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2013 Annual Survey: Recent Developments in Sports Law

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SURVEY

2013 ANNUAL SURVEY: RECENT DEVELOPMENTS IN SPORTS LAW

INTRODUCTION

This survey provides a snapshot of important sports industry cases decided between January 1, 2013 and December 31, 2013. Not every sports-related case decided in 2013 is included in this survey. Instead, this survey briefly summaries a wide range of cases that impacted the sports industry in 2013. The survey intends to provide the reader with greater insight into the many current sports-related legal issues and to highlight the most recent developments in sports law. To better assist the reader, this survey is arranged alphabetically by the specific substantive area of law associated with each sports law case.

ADMINISTRATIVE LAW

Administrative law covers the actions of the federal, state, and local governments, such as adjudicating, rulemaking, and regulatory enforcement. One interesting case involving the Federal Communications Commission (FCC) is included below.

Comcast Cable Commc'ns, LLC v. FCC[1]

Comcast Cable offers cable television to subscribers in several different packages known as tiers. Comcast carries two of its own sports networks, Versus and the Golf Channel, on its most broadly distributed tiers, and carries another sports network, the Tennis Channel, on a less broadly distributed tier. In 2009, the TennisChannel successfully filed a complaint with the Federal Communications Commission (FCC) alleging that Comcast violated the Communications Act of 1964 by refusing to broadcastthe Tennis Channel as widely as its own sports networks. Comcast filed a petition with the United States Court of Appeals for the District of Columbia seeking to review the FCC's order providing the Tennis Channel with the same coverage as Versus and the Golf Channel. The court granted Comcast's petition because the FCC did not provide evidence that Comcast would receive any benefit from placing

1. 717 F.3d 982 (D.C. Cir. 2013).

the Tennis Channel on a more broadly distributed tier, and thus the FCC did not prove that Comcast discriminated against the Tennis Channel based on its affiliation with Versus and the Golf Channel.

ANTITRUST LAW

Antitrust law exists to protect consumers from unfair business practices and anticompetitive behavior. The federal Sherman Antitrust Act prohibits monopolistic behavior and conspiracies to restrain trade. Many courts find unique applications of the Sherman Act within the sports industry, particularly within collegiate athletics. Each year many cases focus on antitrust claims, and 2013 was no exception, as several cases brought antitrust claims, particularly against the NCAA.

Bleid Sports, LLC v. NCAA[2]

Bleid Sports, a basketball tournament promotion company, sued the NCAA claiming antitrust violations due to the NCAA's denial of a waiver to host a basketball tournament at Kentucky's Rupp Arena, a NCAA member institution facility. Bleid Sports claimed that the University of Kentucky's legislative relief waiver was denied after several confirmations by the NCAA that the tournament would be compliant with the association's bylaws. Once the waiver was denied, the university refused to host the tournament in order to steer clear of an NCAA infraction. As a result, Bleid Sports moved its tournament to a local high school. Bleid Sports claimed that it suffered damages in the amount of the loss of sales and registration fees resulting from the change in location. The Court found that the NCAA lacked the capacity to be sued in its own name under Kentucky state law. Furthermore, the Court determined that the bylaw in question was "clearly" a recruiting rule and not commercial, and consequently not within the reach of federal antitrust law. Therefore, the NCAA's motion to dismiss the suit was granted.

City of San Jose v. Officer of the Comm'r of Baseball[3]

The City of San Jose sued the Commissioner of Baseball alleging claims for violations of the Sherman Act, California's Cartwright Act, and state tort and unfair competition laws based on Major League Baseball's (MLB) failure to approve the Oakland Athletics Baseball Club's proposed relocation from Oakland to San Jose. The defendant's argued that the decision to deny the

2. No. 5:12–347–kkc, 2013 WL 5410988 (E.D. Ky. Sept. 26, 2013).

3. No. C–13–02787 RMW, 2013 WL 5609346 (N.D. Cal. Oct. 11, 2013).

relocation was exempt from antitrust per the baseball antitrust exemption. Even though this court recognized that the antitrust exemption is "unrealistic, inconsistent, and illogical," it still adhered to Supreme Court and found that federal antitrust exemption for the "business of baseball" remains unchanged, and is not limited to the reserve system.

Dang v. S.F. Forty Niners[4]

Plaintiff Patrick Dang alleged that he purchased NFL apparel from a retailer for an anticompetitive overcharged price. Dang claimed that an agreement between the NFL, its individual teams, and National Football League Properties, Inc. (NFLP), granting Reebook exclusive licensing rights to produce NFL apparel caused Dang to pay the anticompetitive overcharged price. Dang argued that the defendant's behavior harmed two possible markets: (1) "the United States market for the licensing of the trademarks, logos, and other emblems (collectively 'the Intellectual Property') of individual NFL teams for use in apparel"; and (2) "the United States retail market for apparel bearing the intellectual Property of any NFL team."[5] The United States District Court for the Northern District of California found that Dang had standing to bring an antitrust claim under his alleged second relevant market because Dang participated in the retail market as a consumer and suffered an injury through the overcharge of prices. The court also found that Dang had standing to bring an antitrust claim under his first alleged relevant market, even though he did not directly purchase NFL licenses, because Dang's situation fell within an exception "for indirect purchasers who suffer injuries in a market that is 'inextricably intertwined' with the alleged relevant market."[6] Therefore, the court denied the defendant's motion to dismiss.

In re NCAA Student-Athlete Name & Likeness Licensing Litig.[7]

Twenty-one current and former NCAA Division I men's basketball and football student-athletes (plaintiffs) moved for class certification to pursue their claim that the NCAA violated the Sherman Antitrust Act by conspiring with video game developers and broadcasters "to restrain competition in the market for the commercial use of their names, images, and likeness."[8]

The United States District Court for the Northern District of California

4. 964 F. Supp. 2d 1097 (N.D. Cal. 2013).
5. *Id.* at 1104.
6. *Id.* at 1112.
7. No. C09–1967, 2013 WL 5979327 (N.D. Cal. Nov. 8, 2013).
8. *Id.* at *1.

certified the injunctive relief class but did not certify the monetary damages subclass. The court found that there are questions of fact and law common to the classes of student-athletes, the claims and interest of the plaintiffs are common to the claims and interests of the entire class, and given that the plaintiffs do not have any conflicts of interest with the class and have brought the claim vigorously on behalf of the class, the plaintiffs will adequately protect the class' interests. However, the monetary damages subclass failed because of the difficulties that plaintiffs would have managing a class action.

Rock v. NCAA[9]

Prior to John Rock's senior season at Gardner-Webb, the school a new head football coach who decided not to renew Rock's athletic scholarship. As a result, Rock had to pay for his own tuition and room and board. Rock challenged two NCAA bylaws on antitrust grounds and claimed that without these bylaws he would have earned more multi-year scholarship offers. Moving to dismiss Rock's claims the NCAA argued that he lacked antitrust standing, failed to alleged "commercial activity" under the Sherman Act, proposed an incorrect relevant market, and did not allege an anticompetitive effect in the relevant market. Finding that Rock had standing to bring his claims, that he had alleged a relevant market, and that he had alleged commercial activity in his receipt of an athletic scholarship in exchange for an opportunity to earn additional scholarships and play football, the district court denied the NCAA' motion to dismiss.

CONSTITUTIONAL LAW

Both the U.S. Constitution and state constitutions serve to protect individuals from certain government acts. Constitutional claims are common in the sports context, because most state athletic associations are considered state actors and must abide by the Constitution. Although there is overwhelming precedent that the right to participate in sports is not a constitutional right, athletes continue to bring claims. The following cases highlight individuals who brought claims under the Commerce Clause, First Amendment, Takings Clause of the Fifth Amendment, and the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment.

9. 928 F. Supp. 2d 1010 (S.D. Ind. 2013).

Corman v. NCAA[10]

Pennsylvania Senator Jake Corman, joined by Treasurer Robert McCord, filed a lawsuit against the NCAA in order to have the $12 million initial PSU/NCAA consent decree installment put into an endowment trust operated by the State of Pennsylvania, in accordance with Pennsylvania's Endowment Act. The NCAA subsequently filed preliminary objections to the State's lawsuit questioning the State's standing and the constitutionality of the Endowment Act. The Court determined that the Endowment Act was constitutional and so overruled the NCAA's preliminary objections in their entirety.

Doe v. Banos[11]

From November 2006–2009, the Haddonfield Board of Education (HBOE) required its high school student athletes' parents to consent to a school policy that prohibited their child from any involvement with alcohol and drugs, on or off school grounds (the 24/7 policy), in order to participate in school-sponsored sports. Jane Doe's father, Plaintiff John Doe, submitted a 24/7 policy for Jane to play lacrosse. With the policy Doe included a letter that said "I believe the 24/7 Policy is illegal and unenforceable but have filled out the form under duress."[12] HBOE informed Doe that the 24/7 policy he submitted was invalid and Jane could not play lacrosse unless he signed a new form.

Doe claimed HBOE violated his First Amendment free speech right to protest a governmental policy and express his opinion by refusing to accept his 24/7 policy form and letter. The United States District Court for the District of New Jersey rejected Doe's argument because he did not provide any evidence, outside of his own beliefs, to support his claim.

J.D. v. Picayune Sch. Dist.[13]

On April 19, 2011, J.D. was preparing to play a baseball game for Picayune Memorial High School baseball team. Prior to the game, the Picayune team met on the field and chose J.D. for a pregame hazing ritual. J.D.'s teammates held his arms behind his back and struck J.D. in the chest. J.D. fell to the ground and suffered a seizure and facial lacerations.

J.D. and his family (the Dixons) claimed that the Picayune School District violated J.D.'s 42 U.S.C. § 1983 rights because they did not stop the hazing.

10. 74 A.3d 1149 (Pa. Commw. Ct. 2013).

11. 966 F. Supp.2d 477 (D. N.J. 2013).

12. *Id.* at 481.

13. No. 1:11CV514-LG-JMR, 2013 WL 2145734 (S.D. Miss. May 15, 2013).

The Dixon's § 1983 claim failed because public schools "do not have a constitutional duty to ensure that students are safe from private violence"[14] unless the school creates a special relationship. The Dixons argued that Picayune coaches created a special relationship with their students, but the district court disagreed because Picayune did not deprive J.D. of his basic needs; J.D. returned home each day after school; J.D. was not required to join the baseball team or attend Picayune schools; and J.D.'s parents were at the baseball game in which he was hazed.

Jones v. Schneiderman[15]

Plaintiffs, mixed martial arts (MMA) promoters, athletes, trainers, and fans, brought an action challenging the constitutionality of a New York' Combative Sports Ban, which banned the live performance of professional MMA in New York. The Court concluded that MMA is not protected under the First Amendment because it is not a form of expressive conduct and the Combative Sports Ban is not unconstitutionally overbroad. Therefore, the defendant's motion to dismiss was granted in part and denied in part, with the vagueness challenge surviving dismissal.

NCAA v. Corbett[16]

This case arises from the acts of former Penn State assistant football coach Gerald Sandusky sexually abusing children for over a decade. The NCAA imposed a $60 million fine upon Penn State, which is to be paid over five years into an endowment for programs devoted to preventing child sex abuse and assisting the victims of such abuse. Shortly after, the Pennsylvania Governor Thomas W. Corbett, Jr. signed the Pennsylvania Institution of Higher Education Monetary Penalty Endowment Act, which required the $60 million fine be deposited into the Commonwealth Treasury and that the funds may only be used within the Commonwealth for the benefit of Commonwealth residents. The NCAA responded by filing a complaint against Governor Corbett seeking declaratory and injunctive relief because the NCAA alleged that the Endowment Act violated the Commerce Clause, the Contract Clause, and the Takings Clause of the U.S. Constitution.

Senator Corman motioned to intervene on behalf of the Commonwealth. The court held that he does not have a right to intervene because he lacked a significantly protectable interest in the action and the Commonwealth was

14. *Id.* at *5.

15. No. 11 Civ. 8215 (KMW)(GMG), 2013 WL 5452758 (S.D.N.Y. Sept. 30, 2013).

16. 296 F.R.D. 342 (M.D. Penn. 2013).

already adequately represented.

NCAA v. Governor of N.J.[17]

Professional and collegiate sports associations, including the National Football League (NFL), National Basketball Association (NBA), MLB, and NCAA sued the State of New Jersey concerning the passage of the state's Sports Wagering Law alleging that the Sports Wagering Law conflicts with the Professional and Amateur Sports Protection Act of 1992 (PASPA). The State of New Jersey responded arguing that PASPA on constitutionality grounds claiming that the federal law violated the Constitution's anti-commandeering principle. Affirming the district court, the Third Circuit determined that the Sorts Wagering Act was preempted by PASPA.

Wyatt v. Fletcher[18]

During a 2009 Kilgore High School softball meeting, Kilgore softball coaches locked student S.W. in a room and questioned her about an alleged relationship she had with another woman. In the room, the coaches yelled and threatened S.W., and later revealed her sexual orientation to S.W.'s mother, Barbra Wyatt. Wyatt alleged that the softball coaches violated S.W.'s right to privacy under the Fourteenth Amendment and claimed that S.W. has a constitutional right to keep her sexual orientation confidential.

The United States Court of Appeals for the Fifth Circuit determined that a high school student does not have "a Fourteenth Amendment right to privacy that bars a teacher or coach from discussing the student's private matters with the student's parents."[19] Accordingly, the softball coaches were entitled to qualified immunity because they did not violate any established federal right.

CONTRACT LAW

Contract law is involved in numerous facets of the sports industry. The following cases discuss contract issues with sponsorship agreements, licensing agreements, NCAA Conference Constitutions as contracts, and Collective Bargaining Agreements.

17. 730 F.3d 208 (3d. Cir. 2013).
18. 718 F.3d 496 (5th Cir. 2013).
19. *Id.* at 510.

ACC v. Univ. of Md.[20]

In response to the financial ramifications caused from member institutions potentially withdrawing from the Atlantic Coast Conference (ACC), the ACC adopted a mandatory withdrawal payment in its conference constitution. Soon after the ACC adopted this rule, the University of Maryland, one of the ACC's member institutions, informed the ACC that they decided to withdraw from the conference. The ACC alleged that Maryland was obligated to pay a $52,266,342 withdrawal payment.

The Court of Appeals of North Carolina affirmed the trial court denyial of Maryland's motion to dismiss the ACC's claim based on sovereign immunity because an extension of comity to Maryland would violate public policy. Accordingly, the court did not consider whether Maryland would be entitled to sovereign immunity under Maryland law.

Bd. of Regents v. ACC[21]

The University of Maryland sued the Atlantic Coast Conference (ACC), alleging that the withdrawal payment set forth in the ACC Constitution was invalid and unenforceable, a breach of contract and tortious interference with a prospective advantage, and state antitrust violations. This suit came to the Maryland Circuit Court after the University of Maryland President publicly announced its withdrawal from the ACC. Subsequently, the ACC filed a lawsuit against the University of Maryland, the Board of Regents, and the University System of Maryland in order to clarify the validity and enforceability of the conference's withdrawal payment, after the University claimed the payment was invalid and unenforceable.

The ACC filed a motion to dismiss or, in the alternative, asked the court to grant a stay of the proceedings until the initial case, filed by the ACC in North Carolina, concluded. While the court determined that the Withdrawal Penalty was subject to Maryland state antitrust law, it found that the University of Maryland did not adequately state a relevant geographic or product market, in addition to failing to allege market harm. As a result, the court dismissed the state antitrust claims against the ACC. The court also found that Maryland properly pleaded claims for invalidity and unenforceability of the ACC Constitution clause, tortious interference with a prospective advantage, and breach of contract, but issued a stay in the case pending the conclusion of the North Carolina proceedings, stating "'[a]n action may be stayed until a prior

20. 751 S.E. 2d 612 (N.C. Ct. App. 2013).

21. No. CAL13-02189, 2013 Md. Cir. Ct. LEXIS 4 (Md. Cir. Ct. June 27, 2013).

parallel action in the courts of a different sovereignty is determined.'" [22] Ultimately, the court stayed the three actions and dismissed the antitrust claims.

Milo v. Univ. of Vt.[23]

Plaintiff Justin Milo played varsity hockey for the University of Vermont. In a letter, Vermont's head hockey coach, Kevin Sneddon, offered Milo a partial scholarship for the 2009–10 academic year and a full scholarship for 2010–11. At the beginning of the 2009–10 academic year, Milo signed Vermont's Student–Athlete Code of Conduct. Later that academic year, Sneddon dismissed Milo from the team. In an August 4, 2010 letter, SFS notified Milo that his scholarship would not be renewed for 2010–11 and informed him of its scholarship nonrenewal appeals process.

Milo argued that Sneddon's letter to Milo created a contract with Vermont, and Sneddon breached the contract by failing to provide Milo a full scholarship for 2010–11 . The United States District court for the District of Vermont concluded Sneddon's letter did not create a contract with Milo because Sneddon's letter did not constitute an offer given that it informed Milo that his scholarship would not renew automatically. Additionally, Milo argued that the Code created a contract between himself and Vermont, and Vermont breached when Sneddon dismissed him from the team. Although Vermont agreed that the Code created a contract, the court dismissed Milo's breach of contract claim because Milo did not utilize the Code's appeals process.

Mount Snow Ltd. v. ALLI, the Alliance of Action Sports[24]

Plaintiff Mount Snow Ltd., a Vermont ski and snowboard resort, had a tentative agreement with the Alliance of Action Sports (AAS) to host the east coast Winter Dew Tour in 2010 and 2011. Mount Snow signed the agreement but AAS did not. Mount Snow hosted the 2009 and 2010 Winter Dew Tour, but AAS relocated the 2011 Dew Tour to a different Vermont resort. Mount Snow alleged that the parties entered in a contract and AAS breached that contract. Additionally, Mount Snow alleged breach of contract implied-in-fact.

The United States District Court of Vermont denied Mount Snow's motion for summary judgment on its claim for breach of contract because: (1) neither party expressly reserved the right to not be bound until the contract was fully executed; (2) hosting the 2010 Dew Tour did not constitute partial performance; and (3) the parties did not unequivocally agree upon all the substantive terms.

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22. *Id.* at *58 (quoting Apenyo v. Apenyo, 32 A.3d 511, 516 (Md. App. Ct. 2011)).

23. No. 2:12–cv–124, 2013 WL 4647782 (D. Vt. Aug. 29, 2013).

24. No. 1:12–cv–22–jgm, 2013 WL 4498816 (D. Vt. Aug. 21, 2013).

Additionally, the court found that a 2010–11 Dew Tour implied-in-fact contract could have existed because Mount Snow signed the agreement, hosted the 2010 event, and an AAS representative referenced the agreement in later discussions about the 2011 event. Accordingly, the court found that summary judgment was also improper on the breach of an implied-in-fact contract. The trial is set to process in 2014, unless a settlement can be reached.

Simms v. Jones[25]

The plaintiffs in this case were ticketholders for Super Bowl XLV held at Cowboy Stadium on February 6, 2011, bringing claims for breach of contract, based on certain seats being unavailable and being forced to relocate, seats having an obstructed view of play, and being delayed in accessing their seats. The plaintiffs are attempting to certify four classes to prosecute the claims in this case. In order to certify a class action suit, the proposed class must meet the four prerequisites of a class action laid out in Federal Rules of Civil Procedure 26(a) and the action must be maintainable under one of the three categories set forth in FRCP 23(b). The court concluded that the displaced class could not be certified because it did not provide evidence that geographic diversity would prevent joinder. The court concluded that the delayed class, persons who were delaying in gaining access to their seats, could be certified but that individualized questions were predominant and decided not to certify the class. The court concluded that the relocated class, persons who were relocated from their assigned seats, could not be certified because each seat is unique. Finally, the court concluded that the obstructed view class, persons who bought tickets and their view was obstructed, could not be certified because the predominance of the individual damages issue.

COURT OF ARBITRATION FOR SPORT

The Court of Arbitration for Sport (CAS) is an international arbitration body headquartered in Lausanne, Switzerland. Rule 61 of the Olympic Charter requires that all disputes in connection with the Olympic Games must be submitted to CAS. Decisions made by CAS are appealed to the Swiss Federal Tribunal. The following CAS decisions focus on anti-doping violations and eligibility.

25. Nos. 3:11–cv–0248–M, 3:11–cv–345–M, 2013 WL 3449538 (N.D. Tex. July 9, 2013).

Andrus Veerpalu v. Int'l Ski Fed'n[26]

In March of 2013, CAS set aside a three-year sanction imposed on Andrus Veerpalu by the International Ski Federation. Veerpalu, an accomplished Estonian Downhill Skier, was accused of having exogenous human growth hormone (HGH) in his system as evidenced by multiple positive laboratory test conducted by the World Anti-Doping Agency (WADA). On appeal to the International Ski Federation (FIS), Veerpalu argued that the delay between the analyses of the two samples taken affected the accuracy of the test and rendered the results unreliable. After the hearing, FIS determined that any defects in the process would have resulted in a false negative rather than a false positive.

Ultimately, CAS determined that FIS did not meet its burden of proof in showing that the delay would have resulted in a false negative. While CAS determined that the test itself was reliable and found that circumstances showed that Veerpalu likely administered the HGH, the FIS decision was set aside because FIS did not prove that the test's decision limits were scientifically correctly set. The CAS panel in turn overturned the three-year sanction imposed by FIS.

Chantelle Kerry v. Ice Skating Australia[27]

Chantelle Kerry, an Australian figure skater, filed an appeal seeking a declaration that Brooklee Han, another figure skater, was ineligible to be on the Ice Skating Australia Olympic team for the Sochi Olympics in 2014. Kerry argued that by Han's competing in the Hershey Open 2013 Figure Skating Competition in New York City made her ineligible to participate in the 2014 Olympics. CAS found that Han was eligible to participate in the 2014 Olympics.

Fernerbahçe SK v. UEFA[28]

Fernerbahçe SK (Club) is a professional football club in Istanbul, Turkey. The Club appealed a decision handed down by the Union of European Football Associations (UEFA) that excluded the Club from competition for a period of two years. Prior to this decision UEFA had fined the Club and forced it to play two matches behind closed doors as a result of Club supporters being destructive and disruptive during the match. CAS found that UEFA was within its power to impose a two-year probationary period and therefore upheld the sanction.

26. Verrpalu / Int'l Ski Federation (FIS) CAS 2011/A/2566.

27. Chantelle Kerry / Ice Skating Australia CAS 2013/A/3415.

28. Fernerbahçe SK / UEFA CAS 2013/A/3139.

Viktor Troicki v. ITF[29]

Vikto Troicki is a 27-year-old Serbian professional tennis player. Troicki had just lost in the first round of the Monte Carlo Rolex Masters Tournament when he was notified that he had been randomly selected to be drug tested. Troicki was asked to provide both a urine and blood sample. The blood sample was to be tested for human growth hormone (HGH), specifically. Troicki agreed to provide the urine sample, but refused to provide the blood sample because he was unwell from the match he had just played.

Troicki went to the doping control station provided the urine sample, but still refused the blood sample because he felt unwell and had a needle phobia. The doctor taking the blood sample told him that if he did not sign the blood sample form that he could face sanctions. Troicki signed the form because he did not want to face sanctions and he then asked the doctor if it would be a violation if he was unable to provide blood because he was unwell. The doctor's response is what is at issue in this case. Troicki claims that the doctor told him that if he did not feel well he could write a letter to the personnel handling the anti-doping control and the doctor denies it saying this. The tribunal sided with the doctor's version of the story and Troicki appealed to CAS. CAS suspended Troicki for twelve months, disqualified his results from the Monte Carlo Masters 2013, and all the prize money and ranking points obtained from his participation in all competitions prior to July 15, 2013.

WADA v. Ivan Mauricio Casas Buritrago & GCD[30]

On May 29, 2012 Mauricio refused to submit to a drug test. On September 27, 2012, the Disciplinary Commission acquitted Mauricio of all allegations. The national Anti-doping Agency of Colombia (NADA) appealed the decision and then WADA requested the file to submit it on appeal. Mauricio argued that the drug-testing did not meet the protocol procedures set forth by WADA because the selection was not made at random and there was no list displayed at the billboard at the finish line of his race.

However, CAS found that there was no compelling justification for the athlete to refuse the drug test and in the absence of mitigating circumstances a probationary period of two-years must be imposed. Mauricio was suspended for two-years beginning at the issuance of the CAS decision and all his competitive results between May 29, 2012.

29. Viktor Troicki / ITF CAS 2013/A/3279.

30. WADA / Ivan Mauricio Casas Buritrago & GCD CAS 2013/A/3077.

WADA v. Lada Chernova & RUSADA[31]

Ms. Lada Chernova (Chernova), a Russian javelin thrower, had previously failed a drug test on December 15, 2008, and was suspended for two years. On February 29, 2013 Chernova again failed a drug test. On June 9, 2012, Russian Anti-doping Agency (RUSADA) issued a decision imposing a life-time ban due to her second anti-doping violation and Chernova appealed this ruling. Chernova tried to argue that the laboratory's analyst, Ms. Sokolova's, signature was forged and thus infringed on Article 5.2.6.6 of the WADA International Standard for Laboratories (ISL).

CAS found that there was no credible departure from the ISL or any other international regulation during Chernova's drug testing period. Therefore, CAS upheld the life-time ban issued by RUSADA and forced Chernova to forfeit all competitive results in relation to competition on February 29, 2012.

DISCRIMINATION LAW

Many state and federal laws work together to protect individuals from discrimination based on race, gender, age, religion, and disability, to name a few. Discrimination claims are often based on the Title VII of the Civil Rights Act of 1964, Title VII of the Education Amendments of 1972, and the Americans with Disabilities Act. The following cases illustrate the effect of anti-discrimination laws in the sports context.

Heike v. Guevara[32]

The plaintiff, a Central Michigan University women's basketball player, filed an Equal Protection claim against the defendants alleging that her scholarship was not renewed based on her race and sexual orientation. The United States Court of Appeals for the Sixth Circuit found that the plaintiff did not present direct evidence or a prima facie case of discrimination to support her claim because she could neither prove that she was in a protected class nor that the legitimate reasons for her dismissal were mere pretext. Furthermore, Heike was not able to show that another similarly situated player was treated differently as required to establish a prima facie case of discrimination.

31. WADA / Lada Chernova & RUSADA CAS 2013/A/3112.

32. No. 10–1728, 2013 WL 1092737 (6th Cir. Mar. 18, 2013).

Mann v. Louisiana High Sch. Athletic Ass'n.[33]

The plaintiff in this case is the father of A.M., who is a high school student in Baton Rouge, Louisiana. A.M. had to transfer schools because he was diagnosed with anxiety disorder, which interfered with his performance at school. He transferred to another school that could better accommodate his condition. Because of the transfer, A.M. was subject to the Louisiana High School Athletic Association's (LSHAA) transfer rule, which renders a student ineligible for one year from date of transfer. A.M. sat out six games of the 2011 football season because he was ineligible. In response, Mann filed a complaint in federal court, alleging violations of the American with Disabilities Act (ADA) and requesting injunctive relief. The district court granted a preliminary injunction against the LSHAA to treat A.M. as eligible and to not impose the restitution rule against A.M. or his school in event the injunction is later reversed or vacated. On appeal, the court concluded that although learning, concentrating, and thinking are major life activities under the ADA, Mann did not connect the findings to any particular way that A.M. was substantially limited in any of those life activities due to his disorder. Thus, the court reversed the injunction because A.M. was not likely to succeed on the merits of his ADA claim.

Starego v. N.J. State Interscholastic Athletic Ass'n.[34]

Plaintiff, a 19-year old autistic high school student and his parents sued the New Jersey State Interscholastic Athletic Association (Association) under the ADA, after the Association denied the student's waiver to continue playing high school football after his four-year participation limit expired. In their decision to deny the student's waiver, the Association claimed that since the student received the full benefit of athletics participation in high school by participating for four years, it would give the student's high school an unfair advantage having a college level player on their team.

In analyzing the case de novo with a small degree of deference to the Association's decision, the Court determined that the student was provided with "equal access and opportunity to play football afforded to every other student without a disability."[35] Therefore, the essence of the ADA was achieved and the Association's denial of the waiver deemed valid.

33. No. 12–264–JJB, 2013 WL 3475116 (N.D. La. Sept. 13, 2013).

34. No. 13–3172 (FLW), 2013 WL 4804821 (D. N.J. Sept. 9, 2013).

35. *Id.* at *13.

Talevski v. Regents of the Univ. of Cal.[36]

Plaintiff Anita Talevski suffers from bi-polar disorder. From late 2011 until early 2012, Talevski participated in the University of California San Diego's (UCSD) triathlon program that was open to the general public. The UCSD triathlon coaches knew about Talevski's disorder. During this time, Talevski stopped taking her medications and had occasional emotional outbursts. She also developed an obsessive affection for another triathlon participant. The UCSD director of recreation informed Talevski that her conduct violated the triathlon program's code of conduct and expelled her from the program.

Talevski brought a disability rights action against Regents of the University of California (Regents) that alleged UCSD violated Title II of the ADA. The United States District Court for the Southern District of California concluded that participating in recreational programs that are open to the public does not constitute a fundamental constitutional right. Therefore, the court dismissed Talevski's ADA claim and concluded that Regents was entitled to Eleventh Amendment immunity.

EDUCATION LAW

Education law is an area of law that covers the laws and regulations that govern federal and state education, including school athletics. High school athletic associations and the NCAA both impose rules and regulations to govern the conduct of student-athletes. The following cases involve challenges to various rules and regulations that govern high school athletic associations and the NCAA.

B.A. v. Miss. High Sch. Activities Ass'n Inc.[37]

The plaintiffs, a group of high school student-athletes, sought to enjoin the high school association from enforcing its rule prohibiting student-athletes from competing on both a school and non-school team in the same sport during the academic year. The plaintiffs alleged a violation of the Equal Protection of Fourteenth Amendment to the U.S. Constitution because the rule created two classes of student-athletes: (1) a group that may associate with independent teams and high school teams, allowing for more training in that sport; and (2) a group that may associate with either their independent team or their high school team, having limited opportunities for training and development in their sport. The court applied the rational basis test to the rule since it does not discriminate

36. No. 13cv958JM (JMA), 2013 WL 4102202 (S.D. Cal. Aug. 13, 2013).

37. No. 1:13cv170–SA–DAS, 2013 WL 5676899 (N.D. Miss. Oct. 18, 2013).

against a suspect class and found that the rule was reasonably related to competitive balance among member schools. Thus, judgment as a matter of law in favor of the association was proper.

Hinterberger v. Iroquois Sch. Dist.[38]

Plaintiff, a cheerleader, filed a lawsuit against the Iroquois School District and a parent-volunteer coach who instructed and supervised the cheerleading squad after plaintiff sustained a head injury during practice. On appeal, the parent-volunteer coach seeks the reversal of District Court's decision denying the application of qualified immunity.

The court concluded that because the defendant's conduct did not violate a clearly established right, the district court erred in deciding in favor of the plaintiff. Therefore the defendant is entitled to qualified immunity based on her status as a volunteer coach for the district and released from liability.

Lavella v. Stockhausen[39]

Alexandria Lavella suffered a concussion while performing for the Peters Township High School (PTHS) varsity cheerleading squad. Lavella's cheerleading coach, Chelsea Stochkausen, was aware of Lavella's cocussion and symptoms. Two weeks later, Lavella returned to cheerleading practice, was struck in the head, and suffered concussion-like symptoms. Stochkausen observed this injury, but did not file an injury report with PTHS. A week later, during practice, Levalla suffered another concussion after a teammate fell onto her head.

Lavella claims that Stockhausen violated her constitutional right to be free from bodily harm. Because states do not have an obligation to protect their citizens, Lavella pursued her constitutional claim through the four-pronged "state-created danger theory." Stockhausen claimed that Lavella failed the second prong which requires proof that "the state-actor acted in willful disregard for the Plaintiff's safety."[40] The United States District Court for the Western District of Pennsylvania concluded that Lavella did not satisfy the second element because Lavella was medically cleared to participate in the two cheerleading practices and she decided to participate in the cheerleading practices.

38. No. 12–3875, 2013 WL 6284433 (3d Cir. Dec. 5, 2013).

39. No. 13cv0127, 2013 WL 1838387 (W.D. Pa. May 1, 2013).

40. *Id.* at *3.

Rodriguez v. Unified Sch. Dist. 500[41]

In 2006, Michael Hitze was driving plaintiff Jesus Rodriquez, a student and soccer player at Sumner Academy High School, to a Sumner soccer game when Hitze's vehicle crashed and severely injured Rodriquez. Rodriquez made a claim for benefits under the Kansas State High School Athletic Association's (KSHSAA) catastrophic injury insurance policy which covered students participating in "pre and post game-related activities. . .[including] individual travel, for purposes of representing the Participating School, . . . provided the travel is paid for or subject to reimbursement by the Participating school."[42] Mutual of Omaha Insurance Company denied Rodriquez's claim for benefits under KHSAA's policy.

The Court of Appeals of Kansas interpreted the insurance policy to mean that "only travel that is paid for or subject to reimbursement by the school district is covered by th[e] policy."[43] Under this interpretation the court determined that Rodriquez's travel to the soccer game was not covered by KHSAA's insurance policy because his travel was not subject to reimbursement. Based on the Unified School District 500's policy, Rodriquez was not entitled to reimbursement because Hitze was not over twenty-one years old and Hitze did not verify insurance coverage with Sumner.

Scott v. Okla. Secondary Sch. Activities Ass'n.[44]

A student athlete sued his state high school athletic association seeking declaratory judgment and permanent injunction, to prevent the association from enforcing its eligibility ruling not allowing the plaintiffs and many of his teammates to participate in the state football playoffs. The rule against paying the fees for various individual camps in which plaintiff participated came into effect after he and his teammates attended most of the individual camps at issue. The defendant was able to confirm that plaintiff's school paid for him and some of his teammates to attend football camps. On plaintiff appeal directly to the supreme court of Oklahoma the court ruled that the defendant's decision was arbitrary and capricious because it retroactively applied a rule that did not exist for the majority of the alleged violations.

41. 306 P.3d 327 (Kan. Ct. App. 2013).

42. *Id.* at 330.

43. *Id.* at 335.

44. 313 P.3d 891 (Okla. 2013).

Spirit Lake Tribe of Indians v. NCAA[45]

The University of North Dakota (UND) uses a Native American name—the Fighting Sioux—and image as its logo and mascot. Members of the Spirit Lake Tribe (SLT) and Standing Rock Tribe (SRT) approved UND's Fighting Sioux name in a 1969 ceremony. In 2005, the NCAA prohibited its member institutions from displaying Native American images, mascots, and nicknames at championship events. In 2007, UND and the NCAA agreed that UND could retain the Fighting Sioux name without sanctions if SLT and SRT approved the Fighting Sioux name. SLT brought this action to prohibit the NCAA from sanctioning UND for its use of the Fighting Sioux name. SLT claimed that the NCAA interfered with a protected activity by interfering with the contract allegedly created during the 1969 ceremony. The United States Court of Appeals for the Eighth Circuit affirmed the NCAA's motion for summary judgment because the 1969 ceremony did not create a contract.

Wright City Pub. Schs. v. Okla. Secondary Sch. Activities Ass'n[46]

The Oklahoma Secondary School Activities Association's (OSSAA) baseball regulations limit Oklahoma varsity baseball teams to twenty-two games per season. When a varsity baseball team violates the twenty-two game rule the OSSAA may: (1) place the team's school on warning status; (2) place the baseball team's school on probation status; or (3) suspend the team's school from OSSAA membership. After playing twenty-two baseball games in the 2013 season, the Wright City Public School varsity baseball team (WCPS) played two more five-inning games against two Oklahoma high school baseball teams. For violating the twenty-game rule, the OSSAA required WCPS to forfeit its next game, eliminating WCPS from the Oklahoma state baseball tournament. The Wright City school board sought injunctive relief against this penalty and claimed that the OSSAA arbitrarily or unreasonably imposed the forfeiture against WCPS for violating the OSSAA's baseball rule. The Supreme Court of Oklahoma held that the OSAA's forfeiture penalty against WCPS was arbitrary.

EMPLOYMENT LAW

Employment law is a broad area that encompasses all areas of the employer/employee relationship. Employment law is made up of thousands of federal and state statutes. The following cases highlight various issues that

45. 715 F.3d 1089 (8th Cir. 2013).

46. 303 P.3d 884 (Okla. 2013).

involve employment law in the realm of sports, such as whether coaches are considered at-will employees, retirement benefits for former professional athletes, and whether universities can be vicariously liable for their coaches.

Giles v. Bert Bell/Pete Rozelle NFL Player Ret. Plan[47]

A retired NFL player filed this lawsuit against the NFL Retirement Board to have his medical impairments classified as arising out of League football activities in order to qualify the plaintiff for Degenerative Football benefits provided by the Leagues' Retirement Plan. Conversely, defendants felt that the plaintiff's injuries stem from a mixture of League football activities, as well as non-football activities outside of the League, therefore the resulting impairments do not warrant the classification sought by the plaintiff. The Court determined that the plain language of the NFL Player Retirement Plan allows all players receiving Social Security benefits to qualify for League's disability benefits, but does not specify the classification of benefits applicable. However, the Court found the denial of the plaintiff's Degenerative Football benefits was unreasonable based on the precedent established by the Retirement Board. As a result, the plaintiff was granted summary judgment in his favor allowing for the receipt of Football Degenerative benefits from the NFL Retirement Board.

Haywood v. Univ. of Pittsburgh[48]

A former University of Pittsburgh football coach filed claims of breach of written contract, breach of oral contract, and various other state law claims against his former employer, the University of Pittsburgh, after the University terminated his employment agreement for cause following the plaintiff's involvement in a domestic dispute. The court determined that the University acted reasonably and in good faith in determining that the plaintiff's conduct constituted just cause for termination. Additionally, the court concluded that while a separate oral agreement existed in regards to the buyout payment with the University of Miami, the determination that the plaintiff was rightfully terminated with cause relieved the University from all obligations to the plaintiff. Therefore, the court granted summary judgment in favor of the defendant University on the breach of written and oral contract claims.

47. No. ELH–12–634, 2013 WL 6909200 (D. Md. Dec. 31, 2013).

48. No. 11–1200, 2013 WL 5466958 (W.D. Pa. Sept. 30, 2013).

Hernandez v. Nat'l Ins. Co.[49]

From 1995 until 2009, the University of Puerto Rico Bayamon employed Pedro Rojas as its Olympic Wrestling coach for a series of ten-month periods, starting in August and ending in May. During June and July, Rojas was not a University employee, and the University's athletic director told Rojas not to train student-athletes. Jose Rey Hernandez was a student at the University and a member of the Olympic Wrestling team. According to Hernandez, Rojas required that he attend practices during the summer. At a wrestling practice in June 2009, Hernandez injured his neck.

Hernandez sued the University's insurance company, National Insurance Company (NIC), and NIC's successor, Puerto Rico Guaranty Association. All of the defendants moved for summary judgment. The United States District Court for the District of Puerto Rico considered whether the University, as Rojas employer, was responsible for Rojas negligence even though Rojas was not under contract with the University when Hernandez was injured. The court found that a jury could determine that the University employed Rojas because Rojas was acting as a University employee when Hernandez was injured. Specifically, Rojas was partaking in his job's primary function: coaching the University's Olympic wrestling team.

Hewitt v. Kerr[50]

The Rams fired Equipment Manager Todd Hewitt at the age of fifty-four. Hewitt filed an age discrimination claim under the Missouri Human Rights Act. Thereafter, the Rams moved to compel arbitration of Hewitt's claims, according to the arbitration provision in his employment contract. The court ruled that the Commissioner has an ingrained potential for bias associated with the fact that the NFL teams selected him to be Commissioner. For that reason, the court did not believe that the arbitration provision provided for a fair and impartial arbitration process, since Hewitt had limited bargaining power in accepting the employment contract. Thus, the court held that the trial court will appoint an arbitrator, which shall have the powers originally granted by the arbitration provision.

49. 964 F. Supp. 2d 194 (D. P.R. 2013).

50. No. ED 100479, 2013 WL 5725992 (Mo. Ct. App. Oct. 22, 2013).

Jones v. Alcorn State Univ.[51]

In 2008, Alcorn State University (ASU) gave Plaintiff Ernest Jones, ASU's head football coach, written notice of its intent to terminate his employment. The notice described various incidents in which Jones engaged in football-related financial transactions without the proper authority and without following proper procedures. Additionally, the notice informed Jones that he was entitled to a hearing and to have an attorney at the hearing, but his attorney could not present evidence or cross-examine witnesses. At the hearing, the ASU Grievance Committee recommended to ASU's president to terminate Jones' employment. Jones argued that ASU did not provide him procedural due process under Mississippi law because ASU did not allow his attorney to present evidence or cross-examine witnesses at his hearing. The Mississippi Court of Appeals found that ASU did not restrict Jones' due-process rights because the notice informed Jones that his attorney would not be able to cross-examine witnesses or present evidence at the hearing. Moreover, the court noted, "An adequate opportunity to be heard . . . does not require the procedural safeguards of a trial."[52]

GENDER EQUITY LAW

The most significant legislation for gender equality is Title IX of the Education Amendments of 1972. Title IX has been the cornerstone for generating athletic opportunities for women at both the high school and the collegiate level. Title IX seeks to protect individuals from discrimination based on sex in education programs or activities that receive federal financial assistance. Title IX claims are prevalent in sports law and the following cases demonstrate how Title IX claims can be brought against a high school or university.

Beattie v. Line Mt. Sch. Dist.[53]

A Line Mountain School District policy would not allow seventh grader A.B. to join the middle school wrestling team because she was female. After A.B.'s parents' petition to allow A.B. to join was denied, A.B.'s parents challenged the District's policy under on Equal Protection grounds. The Pennsylvania Wrestling Club (PWC) filed a motion to intervene and claimed that it had an interest in the lawsuit to protect A.B. from injuries that could result

51. 120 So.3d 448 (Miss. Ct. App. 2013).

52. *Id.* at 452.

53. No. 4:13–CV–02655, 2013 WL 6095488 (M.D. Pa. Nov. 20, 2013).

from wrestling boys and inhibit her from fulfilling her future Olympic wrestling career. PWC also claimed an interest based on a statutory mandate to "protect the opportunity of any amateur athlete . . . to participate in amateur athletic competition."[54]

The United States District Court for the Middle District of Pennsylvania denied the Club's intervention because its interest in the litigation was not sufficiently specific or definite. Specifically, the Club's interest in protecting A.B. so that she may hopefully become an Olympian when eligible in 2024 was too remote. The court also denied the Club's statutory interest because A.B.'s challenge fulfilled the statutes' obligations.

Biediger v. Quinnipiac Univ.[55]

The Second Circuit affirmed a district court ruling that Quinnipiac University (Quinnipiac) has continued to fail in providing its female student population with genuine athletic participation opportunities substantially proportionate to the University's female enrollment. In 2010, after Quinnipiac announced its plans to eliminate the men's volleyball, golf, and track programs, as well as, engage in extensive roster management for other men's teams, the plaintiffs, Quinnipiac volleyball players, filed a lawsuit under Title IX. The district court enjoined Quinnipiac from taking any action. In determining whether to grant or deny Quinnipiac's motion to lift the injunction, the district court determined that Quinnipiac's counting has continuously failed to achieve substantial proportionality under the first prong of Title IX. Quinnipiac maintained a 6.3% disparity in women's athletic competition in relation to men's athletic competition, a factor of substantial proportionality. As a result, the court denied Quinnipiac's motion to lift the injunction.

McCully v. Stephenville Indep. Sch. Dist.[56]

In comparison to boys, females at Henderson Junior High (HJH) have fewer athletic opportunities and are treated differently. Accordingly, the plaintiff sued Stephenville Independent School District (SISD) for allegedly violating Title IX. As a result of the lawsuit, the plaintiff claims that the defendants retaliated against his daughter, M. McCully, by forcing M. McCully off the HJH basketball team. The United States District Court for the Northern District of Texas dismissed the plaintiff's retaliation claim against SISD because the plaintiffs failed to allege facts sufficient to infer a right to recovery.

54. *Id.* at *1.

55. 928 F. Supp. 2d 414 (D. Conn. 2013).

56. No. 4:13-CV-702-A, 2013 WL 6017368 (N.D. Tex. Nov. 13, 2013).

Moss v. Franklin Cnty. Bd. of Educ.[57]

In 2011, plaintiff Amy Moss, a high school physical education teacher, applied for a Girls Softball and Girls Basketball coaching position at a different high school, but was not granted an interview or chosen for the positions. Instead, with the support of a Franklin County Board of Education (Franklin) member, a male teacher filled the vacant coaching positions before the positions were posted online. Moss claimed that Franklin violated Title VII by discriminating against her on the basis of gender. The United States District Court for the Northwestern District of Alabama found that Franklin had a legitimate, nondiscriminatory reason for hiring the male teacher; namely, that the teacher lived and grew up in the high school's community.

INTELLECTUAL PROPERTY

Intellectual property rights are important in the sports industry. Intellectual property rights help secure economic value in sport and merchandising and licensing agreements generate billions of dollars in revenue every year. The following decisions discuss a range of cases involving teams and individual's intellectual property rights and the extent to which the court will protect those rights.

Action Ink, Inc. v. Anheuser-Busch, Inc.[58]

This is a trademark infringement and unfair competition case, which arose out of a dispute between a sport marketing firm Action Ink, Inc. (Action) and Anheuser-Busch (Anheuser). In 1985, Action received a trademark for the "THE ULTIMATE FAN" (the Mark) with the purpose of promoting goods and/or services by having fans compete in contests at sporting events. Action's president, Michael Eckstein, met with several NBA teams to hold the Mark contests.

The first interaction between the parties occurred in 1988, when Action requested Anheuser to stop using the phrase "THE ULTIMATE CUBS FAN BUD MAN SEARCH" at Cubs games. Action renewed the Mark in 2005. In 2009, Action sent a cease and desist letter to Anheuser in relation to its promotion, "BudLight/Washington Redskins Ultimate Fan Sweepstakes." In September 2011, Action learned that Anheuser used the phrase "Ultimate Fan Experience" during a Bud Light promotion during commercial aired during NFL games. In November 2011, Action sent a cease and desist letter to

57. No. CV-12-J-3811-NW, 2013 WL 6019470 (N.D. Ala. Nov. 13, 2013).

58. 959 F. Supp. 2d 934 (E.D. La. 2013).

Anheuser to which Anheuser responded that it was not infringing the Mark. Finally, on January 19, 2012 Action sued Anheuser for trademark infringement and false designation under the Lanham Action and violation of state law.

The court concluded that the mark is suggestive because the "Ultimate Fan" could either refer to the greatest fan of a team or it could refer to an individual who wins a contest among fans. A suggestive mark is not afforded the higher protection of an "arbitrary" or "fanciful" mark, thus this factor does not favor a likelihood of confusion. Lastly, Action did not provide the court with any evidence of actual confusion. Therefore, the court held that Action could not maintain its action for trademark infringement.

Already, LLC v. Nike, Inc.[59]

Nike sued Already alleging that its athletic shoe lines "Sugars" and "Soulja Boys" violated Nike's Air Force 1 trademark. Already filed a counterclaim that the Air Force 1 trademark is invalid. Four months after Already filed its counter claim, Nike issued a Covenant not to sue. The covenant stated that Nike would not bring claims against Already or any of its affiliates for trademark infringement or unfair competition claims stemming from Already's existing footwear designs. Nike then moved to dismiss its claims with prejudice and to dismiss Already's counterclaim. Already opposed the dismissal of its counterclaim because Nike had not established that its covenant mooted the case. Already had intentions of introducing new versions of its shoe lines and potential investors wanted Nike's trademark to be invalidated before they would invest. The District Court dismissed Already's counterclaim and the second circuit affirmed.

The Supreme Court began its analysis by examining the terms of the covenant. The Court found that the covenant was unconditional and irrevocable and reaches to prohibit Nike from making any claim or demand. Furthermore, Already failed to assert an intent to market a shoe that would result in infringement. The Court upheld the Court of Appeals dismissal and concluded that the "'covenant renders the threat of litigation remote or nonexistent' because it could not envision a shoe that would be within Nike's trademark yet not protected by the covenant."[60]

59. 133 S.Ct. 721 (2013).

60. *Id*. at 733.

Bouchat v. Balt. Ravens Ltd. P'ship[61]

Frank Bouchat sought to recover damages from the Baltimore Ravens in reaction to the use of Bouchat's "Flying B" logo by the Ravens. Bouchat had previously litigated several lawsuits pertaining to the Ravens' use of the logo, including the initial confirmation of trademark infringement against the Ravens. The Ravens asserted the fair use defense against Bouchat's current claims. The Fourth Circuit determined that the Ravens' use of the logo in the videos constituted fair use and did not establish infringement on the part of the Ravens.

Brown v. Elec. Arts, Inc.[62]

Jim Brown alleged that EA Sports violated the Lanham Act through the use of Brown's likeness in EA's Madden NFL series of football video games. The court ruled that Brown's likeness is artistically relevant because it is important in recreating one of the teams in the game and he is one of the all-time greatest players, and that Brown's evidence did not allege that EA misled consumers as to his involvement with the game.

Cross Fit, Inc. v. Maximum Human Performance, LLC.[63]

CrossFit, Inc. sought a preliminary injunction requiring Maximum Human Performance, LLC (MHP) to cease and remove its "X-Fit Workout Series" fitness videos and any other such videos available on the internet that state or imply an affiliation with CrossFit, and to remove any use of "X-Fit" from its website or social media relating to exercise instruction. The court found that there was sufficient evidence that consumers are likely to associate the "X" in "X-Fit" as a short form for "Cross" as it is commonly used by the general public in that context and that CrossFit is likely to suffer irreparable harm in losing control of its reputation and loss of good will without injunctive relief. Thus, the balance of hardships are in favor of CrossFit because both companies operate in the same domain and the danger lies in the potential confusion of customers will have in associating "X-Fit" to CrossFit or the X-Fit brand. Therefore, the court granted CrossFit's motion of preliminary injunction.

61. 737 F.3d 932 (4th Cir. 2013).

62. 724 F.3d 1235 (9th Cir. 2013).

63. No. 12cv2348-BTM-MDD, 2013 WL 1627953 (S.D. Cal. April 12, 2013).

Dryer v. NFL[64]

This case is about former NFL players who contend that the NFL violated their common-law and statutory rights of publicity. The parties reached a settlement, which provided for a fund that will distribute payments to assist former players and their families, and for a licensing agency to market former players' publicity rights. Despite the benefits of the settlement, a group of plaintiffs opposed the agreement. They argued that the district court erred because the settlement requires an impermissible cy pres distribution of settlement proceeds. Also, they argued that the Plaintiffs supporting the settlement failed to procure the maximum amount of money that the NFL could pay.

The court stated that the certification of a class action is highly doubtful and absent a class action it is unlikely any single plaintiff's claims is so valuable to be worth engaging in continued litigation if this case is not resolved now. The court also stated that the merits of the case weigh in favor of settling this matter now. The fact that the case has gone on for three years and the further expense of litigation also weighs in favor of a resolution. The last factor is not an issue because the NFL was able to pay any judgment against it.

Hart v. Elec. Arts, Inc. [65]

As a NCAA Division I student-athlete, Ryan Hart was included in Electronic Arts, Inc.'s (EA) *NCAA Football* videogame franchise. Hart's *NCAA Football* digital avatar could be found on his former collegiate football team, playing Hart's collegiate position, wearing his collegiate number, weighing his same weight, and height. Hart alleged that EA violated his right of publicity under New Jersey law for using his biographical information and likeness in *NCAA Football*. Applying the Transformative Use Test to balance EA's First Amendment Right of free expression against Hart's right of publicity, the Third Circuit concluded that *NCAA Football* did not sufficiently transform Hart's identity to avoid Hart's right publicity claim.

Hockey Club of the Ohio Valley, LLC v. Eagle Mktg. Group[66]

The Hockey Club of the Ohio Valley and the ECHL filed a claim of trademark infringement against Eagle Marketing, alleging that Eagle Marketing engaged in unauthorized use of its trademark in order to solicit and sell

64. No. 09-2181 (PAM/AJB), 2013 WL 1408351 (D. Minn. April 8, 2013).

65. 717 F.3d 141 (3d Cir. 2013).

66. No. 5:12cv161, 2013 WL 6524719 (N.D. W.Va. Dec. 12, 2013).

marketing advertisements to local retailers. The plaintiffs requested actual and treble damages, as well as, attorney and court fees as relief.

Ultimately, the court granted the request for relief. In coming to this conclusion, the court found that because the defendant had previously engaged in such behavior and received a cease and desist letter based on the prior infringement, Eagle Marketing knew of the illegality of its actions. Therefore, the plaintiffs were awarded all requested damages.

La. Athletics Down on the Bayou, LLC v. Bayou Bowl Ass'n[67]

The Bayou Bowl Association (BBA) hired Brian Rigby, owner of Louisiana Athletics Down on the Bayou, LLC to help start the first Bayou Bowl. Among other things, Rigby organized hotel rooms, collected shoe and T-shirt sizes, and met with players' parents. After the first Bayou Bowl in 2003, the BBA fired Rigby.

Rigby brought a trademark infringement action against BBA and claimed that he created the Bayou Bowl name and concept. To determine if BBA committed trademark infringement, the district court considered whether Rigby satisfied the Lanham Act's use requirement. The court determined that Rigby did not satisfy the use requirement because: (1) Rigby never used the title "Bayou Bowl" in commerce; (2) Rigby has not planned or held an event titled Bayou Bowl before meeting with the BBA; and (3) nothing suggests that Rigby ever used Bayou Bowl outside of his preparation for the 2003 football game.

Masck v. Sports Illustrated[68]

Brian Masck filed a copyright infringement claim against multiple defendants for unauthorized use of a photo Masck took of Desmond Howard's iconic "Heisman Pose" that Howard did after he scored versus Ohio State in 1991. As a result of the action and at issue before the court was Desmond Howard's counterclaim, alleging Masck violated his right of publicity under Florida law and the Lanham Act on the theory that Masck's use gives the public a false impression that Masck's products are associated with Howard in some way.

The court concluded that Howard's Florida law claim is barred by Florida's four-year statute of limitations period because Howard's claim was fifteen years past due, since the photo was first published in 1991. Regarding the Langham Act, Masck alleged Howard failed to state a valid claim because Masck's website and his products were not literally false. A publication must be literally

67. No. 11–303–BAJ–SCR, 2013 WL 2102354 (M.D. La. May 14, 2013).

68. No. 13–cv–10226 2013 WL 3810305 (E.D. Mich. July 23, 2013).

false to violate the Lanham Act, but a literally true statement could still convey a false message. Therefore, the court did not dismiss Howard's claim because the use of his picture and likeness on Masck's website provides a misleading representation.

Tovey v. Nike, Inc.[69]

In 2005, Edward Tovey conceived an idea about a clothing line named "BOOM YO!," which he shared with Savannah Brinson, the girlfriend of NBA player Lebron James, in hopes of creating a partnership with James and James' sponsor Nike. In 2009, Tovey was granted a trademark for "BOOM YO" on apparel. Tovey created shirts with "BOOM" on the front and "YO" on the reverse. In 2010, Nike started a marketing campaign featuring the line "BOOM," on its apparel.

The district court granted Nike's motion to dismiss Tovey's federal trademark counterfeiting claim because no willful intent on behalf of Nike was proven. The court denied Nike's motion to dismiss Tovey's infringement claim because the average sports apparel consumer could mistake Nike's apparel for Tovey's apparel if the consumer did not look at the back of Tovey's apparel. Finally, the court denied Nike's fair use defense because Nike could not establish that it used "BOOM" in good faith, as a reasonable trier of fact could determine that Brinson told James of Tovey's idea and James gave the idea to Nike.

LABOR LAW

Labor law governs the relationship between employers and employees who are unionized or are seeking to unionize. Federal labor law continues to have a significant impact on the sports industry as each of the major U.S. professional sports leagues is unionized. Through these unions, professional athletes negotiate CBAs with their respective leagues. Because a majority of American professional athletes are union members, many of the labor law claims in sports arise out of a dispute concerning a particular sport's CBA.

Eller v. NLFPA[70]

Retired NFL players filed a class action lawsuit against the NFL Players Association (NFLPA), its executive director, and certain plaintiff's from *Brady v. NFL*, claiming that the defendants: (1) wrongfully barred the retirees from

69. No. 1:12CV448 (N.D. Ohio Feb. 6, 2013).

70. 731 F.3d 752 (8th Cir. 2013).

settlement negotiations; (2) negotiated on the retirees behalf without authority to do so; and (3) agreed to a settlement concerning the new CBA with fewer benefits than the retirees would have been able to attain for themselves. The Eighth Circuit concluded that the retired players could not negotiate with the NFLPA due to the non-statutory labor exemption and lacked standing under federal labor laws. Also, the court determined that the defendants did not improperly interfere with any economic advantage. Ultimately, the court found that the retirees failed to allege facts to support their claims and dismissed the action.

Vilma v. Goodell[71]

New Orleans Saints player Jonathan Vilma brought claims of libel, slander, and intentional infliction of emotional distress against NFL Commission Rodger Goodell for the statements Goodell made regarding Vilma's involvement in the Saints' bounty program that targeted certain opposing players to injure. Goodell moved to dismiss Vilma's claim and the district court granted the motion. The court found that: (1) the Labor Management Relations act preempted Vilma's claim; (2) the dispute instead needed to be resolved by the "mandatory, binding dispute resolution procedures of the [CBA]"[72]; and (3) Vilma's claims were inadequately pled.

TAX LAW

Generally, tax law involves the rules that regulate federal and state taxation, which are derived from the U.S Constitution, statutes, and common law. While tax law plays a significant role in the sports industry, particularly professional sports, this area of law is rarely litigated.

Capital Gymnastics Booster Club, Inc. v. C.I.R.[73]

Capital Gymnastics Booster Club (CGBC) was created to raise funds for local competitive gymnastics teams to participate in competitions. As an entity that fostered amateur sports competition, CGBC was exempt from paying Federal income taxes under section 501(c)(3) of the Internal Revenue Code. CGBC member families paid CGBC annual dues and a $600 to $1400 assessment to cover competitions costs. CGBC gave families the option to fundraise money to pay the yearly assessments costs. CGBC awarded

71. 917 F. Supp. 2d 591 (E.D. La. 2013).

72. *Id.* at 593.

73. 106 T.C.M. (CCH) 154 (T.C. 2013).

fundraising parents points "in proportion to the fundraising profit that each family generated."[74] CGBC would reduce a family's assessment costs by the number points a family earned.

In 2005, the Commissioner of Internal Revenue (CIR) determined that CGBC's income benefited private individuals and was thus used for a private purpose. Accordingly, CGBC violated the internal revenue code and CIR revoked CGBC's tax-exempt status. The U.S. Tax Court concluded that CGBC was not operating exclusively for a tax-exempt purpose because it promoted it's fundraising members' financial interests, a non-public interests. Specifically, the court noted that CGBC's point system benefited the child-athlete families who were fundraising members, but not the child-athletes generally. Accordingly, the Tax Court determined that CGBC did not satisfy section 501 (c)(3) and was no longer entitled to the tax exemption.

TORT LAW

Tort law is a heavily litigated area in sports law. Tort law governs the duty of care an individual owes to co-participants and spectators, as well as, a duty of care facility owners owe to its users. Typically courts will look to see if the risk was inherent to participation and participants assumed the risk. Another area of tort law involves the negligence of coaches. The cases that follow represent tort issues involving spectators, coaches, athletes, and co-participants.

Cann v. Stefanec[75]

The parties, both members of the UCLA swim team, were engaged in a team weight-lifting session in the University weight room when Stefanec lost her balance and dropped a weighted bar on Cann's head. The court found that the classification of whether the parties were engaged in sport or recreation did not alter the application of the doctrine of primary assumption of risk. Additionally, the court determined that the since the parties were engaged in a necessary activity of their participation on the UCLA swim team, primary assumption of the risk is applicable to lifting weights, and the injury therefore became inherent to participation. Consequently, Cann's negligence claim was barred.

74. *Id.*

75. 158 Cal. Rptr. 3d 474 (Ct. App. 2013).

Herman v. Lifeplex, LLC[76]

While playing tennis at an indoor tennis facility operated by Lifeplex, LLC, Samuel Herman sustained injuries from slipping on a water bottle that was hidden behind a curtain on Herman's tennis court. Herman brought an action against Lifeplex to recover damages for his personal injuries.

Lifeplex argued that Herman assumed the inherent risk of playing indoor tennis and that it did not have actual or constructive notice of the water bottle's location. On appeal, the Supreme Court of New York reversed the trial courts decision to grant Lifeplex's motion for summary judgment because: (1) issues of fact remained in regards to whether the water bottle was concealed or within the playing area of Herman's tennis court; and (2) Lifeplex did not provide evidence demonstrating when Herman's tennis court was last inspected or cleaned.

Holzhausen v. Bi-State Dev. Agency[77]

Julie Holzhausen was injured when she fell off an embankment located on the premises owned by the St. Louis Cardinals. Holzhausen reached the embankment by climbing around a set of pipes to watch the St. Louis Cardinals 2006 World Series victory parade. Holzhausen claimed that the Cardinals should have anticipated the harm created by the drop off given the distraction posed by the large crowds that accompany parades. The court determined that a distraction exception did not apply because the Cardinals had no reason to expect that Holzhausen would climb over large pipes and be so distracted by the parade that Holzhuasen would not see the drop off. Additionally, the court determined that a reasonable person would recognize the risking of falling from the drop off would outweigh the advantage of gaining a better view of the parade.

Jahn v. Monroe Bd. of Educ.[78]

Spencer Jahn, a member of the Mausk High School boy's swimming team, brought a negligence claim against the Monroe Board of Education and Tom Harkins, the head swimming coach (the defendants), for injuries Jahn suffered before a swim meet. Jan alleged that Harkins failed to supervise a warm-up drill where he instructed the swim team to dive into a pool and swim several lengths. While participating in the drill, another swim team member dove into the pool

76. 966 N.Y.S.2d 473 (App. Div. 2013).

77. 414 S.W.3d 488 (Mo. Ct. App. 2013).

78. No. CW36032218S, 2013 WL 4504826 (Conn. Super. Ct. Aug. 2, 2013).

and struck Jahn, causing injuries to his head and neck. The court determined that Jahn was not subject to imminent harm because his membership on the swim team was voluntary—swim team participation occurred after school hours and required a participation fee payment. The court rejected Jahn's argument that participating in the team drill was mandatory by drawing a distinction between required participation and mandatory participation.

Moore v. Town of Billerica[79]

A mother of injured infant sued the Town of Billerica under Massachusetts recreational use statute for negligent maintenance of public property. Plaintiff's child was injured after being hit with a baseball that came from an adjacent baseball field, which was also owned by the Town.

The Town claimed that it was immune from the application of the recreational use statute because the claim was based on the Town's failure to prevent injury, which section 10(j) of Massachusetts recreational use statute strictly prohibits. Moore argued that her claim was based on the Town's failure to maintain safe conditions in the park where her child was injured. In disagreeing with Moore's position, the court stated that the Town was granted immunity under the recreational use statute because the persons causing the injury were engaged in recreation and were not willful, wanton, or reckless in their activities. Therefore, the Town's inaction in preventing the injury did not serve as an exception to the grant of immunity.

Nathans v. Offerman[80]

Jonathan Nathan, a professional baseball catcher for the Bridgeport Bluefish, sued Jose Offerman, a professional baseball player for the Long Island Ducks, and Offerman's team for injuries Offerman inflicted upon Nathan during a summer professional baseball game. After a pitch hit Offerman, Offerman charged the pitchers mound with his baseball bat in hand. Nathan followed Offerman towards the pitchers mound where Offerman swung his bat and hit Nathan's head.

The Ducks moved for summary judgment against Nathan's claims and argued that it cannot be vicariously liable because Offerman's actions were outside the course and scope of his employment as a professional baseball player. The Ducks also claimed that Offerman cannot be liable because Nathan was a co-participant during the baseball game, a contact sport.

The district court denied the Ducks' summary judgment motion against

79. 989 N.E.2d 540 (Mass. App. Ct. 2013).

80. 922 F. Supp. 2d 271 (D. Conn. 2013).

vicarious liability because Offerman's actions occurred within the Ducks time and space limits. The court also determined that a jury could find that charging the mound, with a baseball bat in hand, amounted to assault and battery, but a jury could also find that it was foreseeable that a professional baseball batter would charge a pitcher after being struck by a pitch. Thus, the question of liability was left for the jury.

Pelham v. Bd. of Regents[81]

During a March 2008 practice, Georgia Southern University's head football coach lined his players "up in two single file lines facing each other"[82] and ordered them to fight each other on his command. The fights' purpose was to determine which players would make the team and become eligible for scholarships. As a result of his fight, Jerome Pelham suffered severe injuries to his right leg.

A trial court dismissed Pelham's negligence claims against the University. Pelham appealed and argued that his negligence claim was not barred by Georgia sovereign immunity under the assault and battery exception. The Georgia appellate court held that sovereign immunity barred Pelham's claims because Georgia's anti-hazing statutes did not contain language explicitly waiving sovereign immunity. Additionally, the court held that Georgia's assault and battery exception barred Pelham's negligence claims because the fight with a teammate caused his injuries, not his head coach's orchestration of the fight.

Pippen v. NBCUniversal Media[83]

When news organizations learned about former Chicago Bulls great Scottie Pippen's financial difficulties, the organizations inaccurately reported that Pippen filed for bankruptcy. Pippen claimed that the news organizations' inaccurate reporting defamed him and his ability to make a living through personal appearances and product endorsements.

The Seventh Circuit considered whether the news organization's reports constituted defamation *per se* or defamation *per quod* under Illinois law. The court concluded that the news organizations reports did not constitute defamation *per se* or *per quod* because incorrect bankruptcy accusations do not fully ruin reputations given that there are many innocent reasons for financial difficulties. Moreover, inaccurate bankruptcy reports do not imply that Pippen lacked the ability to perform his jobs as a Chicago Bulls ambassador, basketball

81. 743 S.E.2d 469 (Ga. Ct. App. 2013).

82. *Id.* at 471.

83. 734 F.3d 610 (7th Cir. 2013).

analyst, and product endorser.

Rispoli v. Long Beach Union Free Sch. Dist.[84]

Steven Rispoli was injured while competing in a high school wresting match when he fell on the mat. Rispoli claimed that negligent refereeing caused his injury because the referee failed to stop the match when Rispoli and his opponent "entered into a potentially dangerous position, even though the referee had previously stopped the match under the same circumstances."[85]

The court found that Rispoli assumed the risk of injury presented in the wrestling match by voluntarily participating in the sport, thereby consenting to any commonly appreciated risks that were inherent to wrestling. Moreover, the court found that the dangerous wrestling position that injured Rispoli was considered potentially dangerous for Rispoli's opponent, not Rispoli. Therefore, failing to stop the wrestling match did not unreasonably increase Rispoli's risk of injury.

Squires v. Breckenridge Outdoor Educ. Ctr.[86]

Kimberly Squires was on a ski trip hosted by the Breckenridge Outdoor Education Center (BOEC), an organization that provides children with disabilities outdoors adventures. Prior to the trip, BOEC sent Squires and her parents a welcome letter and liability release, which Squires and her mother read and signed. On the first day of skiing, another skier collided with the tethers connecting an instructor to Squires. The collision caused Squires' instructor to let go of the tethers, and Squires continued skiing unrestrained into a tree.

Squires filed an action against BOEC claiming that BOEC's liability release was unenforceable and that her mother's consent to the release was not voluntary or informed because her mother did not comprehend the risks associated with Squires skiing with an instructor. The Tenth Circuit determined that BOEC's release was enforceable because it contained unambiguous and clear language that demonstrated Squires' mother intended to release BOEC from any negligence claims. Additionally, the court determined that Squires' mother's consent was voluntary and informed because her mother had enough information to evaluate the risks of skiing and did not inquire about those risks.

84. 975 N.Y.S.2d 107 (App. Div. 2013).

85. *Id.* at 108.

86. 715 F.3d 867 (10th Cir. 2013).

Suitos v. Elk Grove Unified Sch. Dist.[87]

Chelsea Suitos suffered a brain injury when a softball struck her helmet during a high school softball game. Suitos alleged that the Elk Grove Unified School District negligently provided her a defective helmet that was insufficient to protect her head from softballs. The court found that the School District demonstrated that it did not breach a duty of care because Suitos, and the umpire at the game, examined the helmet before the game and did not notice any defects. Additionally, the court found that Suitos did not demonstrate that her helmet was defective.

Tadmor v. N.Y. Jiu Jitsu, Inc.[88]

Erez Tadmor injured his left knee while sparring with another student during his first advanced mixed martial arts (MMA) class. Although the other student was bigger, Tadmor was relatively experienced at martial arts having sparred for almost two months in a beginner class. Additionally, Tadmor received combat training as an air marshal for the Israeli army.

The New York appellate corut reversed the lower court's ruling, which denied the defendant New York Jiu Jitsu's motion for summary judgment. The court reasoned that Tadmor assumed the risk because participating in the advanced MMA class was voluntary, and suffering a knee injury was a reasonably foreseeable consequence of participating in MMA.

UCF Athletics Ass'n Inc. v. Plancher[89]

During a University of Central Florida football practice, football player Ereck Plancher collapsed and died after participating in conditioning drills. Plancher's parents brought a negligence action against the University and its athletic association. A jury trial found the athletic association liable for Plancher's death and awarded Plancher's parents $10 million. The athletic association appealed and argued that the trial court incorrectly determined that the athletic association was not entitled to limited sovereign immunity.

On appeal, the court considered whether the athletic association was a "corporation primarily acting as an instrumentality of the [university],"[90] and thus immune from liability under Florida's state agency sovereign immunity laws. The court found that the athletic association acted primarily as an

87. No. CO70377, 2013 WL 4460707 (Cal. Ct. App. Aug. 19, 2013).

88. 970 N.Y.S.2d 777 (App. Div. 2013).

89. 121 So.3d 1097 (Fla. Dist. Ct. App. 2013).

90. *Id.* at 1103.

instrumentality of the university, and was thus entitled to immunity, because the athletic association was completely controlled by and intertwined with the University. The court therefore reversed the trial court and remanded for further proceedings.

Univ. of Tex. at Arlington v. Williams[91]

The Texas Court of Appeals affirmed a decision holding the University of Texas at Arlington (UTA) liable for injuries suffered by plaintiff at its stadium. The plaintiff, who was at the stadium watching her daughter's soccer game, was classified as a spectator. The UTA, a governmental entity, would generally be shielded from liability under Texas' recognition of sovereign immunity, but under Texas law, the defense is waived for governmental entities for certain tort claims, including a premises defects, if gross negligence or malicious intent can be proved by the plaintiff.

The court declined to apply Texas' Recreational Use statute, due to the fact that the plaintiff was not engaged in a recreational activity at the time of her accident. The court noted that neither watching a sporting event nor exiting the premise constituted "recreational" activity and UTA could be liable for the plaintiff's injuries under theories of gross negligence. Ultimately, the court determined that UTA was liable for the plaintiff's injuries due their failure to warn and requisite knowledge of dangerous conditions.

U.S. ANTI-DOPING AGENCY

The U.S. Anti-Doping Agency (USADA) is the national anti-doping organization in the United States responsible for drug testing and imposing sanctions for positive test results of athletes in the U.S. Olympic and Paralympic movement. USADA was formed in 2000 and aims to preserve the integrity of competition. The following decisions deal with athletes' punishment after failing a drug test.

USADA v. Klineman[92]

Alexandra Klineman entered into arbitration with the USADA to determine whether she had used performance-enhancing drugs in strict violation of the WADA Code. Klineman had taken multi-vitamins that triggered positive test in the past. The arbitration panel concluded that the defendant's fault was slight in this manner because she did not exhibited intentional or deceitful conduct in

91. No. 02-12-00425-CV, 2013 WL 1234878 (Tex. App. Mar. 28, 2013).

92. AAA No. 77 190 00462 13 JENF (2013).

taking the multi-vitamins and the supplements were not of the sports performance enhancing variety. Therefore, Klineman's case warranted a reduction in penalty to thirteen months.

USADA v. Meeker[93]

Richard Meeker tested positive for a USADA prohibited substances after a 2012 cycling race. Meeker testified that he ingested supplements before or during the race, but that he inadvertently ingested the prohibited substances with no negligence or fault because there was an unknown contamination in one of his supplements. Therefore, Meeker argued that the standard two-year ineligibility sanction should be reduced or eliminated.

At arbitration the only issue was the length of Meeker's period of ineligibility. The arbitration panel found that Meeker failed to meet his burden of having an explanation that "more likely than not" explained how the banned substances entered his body. Because Meeker failed to demonstrate how the banned substance entered his system, the arbitration panel applied the standard two-year ineligibility sanction.

WORKERS COMPENSATION

Worker's compensation laws were created for timely payment of medical expenses, lost wages, and even permanent disability to workers sustaining injuries on the job or injuries stemming from performing the job. The following cases demonstrate the complexities of worker's compensation because of the interrelationship of the player's contract and the leagues collective bargaining agreement.

Battles v. WCAB (Pittsburgh Steelers Sports, Inc.)[94]

Ainsley Battles tore his hamstring playing in a football game for the Pittsburgh Steelers. Battles' missed the entire season as he underwent hamstring surgery and rehab. The Steelers paid Battles $205,000, the contractual amount owed to Battles in the event he missed the season because of an injury. After doctors determined that Battles' hamstring healed enough to play football again, the Steelers chose not to resign him and Battles was unable to secure a spot on any other NFL team.

Battles filed an unsuccessful petition with the Workers Compensation Appeal Board for total disability benefits and claimed that his injury diminished

93. AAA No. 77 190 00335 13 (2013).

94. 82 A.3d 477 (Pa. Commw. Ct. 2013).

his athletic abilities so much that he could not make a NFL team roster. The court affirmed the Appeal Board's holding because Battles did not prove that his hamstring injury resulted in a loss of earnings. Specifically, the court noted that Battles did not lose any earnings because the Steelers paid Battles the $205,000 he was contractually owed. Moreover, the court found Battles did not establish that he suffered a compensable disability because testimony at the Appeals Board hearing indicated that Battle's injury did not prevent him from making a professional football team; rather, other market forces caused his unemployment.

Campbell v. New Orleans Saints[95]

Daniel Campbell injured his right knee at a mini-camp for the New Orleans Saints. The Saints placed Campbell on the team's injured reserve list, ultimately ending Campbell's professional football career. In accordance with Campbell's contract, the Saints paid Campbell $525 per week from the time of his injury until the team's first regular season game, and $335,000 over the course of the team's regular season.

Two years later, Campbell signed a consulting contract with the Miami Dolphins. Soon after, Campbell filed a claim for temporary total disability benefits with the Office of Workers' Compensation (OWC). The OWC concluded that Campbell was not eligible for disability payments because he was able "to earn wages equal to 90% of his pre-injury wages."[96]

Campbell appealed the OWC's decision and claimed that the OWC imposed an improper burden to determine his eligibility for disability payments by considering his $525 per week payment, instead of his $335,000 payment, in its disability payment calculation. The Louisiana appellate court affirmed the OWC's decision because the only significant financial figure used to determine a disability claimant's benefit eligibility is the amount the claimant was earning when he was injured.

Fed. Ins. Co. v. WCAB (Johnson)[97]

The WNBA team, the Connecticut Sun, and its insurer filed a writ of review to determine whether a California Worker's Compensation Board possessed jurisdiction to adjudicate the worker's compensation claim of the team's former player. The plaintiffs claimed that sufficient contacts with California did not exist in order for the Board to have jurisdiction over the claim.

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95. 113 So.3d 1215 (La. Ct. App. 2013).

96. *Id.* at 1216.

97. 165 Cal. Rptr. 3d 288 (Ct. App. 2013).

The court concluded that the Board did not have jurisdiction to adjudicate the former player claim because she did not have sufficient contacts within the state. In coming to its decision, the court stated, "The effects of participating in one of 34 games do not amount to a cumulative injury warranting the invocation of California law."[98] Therefore, the case was remanded with instructions to dismiss for lack of jurisdiction.

Gridiron Mgt. Group, LLC v. Travelers Indemnity Co.[99]

In 2007, Gridiron Management Group, LLC (GMG) purchased the Omaha Beef indoor football team from Omaha Beef, LLC. GMG was a new entity formed solely to operate the Omaha Beef football team. In 2008, GMG applied for worker's compensation insurance from defendant Travelers Indemnity Co. Although new businesses are assigned the lowest possible premium, GMG was assigned a higher premium because the National Council on Compensation Insurance determined that, based on its rules, GMG was Omaha Beef's successor entity. The Supreme Court of Nebraska determined that GMG was a successor entity to Omaha Beef, and therefore not entitled to the new business premiums because like Omaha Beef, GMG's business was operating the Omaha Beef football team.

NFLPA v. NFLMC[100]

This case arises from a dispute in 2005, where the NFL Players Association (NFLPA) received an arbitration award mandating a time offset. The NFLPA then sought a confirmation of the award by the district court, which was granted. Despite the confirmation, the NFL Management Council (NFLMC) and individual teams continued to seek dollar for dollar offsets in various state workers' compensation tribunals and courts. The NFLPA returned to the district court asking for injunctive relief, arguing that the NFLMC and participating teams were violating the arbitration award and the district court's confirmation. The district court issued an injunctive order granting relief to the players and held that Paragraph 10 of the CBAprovides for a time offset and preempts any state law to the contrary. The NFLMC challenged the district court's Order, arguing that the district court does not have the authority to resolve the preemption issue in proceedings to enforce the arbitration award.

The Second Circuit held that the district court's authority does not extend beyond the terms under the arbitration award. The court explained that the

98. *Id.* at 298.

99. 839 N.W.2d 324 (Neb. 2013).

100. No. 12-0402-cv, 2013 WL 1693951 (2d Cir. Apr. 19, 2013).

district court's conclusion expanded the terms of the arbitration award as the arbitrator expressly declined to resolve the question of Paragraph 10 in the CBA and the preemption of state law.

Tenn. Football, Inc. v. NFLPA[101]

Tennessee Football, Inc. and the NFL Management Council sought confirmation of an arbitration award against former NFL players for the Tennessee Titans (the Players). The Players filed worker's compensation in California in contradiction of the choice of law provision in their NFL contracts that required Tennessee or Texas (if the player signed with the team while it was located in Houston, Texas) law to govern all legal proceedings.

In making its determination, the court stated that federal labor policy "strongly favors the resolution of labor disputes through arbitration."[102] Furthermore, the Court clarified that an arbitration award will be confirmed if on its face it is a plausible interpretation of the contract. In this instance, the court found that the arbitrator did not stray from the contractual language and followed the plain meaning of the disputed provisions. Thus, the arbitration award was confirmed.

MISCELLANEOUS

The following cases represent decisions that do not fall in any particular area of law, but are significant to the sports industry.

Doe 6 v. Pa. State Univ.[103]

Plaintiff John Doe 6 claimed that Gerald Sandusky, a football coach for Pennsylvania State University (PSU), sexually abused him when Doe was seven-years-old. Specifically, Doe claimed that Sandusky used his position with PSU to lure him into PSU campus showers and sexually molest him. Among other claims, Doe sued PSU for vicarious liability and PSU moved to dismiss. The district court dismissed Doe's vicarious liability claim because Sandusky's sexual molestation was an unlawful, outrageous action outside the scope of his employment as a PSU football coach, and Doe's complaint did not explain how sexual abuse of a minor "was the kind of act that PSU employed Sandusky to perform or how Sandusky was actuated by intent to serve PSU."[104]

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101. No. 12–CV–2812 BEN (DHB), 2013 WL 3338630 (S.D. Cal. July 1, 2013).

102. *Id.* at *1.

103. No.13–0336, 2013 WL 5942380 (E.D. Pa. Nov. 6, 2013).

104. *Id.* at *7.

Hebert v. La. State Racing Ass'n[105]

The Louisiana State Racing Association Commission suspended licensed racehorse trainer Joseph Hebert after eight of his horses tested positive for a banned drug. Following a hearing before the Commission, Herbert accepted a three-year suspension. Nevertheless, Herbert appealed the Commission's decision after he learned that the drug was not listed as banned until after his horses tested positive. Given this information, the trial court gave Herbet additional time to conduct discovery, but the Commission filed a writ seeking to reverse the trial court's decision.

The Louisiana appellate court denied the Commission's writ because determining whether or not the banned drug was listed as banned when Herbert's horses tested positive was material to the case's resolution. Additionally, the court noted that Herbert had good reason for not presenting evidence about the banned drug at the original hearing because there was a legitimate question about whether Herbert knew the drug was banned.

Hooser v. Ohio State Racing Comm'n[106]

Darrell Hooser, a licensed horse trainer, allegedly abused one of his horses for escaping from its stall. A witness overheard Hooser claim that he was going to harm the horse and another trainer overheard whipping sounds after Hooser recaptured the horse in its stall. Additionally, a security guard testified about Hooser's angry reputation with horses and that he saw welts in an "X" pattern on the horse. For these reasons, the Ohio State Racing Commission held a hearing and revoked Hooser's training license.

The court determined that based on the above evidence, the Racing Commission did not abuse its discretion by revoking Hooser's license for whipping the horse even though no person directly witnessed him whipping the horse. Additionally, the court found that testimony about Hooser's reputation did not necessarily constitute hearsay because administrative agencies are not bound by rules of evidence.

NFL v. Fireman's Fund Ins. Co.[107]

Former NFL players filed 140 lawsuits against the NFL that allege the NFL knew about and failed to protect the players from concussions and other head injuries. The NFL sought a California declaration that its insurance companies

105. 125 So. 3d 609 (La. App. 2013).

106. No. 13AP–320, 2013 WL 5963105 (Ohio Ct. App. Nov. 5, 2013).

107. 157 Cal. Rptr. 3d 312 (Ct. App. 2013).

must indemnify the NFL under all the policies for damages they have to pay their former players.

The NFL and insurance companies are also parties to parallel coverage actions in New York.[108] The insurers sought a stay or dismissal of the NFL's California case based on the theory forum non-conveniens. A California trial court ordered the case stayed and the appellate court affirmed the order, reasoning that the NFL is headquartered and operated in New York, brokered most of its insurance policies from New York, and most of its personnel involved in this litigation are employed in New York.

CONCLUSION

The cases decided in 2013 will likely have a strong impact in the development of sports law. While this survey does not include an exhaustive list of every sports-related case decided in 2013, it does include brief summaries of many interesting cases and highlights the interrelation of various areas of law to sports law.

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108. *Id.* at 906.