN.

Garden City Boxing Club, Inc. v. Collins

Garden City Boxing Club (Garden City) held the exclusive licensing rights to exhibit and sublicense a boxing match between Oscar De La Hoya and Shane Mosley. Garden City claimed that Collins intercepted the closed circuit telecast and showed the boxing match at WingStop Restaurant without paying the licensing fee to Garden City. The defendants did not answer the complaint,

91. 207 S.W.3d 52 (Mo. Ct. App. 2006).
and a default judgment was rendered against them. Garden City asked for damages totaling $60,000, but the court awarded $8000 in damages and $2000 in attorney’s fees because WingStop did not advertise, did not charge an admission fee, and only showed the boxing match on two TVs.

_Garden City Boxing Club, Inc. v. DeJesus_94

Garden City Boxing Club claimed that DeJesus and Punto Latino Restaurant violated the Communications Act of 1934 when they unlawfully intercepted and exhibited the Barerra/Morales pay-per-view boxing event on November 27, 2004. Default judgment was granted against the defendants for failure to answer or appear in court after proper service was sent. DeJesus then sent a letter on behalf of himself and Punto Latino Restaurant to inform the court that he did not answer the complaint because he could not speak or read English and could not afford to hire an attorney. He requested that the court vacate the default judgment. The court scheduled a status conference, and the plaintiff sent a letter in both English and Spanish to inform the defendant of the conference. The defendant failed to show up on time to the status conference. As a result, the court declined to vacate the default judgment.

_Garden City Boxing Club, Inc. v. Mercado_95

Garden City owned the exclusive rights to the November 27, 2004 fight between Barrera and Morales. The defendants showed the fight on television at Guacho Grill. The defendants claimed that they purchased the fight through a DirecTV package, but DirecTV said it did not provide the fight. The plaintiffs sued claiming that the defendants violated piracy statutes by showing the fight in their establishment for commercial gain without authorization from the plaintiffs. The plaintiffs moved for summary judgment, and the defendants failed to respond. The court granted summary judgment for the plaintiffs because the defendants' only defense was that their subscription to DirecTV allowed them to show the fight, and the DirecTV account shows that it did not purchase the rights to show the fight.

_Hart v. N.Y Yankees P'ship_96

The plaintiff filed an intent-to-use application with the United States Patent and Trademark Office to register the mark Baby Bombers for clothing

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94. No. 05 CV 3898 (SJ), 2006 U.S. Dist. LEXIS 26093 (E.D.N.Y. May 3, 2006).
and athletic wear. The New York Yankees Partnership filed an opposition on the basis of their common law mark Baby Bombers in association with their major and minor league teams. The New York Yankees had used the mark in promotional material since 1999, and Hart did not register for the mark until 2001. The court found the mark to be distinctive and found that Hart’s use of the mark would have been confusingly similar to the Yankees’ identical mark. The court agreed with the Trademark Trial and Appeal Board that Hart should not be granted use of the mark Baby Bombers.

_Haw.-Pac. Apparel Group, Inc., v. Cleveland Browns Football Co._97

Hawaii-Pacific manufactured and marketed a line of apparel using the dawg pound phrase as a mark. Hawaii-Pacific tried to register the dawg pound mark, but National Football League Properties (NFLP) contested the registration because it had used the same phrase to characterize Cleveland Browns fans even though it had never registered the mark. Hawaii-Pacific registered the marks top dawg and lil dawg pound. Subsequently, NFLP filed an intent-to-use application for the dawg pound mark, but it was rejected because it was too close to Hawaii-Pacific’s registered lil dawg pound mark. Hawaii-Pacific sued NFLP alleging trademark infringement and unfair competition. The district court declared NFL Properties the official user of the mark dawg pound because the Browns and NFLP used the dawg pound mark prior to Hawaii-Pacific.

_Ignition Athletic Performance Group, LLC v. Hantz Soccer U.S.A., LLC_98

The plaintiff provides sports-specific training in the Cincinnati area. The plaintiff applied for trademark protection on February 5, 2005, and registered the Ignition mark and logo with the United States Patent and Trademark Office on March 5, 2006. On September 12, 2005, the defendant announced that it would operate a soccer team in Detroit named Detroit Ignition. The plaintiff sued claiming trademark infringement and moved for a temporary restraining order and preliminary injunction. The court did not grant the temporary restraining order or the preliminary injunction because there was not a likelihood of confusion since the plaintiff is located in Cincinnati and the defendant is located in Detroit. Further, the defendant was more likely to suffer substantial harm than the plaintiff.

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Korpacz v. Women's Prof'l Football League

Melissa Korpacz is the owner of the New England Storm, which was expelled from the Women's Professional Football League (WPFL). Korpacz alleged trademark infringement because the WPFL allegedly used certain marks owned by Korpacz without permission. Korpacz was unable to prove damages or show that she was the registered owner of the WPFL logo, and she had explicitly invited others to use additional marks, thus ceding her ownership in the marks.

Lemon v. Harlem Globetrotters Int'l, Inc.

The plaintiffs are former Harlem Globetrotter basketball players who claimed that their names, likenesses, and player numbers were trademarks. When Harlem Globetrotters International (HGI) licensed the marks to defendant GTFM, the plaintiffs sued alleging violations of the Lanham Act, invasion of the right to publicity, unjust enrichment, and false light invasion of privacy. HGI claimed that it had the right pursuant to the plaintiffs' contracts with HGI's predecessors. Both parties filed for summary judgment. The court granted summary judgment for the defendants regarding the Lanham Act claim because there was only a possibility of confusion rather than a likelihood of confusion. Summary judgment was granted regarding the unjust enrichment claim because the plaintiffs could not prove damages. Summary judgment was granted in favor of the defendants because plaintiffs did not present evidence of highly offensive conduct. The defendants were not granted summary judgment for the players' claims of invasion of privacy because there was a question as to whether the contracts entered into with GTFM were unconscionable.


Miken and Wilson are in the business of manufacturing and selling high performance bats. Wilson owned patent technology for a double-walled bat. Miken brought a declaratory action claiming that certain bat models it designed did not infringe on Wilson's patent. Miken claimed that the patent was invalid because it was anticipated. The court ruled that the patent was valid because once a patent has been issued, it is presumed valid unless another party can prove by clear and convincing evidence that it is not, and

100. 437 F. Supp. 2d 1089 (D. Ariz. 2006).
Miken was unable to prove anticipation by clear and convincing evidence. However, the court also found that a reasonable jury could not have found that Miken's bats literally infringed on Wilson's patents, and therefore, summary judgment for Miken was granted.

*Mont. Prof'l Sports, LLC v. Leisure Sports Mgmt.*\(^{102}\)

Duane Anderson was the owner and operator of the Billings Outlaws, a professional football team that played in the National Indoor Football League (NIFL). Anderson acquired protection for the mark "Billings Outlaws" for use in connection with professional football games and exhibitions. The NIFL terminated Anderson's contract after a dispute, took control of the Billings Outlaws, and offered Montana Professional Sports (MPS) the opportunity to operate a team in Billings as part of its league. Anderson threatened to sue MPS if it used the Outlaws' marks; therefore, MPS used the team name Billings Mavericks during the 2005 season. Subsequently, Anderson agreed to assign all rights in the Outlaws' marks to MPS. During 2005, NIFL acquired a new team and approved the adoption of the team name Osceola Outlaws. MPS sued the NIFL and the owner of the Osceola Outlaws alleging trademark infringement and moved for summary judgment. The court granted a preliminary injunction for MPS allowing it to continue using the Outlaws marks and preventing the defendants from using the Outlaws marks.

*Payne v. The Courier Journal*\(^{103}\)

The Paynes sued the Louisville Courier Journal for using portions of an unpublished children's book written by their brother, Tom Payne, in an article. The article was about Tom Payne's basketball career and his subsequent rape convictions in California and Kentucky. Most of the quotes from the book were in the portion of the article that talked about the rape convictions. The Paynes alleged that the manner and use of the excerpts from Payne's book caused irreparable damage to the character, nature, and meaning of the book. The district court dismissed the complaint because the article's quotations from the book qualified under the fair use doctrine. The appellate court affirmed.

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\(^{102}\) 422 F. Supp. 2d 1271 (M.D. Fla. 2006).

\(^{103}\) No. 05-5942, 2006 U.S. App. LEXIS 18766 (6th Cir. July 25, 2006).
TNA Entertainment (TNA) is a company that produces and promotes live professional wrestling events and markets recordings of these events on television and DVD. Patterson has used the names Superstars of Wrestling, Superstar Wrestling, and Superstars of Pro Wrestling since 1979 in connection with wrestling events, and he registered World Wrestling Association and S*W Superstars of Wrestling with the United States Patent and Trademark office. TNA advertised events in November and December 2002 that used the words Superstars of Wrestling, but Patterson’s attorney did not discover the ads until 2006 while he was conducting research on the internet. Patterson sued claiming that TNA’s programs infringed on the names and marks that are his personal property. TNA moved for summary judgment claiming that the names were merely descriptive and entitled to protection. The court granted summary judgment for TNA, finding that it used the trademarks in a non-trademark use because it used TNA or National Wrestling Alliance in the advertisements, and the use of superstars and wrestling was used in good faith to describe their services.

Pro-Football, Inc. v. Harjo

Pro-Football, Inc. owns the Washington Redskins. In 1992, seven Native Americans petitioned the Trial Trademark and Appeal Board (TTAB) to cancel the registrations of six trademarks used by the Washington Redskins because the use of the word “redskins” is scandalous, may disparage Native Americans, and may cast Native Americans into contempt or disrepute. The TTAB issued a pretrial order in 1994, which dismissed all of Pro-Football’s constitutional defenses because it was beyond the Board’s authority. In 1999, the TTAB issued a cancellation order of the six contested redskins marks. Pro-Football then filed a complaint with the district court. The district court ruled that TTAB’s finding of disparagement was not supported by evidence, and the defendants’ original trademark action was barred by laches. The Native Americans appealed to the D.C. Circuit. The D.C. Circuit agreed that the laches was an available defense for Pro-Football against the Native Americans, but it runs only from the time the party reaches the age of majority. The D.C. Circuit provided for a limited remand to the trial court to determine whether the youngest defendant, who reached the age of majority in 1984, was prejudiced. In response, the Native Americans filed a motion to conduct limited discovery related to laches, and Pro-Football filed a brief in

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opposition. The court denied the motion for additional discovery because the defendants did not provide information about what facts were sought, how the facts were reasonably expected to create a genuine issue of material fact, what previous efforts were made to obtain them, and why they were unsuccessful in obtaining them. Further, in its limited remand the D.C. Circuit Court did not anticipate that further discovery and extensive discovery on this issue had already occurred.

*World Triathlon Corp. v. Zefal, Inc.*

World Triathlon Corporation and Zefal entered into a license agreement where they agreed that World Triathlon Corporation would grant an exclusive license to Zefal to use World Triathlon’s Ironman marks on bicycle equipment on a worldwide basis. World Triathlon Corporation terminated the licensing agreement after Zefal failed to make certain payments and to comply with other obligations under the license agreement. After the termination of the licensing agreement, Zefal continued to use World Triathlon’s marks and logo on its website. World Triathlon alleged breach of license agreement, trademark infringement, and false designation of origin. Zefal moved to dismiss for lack of personal jurisdiction. World Triathlon claimed it satisfied Florida’s long-arm statute because Zefal committed tortuous acts that caused injury within Florida. The court disagreed and dismissed the case based on lack of personal jurisdiction.

**PROPERTY LAW**

Property law can be an issue in the context of sports law when a team is contemplating building a new stadium or arena. If there are houses or businesses within the area where the team would like to build the new stadium or arena, the city may begin an eminent domain proceeding. The following case deals with the process of determining the value of property.

*Robert Siegel, Inc. v. District of Columbia*

The plaintiffs owned land that was within a proposed baseball stadium site in Washington D.C. The plaintiffs brought an action claiming the revaluation of their land was not correct. The trial court dismissed the claim finding that it was not ripe because the plaintiffs could have challenged the revaluation in an eminent domain proceeding, and the plaintiffs appealed. On appeal the claim

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was ripe because the plaintiffs had already pursued an eminent domain proceeding. The court found that the Stadium Financing Act, which was the legislation passed to finance the ballpark, did not allow for a private right of action for citizens whose property was condemned to build the stadium, and the court dismissed the complaint.

TORT LAW

One of the most litigated areas of sports law is tort law. Due to the physical contact of most sports, courts often have a difficult time making decisions regarding tort cases in sports. Courts often preclude damages from being awarded if the injury occurred because of something that was an inherent risk of the sport. Some of the following cases involve plaintiffs that were hit by golf balls, hockey pucks, and baseballs.

Alexander v. Tullis

Both Tullis and Alexander were members of a golf league that played at University Golf Club. Before Tullis hit her ball she looked ahead and thought that Alexander's group was on or approaching the fifth green. Tullis knew that the fifth green was beyond her driving range so she hit her drive. Tullis's shot hit plaintiff in the eye. Alexander sued Tullis alleging negligence and recklessness. The trial court granted summary judgment in favor of Tullis and the appellate court affirmed because when a participant is injured in a sporting event by conduct that is a foreseeable and a customary part of the sport that participant may not recover for mere negligence.

Anderson v. Four Seasons Equestrian Ctr., Inc.

Anderson took riding lessons at Four Seasons for about fifteen years. In January 2000, Anderson signed a waiver and release form that released Four Seasons from tort and civil liability relating to participation in equine activity. In March 2003, Anderson went to Four Seasons, mounted a horse, fell, and was injured. Anderson sued Four Seasons claiming that they were negligent in caring, conditioning, and training her horse. The court affirmed judgment for the defendant because the alleged acts of negligence were the same acts that were covered in the release.

During a game, Jose Avila was hit in the head with a baseball by a Citrus Community College District (CCCD) pitcher and suffered serious injuries. Avila claimed that the ball was thrown in retaliation for a CCCD player being hit during the previous inning. Avila claimed CCCD was negligent when it failed to provide medical care, failed to supervise and control its pitcher, and failed to provide umpires to control the game and prevent reckless retaliatory pitching. The court found that CCCD was not liable for any claims because it was protected by the assumption of risk doctrine. Being hit by a baseball was an inherent risk of the game, and failing to provide umpires did not increase the inherent risk of the game. Further, CCCD was not liable for failing to provide medical care because it was not liable for the injury, Avila was not rendered helpless, and Avila's team had its own coaches and trainers present.

Bartolomei v. Twin Ponds Family Recreation Ctr. 111

Bartolomei, a New Jersey resident, injured herself when she fell at the defendant's ice hockey rink while attending her grandson's hockey game. Plaintiff sued defendant claiming negligence in a district court in New Jersey. The defendant claimed that there was not personal jurisdiction. Plaintiff claimed that defendant's website advertised itself as the home of teams in a league with New Jersey teams. The court agreed that it did not have personal jurisdiction because the defendant conducted all of its business in Pennsylvania, and the injury occurred at a rink in Pennsylvania. Therefore, the court granted summary judgment for the defendant.

Blackwell v. Eskin 112

Blackwell was an assistant basketball coach at Temple University. At the time there was an officer named Campbell that was assigned to watch the basketball team. Campbell noticed that Blackwell had a drug problem. Campbell told Eskin, a local sports broadcaster, about Blackwell's drug problem and said that it got so bad that Blackwell was involved in a theft in the locker room the year before. After Blackwell was suspended for violating team rules, Eskin reported on his sports talk show that Blackwell had a drug problem and was involved in a theft incident. Blackwell did not deny that he had a drug problem, but he alleged defamation, false light invasion of privacy,
and tortuous interference with prospective contractual relations when Eskin made the comment about the theft. The court affirmed summary judgment for the defamation and false light invasion of privacy claims because Blackwell failed to show evidence that Eskin knew or should have known the information was false. The court also affirmed summary judgment for the tortuous interference with prospective contractual relations claim because Blackwell failed to show that the theft statement, rather than his cocaine addiction, frustrated his employability.

_Bonne v. Premier Athletics, LLC_\(^{113}\)

Jordan Bonne was competing in a trampoline event hosted by Premier Athletics and sanctioned by USA Gymnastics (USAG). Bonne fell off the trampoline, hit his head on the concrete floor, and died two days later. USAG required all participants in USAG sanctioned events to be members of USAG, which required them to submit a membership application each year. Bonne was a member of USAG, and he and his parents signed a release form when he registered. Jordan’s parents sued Premier Athletics, USAG, and the United States Gymnastics Federation (USGF) claiming they were negligent because they failed to provide a safe event. USAG and USGF moved for summary judgment claiming the release that was signed barred all claims. Tennessee law does not allow exculpatory clauses to contract against liability for intentional conduct, recklessness, or gross negligence. The court did not grant summary judgment for the defendants because there was a question of fact as to whether the defendants’ conduct constituted gross negligence or reckless conduct.

_Bourne v. Marty Gilman, Inc._\(^{114}\)

Bourne was a student at Ball State University when he rushed onto the field with a crowd of people to tear down the goal post after a football game. Bourne attempted to grab the goal post but missed, and as he was walking away the goal post fell on him and rendered him a paraplegic. Bourne and his parents sued Gilman Gear, manufacturer of the goal post, claiming the post was defective and unreasonably dangerous. The court affirmed summary judgment in favor of the defendants because the plaintiff failed to show the goalpost was defective, and the mere existence of a safer product was not sufficient to establish liability.

114. 452 F.3d 632 (7th Cir. 2006).
Sarah Brisbin attended a hockey game at the MCI Center, which is owned and operated by Washington Sports and Entertainment (WSE). While Brisbin was sitting in her seat, another fan who was sitting several rows above her, stood up from his seat, fell, and landed on Brisbin. Brisbin claimed that Washington Sports breached its duty to her by failing to use reasonable care. The court ruled that Brisbin was barred from claiming that WSE was negligent based on crowd control because she did not point to any specific hazardous conditions that could have caused her injury. Plaintiff was also unable to bring a negligence claim based on failure to use reasonable care because there was not a foreseeable unreasonable risk. The court granted summary judgment for Washington Sports and Entertainment.

Browkaw alleged that McSorely hit Browkaw with his elbow or fist during a high school basketball game. Browkaw claimed that McSorely was not allowed to discharge his personal injury claim for physical harm and damages because the conduct was willful and malicious. The lawsuit was stayed when McSorely filed a bankruptcy petition. The parties jointly requested that the court determine the dischargeability of the claim should a verdict be entered against McSorely. After looking at a videotape of the basketball game, the court determined McSorely intentionally injured Browkaw. Therefore, Browkaw’s personal injury claim was excepted from discharge and Browkaw could proceed in Iowa District Court with his previously filed lawsuit against McSorely.

Carver attended a National Hockey League game and was injured by a hockey puck. Carver sued, claiming negligence. The judge in the case only allowed Carver’s counsel forty-five minutes to question nineteen potential jurors. Counsel did not think this was enough time to learn about all the jurors’ perceptions about sports events, headache disorders, neck pain, mental suffering and anguish, and non-economic damages. The court of appeals ruled that the trial judge abused his discretion in limiting voir dire examination.

Brandon Cassise transferred to a high school in Michigan for academic reasons. The former high school’s principal filed a complaint with the Michigan High School Athletic Association because he believed the transfer was for athletic reasons. The principal and the football coach told two different newspapers that they believed Cassise transferred for athletic reasons. Cassise sued the school district, the principal, the football coach and the high school’s athletic director, alleging intentional infliction of emotional distress, defamation, abuse of process, and invasion of privacy. Cassise was unsuccessful in proving intentional infliction of emotional distress because he testified that he was offended and annoyed only five times, and this was not sufficient to establish the intensity or duration to sustain an intentional infliction of emotional distress claim. He was unsuccessful in proving the defamation claim because he could not prove the comment was made with actual malice. Invasion of privacy could not be proven because the information revealed to reporters was already public information, and he could not prove that the defendants abused the Michigan High School Athletic Association appeals process because he could not prove that it had an ulterior motive during the appeals process.

Fortson v. Colangelo

Danny Fortson played basketball for the Dallas Mavericks. During a game against the Phoenix Suns, Fortson pushed Suns player Zarko Cabarkapa, which resulted in Cabarkapa breaking his right wrist. Following the game, Jerry Colangelo, owner of the Phoenix Suns, commented, “He’s a thug.” A few days later defendant Peter Vecsey wrote in his New York Post column that he did not think the three game suspension was enough. Fortson alleged libel against Colangelo and slander against Vecsey and the owner of the New York Post. The court dismissed the claim against all defendants because Colangelo and Vecsey had made comments in a figurative rather than a literal sense, and the court did not want to place strict restraints on sports commentary.

Gorthy v. Clovis Unified Sch. Dist.

Jacob Gorthy was a fourteen-year-old high school football player at Clovis
West High School. Jacob was late for practice one day and was told by the coaches to do bear crawls on the asphalt on a day when temperatures had exceeded ninety-five degrees. As he was doing bear crawls his palms and fingertips were burned. Following practice, his mother took him to the emergency room where he was diagnosed with second and third degree burns. Gorthy sued, claiming violations of the Fourth and Fourteenth Amendment, cruel and unusual punishment, and intentional infliction of emotional distress. The defendants moved to dismiss. The court dismissed these claims because they were not applicable to corporal punishment imposed by public school officials. However, the other claims were not dismissed because Jacob may have felt that he could not leave and excessive physical abuse by school officials may violate the Fourteenth Amendment.

*Hawkins v. U. S. Sports Ass’n*\(^{121}\)

Hawkins played in a softball tournament and injured his knee when he hit a plastic pipe while sliding into first base. The tournament was organized and controlled by the United States Sports Association (USSA). Hawkins sued alleging that the USSA was negligent in failing to discover the pipe and confirm the field was safe before the game began. The pipe had been put in the ground by the high school girls softball team, but the USSA was not informed of the pipe. The court dismissed the claim because there was no evidence that the USSA had actual or constructive knowledge of the pipe being located in the ground.

*Henney v. Shelby City Sch. Dist.*\(^{122}\)

Donald Henney competed for the Bellevue High School track team in a pole vault event that was held at Shelby High School and governed by the National Federation of State High School Associations (NFSHA). NFSHA rules required that a two-inch thick mat or side pad be placed on each side of the pole vault landing pad. Henney alleged that side pads were not used during the meet. During one of Henney’s vaults, his upper body hit the hard surface to the right of the landing pad, and he suffered injuries to his forehead and wrist. Henney sued the track coach at Shelby High School and the Shelby School District. The trial court granted summary judgment in favor of both defendants, stating that they were immune from liability pursuant to the recreational user statute and that Henney assumed the risk that defendants would provide inadequate safety equipment for the pole vaulting event. The

\(^{121}\) 633 S.E.2d 31 (W. Va. 2006).

\(^{122}\) 2006-Ohio-1382 (Ohio App. Ct. 2006).
appellate court reversed, stating that Henney was not a recreational user and the school district and track coach increased the risk by not providing side pads next to the landing pad. Further, the school district was not immune from liability because the discretion used was not used to make a public policy judgment. The track coach was immune because Henney could not prove that his actions or omissions were wanton or reckless.

*Hopkins v. Conn. Sports Plex, LLC*\(^{(123)}\)

John Hopkins was attacked by Vincent Baker and Rev. James Baker during a softball game at the Connecticut Sports Plex. Hopkins sued Connecticut Sports Plex, claiming that it was negligent when it served alcohol to the Bakers when they were already intoxicated and that the facility failed to provide adequate security. The court ruled that the defendant did not breach the duty of care owed to the plaintiff because there had been no prior altercations, the defendants had not shown any prior rowdy behavior and there was no evidence that their drinking led to the altercation.

*Karas v. Strevell*\(^{(124)}\)

During a junior varsity hockey game, Karas was checked from behind by two players. The collision caused Karas' head to hit the boards and resulted in serious injuries. The Naperville Central Redhawk Hockey Association (NCRHA) had rules against checking from behind and was responsible for coaching and teaching its players to abide by all hockey rules. However, prior to this incident, the league had failed to instruct its players to not check from behind and failed to discipline players who checked from behind. Karas also sued the two players that checked him from behind, claiming willful and wanton conduct. Karas sued the NCRHA, the Amateur Hockey Association of Illinois, and the Illinois Hockey Officials Association for negligence and for their willful and wanton conduct that led to his injury. The trial court dismissed all claims, and Karas appealed. The appellate court ruled that the district court improperly dismissed willful and wanton conduct against the players because there was a question of fact as to whether the conduct was willful and wanton. It also found that the district court improperly dismissed the negligence claim against the associations, because the contact sports exception does not apply to willful and wanton conduct. The court also dismissed the willful and wanton claim because there was no evidence that the associations' failure to act constituted an intent to harm Karas.

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Adam Kelly was a thirteen-year-old special needs child who swam on the defendant’s swim team. While at practice one day, Kelly was told by a swim coach to sit on a hot metal chair as punishment. Kelly got up from the chair because it was too hot, but the coach told him to get back into the chair. Two of the defendant board members witnessed this but did nothing about it. As a result, Kelly became seriously ill and was treated at an emergency room. The plaintiffs sued claiming assault, battery, false imprisonment, intentional infliction of emotional distress, negligence, disability and racial discrimination. The defendants moved to dismiss the negligence claims against the board. The court dismissed the negligence claims because the defendants were immune.

Kennedy v. Speedway Motorsports, Inc. 126

A portion of a walkway at Lowe’s Motor Speedway collapsed on May 20, 2000. About one hundred people sued the defendant, claiming it was negligent and breached a contract of which the plaintiffs were third party beneficiaries. The Speedway had the walkway constructed in 1995 and acted as a general contractor. The walkway went from the Speedway parking lot to the Speedway race track and crossed over a highway. The Speedway agreed to install and maintain the walkway in a safe and proper condition. Defendant Tindall constructed the walkway. When Tindall constructed the walkway, it used a product that contained calcium chloride, which caused the steel in the tees to corrode and the walkway to collapse. The North Carolina statute of repose allows only actions to recover damages based upon or arising out of the defective or unsafe condition within six years from the time the structure was built. However, the plaintiffs brought their action more than eight years after the completion of the walkway. The appellate court ruled that the trial court properly dismissed the claim.

Leung v. City of New York 127

Alison Leung was hit in the face by a lacrosse ball while practicing with the track team at Tottenville High School. The team was practicing on a multi-use sports field that was going to be used for a lacrosse game later that afternoon. The New York City Board of Education (Board) was responsible

for the injury because the accident occurred during an after-school practice on high school property. Therefore, summary judgment was granted for the City of New York. The Board argued that the doctrine of assumption of risk applied, but the court ruled it did not apply because Leung assumed the risk in practicing track, which did not include the risk of being hit by a lacrosse ball.

*Mason v. Bristol Local Sch. Dist. Bd. of Educ.* 128

Brittany Mason was competing at a middle school track and field meet when she was hit by a discus. Following a rain delay, a competitor slipped and fell while throwing the discus and the discus ricocheted off a fence pole and hit Mason. Mason argued that the defendants were negligent for the construction, maintenance, and design of the discus pit, failing to warn students about the condition of the pit, failing to properly supervise, and continuing the track meet in bad weather. The court affirmed summary judgment for the defendants. The defendants qualified for immunity because the manner in which they directed the track meet was a discretionary decision. Further, Mason was considered a recreational user and the Ohio recreational use statute barred her claim.

*Morales v. Town of Johnston* 129

Roxana Morales, a student and soccer player at Central Falls High School, suffered a severe knee injury that required two surgeries and resulted in a permanent disability while playing in a high school soccer game at Johnston High School. While Morales was chasing a ball, she stumbled into a water drain located just slightly out of bounds on the Johnston High School soccer field owned by the Town of Johnston. The Central Falls coach said that he warned the players about the water drain before the game, but Morales had no recollection of the warning. Morales brought a negligence claim against Central Falls School District under a theory of respondeat superior, based on the negligence of its soccer coaches. Morales brought a negligence claim against Johnston High School and the Town of Johnston for failure to maintain the field in a safe condition and failure to warn of a dangerous condition on the field. The high school and the Town of Johnston filed third party claims against Rotondo, who was responsible for mowing the field. Morales then sued Rotondo claiming that he breached his duty of care and proximately caused her injury when he failed to mow the grass and maintain the area around the drainage grates. The trial court dismissed Rotondo’s claim because

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there was no evidence presented that demonstrated Rotondo’s negligence, and it was affirmed by the Rhode Island Supreme Court. The trial court found Central Falls School District liable but granted the Town of Johnston summary judgment based on Rhode Island’s recreational use statute. The Rhode Island Supreme Court reversed both judgments because the coaches had immunity and Central Falls School District could not be held vicariously liable. The Town of Johnston’s summary judgment was reversed because the soccer field was not open to the public at the time of the injury.

*Neal v. Team Kalamazoo LLC*130

Neal attended a Kalamazoo Kings baseball game at Homer Stryker field and was hit between the eyes with a baseball. At the time she was hit, Neal was standing by the fence talking to someone. She was facing the batter but could not see him because the field was obscured by a promotional deck and people standing along the fence. The trial court denied the defendant’s motion to dismiss, but the appellate court reversed and granted summary judgment for the defendant because a limited duty of care applies to baseball stadium owners, and that duty was satisfied by providing screening behind home plate sufficient to meet ordinary demand for protected seating.

*Reaume v. Jefferson Middle Sch.*131

Reaume was a middle school student at Jefferson Middle School and a member of the wrestling team. Reaume was in the gym with his back to the door waiting for wrestling practice to begin when the assistant wrestling coach, Nadeau, came behind Reaume, grabbed him without notice, and performed two wrestling moves on Reaume. As a result of the second move, Reaume fractured his elbow, which required surgery to repair. The trial court granted summary judgment to the school, but not to Nadeau, and he appealed. Nadeau claimed that he was immune because he was a coach and was teaching a particular wrestling move at the time of the accident. The appellate court affirmed the trial court’s decision to deny Nadeau summary judgment because there was a question of fact as to whether Nadeau was grossly negligent by not warning Reaume, and the proximate cause of Reaume’s injuries was Nadeau’s unannounced demonstration rather than his participation in the wrestling program.

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Defendant La Costa Youth Organization (LCYO) held a youth baseball fair at Stagecoach Park, which was owned by the City of Carlsbad. The City closed the baseball field because the field was wet from rain the previous day. Defendant, San Diego School of Baseball (SDSB), set up and operated a pitching exhibit in the grassy area between the parking lot and the field. The pitching exhibit measured the speed of a small squishy baseball thrown at a radar gun held by a SDSB member. Dr. Rivkin participated in the pitching exhibit, and during his second throw, he slipped and fell and dislocated his knee, which required a total knee replacement. Dr. Rivkin sued SDSB and LCYO for negligence and the City for dangerous condition of public property. Rivkin claimed that pitching a ball to a radar gun is not a sport or recreational activity; therefore, it is not included within the primary assumption of risk doctrine. The court granted summary judgment for the defendants because baseball is covered by the assumption of risk doctrine and the doctrine applies to practice or training for the activity as well.

**Romanowski v. Township of Wash.**

The plaintiff enrolled in a licensing program for soccer that was administered by defendant, the New Jersey State Youth Soccer Association (NJSYSA). While participating in the practical training on the Township of Washington’s (Township) fields, the plaintiff slipped on wet grass and injured her knee. The plaintiff sued the Township and the NJSYSA, alleging negligence. Both the Township and the NJSYSA moved for summary judgment. The court granted summary judgment for Township of Washington because the plaintiff did not establish that the Township had actual or constructive knowledge of the dangerous condition or that its conduct in maintaining and inspecting the fields was unreasonable. The court granted summary judgment for the NJSYSA because the New Jersey Charitable Immunity Act applied. The NJSYSA was able to prove that it was formed for nonprofit reasons, it was organized exclusively for educational or charitable reasons, and the plaintiff was a beneficiary of the services because plaintiff benefited in her coaching position by receiving her license upon completing the class offered by the NJSYSA.

**Shin v. Ahn**\(^{134}\)

Shin and Ahn were golfing in a group. On the thirteenth hole, Ahn hit his ball before confirming where Shin was standing, and the ball hit Shin. The trial court granted summary judgment in favor of the defendant because Shin assumed the risk of being hit by a golf ball. Shin appealed, and the court granted a new trial because there was an issue of fact as to whether Ahn’s conduct increased the risk. Ahn appealed. The court ruled that granting a new trial was proper because the trial court needed to compare the defendant’s breach of duty when he did not identify where Shin was standing and the plaintiff’s comparative negligence when he stood in the way of Ahn’s tee shot.

**Strock v. USA Cycling, Inc.**\(^{135}\)

Strock and Kaiter were members of the United States’ junior cycling team in 1990. Strock and Kaiter were injected with unknown substances while being supervised by Wenzel, the head coach. Wenzel told Strock it was a mixture of extract of cortisone and vitamins. In 1993, Wenzel told Strock and Kaiter about rumors that Wenzel had doped the junior national team, but neither Strock nor Kaiter had reason to believe the rumors. Strock was in med school in 1998 when he learned that there was no such thing as an extract of cortisone. Strock said this was the first time he had reason to believe he had been given steroids. In 2000, Strock did a nationally televised interview about the possibility of being administered steroids. Kaiter said that the first time he realized he may have been given steroids was while he watched Strock’s interview. Strock and Kaiter then alleged that they were administered steroids by the coaching staff, and sued claiming negligence, fraud and misrepresentation, and concealment. The defendants moved for summary judgment claiming that Kaiter and Strock knew or should have known the cause of their injuries more than three years prior to filing their claims. The court would not grant the motion to dismiss because there was a genuine issue of material fact as to when both plaintiffs knew or should have known the cause of their health issues.

**Taylor v. The Baseball Club**\(^{136}\)

Delinda Taylor was injured when a pitcher at a Seattle Mariners game accidentally threw a pitch into the stands. Taylor alleged she was not aware

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\(^{135}\) No. 00-cv-2285-JLK, 2005 U.S. Dist. LEXIS 41840 (D. Colo. May 8, 2006).

that her circumstances posed any risk of injury. However, Taylor was a Mariners fan, had been to a game before, knew that the ball could leave the field at any time and had watched many of her sons’ baseball games for the past seven years. The trial court dismissed Taylor’s negligence claim against the Mariners under the doctrine of implied primary assumption of risk. The appellate court affirmed the granting of summary judgment in favor of the Mariners.

_Testerman v. Riddell, Inc._\(^{137}\)

Troy Testerman injured his shoulder in a college football game while he was wearing shoulder pads that a Riddell employee recommended. Testerman sued Riddell alleging that the company negligently fit him with pads that were too small. Testerman relied on expert testimony from his treating physician, but that physician could not determine which blow caused Testerman’s injury, whether the area of impact was covered by the shoulder pad, or whether the injury would have occurred or been substantially mitigated had Testerman been wearing different pads. The district court excluded Testerman’s primary expert witness because he was unreliable and granted summary judgment in favor of Riddell. The appellate court affirmed the decision of the trial court.

_Verni v. Harry M. Stevens, Inc._\(^{138}\)

Antonia Verni and Fazila Baksh Verni were in a car driven by defendant Ronald Verni that was hit by defendant Daniel Lanzaro. Lanzaro was intoxicated at the time of the accident and had been at the New York Giants game and two bars prior to the accident. The plaintiffs sued the company that distributed alcohol at the game. The jury found the defendants guilty and awarded the plaintiffs damages. The defendants appealed and argued that during a delay in the trial the judge allowed admission of evidence of a culture of over-serving at the stadium, and that caused undue prejudice against the Aramark defendants, who were the servers at the game. The court agreed. The court also found that the trial judge erred in granting defendants, who had settled with the plaintiffs, summary judgment because it did not allow the jury to seek allocation of negligence to those parties. The court reversed and remanded for a new trial.


Walker v. Commack Sch. Dist.\textsuperscript{139}

Stephanie Walker was playing floor hockey at Commack Middle School when she was accidentally struck in the mouth by a hockey stick. Walker sued the school district, claiming it was negligent in its failure to provide mouth protectors. The trial court denied the school district's motion for summary judgment. A school district witness testified that it was not the norm for school districts to require its students to wear mouth guards while playing floor hockey. The plaintiff relied on recommendations by the National Intramural-Recreation Sports Association, but there was no proof that the recommendations are reflective of a generally accepted standard of practice. The court granted summary judgment for the defendant.

Zemke v. Arreola\textsuperscript{140}

While participating in a high school football game, Nicholas Zemke dislocated his finger. He came out of the game and had his finger taped up. The trainer asked him if anything else was wrong, but Zemke said "no." The coaches asked Zemke if he was ready to return, and despite saying his finger was fine, he was not ready to return. Shortly thereafter, Zemke asked to return to the game. Zemke suffered a right subdural hematoma and collapsed on the field during a time-out. Zemke sued two coaches and the Los Angeles Unified School District, alleging negligence. The court affirmed summary judgment in favor of the defendants because the coaches did nothing to increase Zemke's risk of injury and were unaware that he had a head injury.

Ziegelmeyer v. U. S. Olympic Comm.\textsuperscript{141}

Ziegelmeyer was a two-time Olympic medal winner in speedskating. While practicing at the U.S. Olympic Training Center in Lake Placid, she fell, hit the fiberglass boards surrounding the rink, and injured her spine. Ziegelmeyer claimed that the defendants were negligent in failing to install the pads in accordance with applicable international standards. The Supreme Court of New York granted summary judgment for defendants because it found that the plaintiff had assumed the risk of her injury. Ziegelmeyer argued that the assumption of risk doctrine did not apply because damaged or dangerous safety features are not inherent risks of the sport. The court found no record of damaged or defective pads and affirmed summary judgment in

\textsuperscript{139} 31 A.D.3d 752 (N.Y. App. Div. 2006).

\textsuperscript{140} No. B182891, 2006 Cal. App. Unpub. LEXIS 4999 (June 12, 2006).

\textsuperscript{141} 813 N.Y.S.2d 817 (N.Y. App. Div. 2006).
favor of the defendants.

WORKERS' COMPENSATION

Workers' compensation claims often arise at the professional sports level. Athletes at the high school and collegiate level are not considered employees, and therefore, do not qualify for workers' compensation claims. Professional contracts often define the circumstances in which a player who sustains an injury will continue being paid following the injury. However, there are certain instances where the circumstances surrounding an injury will preclude continued payment. The following cases discuss under what circumstances a player may be able to continue receiving pay from his or her team and whether workers' compensation is precluded because of that payment.

Bezeau v. Palace Sports & Entm't

Andre Bezeau was a professional hockey player who signed a contract to play for the Detroit Vipers. The contract said that if Bezeau sustained an on-ice injury he would still be entitled to his contractual pay; however, if he sustained a personal injury he would not be entitled to his contractual pay. During the off-season in 2000, Bezeau fell off a forty-five-foot ladder while working for a roofing company. Bezeau worked with an athletic therapist and a chiropractor and believed that he would still be able to play hockey. During the first game of the 2000-2001 season another player hit Bezeau's hip, and thigh and his leg went numb. Bezeau has been unable to play professional hockey ever since that incident. Several doctors could not conclusively rule out that the fall did not have anything to do with Bezeau's current injury. Bezeau claimed that he was entitled to benefits because his injury was an on-ice injury. The lower court determined that Bezeau could not be successful because he was unable to prove that his injury was caused by the hit during the game. The appellate court reversed and remanded for further proceedings because the lower court did not focus on whether the incident during the game could have aggravated or contributed to the injury, which would allow Bezeau to recover.

Hughes v. New Orleans Saints

Danan Hughes signed a contract with the New Orleans Saints in 1999.
During a pre-season football game, Hughes sustained a career ending spine injury. Hughes was released by the Saints prior to the beginning of the regular season. Hughes received over $30,000 in compensation and $60,000 severance pay in lieu of workers compensation. Hughes claimed that he was entitled to workers compensation benefits based on his contract, which was worth $400,000. The court ruled that Hughes could only recover if he could prove he could not make 90% of the wages he earned prior to the accident. Hughes’ pre-injury wages were the $33,182 he received prior to getting cut, rather than the $400,000 promised under his contract. Hughes was not entitled to any workers compensation benefits because he was making more than the required amount as a loan officer in the years following the accident.

*Jani v. The Bert Bell/Pete Rozelle NFL Player Ret. Plan*\(^{144}\)

The plaintiff was the administrator for the estate of Webster. Webster played for the Pittsburgh Steelers from 1974 to 1988 and developed brain damage as a result of the many head injuries he received as a player. He was awarded disability benefits by the administrator of the NFL’s retirement plans but was denied the more lucrative benefits reserved for those whose disabilities began while they were still playing. The plaintiff sued claiming the administrator abused its discretion by ignoring the unanimous medical evidence that established the date of Webster’s onset of total and permanent disability was while he was still playing. The administrator claimed that because Webster was employed during the two years following his football career, his total disability did not occur until after he finished playing football. The court ruled that the administrator abused its discretion by ignoring the evidence and the doctors. The court also noted that Webster’s employment did not provide an adequate reason to delay benefits because none of his employment ventures provided him any money.

*Liger v. New Orleans Hornets NBA Ltd. P’ship*\(^{145}\)

The plaintiffs were a group of people who worked in the sales and fan relations departments of the New Orleans Hornets, and they claimed that the Hornets organization owed them overtime pay because they worked more than forty hours per week on some occasions. The Hornets argued that the amusement or recreational exemption applied, which would not require it to pay overtime to workers. The plaintiffs claimed that the exemption would not apply because they were employed in business offices separate from the

\(^{144}\) No. 05-2386, 2006 U.S. App. LEXIS 30594 (4th Cir. Dec. 13, 2006).

organization's amusement or recreational activities and moved for summary judgment. The court did not grant summary judgment because there was a question whether the Hornets' business offices were separate establishments.

**MISCELLANEOUS**

The following cases do not fit within any of the preceding categories. They discuss an open meeting law, whether the NCAA should be forced to disclose information it received during an investigation, and issues dealing with the BALCO investigation.

*Dillman v. Trs. of Ind. Univ.*\(^{146}\)

During the summer of 2000 there had been discussion about terminating Robert M. Knight, Indiana University's head basketball coach, between Indiana University President and the Trustees. On September 9, 2000, President Brand held a meeting with four of the Trustees followed by a separate meeting with four other Trustees to avoid meeting with a quorum of Trustees. The following day Brand announced his decision to fire Coach Knight. The plaintiffs argued that the meeting should have been subject to Indiana's Open Door Law, which requires all meetings of the governing bodies of public agencies to be open at all times. The court upheld the circuit court's decision that a meeting of less than a quorum of a governing body and the President's decision to fire Coach Knight were not subject to Indiana's Open Door Law.

*United States Dept. of Educ. v. NCAA*\(^{147}\)

The University of District Columbia (UDC) cancelled its basketball season in 2004, and the NCAA investigated the reasons that led to the cancellation. The Office of Inspector General (OIG) had also been inspecting the matter to determine if federal student financial aid dollars were misused. The OIG issued a subpoena for all of NCAA's records pertaining to the investigation. The NCAA claimed that the unrestricted disclosure would harm its ability to regulate college sports because it relies on informants to investigate many situations. If informants cannot be guaranteed confidentiality, the NCAA's success will be harmed. The court ruled that the NCAA is required to provide the OIG with the documents because Congress has given administrative agencies broad powers to subpoena records and

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papers, and the OIG was not going to publicly disclose the documents and would destroy or return them to the NCAA once they were no longer needed.

*United States v. Comprehensive Drug Testing, Inc.*

While investigating the Bay Area Lab Cooperative (BALCO), the government sought drug testing information from Major League Baseball (MLB) for eleven players with connections to BALCO. MLB said that it did not have the information. The government then subpoenaed two drug testing companies to turn over the drug testing information for all MLB players. The MLB Players Association filed a motion to quash the subpoenas. The government then applied for search warrants for the two drug testing facilities. The district court ordered the government to return seized property and quashed the government’s subpoenas. The government appealed. The appellate court reversed and remanded because the searches were reasonable. The government did not have to return the evidence immediately, but it did need to sort through the evidence and return the evidence that was not needed. Furthermore, the appellate court found it was an abuse of discretion for the district court to quash the subpoenas.

**CONCLUSION**

The sports law field continues to grow and change each year. As shown by the preceding cases, it encompasses a number of different areas of law. The cases reported on in this survey provide a detailed background as to how the field of sports law changed and evolved in 2006. The sports law field will continue to grow and expand in the years to come.

Megan Ryther

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148. 473 F.3d 915 (9th Cir. 2006).