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2015 & 2016 Annual Surveys: Recent Developments in Sports Law

Katelynn Hill

SURVEY

2015 & 2016 ANNUAL SURVEYS: RECENT DEVELOPMENTS IN SPORTS LAW

INTRODUCTION

This survey highlights sports-related cases decided by courts between January 1, 2015 and December 31, 2016. While every sports-related case may not be included in this survey, it briefly summarizes a wide range of cases that impacted the sports industry in 2015 and 2016. The survey intends to provide the reader insight into the important legal issues affecting the sports industry and to highlight the most recent developments in sports law. To better assist the reader, this survey is arranged alphabetically by the substantive area of law of each case.

ALTERNATIVE DISPUTE RESOLUTION

Alternative dispute resolution involves an alternate form of adjudicating cases. Parties may choose to settle a dispute through arbitration instead of through the court system. These cases arose over contract disputes, in which the contracts involved an arbitration clause. If a party brings a dispute to court when the contract contains an arbitration clause, the opposing party may file a motion to compel arbitration. Other arbitration disputes arise over unfair arbitration decisions.

Amateur Athletic Union, Inc. v. Bray[1]

The Amateur Athletic Union (AAU) appealed the lower court's denial of its motion to compel arbitration against AAU volunteer Augustus Bray after Bray filed claims for defamation, negligence, and intentional infliction of emotional distress against AAU officers. Bray filed the claims after false claims were made against him for assault by contact at a track meet. The court

1. 499 S.W.3d 96 (Tex. App. 2016).

concluded that the arbitration agreement in the AAU National Policies was valid.
Accordingly, the court reversed the trial court's denial of the AAU's motion and instructed the lower court to compel arbitration.

Henry v. New Orleans Louisiana Saints LLC[2]

Rodney Henry filed a cause of action for unpaid wages against the New Orleans Louisiana Saints (Saints). Henry was employed as owner Tom Benson's personal assistant until his termination. The Saints moved to compel arbitration in accordance with the parties' employment agreement. The court granted the Saints' motion to compel arbitration.

NFL Management Council v. NFLPA ex rel. Brady[3]

After New England Patriots quarterback Tom Brady was suspended for his involvement in deflating footballs, Brady requested arbitration. National Football League (NFL) Commissioner Roger Goodell served as the arbitrator and entered an award confirming Brady's four game suspension. The parties sought judicial review, and the district court vacated the arbitration award finding Brady lacked notice that his actions were prohibited and found the arbitration proceeding deprived Brady of fundamental fairness. The NFL appealed and the Second Circuit reversed. The Second Circuit reasoned that the parties contracted with full knowledge that Goodell would sit as the arbitrator and that Goodell did not exceed the scope of his authority in suspending Brady for four games.

NFLPA ex rel. Peterson v. NFL[4]

The National Football League Players Association (NFLPA) petitioned the district court to vacate the arbitration award upholding Adrian Peterson's suspension from the NFL. Peterson was suspended after he was indicted by a Texas grand jury for felony injury to a child. The district court vacated the arbitration award. On appeal, the Ninth Circuit reversed, concluding that the arbitrator's decision was not subject to judicial second-guessing because the arbitrator's decision was "grounded in a construction and application of the terms of the [Collective Bargaining Agreement]."[5]

2. 100 Fed. R. Evid. Serv. 501 (E.D. La. 2016).
3. 820 F.3d 527 (2d Cir. 2016).
4. 831 F.3d 985 (8th Cir. 2016).
5. *Id.* at 995.

Spinelli v. NFL[6]

The facts of this case are fully stated in *Spinelli v. NFL*, 96 F. Supp. 3d 81 (S.D.N.Y. 2015). In a second amended complaint, the court granted defendants' NFL entities, Replay Photos, LLC (Replay), Getty Images, Inc. (Getty), and Associated Press (AP), motions to dismiss and granted Getty's motion to compel arbitration for copyright and antitrust claims brought by seven photographers. The second amended complaint filed new allegations regarding unconscionability and duress. The court found that unconscionability was adequately pled in the second amended complaint, but it dismissed the plaintiffs' duress claims.

United States Soccer Federation, Inc. v. United States National Soccer Team Players Ass'n[7]

The United States National Soccer Team Players Association (Players Association) filed a grievance and demanded arbitration against the United States Soccer Federation, Inc. (USSF). The Players Association argued that under their collective bargaining agreement (CBA) and uniform player agreement (UPA) that the USSF must obtain Player Association consent for use of players' likenesses in a tequila sponsor advertisement featuring six or more players. The arbitrator reviewed the CBA and UPA to find the agreements were ambiguous so the arbitrator looked to past practice of the parties. Such past practices led the arbitrator to determine that the CBA and UPA did not require Players Association approval for player likenesses. On appeal, the Seventh
Circuit reversed, finding that the relevant provisions of the CBA and UPA were clear and unambiguous such that the arbitrator exceeded his authority in looking to past practices.

Wichard v. Suggs[8]

After a contract dispute arose between Terrell Suggs and his former agent, Gary Wichard, who passed away, an arbitrator found in favor of Wichard's estate because Wichard was the original contract advisor for Sugg's NFL deal with the Ravens. Wichard's estate moved the court to confirm the arbitrator's award and to enter judgment for the amount that was awarded to Wichard.

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6. No. 13 Civ. 7398 (RWS), 2016 U.S. Dist. LEXIS 92996 (S.D.N.Y. July 15, 2016).

7. 838 F.3d 826 (7th Cir. 2016).

8. No. 1:15cv1722 (JCC/TCB), 2016 U.S. Dist. LEXIS 46156 (E.D. Va. Apr. 5, 2016).

The court confirmed the arbitration award and entered judgment in favor of Wichard.

ADMINISTRATIVE LAW

Administrative law covers the various activities engaged in by federal, state, and local government agencies. These actions generally include rule-making, enforcement of various regulatory schemes, and a series of other agency-related actions. While administrative law affects only a small number of sports law cases, a few illustrative cases are provided below.

Howard v. Mississippi Secretary of State[9]

Fred Howard was certified by the NFLPA as a player's agent and worked closely with the professional sports agency firm, Authentic Athletix. Howard helped Authentic Athletix sign a football player out of Jackson State University. Howard was not registered as an agent in Mississippi as required by Mississippi state law. After Howard requested a hearing with the Mississippi Secretary of State's Regulation and Enforcement Division, the hearing officer found Howard had violated the law and fined him $25,000. The Secretary of State reduced the fine to $15,000. Howard brought this action in court claiming he did not violate Mississippi law; the fine imposed was arbitrary and capricious; and his constitutional rights were violated. The court held there was substantial evidence that he violated the law based on his own admittance, and the fine was within the authority of the Secretary of State and was not arbitrary and capricious.

Integrity Gymnastics & Pure Power Cheerleading, LLC v. United States Citizenship and Immigration Services[10]

Integrity Gymnastics & Pure Power Cheerleading, LLC attempted to overturn the denial of its petition for permanent residence that it filed on behalf of one of its coaches, Natalia Laschonava. Laschonava was a former gymnastics Olympic gold medal winner for Union of Soviet Socialist Republics. The petition was based on Laschonava being an alien of extraordinary ability. The court held that Congress set a high benchmark for immigrants to qualify as aliens of extraordinary ability, and Laschonava did not meet that threshold. The court determined Laschonava's area of expertise was in com-

9. 184 So.3d 295 (Miss. Ct. App. 2015).

10. 131 F. Supp. 3d 721 (S.D. Ohio 2015).

peting, not coaching; she was not nationally or internationally acclaimed in coaching. Therefore, Laschonava did not meet the high standard for extraordinary ability and the United States Citizenship and Immigration Services' motion for summary judgment was granted.

Mississippi High School Activities Ass'n v. Hattiesburg High School[11]

Tiaria Griffin, a star female high school basketball player, and Steven Griffin, her brother, transferred schools, but the Mississippi High School Activities Association (MHSAA) ruled they had to sit out a year from high school basketball. Hattiesburg High School sought injunctive relief, alleging the MHSAA's decision was arbitrary and capricious with no substantial basis and that the MHSAA is not a state agency entitled to deference. The court held the MHSAA was not a state agency, but its decisions were not subject to review because there was no authority for the court to do so. However, the court reasoned it may review a decision by the MHSAA if there is a cognizable claim or cause of action such as a breach of contract, tort, or fraud. In this specific case, the court held there was no cognizable claim or cause of action. Therefore, the court had no authority to review the case and the decisions of the Forrest County Chancery Court were vacated.

Muchnick v. Department of Homeland Security[12]

Irvin Muchnick, a freelance journalist, filed suit after the Department of Homeland Security (DHS) withheld documents relating to an Irish Olympic Swim Team coach's, George Gibney, alleged sexual abuse of multiple young female swimmers. The court determined that the Freedom of Information Act protects an individual's privacy interest, but that information can be released when public interest outweighs the individual's privacy interest. The court determined that there was substantial public interest in why the United States would allow Gibney in the country for decades; thus, the court ordered the release of documents relating to the investigation of Gibney, along with additional information determined by the court.

ANTITRUST & TRADE REGULATION LAW

Antitrust and trade regulation law exists to protect consumers from unfair

11. 178 So.3d 1208 (Miss. 2015).

12. No. CV 15-3060 CRB, 2016 U.S. LEXIS 168630 (N.D. Cal. Dec. 6, 2016).

business practices and anticompetitive behavior. The Sherman Antitrust Act, alongside various state antitrust laws, prohibits monopolistic behavior and conspiracies to restrain trade. Courts have historically applied the Sherman Antitrust Act in a unique fashion within the sports context, such as Major League Baseball's antitrust exemption. A number of recent antitrust cases focus on the NCAA's practices.

Abraham & Veneklasen Joint Venture v. American Quarter Horse Ass'n[13]

Abraham & Veneklasen Joint Venture (AVJV) is a partnership that invests in Quarter Horses that have been produced by cloning past winners. The American Quarter Horse Association (AQHA) is a voluntary membership association that identifies required characteristics for horses to be deemed American Quarter Horses and be eligible to compete in various AQHA-sponsored functions. The AQHA did not allow cloned horses to be eligible for breed registration and declined to change the rule at AVJV's request. AVJV filed suit alleging that AQHA engaged in a conspiracy to restrain trade in violation of § 1 of the Sherman Act and partook in an illegal monopolization of breed registration in violation of § 2 of the Sherman Act. The court held there was no violation under either claim of the Sherman Act because there was no common design and understanding or meeting of the minds, as there was no unity of interest. Further, the court held there was no violation of § 2 of the Sherman Act because the AQHA was not engaged in breeding, racing, selling, or showing elite Quarter Horses.

Champion Pro Consulting Group, LLC v. Impact Sports Football, LLC[14]

Robert Quinn was initially represented by Champion Pro Consulting Group (Champion), but following the start of the 2011 NFL lockout, he fired Champion and hired Impact Sports Football (Impact). Champion claims Impact violated § 75-1.1 of the North Carolina General Statutes when it recruited Quinn and induced him to sever his contract with Champion, and Impact engaged in a civil conspiracy. The court held there was no evidence of forged documents, lies, or fraudulent inducement to support the claim that Impact violated § 75-1.1, nor was there sufficient evidence to show an agreement between Impact and three of its employees to commit a wrongful act amounting to a civil conspiracy.

13. 776 F.3d 321 (5th Cir. 2015).

14. 116 F. Supp. 3d. 644 (M.D.N.C. 2015).

City of San Jose v. Office of the Commissioner of Baseball[15]

The Oakland Athletics desired to move to San Jose where it believed it would be more profitable, but San Jose fell within the San Francisco Giants' territory market. San Jose claimed MLB's antitrust exemption did not extend to claims relating to franchise relocation. The court held the antitrust exemption did include franchise relocation because the limitations were designed to ensure profitability for the clubs and access to a wide range of markets. Congress did not include relocation in the Curt Flood Act, which signified their belief that relocation was included in MLB's antitrust exemption.

Elite Rodeo Ass'n v. Professional Rodeo Cowboys Ass'n[16]

Elite Rodeo Association (ERA) alleged that the Professional Rodeo Cowboys Association's (PRCA) adoption of two bylaws violated federal antitrust law and filed suit seeking an injunction. The ERA claimed that the PRCA bylaws were the actions of separate entities with separate economic interests, and that the PRCA had monopoly power within the marketplace. ERA failed to show it would suffer irreparable harm and that the PRCA had the power to exclude competition. Further, the court found that ERA failed to show the PRCA had monopoly power. However, the court did not dismiss the § 2 monopolization claim. The court dismissed the motion for preliminary injunction, as well as the PRCA's motion to dismiss.

Gold Medal LLC v. USA Track & Field[17]

Gold Medal LLC d/b/a Run Gum, founded by Nick Symmonds, a two-time Olympian and professional track athlete, and Sam Lapray, a running coach, filed suit alleging that USA Track & Field, the USOC, and other unnamed co-conspirators violated the Sherman Act by agreeing and conspiring to limit the individual sponsors that athletes may bear at the 2016 Olympic Trials, making their conduct per se illegal or an unreasonable restraint of trade under the rule of reason. The United States District Court for the District of Oregon dismissed Run Gum's complaint, holding that the defendants were entitled to implied immunity under the Amateur Sports Act.

Hicks v. PGA Tour, Inc.[18]

15. 776 F.3d 686 (9th Cir. 2015).

16. 159 F. Supp. 3d 738 (N.D. Tex. 2016).

17. 187 F. Supp. 3d 1219 (D. Or. 2016).

One hundred and sixty-eight caddies brought a class action suit against the Professional Golf Association (PGA) arguing, *inter alia*, that the PGA's bib requirement violated federal antitrust law. The court rejected the caddies' allegations that the PGA committed antitrust violations in relevant product markets. The court found that the caddies' argument that advertising in these markets "[was] meaningfully distinct from other forms of advertising to golf fans—[was] not plausible."[19] Put simply, the court found the caddies' failed to propose sufficient product markets because the "the product markets proposed by the caddies [were] not natural."[20] Thus, the court granted the PGA's motion to dismiss.

In re National Football League's Sunday Ticket Antitrust Litigation[21]

Gary Lippincott, Jr. brought antitrust claims against DirecTV, Inc. and DirecTV Holdings LLC relating to their NFL Sunday Ticket product. The issue before the court was whether Lippincott's "artfully pleaded Complaint necessarily state[d] a substantial federal question under the Sherman Act" after Lippincott claimed DirecTV charged consumers unreasonable amounts for its programming.[22] The court concluded that Lippincott sufficiently asserted a federal question and that it could exercise subject matter jurisdiction over Lippincott's complaint.

In re NCAA Athletic Grant-in-aid Cap Antitrust Litigation[23]

Plaintiffs are comprised of NCAA member institution basketball and football student-athletes who allege that the NCAA and its member institutions violated antitrust law by conspiring to cap the amount of grant-in-aids. The court denied the NCAA's motion for judgment on the pleadings, motion for dismissal of the case in its entirety, and motions for seeking injunctive relief for claims regarding the NCAA compensation restrictions for student-athletes. The court reasoned that the Ninth Circuit's decision in *O'Bannon v. NCAA* related only to cash compensation, which is only one form of relief sought by the

18. 165 F. Supp. 3d 898 (N.D. Cal. 2016).

19. *Id*. at 910.

20. Id.

21. No. CV 15-09996, 2016 WL 1192642 (C.D. Cal. Mar. 28, 2016).

22. *Id.* at *1.

23. Nos. 14-md-2541 CW, C 14-2758 CW, 2016 U.S. Dist. LEXIS 103703 (N.D. Cal. Aug. 5, 2016).

plaintiffs.[24]

Le v. Zuffa, LLC[25]

A class of mixed martial arts fighters brought an antitrust action alleging that the Ultimate Fighting Championship (UFC) "foreclosed competition and thereby enhanced and maintained the UFC's monopoly power."[26] UFC moved to dismiss, contending that its behavior was merely strong competition. The court disagreed and denied UFC's motion finding that the fighters sufficiently stated an antitrust claim because UFC's conduct was not merely strong competition.

Laumann v. NHL[27]

The plaintiffs sought class certification for a suit against the NHL and MLB alleging the two leagues entered agreements with multichannel video programming distributors that limited the options for viewers and increased prices for those fans not inside the home network in violation of antitrust law. The court granted the class certification stating both former and current customers had an interest in seeing the restraint removed, and the probability the leagues would eliminate the territorial constraints if they were to lose did not preclude class certification.

Marshall v. ESPN[28]

Former collegiate athletes filed claim against athletic conferences and television networks claiming that the athletes have a right of publicity in their names and likenesses when it appears in television broadcasts under Tennessee state and common law. The athletes claimed that the defendants engaged in a horizontal scheme to place no value to the putative rights of the athletes. The court determined that the Tennessee Personal Rights Protection Act allows any player's name or likeness to be used during a sports broadcast. Further, the court reasoned that no court had recognized such rights, as well as the state

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24. *See generally* O'Bannon v. NCAA, 802 F.3d 1049 (9th Cir. 2015).

25. No. 2:15cv-01045-RFB-PAL, 2016 WL 6134520 (D. Nev. Oct. 19, 2016).

26. *Id.* at *5.

27. 105 F. Supp. 3d 384 (S.D.N.Y. 2015).

28. No. 15-5753, 2016 U.S. App. LEXIS 15292 (6th Cir. Aug. 17, 2016).

legislature expressly addressing the issue. Thus, the court affirmed the district court's decision to dismiss the suit with prejudice.

Miranda v. Selig[29]

A group of minor league baseball players challenged the payment restrictions of minor league players imposed by the MLB Commissioner and the thirty MLB teams. The court held this case falls under the same scope of *City of San Jose v. Office of the Commissioner of Baseball* because, like franchise relocation, the payment of minor league players was left out of the Curt Flood Act; thus, it is part of MLB's antitrust exemption. The court granted the defendants' motion to dismiss and dismissed the minor league players' case with prejudice.

O'Bannon v. NCAA[30]

Ed O'Bannon filed suit against the NCAA alleging that the NCAA violated antitrust law by disallowing student-athletes to be compensated for their names, images, and likenesses. Applying the Rule of Reason analysis, the court held O'Bannon proved that the NCAA restriction created anticompetitive effects. The NCAA had evidence of the restriction's procompetitive effects in the form of amateurism and the integration of athletics with the academic learning process, and the only less restrictive alternative was to allow grant-in-aids up to the full cost of attendance. The court also held that providing student-athletes with deferred compensation for each year of participation was not a viable less restrictive alternative because such payment would undermine the student-athletes' amateur status.

Pugh v. NCAA[31]

Devin Pugh, a Weber State University football student-athlete, filed an antitrust claim against the NCAA alleging that the NCAA's transfer rule, which requires Division I transfer students to sit out for one year when transferring to another Division I school, violated the Sherman Act. The court determined that because the rule focused on eligibility, it was presumptively procompetitive under antitrust law analysis. Further, the court found that Pugh lacked standing, as Pugh's five-year eligibility clock had run out. Thus, there

29. No. 14-cv-05349-HSG, 2015 WL 5357854 (N.D. Cal. Sept. 14, 2015).

30. 802 F.3d 1049 (9th Cir. 2015).

31. No. 1:15-cv-01747-TWP-DKL, 2016 U.S. Dist. LEXIS 132122 (S.D. Ind. Sept. 27, 2016).

was no redressability for his claim. The court granted the NCAA's motion for partial dismissal, and dismissed Pugh's remaining claims.

Rock v. NCAA[32]

Class certification was denied in an antitrust claim in which John Rock, a student-athlete, challenged the length of athletic scholarships for Division I football players. The court reasoned that Rock's class for certification was not ascertainable because it was too weak, vague, and subjective. Rock's class for certification also did not meet the typicality requirement or predominance and superiority under civil procedure rules. The court also determined that Rock lacked standing to seek injunctive relief because he had no more eligibility to compete at the NCAA level before he filed his complaint.

Sterling v. NBA[33]

Donald Sterling, former owner of the Los Angeles Clippers, brought, *inter alia*, an antirust claim against the National Basketball Association (NBA) and other defendants. Sterling alleged that he suffered damages for being forced to sell his NBA team for a lower-than-market-value price as a result of his life-time ban from the NBA. The court dismissed Sterling's antitrust claims, concluding that he did not sufficiently allege an injury to competition in the market.

Williams v. NFL[34]

A pro se plaintiff, John Everett Williams III, appealed a judgment that dismissed his antitrust claims against the NFL. The district court dismissed Williams' antitrust claims because he failed to "allege a relevant product and geographic market" when demonstrating the agreement between the parties had any anticompetitive effects.[35] The Ninth Circuit affirmed.

Wyckoff v. Office of the Commissioner of Baseball[36]

Professional baseball scouts brought a class action suit alleging antitrust violations against the Office of the Commissioner of Baseball and all MLB

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32. No. 1:12-cv-01019-TWP-DKL, 2016 U.S. Dist. LEXIS 43841 (S.D. Ind. Mar. 31, 2016).

33. No. CV 14-4192 FMO (SHx), 2016 WL 1204471 (C.D. Cal. Mar. 22, 2016).

34. No. 14-36016, 2016 WL 6892532 (9th Cir. Nov. 23, 2016).

35. *Id.* at *1.

36. No. 15 Civ. 5186 (PGG), 2016 WL 5478498 (S.D.N.Y. Sept. 29, 2016).

teams. Defendants moved to dismiss the antitrust claims asserting that they are barred by MLB's antitrust exemption. The scouts argued that MLB's antitrust exemption only encompassed "league structure and player contracts."[37] The court granted Defendants' motion to dismiss rejecting the scouts' narrow interpretation of MLB's antitrust exemption. The court explained that MLB's antitrust exemption applies to the "business of baseball," which "is not limited solely to the players who appear on the field."[38]

CONSTITUTIONAL LAW

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

Alabama State University v. Danley[39]

The Alabama Supreme Court overturned the trial court's decision to award back pay to Stacy Danley, a former athletic director at Alabama State University, because the court deemed it as an award against the State. The award of back pay was overturned because the State had immunity. The court also determined that the trial court lacked subject matter jurisdiction involving the former athletic director's state law and federal law claims against the university.

Bilbrey v. Williams[40]

Ryan Williams, an assistant baseball coach, filed suit against Tim Bilbrey, the leader of the Trophy Club Roanoke Baseball Association, and Chuck Hall, the head baseball coach, for defamation for the comments Hall made after a game in which Williams lost his temper over a call and proceeded to yell at the teenage child that made the call. The Texas Citizens Participation Act (TCPA) provides protection in the form of free speech when the speech is made based

37. *Id.* at *8.

38. *Id.* at *9–10.

39. Nos. 1140907, 1141241, 2016 Ala. LEXIS 49 (Ala. Apr. 8, 2016).

40. No. 02-13-0032-CV, 2015 Tex. App. LEXIS 2359 (Tex. App. Mar. 12, 2015).

on a concern for a child. The court held that Bilbrey's alleged defamation speech involved the safety and well-being of children in the community and is, therefore, protected by the TCPA. Further, the court held that the necessary minimum evidence required for Williams to meet his burden of proving the defamation claim were not met. Regarding Williams' intentional infliction of emotional distress claim, the claim was not set out as an independent claim, nor was there a showing of how the evidence supported the claim. Next, Williams' claim of conspiracy did not discuss the elements or the evidence that supported it, and lastly, Williams' aiding and abetting claim failed to lay out the element or how the evidence supported it.

Cohane v. NCAA[41]

Timothy Cohane, a former head coach at SUNY Buffalo, resigned from his position amongst an investigation for violations of NCAA and MAC rules. Cohane brought suit claiming the NCAA, MAC, and SUNY Buffalo acted together to deprive him of his liberty interest in his reputation without due process in violation of the Fourteenth Amendment, and that the NCAA and MAC tortuously interfered with his contract with the institution. The court held that the defendants were not in violation of the Fourteenth Amendment because the mere loss of job prospects is a normal repercussion of a poor reputation, and not a specific and adverse action imposed by the defendants. Further, the court held that Cohane did not raise a genuine dispute as to whether his contract was actually breached to warrant the tortious interference.

Croce v. West Chester School District[42]

A high school football player brought a 42 U.S.C. § 1983 action alleging that the West Chester School District violated his constitutional rights when he suffered a concussion in a football game, exited the game, but then returned later without being evaluated. After this incident, the player suffered several lingering side-effects that affected nearly every part of his life. The court granted the school district's summary judgment motion because the player failed to show the school had a policy of ignoring and responding to concussions, or that it acted with deliberate indifference towards its students.

Gordon v. Board of Trustees[43]

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41. 612 Fed. Appx. 41 (2d Cir. 2015), *cert. denied*, 136 S. Ct. 565 (2015).

42. No. 13-6831, 2015 WL 1565834 (E.D. Pa. Apr. 8, 2015).

43. 168 F. Supp. 3d 1148 (E.D. Ark. 2016).

A plaintiff filed suit against his former employer alleging that he was forced to resign after reporting various actions of misconduct by a colleague, including misuse of funds and sexual harassment. The court granted the defendant's
motion to dismiss, stating that the Eleventh Amendment protects boards of trustees from claims associated with actions taken while in their official capacities. Further, the court found that the plaintiff failed to allege any violation of the Fourteenth Amendment by the defendants in their individual capacities, resulting in qualified immunity for the defendants. Additionally, the court determined that the plaintiff failed to show he engaged in Title IX-protected conduct. The court dismissed the claims without prejudice.

Hosszu v. Barrett[44]

A professional swimmer brought a defamation and false light claim against an author who accused the swimmer in a magazine article of using performance-enhancing drugs. The court granted the author's motion to dismiss, reasoning that the author's words were protected under the First Amendment. The court also determined that the swimmer failed to satisfy the factual innocence element required for a false light claim under Arizona law.

Lechnir v. University of Wisconsin-Oshkosh[45]

Thomas Lechnir, the former head baseball coach at the University of Wisconsin-Oshkosh, sued the university for violation of his due process rights when his contract was not renewed. The court held it could not substitute its judgment for the committee's judgment on the weight of the evidence because the decision was not arbitrary or capricious, and the committee properly put the burden on Lechnir to show that improper factors were used when the university decided to not renew his contract.

Maki v. Minnesota State High School League[46]

A high school athletic association deemed a student-athlete ineligible after the student-athlete transferred to another high school. The student-athlete claimed she transferred because of a coach's unprofessional conduct. The student-athlete filed suit against the athletic association seeking to temporarily enjoin the prohibition on the student-athlete from competing in varsity athletic

44. 202 F. Supp. 3d 1101 (D. Ariz. 2016).

45. 862 N.W.2d 903 (Wis. Ct. App. 2015).

46. No. 16-cv-4148 (MJD/HB), 2016 U.S. Dist. LEXIS 181778 (D. Minn. Dec. 27, 2016).

events and prevent the high school from being subject to disciplinary action by the athletic association. The court denied the motion, stating that the student-athlete failed to show that the eligibility procedures set forth violated the student-athlete's procedural due process rights, as well as failed to support the student-athlete's breach of contract and breach of fiduciary claims. Finally, the court reasoned that consistent application of the athletic association's rules and procedures was supported by public policy.

Makindu v. Illinois High School Ass'n[47]

Following an Illinois High School Association (IHSA) bylaw change, Rodrigue Ceda Makindu, an international student, was ineligible to compete for his high school basketball team. The bylaw change eliminated the option to sit out for one year if an international student did not come over via one of the two IHSA-approved ways—making anyone that did not come over in one of these two ways ineligible to compete for his entire high school career. Makindu sought a preliminary injunction under the theory that the rule violated his right to equal protection. The court held that the bylaw change implicated equal treatment because it treated foreign students differently from other foreign students that lived with a parent or guardian, and the IHSA did not establish a correlation between the bylaw and the purported objective of fair completion. Further, the court held the implication of a constitutional right meant the court did not have to defer to the IHSA's judgment. Based upon this, the court upheld the preliminary injunction.

Mann v. Palmerton Area School District[48]

A high school football player suffered a concussion after sustaining a hit on the practice field and was told to continue playing and suffered from second impact syndrome. The player's parents claimed a violation of due process against the school district and the football coach, arguing that their son's rights were violated when the coach told the player to continue playing after exhibiting signs of having a concussion and claimed the school district failed to ensure proper concussion procedures were followed. Under the "state-created danger" theory, all elements were met to find the state actor liable. However, the defendants argued that the coach was entitled to qualified immunity, and the court agreed. Lastly, because the school district issued a handbook regarding

47. 40 N.E.3d 182 (Ill. App. Ct. 2015).

48. 189 F. Supp. 3d 467 (M.D. Pa. 2016).

concussion policies, and it was the coach that did not remove the player from practice, the court found insufficient evidence to support the claim against the school district.

McGuire v. Independent School District No. 833[49]

Following an investigation into Nathan McGuire's treatment of his players, Independent School District No. 833 (Woodbury High School) chose not to
renew his coaching contract, citing reasons that included needing to go in a new direction, failing to meet the administrator's expectations, and utilizing a coaching style that was not desired by the administration. McGuire sought review by the school board and claimed the decision was based on parent complaints. The school board upheld the decision to not renew the contract and McGuire sought judicial review. The court held McGuire did not have a constitutionally-protected interest in having his contract renewed because the contract had expired. There was no guaranteed renewal, and Minnesota state law granted the school board discretion to not renew McGuire's coach's contract.

McNair v. NCAA[50]

Todd McNair, a former assistant football coach at the University of Southern California (USC), sought breach of contract, defamation, and tort claims against the NCAA after the NCAA issued its committee on infractions (COI) final report, following an investigation into USC and football player Reggie Bush. After the NCAA lost a motion to strike, it sought to seal McNair's opposition to its motion to strike and the accompanying documents. In
California, there is a presumption that court records should be left open. For that reason, the NCAA had to prove there was an overriding interest that justified such an order. The court held that the NCAA failed to meet its burden because there were no overriding interests and no privilege from disclosure. Further, the court held that even if it found the burden was met, the NCAA had not shown a substantial probability of prejudice if the documents were not sealed and the NCAA's motion was denied.

Paterno v. Pennsylvania State University[51]

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49. 146 F. Supp. 3d 1041 (D. Minn. 2015).

50. 183 Cal. Rptr. 3d 490 (Cal. Ct. App. 2015).

51. 149 F. Supp. 3d 530 (E.D. Pa. 2016).

Two former Pennsylvania State University employees filed claim against the university claiming that the university violated state and federal law by terminating them following the sexual abuse scandal involving former Penn State assistant football coach Jerry Sandusky. The employees alleged that the terminations caused permanent damage to their reputations, personally and professionally, and both were deprived of their due process rights in a civil conspiracy. Using the "stigma-plus" test, the court dismissed the claim, determining that the university did not stigmatize the employees' reputations specifically, nor did it deprive either employee of an additional right or interest. Because the court had dismissed the matter of the conspiracy, the court also dismissed the civil conspiracy claim. Finally, the court declined to exercise supplemental jurisdiction over the state law claims, which were dismissed without prejudice.

Ryan v. Mesa Unified School District[52]

Two high school softball players filed a claim against their high school and Goodman, their former coach, alleging they were dismissed from the team after refusing to participate in the pre-game team prayer and for tweeting and playing music during school-related activities. The court previously dismissed all claims against the school, yet the softball players still sought relief from the coach's violations of their rights under the Establishment Clause and the Free Speech Clause of the First Amendment. The court determined that qualified immunity shields the coach from liability for violations of the players' First Amendment claims. The court granted Goodman's motion for summary judgment in reference to free speech violations because the music was played in a school environment and contained vulgar lyrics. The court also held any form of relief was moot, since the softball players had graduated.

Tanyi v. Appalachian State University[53]

Lanston Tanyi, a football player at Appalachian State University, was charged with violations of the student code of conduct stemming from rape allegations made by two students. At the hearing for one of the students who alleged Tanyi raped her, Tanyi was assigned, as defense counsel, a philosophy student with no legal experience while his accuser was assigned a licensed attorney as defense counsel. The hearing panel found in favor of the victim;

52. 195 F. Supp. 3d 1080 (D. Ariz. 2016).

53. No. 5:14-CV-170RLV, 2015 WL 4478853 (W.D.N.C. July 22, 2015).

however, Tanyi was later granted a rehearing due to the discrepancy in representation, and the hearing panel found in favor of Tanyi. At the second alleged victim's hearing, the hearing panel found in favor of Tanyi. Tanyi alleged violations of his procedural due process, substantive due process, equal protection rights under 42 U.S.C. § 1983, and gender discrimination under 20 U.S.C. § 1681. The court granted Appalachian State's motion to dismiss on all claims except two procedural due process claims and a substantive due process claim.

Votta ex rel. R.V. & J.V. v. Castellani[54]

Six high school students at Marlboro Central High School brought a violation of substantive due process claim against the school district, the superintendent, and its football coach, alleging the coach had infringed on the students' bodily integrity. The court held the coach's conduct—"handling players roughly, grabbing their facemasks and shoulder pads, shaking them, and screaming at them in such close proximity that he spat on them"[55]—did not rise to a serious enough level to shock the conscience and constitute a violation of law.

Zuffa, LLC v. Schneiderman[56]

A court denied Zuffa, LLC's, the UFC's owners, motion for preliminary injunction after Zuffa sought to prevent the State of New York from enforcing New York laws preventing mixed-martial arts competitions within the state, as well as prohibiting venues that hold liquor licenses from hosting such competitions. In this case, Zuffa alleged the Combative Sport Law and Liquor Law are "unconstitutionally vague as applied to a professional MMA event sanctioned by an Exempt Organization." Zuffa filed a motion to preliminary enjoin the State of New York from enforcing the challenged provisions. The court determined that it would be inappropriate for any federal court to construe state law. The court denied the motion without prejudice, and abstained from the case, citing a state court will resolve the constitutional issues, but retained jurisdiction pending the state court's decision.

CONTRACT LAW

Contract law plays a pivotal role in every facet of the sports industry given

54. 600 Fed. Appx. 16 (2d Cir. 2015).

55. *Id.* at 16.

56. No. 15-CV-7624 (KMW), 2016 U.S. Dist. LEXIS 9178 (S.D.N.Y. Jan. 26, 2016).

that contracts are the foundation for sponsorships, construction and renovation of sports facilities, insurance agreements, and employment and uniform player agreements. The following cases examine a broad spectrum of contract issues that arose within the sports industry in 2015 and 2016.

Adams v. Karl[57]

In a breach of contract claim, an attorney claimed that he acted as an agent for NBA coach, established by an oral contract between the attorney and the coach. The attorney filed suit against the coach, claiming breach of contract after the coach failed to pay the attorney the monthly fee. Both parties disagreed as to whether the attorney was, in fact, the coach's agent, although the court recognized that the attorney provided a variety of services for the coach. The court found that the attorney failed to meet his burden to prove that a contract existed between him and the coach.

Eppley v. University of Delaware[58]

Jennifer Eppley and her father filed suit against the University of Delaware alleging negligent misrepresentation and fraudulent misrepresentation stemming from university's failure to honor the athletic scholarship agreement between Eppley and the previous field hockey coach, Carol Miller. Eppley and her father claimed Miller had promised a 35% scholarship in the first year, a 75% scholarship in the second year, and at least a 75% scholarship in the third and fourth year. However, following Eppley's first year, Miller retired. The new coach informed Eppley that her scholarship would be reduced to 20% in the second year based on performance. The university filed a motion for summary judgment, which the court granted, holding that Eppley had not shown enough evidence to show there was negligent misrepresentation or fraudulent misrepresentation.

Kent State University v. Ford[59]

Gene Ford was the head men's basketball coach at Kent State University. With four years remaining on his coaching contract with Kent State, Ford

57. No. 2:13-cv-894, 2016 WL 7210920 (S.D. Ohio Dec. 13, 2016).

58. No. 13-cv-99 (GMS), 2015 WL 156754 (D. Del. Jan. 12, 2015).

59. 26 N.E.3d 868 (Ohio Ct. App. 2015).

accepted the same job at Bradley University. Kent State claimed Ford breached his contract because Ford unilaterally terminated the agreement, a breach of Ford's fiduciary duty owed to Kent State. Ford, on the other hand, claimed Bradley University engaged in tortious interference with a contract. The
contract between Ford and Kent State stated that Ford had to pay an amount equal to the balance of his annual salary of the remaining contract if he terminated the agreement. The court granted summary judgment for Kent State and held that liquidated damages that are included in a contract do not require Kent State to show actual damage.

Lightbourne v. Printroom Inc.[60]

The University of Texas-El Paso (UTEP) granted an exclusive license to IMG College, Inc. to use student-athletes' names, images, and likenesses. IMG College then granted the license to CBS Interactive, Inc. for the reproduction and sale of university-related images on UTEP's University Photo Store. Yahchaaroah Lightbourne, a UTEP football player, claimed the proceeding
violated his right to publicity after his girlfriend purchased a photograph of him from the University Photo Store. The court held that there was no genuine issue of material fact as to whether Lightbourne had expressly consented to the sale of his image after signing a Student-Athlete Image Authorization form at the start of each football season allowing UTEP to sell images of Lightbourne. Thus, CBS Interactive's motion for summary judgment was granted.

McAllister v. St. Louis Rams, LLC[61]

Three season ticket holders asserted breach of contract claims against the St. Louis Rams and those cases were consolidated. The season ticket holders were purchasers of Personal Seat Licenses and argued they suffered damages because of the Rams' move to California. The court granted the Rams' motion for
judgment on the pleadings based on the FANS Agreement, stating that the contract had terminated once the Rams relocated. The court did not grant the motion on the Rams Agreement claims because the Rams needed to use best efforts in securing seats for transferred home games.

60. 122 F. Supp. 3d 942 (C.D. Cal. 2015).

61. No. 4:16-cv-297, 2016 WL 5118597 (E.D. Mo. Sept. 21, 2016).

Mississippi High School Activities Ass'n v. R.T.[62]

R.T., a student at De Soto County School District, and his parents filed suit against the Mississippi High School Activities Association (MHSAA) for a
temporary restraining order and revocation of MHSAA's eligibility determination after MHSAA ruled R.T. ineligible for the football season after him and his sister transferred to different high schools. MHSAA ruled R.T. ineligible claiming that R.T. did not make a bona fide move. MHSAA claimed R.T.'s parents lacked standing to bring suit. The court concluded R.T.'s parents had standing because R.T. was a third-party beneficiary of a contract between De Soto County School District and MHSAA. The court reasoned that without students, there would be no sports, no MHSAA, and no contract. Therefore, the intended beneficiaries of the contract were the students and R.T.'s parents had standing to bring the suit.

Right Field Rooftops, LLC v. Chicago Baseball Holdings, LLC[63]

Chicago Baseball Holdings, LLC (Cubs) entered into an agreement with Right Field Rooftops, LLC (Rooftops), which allowed Rooftops to sell tickets for fans to watch Cubs games from their rooftops as long as Rooftops gave the Cubs 17% of the profits and the Cubs did not construct anything that would obstruct the view from Rooftops. However, the contract had a clause that allowed for Wrigley Field expansion if a government authority approved such expansion. The Cubs were granted government-issued permits to construct new electronic signs and video boards, which would obstruct the view from Rooftops. Rooftops claimed the Cubs violated its contract and engaged in anticompetitive practices under antitrust law. The court concluded that Rooftops failed to show a likelihood of success on the merits on both claims, and that the Cubs are exempt through MLB's antitrust exemption. This case was preceded by *Right Field Rooftops, LLC v. Chicago Baseball Holdings, LLC*, 80 F. Supp. 3d 829 (N.D. Ill. 2015), where the court denied a TRO motion.

Spinelli v. NFL[64]

Seven professional photographers brought this suit after the NFL entered a licensing agreement with Getty. The licensing agreement made the

62. 163 So.3d 274 (Miss. 2015).

63. 87 F. Supp. 3d 874 (N.D. Ill. 2015).

64. 96 F. Supp. 3d 81 (S.D.N.Y. 2015).

photographers become contributors to Getty who then licensed the photographers' photographs. The photographers alleged Getty granted unfettered access of their photographs to the NFL and threatened to remove the photographers' other content from Getty's distribution network if the photographers did not continue licensing their NFL photographs to Getty. The claims against the NFL and other defendants included Sherman Act antitrust claims, copyright infringement claims, vicarious copyright and contributory infringement claims, breach of contract claims, breach of fiduciary duty claims, and unjust enrichment claims. The NFL and other defendants filed a motion to compel arbitration because the agreement with Getty included an enforceable arbitration clause. The motion to compel arbitration was granted. As to the other claims against the NFL and the other defendants, the court granted
motions to dismiss for insufficient allegations.

State ex rel. Hewitt v. Kerr[65]

Todd Hewitt, a St. Louis Rams' equipment manager, was told his contract would not be renewed after working for the Rams for forty years. Hewitt alleged the Rams engaged in age discrimination. The Rams sought to compel arbitration and to either dismiss or stay the court proceedings. The trial court granted the motion for arbitration and Hewitt appealed. The court concluded that the arbitration clause was valid and enforceable, but that the Rams failed to incorporate terms in a way that would allow Hewitt to manifest consent. In this scenario, the court reasoned the clause did not become unenforceable but had to be interpreted from the statutes. Further, the court held the requirement that the NFL Commissioner be the arbitrator was unconscionable because he is an
employee of the NFL team owners. Therefore, the parties had to instead look for a neutral arbitrator.

CRIMINAL LAW

The most common connection between criminal law and the sports world arises when individual athletes find themselves facing criminal charges. However, as the following cases highlight, criminal law touches on the sports industry in a number of aspects.

65. 461 S.W.3d 798 (Mo. 2015).

Marcantonio v. Dudzinski[66]

Anthony Marcantonio was a member of the University of Virginia swim team. Marcantonio filed a diversity action against his teammates for subjecting him to "hazing, threats, verbal abuse, intimidation, and unwanted touching."[67] Marcantonio filed "assault, battery, false imprisonment, hazing, tortious
interference with contractual relations, intentional infliction of emotional distress, punitive damages, common law and statutory conspiracy, and negligence [claims]."[68] Marcantonio's teammates filed motions to dismiss the claims, but only the tortious interference with contractual relations, intentional infliction of emotional distress, and statutory conspiracy claims were dismissed. The court held that Marcantonio alleged sufficient evidence to deny the motions to dismiss on the other claims.

McCoy v. Amateur Athletic Union, Inc.[69]

Lance McCoy sought to hold Amateur Athletic Union, Inc. (AAU) vicariously liable for the sexual abuse he experienced by a former track coach. Following the district court's grant of summary judgment for AAU, McCoy appealed. McCoy claimed the district court erred by denying his motion to remand the case to state court, erred by granting summary judgment, and a genuine dispute of material fact existed in regards to whether the former coach was an agent of AAU. On appeal, the court affirmed the district court. The appellate court reasoned McCoy waived his right to have the case remanded because he failed to timely assert AAU's notice of removal to the district court; summary judgment was proper because there was no conflict between state and federal law; the district court was not bound by res judicata or collateral
estoppel; and the former track coach's conduct was unprovoked, highly unusual, and too outrageous to fall within the scope of a principal-agent relationship.

United States v. Bonds[70]

Barry Bonds was summoned and questioned about steroid use for nearly

66. 155 F. Supp. 3d 619 (W.D. Va. 2015).

67. *Id.* at 622.

68. *Id.*

69. 621 Fed. Appx. 182 (4th Cir. 2015).

70. 784 F.3d 582 (9th Cir. 2015).

three hours, where he then was subsequently charged with four counts of making false statements and one count of obstruction of justice for various statements he made during the questioning. A jury convicted Bonds on the obstruction of justice charge under 18 U.S.C. § 1503(a) but could not reach a verdict on the other four charges. In a plurality decision, the court held there was insufficient evidence to make Bonds' statement a material obstruction; 18 U.S.C. § 1503 has a broad range, but its application is narrow; and evasive or misleading statements are different than false statements. For these reasons, the court overturned the jury conviction.

DISABILITY LAW

The Americans with Disabilities Act (ADA) prohibits discrimination against those with disabilities in terms of employment, education, and access to public services.[71] In the sports context, the ADA requires sports organizations to also make reasonable accommodations to allow disabled athletes to participate. The following cases illustrate instances where the ADA was applied to sports entities in 2015 and 2016.

Class v. Towson University[72]

Following a collapse on the football field due to an exertional heatstroke, being in a coma for nine days, and requiring a liver transplant and several surgeries, Gavin Class claimed Towson University violated the ADA when it refused to allow him to return to play. After Class recovered, he attempted to return to the football field, but the team physician had to clear him in accordance with the university's Return-to-Play Policy. That policy stated that the team physician had final authority in determining a student-athlete's ability to return to the field. The team physician evaluated Class, but the physician concluded his participation in football would be an unacceptable risk of serious injury or death. The court held that the university's Return-to-Play Policy was a
legitimate, essential eligibility requirement, and the university reasonably applied that policy.

K.L. v. Missouri State High School Activities Ass'n[73]

71. Americans with Disabilities Act of 1990, 42 U.S.C.A. § 12101 et seq. (2016).

72. 806 F.3d 236 (4th Cir. 2015).

73. No: 4:15CV679 HEA, 2016 U.S. Dist. LEXIS 47621 (E.D. Mo. Apr. 8, 2016).

A high school track para-athlete alleged the Missouri High School Athletic Association prohibited the para-athlete from participating in track and field by refusing to reasonably accommodate the her disability. The para-athlete claimed the athletic association violated § 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act. The para-athlete desired that she be allowed to use a racing chair and receive time accommodations to make competitions equitable between disabled and non-disabled athletes. The court denied injunctive relief because modifying "the manner in which points are earned and scored would . . . alter the nature of . . . the program."[74] The court denied the para-athlete's motion for preliminary injunctive relief.

Miller v. Ceres Unified School District[75]

Jack Miller, a disabled parent of a high school athlete, claimed that the Ceres Unified School District (School District) violated Title III of the ADA and
Section 504 of the Rehabilitation Act. Miller claimed the School District denied him full and equal access to public accommodations when he would try to attend his daughter's high school athletic events. The School District filed a motion to dismiss for lack of subject matter jurisdiction and failure to state a claim. As to subject matter jurisdiction, the court held the School District was not immune from suit under the ADA due to sovereign immunity and denied the School District's motion. As to the School District's motion for failure to state a claim, the court held that Miller made a prima facie case that he was entitled to relief, so the court denied the motion.

Nathanson v. Spring Lake Park Panther Youth Football Ass'n[76]

Four deaf individuals and a youth football association claimed the Spring Lake Park Panther Youth Football Association (Association) had violated Title III of the ADA and the Minnesota Human Rights Act (MHRA). David Nathanson, one of the adult plaintiffs, had applied for a football coaching job, but the Association refused to provide him an interpreter for a mandatory prospective coaches meeting and did not hire him. The Association also denied Nathanson an interpreter for a mandatory parent's meeting. The Association sought dismissal and claimed it was not a place of public accommodation because it did not occupy a physical place, and the two adult plaintiffs, David and Gloria Nathanson, did not have standing. The court denied the

74. *Id*. at *42–43.

75. 141 F. Supp. 3d 1038 (E.D. Cal. 2015).

76. 129 F. Supp. 3d 743 (D. Minn. 2015).

Association's motion to dismiss and found the football games and practices were scheduled in advance, the geography and academic requirements of the Association were not selective enough to remove the Association from being a place of public accommodation under the MHRA, and David and Gloria Nathanson had standing because they were part of a client-customer relationship due to the mandatory parent meetings.

Ripple v. Marble Falls Independent School District[77]

Blake Ripple was a high school student-athlete that suffered several injuries and illnesses throughout his athletic career such as constant headaches and nausea. Ripple brought suit against Marble Falls Independent School District (School District) claiming that the School District violated the ADA and Section 504 of the Rehabilitation Act for failure to keep him safe from harm, failure to provide him with a safe environment, failure to make reasonable accommodations, and failure to train the School District's agents on the needs of the disabled. In arguing for summary judgment, the School District claimed Ripple's evidence was self-serving, based on pure speculation, and conflicted with Ripple's deposition testimony. The School District also argued Ripple's claims were barred by the statute of limitations and barred under the Individuals with Disabilities Education Act's (IDEA) exhaustion requirement. The court found the claims were not barred and fell under the IDEA exhaustion requirement. The court granted summary judgment to the School District as to the Section 504 claim.

DISCRIMINATION LAW

Federal and state antidiscrimination laws are intended to protect individuals from discrimination on the basis of race, gender, age, religion, and various other protected attributes. Discrimination claims generally center on the Equal Protection Clauses of the Fourteenth Amendment[78] and Title VII of the Civil Rights Act.[79] In the sports context, discrimination can affect athletes, coaches, administrators, and other employees, as the following cases illustrate.

Berri v. Dearborn Public Schools[80]

After Mazen Berri, who was a Muslim Arab American of Lebanese de-

77. 99 F. Supp. 3d 662 (W.D. Tex. 2015).

78. 42 U.S.C.A. §§ 1981, 1983 (2016).

79. Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e et seq. (2016).

80. 103 F. Supp. 3d 855 (E.D. Mich. 2015).

scent, was suspended from coaching, Berri alleged Dearborn Public Schools discriminated against him both on religious and national origin grounds in violation of Title VII of the Civil Rights Act of 1964. Dearborn filed for summary judgment claiming Berri lacked evidence that he was treated less favorably or was replaced by someone outside of his protected class. The court granted Dearborn's motion because even if Berri had made a prima facie case—which they held he had not—Dearborn met its burden by showing a legitimate, non-discriminatory reason for Berri's suspension. Berri had actually been
suspended for using his school access to illegally go paintballing on school property, then failing to report the incident to Dearborn after police stopped him.

Flowers v. Troup County, Georgia School District[81]

Charles Flowers, a former head football coach at Troup High School, filed suit claiming he was discriminated against on the basis of race in violation of Title VII. In response, the Troup County, Georgia, School District put forth evidence that Flowers was fired for committing recruiting violations. The court held that Flowers presented sufficient evidence to show his treatment was
unfair, but that Flowers failed to provide sufficient evidence to show this unfair treatment was due to his race. Flowers appeared the grant of summary judgment. The Eleventh Circuit found in favor of the school district and affirmed the previous court's grant of summary judgment.

Johnston v. University of Pittsburgh[82]

Prior to application and acceptance to the University of Pittsburgh-Johnstown (University), Seamus Johnston applied to the University as a female but already began the transition to becoming male. Johnston used the men's restroom and locker room but was repeatedly arrested, received citations, and was eventually expelled. Johnston filed suit, alleging discrimination and retaliation in violation of the Equal Protection Clause of the Fourteenth Amendment; Title IX of the Education Amendments of 1972; discrimination and retaliation on the basis of sex in violation of the Pennsylvania Human Relations Act and Pennsylvania Fair Educational Opportunities Act; and breach of contract because the University violated its own non-discriminatory policy. The court held that the University had not

81. 803 F.3d 1327 (11th Cir. 2015).

82. 97 F. Supp. 3d 657 (W.D. Pa. 2015).

violated the Equal Protection Clause because "transgender" was recognized as a suspect class. Johnston also failed to state a plausible claim for relief under Title IX and failed to allege sufficient facts and evidence to establish a retaliation claim. The court granted the University's motions to dismiss related to each of the federal claims and declined to exercise supplemental jurisdiction on the state law claims.

Minnis v. Board of Supervisors[83]

Anthony Minnis, an African-American, was the head women's tennis coach for Louisiana State University (LSU) for twenty-one years. When Minnis'
contract was not renewed, Minni was receiving a salary of $85,000. LSU then hired a white female as the head women's tennis coach, who received a starting salary of $110,000. LSU utilized the women's tennis program's recent lack of success and a battle with the University of South Carolina as reasons for hiring the new coach. Minnis claimed racial discrimination, harassment, and
retaliation under Title VII; retaliation under Title IX; and discrimination and retaliation under state law. The court held that LSU provided nondiscriminatory reasons for the pay difference and that Minnis failed to provide sufficient evidence to support his Title VII discrimination claims. Also, Minnis failed to show a race-based hostile work environment for his Title VII harassment claim. Lastly, Minnis failed to demonstrate how his complaints were related to gender inequality under Title IX, and Minnis waived his Title VII retaliation claim and state law claims because he failed to make any argument against the district court's holding related to those claims. Therefore, summary judgment for LSU was affirmed.

Pambianchi v. Arkansas Tech University[84]

After a series of scandals and complaints as to her conduct and the conduct of her team, Gidget Pambianchi, a former Arkansas Technical University (ATU) head softball coach, was terminated. ATU cited violations of its sexual harassment policy for terminating Pambianchi. Pambianchi filed suit under Title VII alleging that similarly situated male employees were treated better than her. The court found ATU had legitimate, nondiscriminatory reasons for terminating Pambianchi, and there was no direct evidence that these reasons were merely pretext for discrimination. Based upon statements Pambianchi

83. 620 Fed. Appx. 215 (5th Cir. 2015).

84. 95 F. Supp. 3d 1101 (E.D. Ark. 2015).

had made, the court found that a jury could reasonably conclude that ATU reasonably believed Pambianchi violated the sexual harassment policy. Based upon its findings, the court dismissed Pambianchi's claim.

Sharp v. Kean University[85]

Following an NCAA investigation that resulted in NCAA violations, Michelle Sharp, a former Kean University head women's basketball coach, was removed as head coach and given another role at the university. Sharp filed several claims including 42 U.S.C. §§ 1983 and 1985 claims, Title IX claims, New Jersey Law Against Discrimination (NJLAD) claims, and Racketeer
Influenced and Corrupt Organizations Act (RICO) claims against Kean University, the NCAA, and several individuals. As to the claims against the NCAA and the individuals, the court dismissed the § 1983 and § 1985 claims because the NCAA had not acted under the color of state law, and no state action occurred. The court dismissed the Title IX claims and dismissed the RICO claims because there was insufficient evidence. As to the claims against Kean University, the court dismissed the § 1983 and § 1985 claims because Sharp failed to show the existence of discriminatory policies and customs. The court also dismissed the NJLAD claim and the RICO claims against Kean University.

EDUCATION LAW

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

Albany Academies v. New York Public High School Athletic Ass'n[86]

New York charter and high schools challenged the high school transfer rule, which was dismissed by the lower court. The appellate court held that the rule had a rational basis for dissuading the recruitment of athletes and school-shopping based on the schools' athletics programs. Moreover, the rule allowed a hardship exception if the parents were legally separated. The court

85. 153 F. Supp. 3d 669 (D.N.J. 2015).

86. 43 N.Y.S.3d 583 (N.Y. App. Div. 2016).

found the legal separation requirement rule had a rational basis and the lower court's decision to dismiss the petition was upheld.

Indiana High School Athletic Ass'n v. Cade[87]

Indiana High School Athletics Association (IHSAA) suspended several basketball teams from the state tournament for a fight that occurred during a high school basketball game. The trial court granted the schools a preliminary injunction to play in the tournament. IHSAA appealed, and the court found the trial court incorrectly issued a preliminary injunction because the trial court
applied the wrong standard of review and improperly judged IHSAA's internal, whose members voluntarily joined.

Kendrick v. Advertiser Co.[88]

Student-athlete plaintiffs' financial records were disclosed to Josh Moon, a reporter employed by The Advertiser Company, by Kevin Kendrick, the Director of Compliance at Alabama State University. The Alabama Supreme Court found that financial aid records of a student-athlete were an educational record protected by the Family Educational Rights and Privacy Act (FERPA), which required students' consent to disclose educational records. The Advertiser company argued that the Open Records Act allowed for public inspection. The court determined that no FERPA exception applied to redacted financial aid forms. Further, the court found that the Open Records Act did not take precedent over FERPA and reversed and remanded the case to the trial court to enter summary judgment in favor of Kendrick.

GENDER EQUITY/TITLE IX

Title IX of the Education Amendments of 1972 had a significant impact on female athletes' ability to gain equal rights to their male counterparts within the collegiate and high school settings. Despite the implementation of Title IX over forty years ago, it is ever-changing and continues to be a hotly-contested issue.

Colman v. Faucher[89]

When Judy Colman, a mother, did not receive an interview and was not

87. 51 N.E.3d 1225 (Ind. Ct. App. 2016).

88. No. 1150275, 2016 Ala. LEXIS 79 (Ala. June 24, 2016).

89. 128 F. Supp. 3d 487 (D.R.I. 2015).

hired as the head coach of the girls' lacrosse team at Portsmouth High School, Judy Colman and her daughter, Hadley Colman, brought suit against the Town of Portsmouth and several individuals claiming that Judy Colman suffered gender discrimination and retaliation in violation of the Rhode Island Civil Rights Act and Fair Employment Practices Act. The only other person to apply for the job had much less experience and was a male. Hadley Colman claimed that once the new coach was hired, she lost playing time even though she was the star girl's lacrosse player. Hadley argued the decrease in playing time caused her to be deprived of pursuing collegiate lacrosse. For these reasons, the court held that Judy Colman made a prima facie case as to the gender discrimination claims; thus, the court denied the Town of Portsmouth's and the individuals' summary judgment motion. However, the court granted summary judgment to the Town of Portsmouth and the individuals on the retaliation claim for lack of sufficient evidence. Finally, the court granted summary judgment to the Town of Portsmouth and the individuals on Hadley Colman's claims because her loss of playing time was not a material adverse action to support a retaliation claim, and Hadley Colman provided no facts to allege a Title IX gender discrimination violation.

Doe v. Rutherford County Tennessee, Board of Education[90]

Three sisters were participants on the Siegel High School women's basketball team when a teammate, Allison Bush, tried to "goose" them in practice. All three sisters reported the alleged sexual assault, but claimed the head coach, Bush's father, retaliated against them in violation of Title IX after they reported the assault. A jury reached a verdict finding in favor of the Rutherford County Board of Education on all claims except one sister's Title IX retaliation claim. On review, the court denied the sisters' motion for a new trial and granted in part and denied in part the parties' respective motions for expenses and fees.

G.G. v. Gloucester County School Board[91]

The Fourth Circuit reversed a lower court's decision relating to a transgender boy's claim that his high school violated Title IX and Equal Protection when it denied him access to the boys' bathroom at his high school. The court reasoned the language of the Department of Education's regulation

90. 86 F. Supp. 3d 831 (M.D. Tenn. 2015).

91. 822 F.3d 709 (4th Cir. 2016).

was ambiguous; therefore, the school board's interpretation of the regulation was entitled to deference unless the interpretation was clearly erroneous or inconsistent with the law. The court vacated and remanded the district court's denial of the transgender boy's request for preliminary injunction because the lower court used a stricter evidentiary standard when it denied the preliminary injunction. Finally, the court denied the transgender boy's request to reassign the case to a different judge, stating that it was too early to determine whether the judge would refuse contrary evidence.

K.T. v. Culver-Stockton College[92]

A prospective student-athlete filed a Title IX claim against Culver-Stockton College when the prospective student-athlete claimed she was assaulted by a student at the institution while on an official visit. The court concluded that the prospective student-athlete, as a non-student, could not bring a Title IX claim against the institution. Further, the court concluded that the prospective
student-athlete, even if allowed to bring the claim, failed to prove the institution had actual knowledge of the alleged assault.

Portz v. St. Cloud State University[93]

Five St. Cloud State University (SCSU) women's tennis student-athletes filed suit against SCSU after they learned the women's tennis team would be eliminated as part of SCSU's plan to reduce athletic teams in response to declining enrollment and financing. The student-athletes claimed eliminating the team would violate Title IX and Equal Protection and they sought a preliminary injunction to prevent SCSU from eliminating the team until the litigation ended. The court granted the preliminary injunction, stating that while SCSU's reorganization plan may contain accurate numbers, the student-athletes showed a likelihood of success on the merits of their claim. Furthermore, the student-athletes would likely suffer irreparable harm if the injunction was not granted.

Samuelson v. Oregon State University[94]

After being raped at an off-campus party in 1999, a former student filed

92. No. 4:16-CV-165 CAS, 2016 U.S. Dist. LEXIS 106107 (E.D. Mo. Aug. 11, 2016).

93. No. 16-1115 (JRT/LIB), 2016 U.S. Dist. LEXIS 97055 (D. Minn. July 25, 2016).

94. 162 F. Supp. 3d 1123 (D. Or. 2016).

suit against the University of Oregon claiming the university violated Title IX and its former head football coach violated the student's § 1983 Equal Protection rights. The student claimed the university was deliberately indifferent to her claims of rape when she reported the incident to school officials and failed to take action. The court dismissed the claims because the student's assailant was not affiliated with the university and the university lacked meaningful control over both the assailant and the party's location. The court also dismissed the claims against the former head football coach, who was entitled to qualified immunity as a state official. All claims were dismissed with prejudice.

S.K. v. North Allegheny School District[95]

When a high school failed to respond to sexual harassment and bullying committed by fellow students, the victim-student, S.K., filed suit against North Allegheny School District claiming violations of Title IX and the Civil Rights Act. The school district filed a motion to dismiss, which the court granted in part and denied in part. The court dismissed the Title IX claim of retaliation for failure to provide sufficient facts, and furthermore, S.K. failed to adequately plead an equal protection violation. The court dismissed a claim for a First Amendment violation regarding the harassment and lack of action toward those who committed the harassment. Because of the school's deliberate indifference to the harassment and lack of action after learning the harassment continued, the court denied the school district's motion to dismiss the Title IX violation.

Students & Parents for Privacy v. United States Department of Education[96]

The court issued a recommendation over a Title IX claim involving a school district's transgender policy. The plaintiffs, Students and Parents for Privacy, a voluntary unincorporated association, sought a preliminary injunction of the policy, claiming that the Department of Education violated the Administrative Procedure Act when it interpreted Title IX as requiring schools to allow transgender students to use locker rooms and bathrooms according to their
gender identity. The court recommended the district court judge deny the Students and Parents for Privacy's motion for preliminary injunction because they failed to show a likelihood of success on the merits. The court viewed

95. 168 F. Supp. 3d 786 (W.D. Pa. 2016).

96. No. 16-cv-4945, 2016 U.S. Dist. LEXIS 150011 (N.D. Ill. Oct. 18, 2016).

the policy as consistent with Title IX. Furthermore, the court reasoned that even if Students and Parents for Privacy could prove a likelihood of success on the
merits, they would still fail to show irreparable harm if the action was not enjoined.

HEALTH & SAFETY

Given the numerous inherent risks for injury in sports, health and safety have long been issues of legal concern for the sports industry. Recently, the NCAA and several professional sports leagues have faced legal challenges related to health and safety issues that revolve around student-athlete and player concussions.

In re NCAA Student-Athlete Concussion Injury Litigation[97]

In a class action lawsuit, various former and current student-athletes sued the NCAA on contractual and common law claims relating to how the NCAA has handled student-athlete concussions and concussion risks over the years. The court previously declined to approve a settlement between the parties. Then, the court preliminarily approved the amended class settlement between student-athletes and the NCAA and required the parties to agree to certain modifications or present evidence to relieve the court's concerns. The parties agreed to modifications, except one, which was modified and approved in this decision.

In re NHL Players' Concussion Litigation[98]

Following the filing of a lawsuit by former professional hockey players alleging the NHL failed to warn the players of the effects of concussions and head trauma, the NHL served several interrogatories, which included a medical records disclosure authorization form from all named plaintiffs for seeking discovery of their medical records. The plaintiffs sought to limit the NHL's discovery of their medical information and the unlimited temporal scope of the information requested. The court held medical information related to HIV, AIDS, and sexually transmitted diseases were not discoverable and that the temporal scope of discovery should be limited to information from age fifteen to the present.

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97. No. 13 C 9116, 2016 U.S. Dist. LEXIS 91866 (N.D. Ill. July 15, 2016).

98. No. 14-2551 (SRN/JSM), 2015 WL 1191272 (D. Minn. Mar. 16, 2015).

In re Riddell Concussion Reduction Litigation[99]

Riddell produced football helmets and claimed the helmets were 31% more effective in reducing the occurrence of concussions, but more recent studies showed this was not the case. Plaintiffs, four individuals and one school district, brought this case seeking damages for relying upon Riddell's advertisement. Riddell sought dismissal based on the plaintiffs' failure to comply with Rule 8, Rule 9(b), and Rule 12(b)(6) of the Federal Rules of Civil Procedure. The court held the plaintiffs met the requirements of Rule 8 because the complaint put Riddell on notice as to the claims against him. The plaintiffs did not meet the requirements of Rule 9(b) because of lack of notice as to the basis of the plaintiffs' claims, and the plaintiffs failed to meet the requirements of Rule 12(b)(6) for the same reasons they failed to meet the Rule 9(b) requirements. Therefore, the case was dismissed in part and denied in part.

Mehr v. FIFA[100]

Seven plaintiffs, all members of California soccer clubs, filed a complaint against FIFA for failure to provide adequate concussion management. FIFA filed a motion to dismiss for lack of personal jurisdiction, specific jurisdiction, and failure to state a claim. The court granted the motion for lack of personal jurisdiction because FIFA's contacts with California were not enough to create general personal jurisdiction, and there was no evidence of specific personal jurisdiction. The court granted the motion for lack of subject matter jurisdiction because the plaintiffs had not alleged concrete, particularized, actual, and imminent injuries. Lastly, the court granted the motion for failure to state a claim because the plaintiffs had not pled sufficient facts.

M.U. v. Downingtown High School East[101]

After a soccer student-athlete suffered a head injury during a high school soccer game, which was diagnosed as a traumatic brain injury, and her coach never removed her from the game, the student-athlete filed suit against her high school soccer coach and school district. The student-athlete asserted, *inter alia*, a state-created danger theory of § 1983 liability. In other words, the student-athlete alleged "her coach's failure to remove her from the game . . . and the school district's failure to implement proper policies regarding

99. 77 F. Supp. 3d 422 (D.N.J. 2015).

100. 115 F. Supp. 3d 1035 (N.D. Cal. 2015).

101. 103 F. Supp. 3d 612 (E.D. Pa. 2015).

concussion evaluations amount to a violation of her constitutional rights."[102] On the coach's and school district's motions to dismiss, the court concluded that neither the coach's nor school district's conduct shocked the conscience, which would render such conduct to be a constitutional violation. However, the court granted the student-athlete leave to amend her complaint.

Swank v. Valley Christian School[103]

A high school football player suffered a concussion and was cleared to play by a doctor and football coach. In his next game, the player continued to show signs of a concussion but remained in the game. The player was taken off the field after being hit by an opposing player, and the player later died. His parents sued the Valley Christian School (VCS), the football coach, and the doctor that cleared the player for negligence, medical negligence, and violation of the Zackery Lystedt Law. The court held the school had a duty of ordinary care to protect the player consistent with the training VCS outlined in the Concussion Information Sheet given to coaches. Because of this duty, the court held that the lower court erred in dismissing VCS from the suit, but upheld the dismissal of the coach and doctor due to lack of jurisdiction.

INTELLECTUAL PROPERTY LAW

Trademarks, copyrights, and patents generate billions of dollars in revenue for the sports industry in the form of sponsorship deals, advertisements, licensing agreements, and merchandise sales. Therefore, these intellectual property rights have become a highly-contested issue within the sports context as entities seek all available measures to protect their intellectual property, as illustrated by the following cases.

Dryer v. NFL[104]

A group of former professional football players filed suit against the NFL claiming violation of players' publicity rights when NFL Films used players' performances in producing films later sold to various consumers. The players also argued that the films violated the Lanham Act by creating false endorsements for the NFL by the players. The court upheld the district court's

102. *Id.* at 616–17.

103. 374 P.3d 245 (Wash. Ct. App. 2016).

104. 814 F.3d 938 (8th Cir. 2016).

summary judgment for the NFL, reasoning that the Copyright Act preempted the claim because the players' performances were fixed works eligible for copyright protection by the NFL. Further, the court determined that the former players failed to establish that the films included false or misrepresented information that would cause consumer confusion that the players endorsed the NFL under the Lanham Act.

Florida International University Board of Trustees. v. Florida National Univeristy, Inc.[105]

Florida International University (FIU) alleged Florida National University's (FNU) name had generated confusion and claimed federal trademark infringement, federal unfair competition, Florida trademark dilution, Florida trademark infringement, common law trademark infringement and unfair competition, and cancellation of State of Florida trademark registration. As to the federal trademark infringement and federal unfair competition claims, the court granted summary judgment for FNU because FIU had not proven FNU's mark created a likelihood of confusion. For the Florida trademark dilution claim, the court granted summary judgment in FNU's favor because there was not a serious danger that the public would perceive FNU and FIU as a single source. Finally, the court granted summary judgment for FNU on the final three claims because they mirrored the federal claims.

Front Row Technologies, LLC v. NBA Media Ventures, LLC[106]

Front Row Technologies brought a patent infringement action against MLB Advanced Media (MLBAM) and other defendants related to streaming videos on mobile devices. MLBAM and other defendants moved for judgment on the pleadings. The court granted the motion, finding that there was no inventive concept in Front Row Technologies' claim or a meaningful limitation in scope.

International Olympic Committee v. Frayne[107]

The International Olympic Committee (IOC) brought various claims alleging that Stephen Frayne, Jr. and CityPure L.C.C. violated the Amateur Sports Act when it "registered and stockpiled hundreds of internet domain

105. 91 F. Supp. 3d 1265 (S.D. Fla. 2015).

106. 204 F. Supp. 3d 1190 (D.N.M. 2016).

107. No. 4:15-CV-3277, 2016 U.S. Dist. LEXIS 85884 (S.D. Tex. July 1, 2016).

names in order to exploit" the IOC's goodwill for commercial gain at the Olympic Games.[108] The court granted Frayne and CityPure's motion to dismiss because the pleadings did not include relevant facts showing the domain names were used "for the purpose of trade or to induce the sale of goods or services, or for use in commerce."[109]

Jordan v. Dominick's Finer Foods[110]

Former NBA player, Michael Jordan, sued Dominick's Finer Foods, a supermarket chain, and its owner for its unlicensed use of his persona under the Illinois Right of Publicity Act (IRPA). Jordan moved for summary judgment alleging the defendants violated IRPA, which was granted. Prior to the scheduled trial on damages, the parties filed cross motions in limine regarding jury instructions on calculating damages, and both parties moved to exclude expert testimony. Because all the motions pending before the court centered on damages, the court first considered the appropriate method of calculating actual damages. The court held that damages could be proven by: (1) the fair market value of the individual's persona at the time of the infringement, plus interest; and (2) the method cannot be based on mere speculation or conjecture. The court denied each party's motions to exclude expert testimony, finding that all of the expert testimony was sufficiently reliable.

Maloney v. T3Media[111]

Several members of the Catholic University basketball team from 1997–2001 filed suit against T3 Media, alleging deprivation of rights of publicity in violation of the California Civil Code § 3344 and under California common law, as well as violations of the Unfair Competition Act. T3Media had entered an agreement with the NCAA to store, license, and host photographs owned and copyrighted by the NCAA. The basketball players sought a class action suit of current and former NCAA student-athletes whose names, images, and likenesses had been used without their consent. The court held that the basketball players' claims were all preempted by the Copyright Act and granted T3Media's motion to dismiss.

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108. *Id.* at *1.

109. *Id.* at *3.

110. 115 F. Supp. 3d 950 (N.D. Ill. 2015).

111. 94 F. Supp. 3d 1128 (C.D. Cal. 2015).

Marshall v. NFL[112]

A class action lawsuit against the NFL for false endorsement under the Lanham Act, common and statutory rights of publicity under several states' laws, and unjust enrichment for the many years NFL Films used players' names, images, and likenesses without player consent ended in a settlement between the NFL and the 25,000 class members. Following the settlement, six former players alleged the district court had abused its discretion by approving the
settlement because there was no direct financial payment to each class member, and the settlement was not fair, reasonable, and adequate. The reviewing court held the district court had looked at all relevant factors and did not abuse its discretion in finding the settlement fair, reasonable, and adequate because the complexity and expense of further litigation, the amount of opposition to the settlement, and the merits of the former players' case balanced against the settlement terms all weighed in favor of the settlement.

NFL Properties LLC v. Humphries[113]

This case stems from an alleged trademark infringement of counterfeit 2016 Super Bowl tickets and merchandise. NFL Properties LLC, the Carolina Panthers, and the Denver Broncos moved for a default judgment to dispose of the counterfeit goods and requested exoneration of their bond. After the defendants, four individuals, failed to respond and appear at a hearing, the court granted NFL Properties' motion for default judgment.

Ray v. ESPN, Inc.[114]

After ESPN rebroadcast some of Steve Ray's, a former wrestler for the Universal Wrestling Federation, old matches, Ray filed suit against ESPN. Ray claimed invasion of privacy, misappropriation of name, infringement of the right of publicity, and interference with prospective economic advantage under Missouri law. ESPN removed the case to federal court and alleged Ray's claims were all preempted by the Copyright Act. In holding Ray's state law claims were preempted by the Copyright Act, the court reasoned ESPN had not used his name or likeness in any advertisement, nor could his likeness be detached from the copyrighted material.

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112. 787 F.3d 502 (8th Cir. 2015).

113. No. C 16–474 CRB, 2016 U.S. Dist. LEXIS 61273 (N.D. Cal. May 6, 2016).

114. 783 F.3d 1140 (8th Cir. 2015).

LABOR & EMPLOYMENT LAW

The National Labor Relations Act (NLRA) governs the relationship between private employers and their employees, which greatly impacts professional sports as most professional sports leagues are private entities. Further, most American professional sports leagues are unionized and covered by their respective collective bargaining agreements (CBAs). Additionally, federal and state employment laws regulate employment relationships in the sports industry. Recently, many challenges to the employment classification of college student-athletes have occurred, leading the National Labor Relations Board (NLRB), to find that Division I FBS football and basketball student-athletes at private universities may be covered by the NLRA. The following cases highlight the intersection of labor and employment law and sports.

Asbury University v. Powell[115]

Asbury University appealed a lower court's decision to affirm a jury's award of damages in relation to a former Asbury University employee and women's basketball coach's retaliation claim. The former employee filed suit against Asbury University, claiming the university retaliated against her after she filed a gender discrimination grievance. The former employee alleged retaliation after rumors of inappropriate conduct with her colleague. The former employee filed a claim under state discrimination laws, and the jury awarded her damages. The court affirmed the decision, finding that the appropriate standard was used to prove retaliation.

Ballard v. NFLPA[116]

Several former NFL players filed suit against the National Football League Players Association (NFLPA) for fraud, civil conspiracy, and negligence in relation to repeated head trauma, concussions, and CTE. The players alleged the NFLPA was in a position and had a duty to protect players from head injuries. The court held that the NLRA preempted the players' fraudulent concealment, fraud, and civil conspiracy claims under state law because the claims were actually breach of duty of fair representation claims. As to the players' negligence claims, the court held the claims were preempted by § 301 of the Labor Management Relations Act (LMRA) because there would have to

115. 486 S.W.3d 246 (Ky. 2016).

116. 123 F. Supp. 3d 1161 (E.D. Mo. 2015).

be an analysis of the CBA. Further, under both the breach of duty of fair representation and the LMRA, there is a six-month statute of limitations. For this reason, the court dismissed all claims against the NFLPA.

Berger v. NCAA[117]

Three University of Pennsylvania student-athletes sued the NCAA and member schools, claiming that their participation on the track and field team made them employees under the Fair Labor Standards Act (FLSA). Further, the student-athletes requested that the court certify the case as a class action. The student-athletes argued that the FSLA Intern Fact Sheet should be used to determine whether student-athletes are employees. The court determined that the FLSA Intern Fact Sheet was not designed to apply to student athletes and that courts will not apply that test even to interns. The court found that just because the plaintiffs are student-athletes at the University of Pennsylvania does not make them employees for FSLA purposes and dismissed the case with
prejudice.

Boogaard v. NHL[118]

Derek Boogaard was an enforcer/fighter in the NHL, which resulted in various medical problems requiring painkillers and injections. Eventually, Boogaard became addicted to these pain treatments and died due to an accidental overdose. The personal representative of Boogaard's estate alleged the NHL was negligent by not preventing Boogaard from becoming addicted; breached its voluntary duty to curb and monitor his addiction after he had been admitted to an NHL addiction program; was negligent by not protecting him from head trauma; and breached its voluntary duty to protect his health by not preventing doctors from injecting him with Toradol, a medicine that Boogaard's representative claimed increases concussions. The court previously granted the NHL's motion for summary judgment on all Boogard's claims. Boogaard's representative moved for leave to file a second amended complaint. The court explained that the LMRA did not preempt estate's claims and granted the
motion.

Brown v. Texas Christian University Board of Trustees[119]

117. 162 F. Supp. 3d 845 (S.D. Ind. 2016).

118. No. 13 C 4846, 2016 WL 5476242 (N.D. Ill. Sept. 29, 2016).

After a walk-on basketball player at Texas Christian University was informed he would not be on the team for the 2015–16 season due to a reduction in team size, the player filed a lawsuit against the university claiming violations of state law. The player alleged that he was cut from the team because of his race. Further, the player claimed that the university required him to move
dormitories with less amenities constituting a violation of the Fair Housing Act. The court determined that the player would not succeed on his discrimination claim because the claim was not plausible on its face. Further, the player failed to prove any statement that would slander or defame the player's character.
Finally, the court determined that the player failed to show any unconstitutional reason he was denied housing. Therefore, the court granted the Texas Christian University's motion to dismiss.

Chambersburg Area School District v. Chambersburg Education Ass'n[120]

The Chambersburg school board voted to not reappoint a fifth-grade teacher as the head varsity boys' basketball coach. The teacher went to arbitration over the issue, where the arbitrator held that a professional employee who is also a coach has a right to file a grievance and go to arbitration, and the Chambersburg Area School District's justifications to not reappoint the teacher as the head coach did not satisfy the just cause provision. The school district argued that the arbitration decision was not within the scope of the CBA. However, the court held the arbitration decision was within the scope of the CBA and
rationally related to the terms of the CBA, so the arbitrator's award was not disturbed.

Chen v. MLB Properties, Inc.[121]

John Chen was one of several volunteers at MLB's FanFest during the 2013 All-Star Week. Chen received no wages but did receive a t-shirt, baseball hat, drawstring backpack, water bottle, and a baseball. Chen filed suit against MLB Properties for failing to pay the minimum wage required by FLSA. MLB
Properties claimed Chen was not an employee and that FanFest is exempt

119. No. 4:15-CV-791-Y, 2016 U.S. Dist. LEXIS 108619 (N.D. Tex. Aug. 16, 2016).

120. 120 A.3d 407 (Pa. Cmmw. Ct. 2015).

121. 798 F.3d 72 (2d Cir. 2015).

from FLSA because it is an amusement or recreational establishment under 29 U.S.C. § 213(a)(3). The court held FanFest was a separate establishment because it was physically separated from MLB Properties' office and the other All-Star Week events. Further, the court held FanFest is an amusement or recreational establishment because it offered numerous sporting activities similar to an amusement park or carnival. Thus, the court affirmed the district court's dismissal of Chen's case for failure to state a claim.

Connally v. Dallas Independent School District[122]

A school district's director of compliance for athletics alleged that she was wrongfully terminated from the Dallas Independent School District (DISD) in retaliation for reporting potential falsifications of zone residency documents to DISD departments. The director of compliance claimed that the Texas Whistleblower Act provided immunity for such acts. The issue centered on whether the director of compliance made the reports of criminal violations to the proper law enforcement agency required by law and if there was sufficient evidence to make such a report. The court determined that the district's police department was a proper agency required by the law, although the director of compliance's report lacked sufficient information to make a question of fact in relation to the forgery. Thus, the court reversed and remanded in part and affirmed in part.

Evans v. Arizona Cardinals Football Club, LLC[123]

A former NFL player's estate and twelve retired players brought claims against the individual clubs of the NFL alleging the NFL clubs "made intentional misrepresentations to plaintiffs regarding medications in violation of the Controlled Substances Act and the Food, Drug, and Cosmetic Act."[124] The NFL moved to dismiss arguing that the estate and players' claims were preempted under § 301 of the LMRA. The court rejected the NFL's argument and denied its motion to dismiss concluding that the estate and players' claims did not require interpretation of the NFL CBA.

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122. No. 08-15-00310-CV, 2016 Tex. App. LEXIS 13547 (Tex. App. Dec. 21, 2016).

123. No. C 16-01030 WHA, 2016 WL 3566945 (N.D. Cal. July 1, 2016).

124. *Id.* at *4.

Hirschbeck v. Office of Commissioner of Baseball[125]

Mark Hirschbeck, a former MLB umpire, suffered a work-related hip injury that resulted in workers' compensation benefits. These benefits ceased when Hirschbeck won a medical malpractice and products liability case related to a hip replacement he underwent. The Office of the Commissioner of Baseball argued that the workers' compensation carrier had reserved the right to future offsets from any settlements the claimant may be involved in. A Workers' Compensation Law Judge reviewed the settlement agreement and held the agreement expressly stated the workers' compensation carrier had the right to future offsets from any Hirschbeck settlements. In this appeal, the court affirmed the Worker Compensation Board's decision.

National Football League Management Council v. National Football League Players Association[126]

Following a game between the New England Patriots and the Indianapolis Colts, questions arose as to the proper inflation of the footballs used by the Patriots. The NFL commenced an investigation into the deflated footballs, which resulted in a four-game suspension for Patriots' quarterback Tom Brady, a fine of $1,000,000 on the Patriots, and a forfeiture of the Patriots' first round pick in the upcoming draft. Eventually, the case went to arbitration where NFL Commissioner Roger Goodell appointed himself as arbitrator and confirmed the suspension and fines. The court granted the NFLPA's motion to vacate the arbitration award and held that Brady had no notice that he may suffer a four-game suspension, no notice that the NFL players may be punished for general awareness of misconduct by others, no notice players may face a suspension over a fine, and Goodell improperly denied Brady an opportunity to examine one of the lead investigators and the investigative files.

National Football League Players Association v. NFL[127]

After Adrian Peterson pleaded nolo contendere to misdemeanor reckless assault following an incident with his son, the NFL conducted a review for potential disciplinary action. Based upon this review, the NFL found Peterson's conduct to be detrimental to the league, suspended him for the 2014 sea-

125. 16 N.Y.S.3d 336 (N.Y. App. Div. 2015).

126. 125 F. Supp. 3d 449 (S.D.N.Y. 2015).

127. 88 F. Supp. 3d 1084 (D. Minn. 2015).

son, fined him six weeks' pay, and ordered him to participate in a counseling and treatment program. Peterson took this matter to arbitration because he had been deprived his right to be heard by the NFL Commissioner, Roger Goodell, prior to the imposition of discipline. The arbitrator determined Peterson had no right to be heard before Goodell imposed the discipline. The NFLPA appealed the arbitrator's decision and argued the award should be vacated. The court held the arbitrator went beyond the issues submitted by the NFLPA and exceeded the authority given. As such, the court vacated the arbitration award.

New York Knickerbockers v. Workers' Compensation Appeals Board[128]

Durand Macklin claimed he suffered cumulative trauma injuries from his years as an NBA player with the Atlanta Hawks, New York Knicks, Albany Patroons (minor league), and the Los Angeles Clippers. The workers' compensation judge found there to be subject matter jurisdiction in California because Macklin had played there with the Clippers and visited regularly as a member of the Hawks and Knicks, which the Workers Compensation Appeals Board affirmed. The Knicks claimed there was no jurisdiction in California because its relationship with Macklin was *de minimis*. The court held Macklin had been an employee of the Knicks during the critical one-year period under the Labor Code § 5500.5(a), which confers liability on the employer. The case was remanded to the Workers Compensation Appeals Board to award Macklin reasonable attorneys' fees.

Nowak v. Major League Soccer, LLC[129]

Piotr Nowak was terminated as the Philadelphia Union's team manager following an investigation by MLS and the Major League Soccer Players Union (MLSPU). The investigation showed that Nowak had physical confrontations with players and officials, interfered with the rights of players to contact the MLSPU, subjected the players to hazing, and engaged in behavior that put the players' health and safety at risk. Both MLS and the MLSPU encouraged the Philadelphia Union to terminate Nowak. Nowak filed suit claiming tortious
interference with contractual relations by MLS and the MLSPU. The court granted the MLSPU's motion to dismiss because Nowak's claim was preempted by the NLRA. The court reasoned that the MLSPU's conduct was protected by the NLRA because it was no different than a labor union complaining about a supervisor who puts the union members' health and safety at

128. 193 Cal. Rptr. 3d 287 (Cal. Ct. App. 2015).

129. 90 F. Supp. 3d 382 (E.D. Pa. 2015).

risk.

Philadelphia Eagles, LLC v. Workers' Compensation Appeal Board[130]

Claimant suffered an injury during the course of his employment as a professional football player for the Philadelphia Eagles. In this appeal, the Eagles argued the workers' compensation judge (WCJ) erred when it held that the Eagles did not comply with § 306(b) of the Workers' Compensation Act. The court reversed the decision, reasoning that the WCJ erred in determining credible testimony during the hearing and exceeded his authority when he based his decision exclusively on the Claimant's resume and testimony. The court remanded the case with specific instructions to determine whether the Claimant was actually qualified for any available positions with the Eagles.

Senne v. Kansas City Royals Baseball Corp.[131]

A group of minor league baseball players asserted MLB, MLB Commissioner, and several MLB clubs (defendants) violated the FLSA and wage and hour laws of various states. The players moved for class certification and the defendants moved to decertify the players' claims. The court denied the players' motion and granted defendants' motion concluding that the "individualized inquiries associated with [the players'] claims . . . [would] not be manageable" in a class mechanism.[132]

Trustees of Columbia University in the City of New York & Graduate Workers of Columbia[133]

The NLRB overturned a previous decision finding graduate students were not employees under § 2(3) of the National Labor Standards Act. The NLRB reasoned that statutory coverage is, by virtue, an employment relationship, and that student assistants are protected by the Act, as they are statutory employees. As a result of these circumstances, student graduate assistants were classified as state employees, and the length of their employment did not affect their exclusion from the petitioned-for classification.

130. No. 1103 C.D. 2015, 2016 Pa. Commw. Unpub. LEXIS 340 (Pa. Commw. Ct. May 6, 2016).

131. 315 F.R.D. 523 (N.D. Cal. 2016).

132. *Id.* at 584.

133. 364 N.L.R.B. No. 90 (Aug. 23, 2016).

White v. NFL[134]

In 1992, Reggie White and four other NFL players filed an antitrust action against the NFL seeking injunctive relief and damages based on, among other things, the NFL's free agency system and the college draft.[135] That initial case led to settlements between the parties and eventually, the Settlement of Dismissal (SOD) at issue here. As a result of the settlement agreement that came out of *Brady v. NFL*, 644 F.3d 661 (8th Cir. 2011), the parties filed the SOD to dismiss and release all claims against the NFL. The NFLPA filed suit claiming the "NFL engaged in fraud or misconduct to conceal or affirmatively misrepresent the NFL's violation of its agreement" that it would leave the 2010 season as an uncapped season.[136] The court held the NFLPA had agreed to
release all unknown claims against the NFL in the SOD because both parties had zealously argued and debated over the SOD, the NFL did not engage in coercive actions or mislead the NFLPA about the legal effect of the settlement, and it was the NFLPA's decision to agree to the SOD.

TAX LAW

Tax law involves rules that regulate federal and state tax obligations. Tax law plays a significant role in the professional sports context, particularly with respect to player earning and sports facilities.

Hillenmeyer v. Cleveland Board of Review[137]

A former Chicago Bears linebacker asserted that the games-played method of compensation under Cleveland's income tax was "illegal, erroneous, and unconstitutional."[138] The player asserted the games-played method overstated his income because the Chicago Bears only played one game in Cleveland over the course of the three years that his income was taxed. The player also claimed that he was entitled to tax refunds under the duty-days method, which considered the number of days spent in the taxing city in relation to the total number of work days. The Supreme Court of Ohio determined that Cleveland's power to tax a nonresident's income only reached the portion of compensation that was earned by work performed in Cleveland. Thus, the court

134. 129 F. Supp. 3d 683 (D. Minn. 2015).

135. White v. NFL, 822 F. Supp. 1389 (D. Minn. 1993).

136. *Id*. at 685.

137. 41 N.E.3d 1164 (Ohio 2015).

138. *Id*. at 1168.

held that the games-played method violated due process, as applied to the player, because it reached income that was performed outside of Cleveland.

Saturday v. Cleveland Board of Review[139]

The Supreme Court of Ohio was presented with the question of whether an NLF player still needs to pay municipal income tax to Cleveland because of his team's appearance in the city if that player did not travel with his team to Cleveland. The player argued that the taxed wages for work performed outside of Cleveland was contrary to Ohio laws. The court agreed, noting that under the duty-days method, compensation subject to Cleveland's income tax was
calculated by including all of the work the professional athletes performed, rather than merely the number of football games played each year. The court pointed out that the player spent the day in Indianapolis to rehabilitate an injury, and the court determined that the player was performing job duties in another city that day. Ultimately, the court concluded that "Cleveland's municipal-income-tax ordinance and its nonresident-professional athlete regulation" did not permit the taxation to the player's income. [140]

TORT LAW

Tort law represents the most widely litigated issue within the sports context. Tort law governs the duty of care to participants, coaches, and spectators. Generally, courts must evaluate the inherent risks associated with the sports, in relation to the degree of safety due to others involved. The following cases illustrate how courts analyze tort claims within a wide variety of aspects of sports.

Archer v. Marysville School District[141]

Thirteen-year-old John Archer, by his parents, appealed a court's grant of summary judgment in a negligence claim after Archer was injured playing basketball on Sunnyside Elementary School's playground. However, a state statute granted immunity to public and private landowners, such as the school, from liability for unintentional injuries. Archer claimed basketball did not qualify as an outdoor activity under the statute and that the legislative intent for the statute's application to public land owners was not applicable to the

139. 33 N.E. 3d 46 (Ohio 2015).

140. *Id.* at 49.

141. No. 73449-1-I, 2016 Wash. App. LEXIS 1708 (Wash. Ct. App. July 25, 2016).

school. The court affirmed stating Archer failed to provide any authority to support his claim of legislative intent, and that basketball qualified as outdoor recreation under the statute.

B.D. v. Downingtown Area School District[142]

A high school track athlete, B.D., by his parents, brought a negligence claim against Downingtown Area School District and coaches George Read and Kayla Greaves after he was injured while running in the halls of his high school as part of an indoor track practice. The coaches held practice inside the high school as a result of bad weather. The complaint alleged that the hallways were not designed to prevent collisions between athletes. The court found that it was foreseeable that the athletes could collide with each other and that the coaches and school had a duty to use the hallways for permissible uses as they were designed. The court denied the school district and coaches' motion to dismiss.

Cameron v. University of Toledo[143]

A student-athlete's negligence claim against the University of Toledo was denied because the student-athlete assumed the risk of injury when he attempted to "dunk" a football over a football goal post. The court held that the student-athlete failed to prove that the university's actions or inactions were the proximate cause of his injuries. Further, the court granted summary judgment in favor of the university for violation of Ohio's antihazing law because the university was actively enforcing an antihazing policy, which created an affirmative defense. Even if the university had not been enforcing the policy, the student-athlete still failed to prove he was hazed as defined under Ohio law.

Champion Pro Consulting Group, Inc. v. Impact Sports Football, LLC[144]

Champion Pro Consulting Group, Inc., the former agency of a professional football player, Robert Quinn, filed a lawsuit against the player's new agency, Impact Sports Football, LLC, claiming that Impact Sports Football acted in violation of state law by acting in an unfair and deceptive manner. Champion

142. No. 15-6375, 2016 U.S. Dist. LEXIS 80317 (E.D. Pa. June 20, 2016).

143. No. 2015-00580, 2016 Ohio Misc. LEXIS 125 (Ohio Cl. Ct. Nov. 1, 2016).

144. 845 F.3d 104 (4th Cir. 2016).

Pro Consulting Group claimed that Impact Sports Football's actions were made in retaliation, and that Impact Sports Football violated the state's uniform agency act by utilizing runners to contact Quinn. The court determined that Impact Sports Football's actions did not violate state law, and that retaliatory actions did not fall within the scope of the state law. Moreover, the court reasoned that the state law did not act as a regulatory law for the state's agency act.

Cvijenovich v. Beacon Kids Wrestling Club[145]

Defendant, Beacon Kids Wrestling Club, appealed the order of the New York Supreme Court denying its motion for summary judgment. During a wrestling match sponsored by the wrestling club, plaintiff's child was injured when the opponent of the plaintiff's child performed an illegal move immediately before the injury. The plaintiff contended that the wrestling club was negligent in failing to provide an adequate referee. On appeal, the court concluded that the wrestling club was entitled to summary judgment because evidence demonstrated that the allegedly illegal wrestling move occurred so quickly that no supervision could have prevented the injury.

Davis v. Electric Arts, Inc.[146]

Plaintiffs, former NFL players, alleged Electronic Arts (EA) infringed on their right of publicity in its series of videogames featuring the NFL players where EA used avatars that depicted players with their identical physical characteristics. The district court denied EA's motion to strike the complaint. On appeal, EA argued that the former NFL players' claims were barred by five affirmative defenses. The Ninth Circuit found that EA failed to show a probability of prevailing on its incidental use defense and concluded that the other four affirmative defenses were precluded by its previous holding in *In re NCAA Student-Athlete Name & Likeness Licensing Litigation*.[147] In support of its holding regarding EA's incidental use defense, the court pointed out that EA's use of the former players' likenesses contributed to the commercial value and were substantially related to the main purpose of the videogames—"to create an accurate virtual simulation" of an NFL game.[148]

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145. 5 N.Y.S.3d 240 (N.Y. App. Div. 2015).

146. 775 F.3d 1172 (9th Cir. 2015).

147. In re NCAA Student-Athlete Name & Likeness Licensing Litigation, 724 F.3d 1268 (9th Cir. 2013).

148. *Davis*, 775 F.3d at 1181.

Deaver v. Board of County Commissioners[149]

Parents of Hannah Deaver, who was killed at a Mud-A-Thon, where a racing vehicle left the track and landed on her, brought a wrongful death lawsuit against the Board of County Commissioners of Lyon County, Kansas, and The Lyon County Fairboard. The district court granted the defendant's motion for summary judgment. On appeal, the court refused to address the Deaver's challenge to the scope of the recreational use statute because the Deavers did not make that argument before the district court. Instead, the court focused on the question of whether the conduct of the Kansas municipality was gross and wanton under Kansas' recreation use exception. Accordingly, the case was reversed and remanded back to the district court.

Dorley v. South Fayette Township School District[150]

Zachary Dorley, a high school football player, was injured in a one-on-one drill during football training camp, which was performed without helmets or other pads. Six of the eleven allegations were brought against the plaintiff's coaches and school district under 42 U.S.C. § 1983, and five allegations of state law tort allegations were brought against the student defendant who caused
Dorley's injury and his parents. On motions to dismiss, the court concluded that Dorley's federal substantive due process allegations were deficient. The court found that nothing in Dorley's complaint indicated that his injury was foreseeable, or that "the drill as designed or executed served no legitimate and reasonable teaching purpose."[151] The court granted Dorley leave to amend. The court dismissed all state tort claims with prejudice against the student defendant's parents, and the intentional infliction of emotional distress claim against the student defendant. However, the court denied the student defendant's motion to dismiss with regard to claims for battery and negligence.

Dugan v. Thayer Academy[152]

Amy Dugan, a high school field hockey player, asserted that her coach, Erin Cash, and school, Thayer Academy, were negligent after she sustained head

149. 342 P.3d 970 (Kan. Ct. App. 2015).

150. 129 F. Supp. 3d 220 (W.D. Pa. 2015).

151. *Id.* at 236.

152. No. CV2014-01359-C, 2015 Mass. Super. LEXIS 59 (Norfolk).

injuries that were five days apart. Although Cash witnessed both injuries, Cash never tried to determine whether Dugan suffered an injury, and Cash never
communicated the nature of Dugan's head injury to her parents, school personnel, or any medical professional. Cash and Thayer Academy moved for judgment on the pleadings, arguing that Dugan may only pursue tort claims against them by alleging willful, wanton or reckless conduct because Dugan chose to play in a competitive sport. The court rejected Cash and Thayer Academy's argument and found that there was a distinction between the duty a coach owes to its own players compared to the duty a coach owes to the opposing team. Thus, the court denied Cash and Thayer Academy's motion and concluded that Dugan only had to prove negligence.

DuRocher v. Riddell, Inc.[153]

John DuRocher and Darin Harris, two former University of Washington football players, assert they suffered repeated head impacts while playing college football and wore helmets that were manufactured by defendant, Riddle. DuRocher and Harris asserted negligence and product liability claims against Riddle. The court granted Riddle's motion to dismiss DuRocher and Harris' negligence claims by concluding they were "subsumed in [DuRocher and
Harris'] product liability claim."[154] Although the court denied DuRocher and Harris' products liability claim based on a manufacturing defect, the court found that DuRocher and Harris sufficiently plead a cause of action for design defect because they claimed that "alterative available designs and warnings would have decreased the amount of resulting damage from head impacts."[155]

Eriksson v. Nunnink[156]

Mia Eriksson's, a 17-year-old equestrian, parents sued Eriksson's riding coach, Kristi Nunnink, for wrongful death and negligent infliction of emotional distress (NIED). Eriksson's horse struck a hurdle during an event, and, with her parents watching, Eriksson fell off her horse and the horse fell on her, resulting in Eriksson's death. Six months before the unfortunate accident, Eriksson and her mother entered into a release of liability with Nunnink. After a bench trial, the court granted Nunnink's motion for entry of judgment relying

153. 97 F. Supp. 3d 1006 (S.D. Ind. 2015).

154. *Id.* at 1016.

155. *Id.* at 1027.

156. 183 Cal. Rptr. 3d 234 (Cal. Ct. App. 2015).

on the release of liability. On appeal, Eriksson's parents argued that the release was ambiguous, and that it did not apply to their NIED claim. The court of appeals affirmed the trial court's holding and found that the release was valid; thus, Nunnink could only be liable if Eriksson's death was caused by Nunnink's gross negligence. However, the court found that Eriksson failed to prove that Nunnink was grossly negligent.

Fine v. ESPN, Inc.[157]

Laurie Fine, the wife of a former Syracuse University assistant men's basketball coach, brought a defamation action against ESPN after it published three stories on how the basketball coach sexually abused minors. The court found that Fine was a "limited purpose public figure" and that "no reasonable factfinder could conclude that [ESPN] acted with actual malice when publishing the three stories at issue."[158] Thus, the court granted ESPN's motion for summary judgment dismissing Fine's complaint.

Grebing v. 24 Hour Fitness USA, Inc.[159]

Timothy Grebing was injured while performing an exercise at a 24 Hour Fitness facility in La Mirada, California, after signing a membership agreement, which included an exculpatory provision releasing 24 Hour Fitness of liability for its own negligence. Grebing brought suit asserting that 24 Hour Fitness was liable for negligence and products liability. 24 Hour Fitness moved for summary judgment arguing that the written release was a complete defense. In response to 24 Hour Fitness' motion, Grebing argued that, as a matter of law, the written release could not relieve 24 Hour Fitness of liability for gross negligence, and that 24 Hour Fitness was in the chain of distribution, not merely a provider of fitness services. The trial court rejected both of Grebing's arguments and granted 24 Hour Fitness' motion, so Grebing appealed. The court of appeals affirmed, concluding that under the clear and explicit language of the release, "Grebing assumed responsibility for the risks arising from his use of [the defendant's] facilities, services, equipment, or premises."[160]

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157. No. 5:12-CV-0836 (DEP), 2016 WL 6605107 (N.D.N.Y. Mar. 25, 2016).

158. *Id.* at *1.

159. 184 Cal. Rptr. 3d 155 (Cal. Ct. App. 2015).

160. *Id.* at 161.

Hill v. Slippery Rock University[161]

Jack Hill, a Slippery Rock University men's basketball player, died after he collapsed on the court during a high-intensity practice. An autopsy determined that Hill had Sickle Cell Trait (SCT), but was unaware since the university did not screen its athletes. The lawsuit claimed that the university, the Slippery Rock Health Center, and a nurse were negligent for not testing athletes for SCT, while also naming the NCAA as a defendant for not requiring the screening from its Division II member schools. The court determined that an incomplete medical evaluation led to Hill believing he was healthy and could participate in high-intensity practices. The court further reasoned that "an increased risk of harm can occur through a failure to act."[162] The court reversed and remanded back to the lower court.

Jurgensen v. Webster Central School District[163]

Kurt Jurgensen, a high school cheerleader's father, brought an action alleging the school district was negligent for allowing the cheerleader's teammate to practice with a sprained ankle. Jurgensen's daughter tore her anterior cruciate ligament (ACL) in her knee while performing a throwing stunt, and Jurgensen alleged his daughter's injury occurred because one of her teammates was practicing injured. The lower court denied the school district's motion to dismiss. On appeal, the court determined the lower court erred in denying the motion and held that Jurgensen's claims were barred by assumption of risk. The court explained that "the doctrine of assumption of risk applies."[164] Further, the court agreed with the school district and found that the assumption of risk doctrine applied because Jurgensen's daughter participated with the teammate, even though she was aware the teammate was practicing with an injured ankle.

Kennedy v. Robert Morris University[165]

After an injury during stunt practice at a cheerleading camp, Shaye-Ashley Kennedy, an incoming freshman cheerleader student-athlete, brought suit

161. 138 A.3d 673 (Pa. Super. Ct. 2016).

162. Hill v. Slippery Rock Univ., 138 A.3d 673, 680 (Pa. Super. Ct. 2016).

163. 5 N.Y.S.3d 663 (N.Y. App. Div. 2015).

164. *Id.* at 664.

165. 133 A.3d 38 (Pa. Super. Ct. 2016).

against Robert Morris University claiming that the cheerleading coach, Cynthia Hadfield, should have known that the Kennedy was incapable of successfully executing the stunt and negligently failed to provide proper safety precautions. The court affirmed summary judgment because the university did not
negligently choose the camp, nor did Kennedy identify any duty that the university breached in regard to the training or operation of the camp. Moreover, a claim of vicarious liability would fail if argued by Kennedy because the camp acted as an independent contractor.

Lanni v. NCAA[166]

Lydia Lanni, a student-athlete at Wayne State University, brought a negligence action against the NCAA and the United States Fencing Association, Inc. (USFA) for injuries she sustained at a fencing competition after she was struck across the face with a sabre. The trial court granted both the NCAA and USFA's motions for summary judgment, and Lanni appealed. The Indiana Court of Appeals affirmed the trial court's decision. The court held that the NCAA and USFA did not owe Lannie a duty of care, and they did not assume a duty of care. Accordingly, the court explained that summary judgment in USFA's favor was warranted because there was no dispute that the competition Lanni participated in was not a USFA-sponsored event.

Litz v. Clinton Central School District[167]

Brady Litz, a high school hockey player, appealed the trial court's dismissal of his complaint for alleging negligence for injuries sustained when his teammate stepped on his foot with a hockey skate in the locker room. The court of appeals affirmed the trial court's decision to grant summary judgment based on the doctrine of assumption of risk. The injury was "'inherent in the sport' of hockey and [Litz] was aware of, appreciated the nature of, and voluntarily
assumed that risk."[168]

Mayall v. USA Water Polo, Inc.[169]

Alice Mayall, on behalf of her minor daughter, who was injured while

166. 42 N.E.3d 542 (Ind. Ct. App. 2015).

167. 5 N.Y.S.3d 636 (N.Y. App. Div. 2015).

168. *Id.* at 640.

169. 174 F. Supp. 3d 1220 (C.D. Cal. 2016).

competing in water polo match, filed a lawsuit seeking injunctive relief against USA Water Polo, Inc. Mayall alleged that the USA Water Polo's rules, absent a concussions policy, caused her minor daughter to remain in a match and aggravate an injury previously obtained in the same match. The court determined that Mayall did not plead sufficient facts establishing an injury-in-fact, and dismissed Mayall's negligence claims and voluntary undertaking claim because Mayall failed to show how the risk of head injury was above those risks inherent to the game. Mayall also failed to prove that USA Water Polo had a legal duty of care to Mayall's daughter. Finally, the court granted Mayall's motion to file an amended claim.

McCants v. NCAA[170]

Rashana McCants and Devon Ramsay filed a putative class action suit alleging that the NCAA breached its fiduciary duty to student-athletes and asserted claims of negligence after the University of North Carolina-Chapel Hill enrolled students in independent study classes that did not involve instruction, faculty supervision, or classroom attendance. The court determined McCants and Ramsay failed to establish a plausible claim of negligence based on the voluntary undertaking and failed to demonstrate the NCAA owed a fiduciary duty to the plaintiff class. The court concluded that McCants and Ramsay failed to establish a plausible claim of relief under North Carolina law, and dismissed the case.

McCullough v. World Wrestling Entertainment, Inc.[171]

Former wrestlers brought negligence and fraud claims against the World Wrestling Entertainment Inc. (WWE) for symptoms of severe head trauma conditions or the possibility of developing head trauma conditions as a result from injuries during employment for WWE. WEE moved to dismiss the former wrestlers' claims. The court granted the WWE's motion to dismiss for negligent misrepresentation and fraudulent deceit, but denied the WWE's claim for fraudulent omission.

170. 201 F. Supp. 3d 732 (M.D.N.C. 2016).

171. 172 F. Supp. 3d 528 (D. Conn. 2016).

McGue v. Kingdom Sports Center, Inc.[172]

Dalton McGue was injured when he made a lay-up and landed on the basketball hoop's support structure. McGue brought an action against Kingdom Sports Center, the indoor sports facility, alleging it negligently, recklessly, and intentionally maintained its facility in a way that allowed the hoop's support structure position to be to close to the baseline of the court. The district court granted Kingdom Sports Center's motion for summary judgment on McGue's negligence claim finding that the hoop was an open-and-obvious danger. Kingdom Sports Center's motion was denied on McGue's recklessness claim because the court found "[a] reasonable mind could conclude that [Kingdom Sports Center] was reckless because it created an unreasonable risk of physical harm to [McGue]."[173]

Paulus v. Holimont, Inc.[174]

Ewald Paulus, a 68-year-old who was injured in a ski accident at the Holimont Ski Area, brought an action against Holimont, Inc., owner of the ski hill, alleging negligence. The court pointed out that many aspects of the case were undisputed. Paulus' accident occurred on a portion of a trail that was rated more difficult with a blue square. However, the parties "hotly contested whether the terrain that [Paulus] encountered was the type that [was] inherent in downhill skiing."[175] The court denied Holimont's motion for summary judgment because there was a dispute of fact with respect to the nature of the terrain that Paulus encountered. While Holimont contended that the area did contain moguls, Paulus asserted that the conditions were not merely moguls, but rather "real deep ditches."[176]

Payne v. Office of the Commissioner of Baseball[177]

Gail Pay and Stephanie Smith moved for injunctive relief to require increased safety netting at MLB stadiums. Pay and Smith claimed they feared baseball games because of the probability that they could be hit by a foul ball.

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172. No. 1:14-cv-162, 2015 U.S. Dist. LEXIS 40668 (S.D. Ohio Mar. 30, 2015).

173. *Id.* at *18.

174. 100 F. Supp. 3d 292 (W.D.N.Y. 2015).

175. *Id.* at 294.

176. *Id.* at 296.

177. No. 15-cv-03229-YGR, 2016 U.S. Dist. LEXIS 159575 (N.D. Cal. Nov. 16, 2016).

Smith's fear was initiated from a serious injury sustained at a baseball game, so Smith also brought a personal injury claim. The court denied Pay and Smith's motion for injunctive relief because they lacked standing. Smith's personal
injury claim was dismissed for improper venue.

Schmitz v. NCAA[178]

Steven Schmitz, a former college football player at Notre Dame University in the late 1970s, was diagnosed with chronic traumatic encephalopathy (CTE) and suffered from severe brain disorders. Schmitz's estate brought claims for negligence, fraudulent concealment, breach of contract, and loss of consortium against the NCAA. The lower court granted the NCAA's motions to dismiss, and on appeal, the court reversed the dismissal of negligence and fraud claims but affirmed the lower court's dismissal of the contract and loss of consortium claims.

Turner v. Wells[179]

In a defamation claim, James L. Turner, Jr., former Miami Dolpins offensive line coach, alleged that the Wells Report compiled and written by Theorder V. Wells, Jr., an attorney and partner at the law firm Paul, Weiss, Rifkind, Wharton & Garrison LLP regarding the conduct and environment of the Miami Dolphins contained false and defamatory statements about Turner, resulting in his termination. The court granted the Wells' motion to dismiss, reasoning that none of the statements in the report supported Turner's claims of defamation, nor did any statements satisfy a claim of defamation by implication.

Univerisity of Texas at Arlington v. Williams[180]

Sandra Williams was injured after watching her daughter at the University of Texas at Arlington's (UTA) Maverick Stadium. When the game ended, Williams walked down the stadium stairs to wait for her daughter, and she leaned on a gate, which opened unexpectedly, causing her to fall. Williams brought a premises liability suit against UTA. UTA responded by filing a motion to dismiss asserting the recreational immunity statute. The trial court denied the motion and UTA appealed. The Texas Supreme Court granted

178. 67 N.E.3d 852 (Ohio Ct. App. 2016).

179. 198 F. Supp. 3d 1355 (S.D. Fla. 2016).

180. 459 S.W.3d 48 (Tex. 2015).

UTA's petition to decide whether attending a soccer game as a spectator was covered by the recreational immunity statute. The court affirmed the trial court's holding concluding that Texas' recreational immunity statute expressly did not include competitive sports like soccer.

USA Track & Field, Inc. v. Leach[181]

Prior to filing a lawsuit, USA Track & Field (USATF) voted and dismissed several individuals from their positions on the Youth Executive Committee for USATF for violations of rules and procedures. USATF filed for declaratory and injunctive relief asserting various tortious interference claims. In response, the individuals filed for preliminary injunction, seeking reinstatement and indemnification from further claims by USATF. The individuals argued that, as former members, they were unable to file for a grievance process with USATF. The court denied the motion, citing that, although they would likely succeed on the merits of their case, the motion was untimely. The court reasoned that the administrative process was not complete and the motion was, therefore, premature.

MISCELLANEOUS

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

Davidovich v. Israel Ice Skating Federation[182]

Andrea Davidovich, a teenage ice skater, filed an action seeking a mandatory injunction requiring the Israeli ice skating federation to allow her to participate in the 2014 Winter Olympics for the United States. The trial court granted Davidovich's request and ordered the Israeli federation to release Davidovich and allow her to compete for another country. The court of appeals reversed because it concluded that Davidovich did not exhaust all possible judicial remedies before filing suit and pointed out the strong policy disfavoring judicial interference to the internal affairs of private sport organizations.

ESPN, Inc. v. University of Notre Dame Police Department[183]

181. No. 1:16-cv-01828-TWP-DML, 2016 U.S. Dist. LEXIS 153807 (S.D. Ind. Nov. 7, 2016).

182. 140 A.3d 616 (N.J. Super. Ct. App. Div. 2016).

ESPN brought this action against the University of Notre Dame Police Department after the police department declined to give an ESPN reporter information regarding 275 University of Notre Dame student-athletes. The Supreme Court of Indiana affirmed a lower court's decision that a campus police department did not qualify as a law enforcement agency under the Indiana Access to Public Records Act (APRA). The court reasoned they did not qualify as a government agency simply because it appointed police officers to monitor and patrol campus. Further, it was not a state agency because it did not act on behalf of the State of Indiana. Therefore, the university police department was not subject to the APRA.

Flood v. NCAA[184]

David Flood, a lifelong Penn State football fan, brought a pro se complaint alleging eleven causes of action against the NCAA, the Big Ten Conference, and others, after the 2012 consent decree that resulted from the Jerry Sandusky child abuse scandal. Flood alleged that he had third-party standing to bring claims on "behalf of Penn State athletes affected by the consent decree."[185] The court dismissed Flood's complaint finding that there was no evidence that Penn State athletes "suffer[ed] an [sic] hindrance which wholly prevent[ed] them from litigating claims on their own behalf."[186] Moreover, the court pointed out "pro se parties are traditionally barred from asserting claims on behalf of others."[187]

Midwestern Midget Football Club, Inc. v. Riddell, Inc.[188]

Midwestern Midget Football Club, a non-profit youth football organization headquartered in West Virginia, filed a class action complaint against Riddell, Inc., a manufacturer of cranial protection devices, seeking class certification, injunctive relief, and actual damages. Midwestern Midget alleged that Riddell used deceptive marketing to induce the proposed class (West Virginia consumers) to purchase Revolution Helmets that supposedly reduced

183. 62 N.E.3d 1192 (Ind. 2016).

184. No. 1:15-CV-890, 2015 U.S. Dist. LEXIS 134017 (M.D. Pa. Sept. 8, 2015).

185. *Id.* at *2

186. *Id.* at *5.

187. *Id.* at *22 (emphasis omitted).

188. No. 2:15-00244, 2016 U.S. Dist. LEXIS 79005 (S.D.W. Va. June 17, 2016).

concussions when compared to other helmets. Midwestern Midget alleged that other studies conducted by third parties contested the study, and Riddell's marketing was, therefore, deceptive. The court denied Riddell's motion to dismiss, and that dismissal would be premature.

Minnesota Police and Peace Officers Ass'n v. NFL[189]

The Minnesota Police and Peace Officers Association (Peace Officers) sought a declaration that the NFL's 2013 Firearms and Weapons Policy, which banned firearms from all NFL stadiums, violated the Minnesota Citizens' Personal Protection Act (PPA). The district court granted the Peace Officers' declaration motion. The court of appeals reversed, finding that the PPA's plain language did not apply to the Peace Officers in any way. However, the court emphasized that that its decision was limited to the PPA, and the court pointed out that "[o]ther provisions of state or federal law may apply."[190]

NCAA v. Governor of New Jersey[191]

The court upheld a district court's determination that a New Jersey state law that partially repealed prohibitions on sports betting violated federal law by allowing sports gambling in an attempt to revitalize the various gaming and racing industries within the state. The court reasoned that the Professional and Amateur Sports Protection Act (PAPSA) bans states from legally permitting sports gambling and does not encourage unconstitutional action by states.

COURT OF ARBITRATION FOR SPORT

The Court of Arbitration for Sport (CAS) is based in Lausanne, Switzerland and has jurisdiction to settle disputes over international sport federations through arbitration. This includes all Olympic federations. It also acts in compliance with the World Anti-Doping Agency (WADA). The cases stated below are the disputes CAS heard in the years 2015 and 2016.

ASSOCIATION GOVERNANCE AND AUTONOMY

189. No. A15–0317, 2015 Minn. App. Unpub. LEXIS 817 (Minn. Ct. App. Aug. 17, 2015).

190. *Id.* at *12.

191. 832 F.3d 389 (3d Cir. 2016).

Indian Hockey Federation (IHF) v. International Hockey Federation (FIH) & Hockey India[192]

India's hockey governing body was originally called the Indian Hockey Federation (IHF), which governed from 1925 until 2001 when a women's hockey federation was created called the Indian Hockey Confederation (IHC). The International Hockey Federation (FIH) realized the country had two hockey governing bodies when it should have only a single hockey governing body. Then, the Indian Olympic Association met with FIH and determined it would create Hockey India to govern and regulate Indian hockey. The IHF brought this matter before the FIH. The FIH decided Hockey India was going to be the recognized governing body, and CAS upheld that decision.

ATHLETE ELIGIBILITY

Legia Warszawa SA v. Union des Ass'ns Européennes de Football (UEFA)[193]

This dispute occurred between Legia Warszawa and UEFA because UEFA suspended Warszawa for three games. Warszawa was not listed to play for two games, but for the third game, UEFA listed Warszawa, who did not play. The fourth game after the suspension, the player was listed and played as a substitute. However, UEFA claimed he was still supposed to be suspended because in order to be suspended, he had to be listed to play. Therefore, the panel needed to decide whether it was necessary for the team to list Warszawa for him to serve his suspension. The panel found it was necessary for the club to list Warszawa for him to serve his suspension because according to the rules, the player must be eligible to play to serve the suspension. By not listing Warszawa, he was ineligible to play, and the club was forced to forfeit those matches.

For further decisions involving athlete eligibility, see the footnote below.[194]

192. CAS 2014/A/3828.

193. CAS 2014/A/3703.

194. Anastasia Karabelshikova & Ivan Podshivalov v. FISA & IOC, CAS ad hoc Division OG 16/013; Daniil Andrienko et al. v. FISA & IOC, CAS ad hoc Division OG 16/011; Darya Klishina v. IAAF, CAS ad hoc Division OG 16/024; El Gouna Sporting Club v. El Dakhlia Sporting Club & EFA, CAS 2015/A/4254; Elena Anyushina & Alexey Korovashkov v. ICF & RCF, CAS ad hoc Divi-

CONTRACTUAL DISPUTE

S.C.S. Fotbal Club CFR 1907 Cluj S.A. v. Ferdinando Sforzini & Fédération Internationale de Football Ass'n (FIFA)[195]

This case was a contractual dispute between a football club and player who had a contract for one season. The contract was signed after a loan agreement was reached between the club, the player, and the Italian club Udinese Calcio. The parties signed the contract in August 2010, and the club was to pay the player in ten monthly installments. The club paid the first month but declined to pay three months. The three parties decided to terminate the loan agreement at the beginning of January, and in February, the player filed a claim about the unpaid wages. The panel found that the player was owed that money because he was working under the contract during those months and was never paid. The termination agreement of the loan agreement also did not release the club from its financial obligations to pay the player.

KAS Eupen v. Ibrahima Sory Camara[196]

This case involved a contract dispute between a player and a football team where by the player agreed to play for the football team. At the beginning of the 2010–11 season, the team informed the player that he would no longer be playing with the main team and should look to play for another team or play on the reserve team. The contract obligated the club to pay the player EUR 5,700 every month for one year. The parties also then entered into another contract called the "Attestation," where the club would pay the player EUR 65,000. The government told the club to stop paying the player because of the player's tax debts. In a hearing before FIFA, the player stated the club owed the
playeroutstanding payments. CAS agreed with FIFA and ruled that the club needed to pay the player according to the maximums set forth in this court order.

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sion OG 16/021; GFF v. FIFA & SVGFF, CAS 2015/A/4193; Ivan Balandin v. FISA & IOC, CAS ad hoc Division OG 16/012; Karen Pavicic v. FEI, CAS ad hoc Division OG 16/014; Kiril Sveshnikov, Dmitry Sokolov & Dmitry Strakhov v. UCI, CAS ad hoc Division OG 16/018; Natalia Podolskaya & Alexander Dyachenko v. ICF, CAS ad hoc Division (OG Rio) 16/019; Tjipekapora Herunga v. NNOC, CAS ad hoc Division OG 16/015; Yulia Efimova v. ROC, IOC & FINA, CAS ad hoc Division OG 16/004.

195. CAS 2014/A/3483.

196. CAS 2015/A/3947.

For further decisions involving contractual disputes, see the footnote below.[197]

DISCIPLINE BY FEDERATION AND FAILURE TO COMPLY WITH FEDERATION DECISION

Samuel Inkoom v. Andrew Evans & Fédération Internationale de Football Ass'n (FIFA)[198]

This case arose out of a breach of contract claim between an agent and a player. The player breached the contract by transferring to another team and did not compensate the agent. FIFA made the decision that the player must pay the agent for contracted services, which the player refused to pay. The CAS arbitrator found that the decision by FIFA was final and binding, and the player was notified about the decision. The player still failed to comply with the
decision. Since FIFA warned the player repeatedly to comply with the decision, and the player did not comply, the arbitrator found the sanctions imposed upon the player to be justified.

For further decisions involving discipline by a federation and failure to comply with a federation's decision, see the footnote below.[199]

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197. AFC Astra v. Laionel da Silva Ramalho & Fédération Internationale de Football Ass'n (FIFA), CAS 2014/A/3864; Al Ittihad Club v. FC Girondins de Bordeaux, CAS 2015/A/3907; Beşiktaş Futbol Yatirimlari Sanayi Ve Ticaret A.Ş. v. Manuel Henrique Tavares Fernandes, CAS 2016/A/4381;
Branislav Krunic v. Bosn. & Herz. Football Fed'n (BIHFF), CAS 2014/A/3850; Danilyuk Mikhail v. Football Club Shinnik, CAS 2015/A/3889; Fábio Rochemback v. Dalian Aerbin FC, CAS 2015/A/3923; FC Sportul Studentesc SA v. FC Petrolul Ploiesti SA & Mares George Alexandru, CAS 2015/A/3957; FC Sportul Studentesc SA v. Valentin Marius Lazar, Daniel-Cornel Lung, Sebastian Marinel Ghinga, Leonard Dobre, Octavian Dorin Ormenisan, Sebastian Cioranu Codrut & Andrei Lungu, CAS 2015/A/4026-4033; Nur Cemre Kaymak v. Azerbaijan Taekwondo Fed'n (ATF) & World Taekwondo Fed'n (WTF), CAS 2015/A/4018; Qingdao Zhongneng Football Club v. Blaz Sliskovic, CAS 2015/A/4158; Vladimir Sliskovic v. Qingdao Zhongneng Football Club, CAS 2015/A/4161.

198. CAS 2015/A/3961.

199. Al Hilal Saudi Club v. Abdou Kader Mangane, CAS 2015/A/4310; Bulgarian Sport Shooting Fed'n (BSSF) v. Int'l Sport Shooting Fed'n (ISSF) & Bulgarian Shooting Union (BSU), CAS 2014/A/3863; BWF v. IWF, CAS 2015/A/4319; Club Samsunspor v. Fédération Internationale de Football Ass'n (FIFA), CAS 2015/A/3903; FC Goverla v. Football Fed'n of Ukr. (FFU), CAS 2015/A/3886; George Yerolimpos v. World Karate Fed'n (WKF), CAS 2014/A/3576; George Yerolimpos v. World Karate Fed'n (WKF), CAS 2014/A/3671; Jan Lach v. WAF, CAS 2015/A/4303; Jobson Leandro Pereira de Oliveira v. FIFA, CAS 2015/A/4184; Liga Deportiva Ala-

DOPING

IOC v. Kleber Da Silva Ramos[200]

This case involved a cyclist that tested positive for the banned substance methoxy polyethylene glycolepoetin on the WADA Prohibited List before the Olympic games. The cyclist tested positive for a drug called CERA in his A sample. The cyclist requested his B sample also be tested. CERA was found in the B sample as well. The athlete did not submit a defense, nor did he try to rebut the tests. He accepted the provisional suspension handed out. The matter was then referred to the International Federation to figure out the appropriate sanctions, and he was prohibited from participating in the Olympic Games.

Sigfus Fossdal v. International Powerlifting Federation (IPF)[201]

Neither party in this case denied that the drugs were found in the athlete's system, or that he tested positive for the illegal drug stanzolnol. The athlete in this situation, though, looked to reduce or eliminate his ineligibility ban because he believed the decision by the International Powerlifting Federation did not consider his story. The panel found that he did at least negligently take the drugs, so the two-year ban was confirmed.

Traves Smikle v. Jamaica Anti-Doping Commission (JADCO)[202]

A Jamaican athlete tested positive for an illegal substance while in competition, which resulted in a two-year suspension. The first sample tested positive. The athlete requested his second sample be tested, which also tested positive for the illegal substance. He contended that he had no idea how the substance got in his body but suspected that whomever gave it to him tampered with it. The panel found the Jamaica Anti-Doping Commission

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juelense v. FIFA, CAS 2015/A/4162; Malaysian Tenpin Bowling Cong. (MTBC) v. Asian Bowling Fed'n (ABF), CAS 2015/A/3879; Mersin Idmanyurdu Spor Kulübü v. PFC CSKA Sofia EAD, CAS 2014/A/3831; Vanessa Vanakorn v. Fédération Internationale de Ski (FIS), CAS 2014/A/3832 & 3833; Vladislav Oskner v. FIG, CAS 2015/A/4255.

200. CAS anti-doping Division (OG Rio) AD 16/003.

201. CAS 2015/A/3945.

202. CAS 2015/A/3925.

(JADCO) was able to show to a comfortable satisfaction that the athlete did indeed commit a doping violation. There was not enough evidence to show his sample was tampered with in any way. The panel further found that there should not be a reduction of the ban because the athlete was not able to show a "balance of probability"[203] of how the substance entered his body.

World Anti-Doping Agency (WADA) v. Czech Anti-Doping Committee (CADC) & Remigius Machura Jr.[204]

An athlete was suspended for a two-year period. With 545 days left on his suspension, he stated he would no longer be competing in sports. One year after the two-year suspension would have ended, the athlete played another sport, without serving the rest of the 545-day suspension. He also failed to submit to doping control when he started playing football. The panel found that he was subject to the out-of-competition testing pool because even though he was not in the registered testing pool, he still intended to participate in competitive activities. He never stated that he did not want to be subject to the out-of-competition testing authority. The arbitrator also found the athlete violated an anti-doping rule because the athlete refused to submit to a sample collection. For this violation, the athlete was given an eight-year period of ineligibility.

For further decisions involving Doping, see the footnote below.[205]

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203. *Id.* ¶ 129.

204. CAS 2015/A/4063.

205. Amar Muralidharan v. Indian Nat'l Anti-Doping Agency (NADA), Indian Nat'l Dope Testing Lab., Ministry of Youth Affairs & Sports, CAS 2014/A/3639; Asafa Powell v. Jam. Anti-Doping Comm'n (JADCO), CAS 2014/A/3571; Danilo Decembrini v. Fédération Internationale de Roller Sports (FIRS), CAS 2014/A/3798; Demir Demirev, Stoyan Enev, Ivaylo Filev, Maya Ivanove, Milka Maneva, Ivan Markov, Dian Minchev, Asen Muradiov, Ferdi Nazif, Nadezha-May Nguen & Vladimir Urumov v. Int'l Weightlifting Fed'n (IWF), CAS 2015/A/4129; E. v. Turkish Athletics Fed'n (TAF) & WADA, CAS 2015/A/4024; F. v. Athletics Kenya (AK), CAS 2015/A/3899; FIFA v. KFA & Kang Soo Il, CAS 2015/A/4215; Ihab Abdelrahman v. Egyptian NADO, CAS ad hoc Division OG 16/023; IOC v. Chagnaadorj Usukhbayar, CAS anti-doping Division (OG Rio) AD 16/008; IOC v. Izzat Artykov, CAS anti-doping Division (OG Rio) AD 16/007; IOC v. Kleber Da Silva Ramos, CAS anti-doping Division (OG Rio) AD 16/006; IOC v. Silvia Danekova, CAS anti-doping Division (OG Rio) AD 16/004; IOC v. Tomasz Zielinski, CAS anti-doping Division (OG Rio) AD 16/002; IOC v. Xinyi Chen, CAS anti-doping Division (OG Rio) AD 16/005; K. v. Turkish Athletics Fed'n (TAF) & WADA, CAS 2015/A/3970; Karam Gaber v. United World Wrestling (FILA), CAS 2015/A/4210; Maria Sharapova v. ITF, CAS 2016/A/4643; Niksa Dobud v. FINA, CAS 2015/A/4163; Pavel Sozykin & RYF v. WS & IOC, CAS anti-doping Division (OG Rio) AD 16/001; R. v. Turkish Athletics Fed'n (TAF) & WADA, CAS 2015/A/3971; Roberto Alexander Del Pino v. Union Internationale

FIELD OF PLAY

Behdad Salimi & NOCIRI v. IWF[206]

This case came before CAS because of a referee's call made during competition. A weightlifter, during the competition's clean and jerk phase, attempted to lift 245kg. The referees nullified the lift. On the weightlifter's second attempt, the referees accepted the lift, but when the athlete dropped the bar, a jury overturned the referees' decision. In general, for a CAS panel to overturn a field of play decision, the referee or the jury would had to have made the decision in bad faith. Here, CAS did not find any bad faith; therefore, CAS did not overturn the jury's decision.

For further decisions involving field of play, see the footnote below.[207]

IMPROPER CONDUCT OF FANS

Koninklijke Nederlandse Voetbalbond (KNVB) v. Fédération Internationale de Football Ass'n (FIFA)[208]

This dispute arose out of a qualifying game for the 2014 FIFA World Cup between the Netherlands (KNVB) and Romania. The incidents leading to this arbitration included disturbances in the Romanian fan section involving the ignition of two bengal fireworks and a political message on a banner. The appeal answered whether a strict liability sanction for the fans' actions within the stadium was just, which the panel decided it was for the bengal lights. The panel reasoned that KNVB did everything it reasonably should have to prevent

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Motonautique (UIM), CAS 2015/A/3892; Sherone Simpson v. Jam. Anti-Doping Comm'n (JADCO), CAS 2014/A/3572; Tatyana Andrianova v. ARAF, CAS 2015/A/4304; Tomasz Hamerlak v. IPC, CAS 2016/A/4439; Traves Smikle v. Jam. Anti-Doping Comm'n (JADCO), CAS 2015/A/3925; WADA v. Amit & Nat'l Anti-Doping Agency of India (NADA), CAS 2014/A/3869; WADA v. Bhupender Singh & Nat'l Anti-Doping Agency of India (NADA), CAS 2014/A/3868; WADA v. Confederação Brasileira de Futebol (CBF) & Erivonaldo Florêncio De Oliveira Filho, CAS 2014/A/3842; WADA v. Damar Robinson & Jam. Anti-Doping Comm'n (JADCO), CAS 2014/A/3820; WADA v. Hasan Mohamed Mahmoud abd El-Gawad & Egyptian Anti-Doping Org., CAS 2015/A/4155; WADA v. IWF & Davit Gogia, CAS 2015/A/4160; WADA v. Narsingh Yadav & NADA, CAS ad hoc Division OG 16/025; WADA v. RUSADA & Serguei Prokopiev, CAS 2015/A/4285; WADA v. SLADA & Don Dinuda Dilshani Abeysekara, CAS 2015/A/4273; WADA v. Thomas Bellchambers et al., AFL & ASADA, CAS 2015/A/4059.

206. CAS ad hoc Division OG 16/028.

207. HSI & Cian O'Connor v. FEI, CAS 2015/A/4208.

208. CAS 2014/A/3578.

the banner's in the stadium, so the panel fined KNVB only for the bengal firework incident and not the banner. Therefore, KNVB's fine was reduced to CHF 7,500.

For further decisions involving fans' improper conduct, please the footnote below.[209]

PLAYER MISCONDUCT DURING EVENT

FC Steaua Bucuresti v. Gabriel Muresan[210]

This case arose out of an incident where a player hit another player during a football game. The player was given a yellow card for the incident and was sanctioned and disciplined by the football league's disciplinary body. The club was punished because of the player's action, and the club sued the player. The panel found that the club had standing to sue the disciplinary body through
"error in procedendo," but the club had no standing to sue the player.[211] However, because the club did not include the disciplinary body in the suit, the panel dismissed the case and upheld the disciplinary body's decision..

For further decisions involving player misconduct during an event, see the footnote below.[212]

PLAYER TRANSFER

Real Madrid FC v. Fédération Internationale de Football Ass'n (FIFA)[213]

A dispute between Real Madrid and FIFA arose over a player's eligibility. The player was a minor who moved to Madrid, and according to FIFA's rules, he was not allowed to play for Real Madrid as a minor unless he was a resident. The player's parents also had to be residents, and the move to Madrid could not be for football reasons. The FIFA committee found that there was no other explanation for the transfer of the parents' residency to Madrid other

209. Football Ass'n of Alb. (FAA) v. Union des Ass'ns Européennes de Football (UEFA) & Football Ass'n of Serb. (FAS), CAS 2015/A/3874; Football Ass'n of Serb. (FAS) v. Union des Ass'ns Européennes de Football (UEFA), CAS 2015/A/3875.

210. CAS 2015/A/3880.

211. *Id.* ¶ 56.

212. Nassir Ali N. Alshamrani v. Asian Football Confederation (AFC), CAS 2015/A/3975.

213. CAS 2014/A/3611.

than
football, so the player was deemed ineligible to play for Real Madrid. Real Madrid appealed to CAS but did not appeal in a timely manner. Therefore, the case before CAS was inadmissible and could not be adjudicated.

For further decisions involving player transfer, see the footnote below.[214]

QUALIFYING FOR COMPETITIONS

Panathinaikos FC v. Union des Ass'ns Européennes de Football (UEFA) & Olympiakos FC[215]

In this case, Olympiakos, a football club who automatically qualified for UEFA Champions League play, was accused of match-fixing. Panathinakios, a football club in same football federation as Olympiakos, appealed this case to the governing body because it had to qualify, rather than automatically qualify for the Champions' league, which Panathinakios wanted to be a part of. The panel found Panathinakios did not have proper standing to sue because it was UEFA's role to safeguard the integrity of its competition against Olympiakos' match-fixing, so CAS dismissed the case because Panathinaikos had no
standing.

SELECTION FOR OLYMPIC GAMES

Jason Morgan v. JAAA[216]

Jason Morgan was a discus thrower for Jamaica. He qualified for every Olympic Games since he was seventeen before the Rio games in 2016. To qualify for the 2016 Olympic Games, he achieved the Olympic standard of sixty-five meters. There was one other person that achieved the standard as well. However, Morgan did not finish in the top three of the JAAA national

214. Admir Aganovic v. Cvijan Milosevic, CAS 2014/A/3836; Club Atlético Mineiro v. FC Dynamo Kyiv, CAS 2015/A/3909; Maritimo da Madeira Futebol SAD v. Al-Ahli Sports Club, CAS 2015/A/4057; Olympique Lyonnais v. AS Roma, CAS 2015/A/4137; Pésci MFC v. Reggina Calcio, CAS 2015/A/3877; PFC CSKA Moscow v. Fédération Internationale de Football Ass'n (FIFA) & Football Club Midtjylland A/S, CAS 2015/A/4105; Racing Club Asociación Civil v. Fédération Internationale de Football Ass'n (FIFA), CAS 2014/A/3536; Real Federación Española de Fútbol (RFEF) v. Fédération Internationale de Football Ass'n (FIFA), CAS 2014/A/3813; Sporting Clube de Port. SAD v. SASP OGC Nice Côte d'Azur, CAS 2014/A/3647; CAS 2014/A/3648.

215. CAS 2015/A/4151.

216. CAS ad hoc Division OG 16/008.

championships, which was needed for Morgan to qualify for the Olympics. Therefore, the JAAA decided to send one of the athletes who placed ahead of Morgan at the JAAA national championships, and the dispute went before CAS. CAS ruled the case inadmissible because Morgan had not exhausted all internal remedies available to him.

For further decisions involving selection for Olympic Games, see the footnote below.[217]

TEAM PROMOTION IN NATIONAL FOOTBALL SYSTEM

Clubul Sportiv Municipal Râmnicu Vâlcea v. Romanian Football Federation (RFF) & Romanian Professional Football League (RPFL)[218]

The two football teams that had the most points at the end of the season were to be promoted to the higher league of the Romanian Professional Football League (League). The third-place team (Appellant) thought it should have been promoted, but after the conclusion of the playoffs, the League changed its three-year requirement, meaning it no longer required a team to be a part of the league for three years before possible promotion. The Appellant would have been promoted but for this rule change. The Appellant filed a claim with the disciplinary committee, which was ruled inadmissible. The Appellant appealed to CAS, which dismissed the case as well because the civil law of the host federation applied to the case and not the laws of the sport federation. Thus, CAS had no jurisdiction.

TERMINATION OF EMPLOYMENT CONTRACT

Erik Salkic v. Football Union of Russia (FUR) & Professional Football Club Arsenal[219]

This dispute arose between a player and his club about an employment contract to play football. The club sought termination compensation for breach of contract when the player terminated his contract, but the player be-

217. Mangar Makur Chuot Chep & SSAF v. SSNOC, CAS ad hoc Division OG 16/005 & 16/007.

218. CAS 2014/A/3855.

219. CAS 2014/A/3642.

lieved the club breached his contract by sending him down a level to practice with the backup team. The issue was whether the player's rights were violated when he was assigned to a backup team, or if the club could receive compensation for the players early termination of his contract. The panel reviewed the contract, which allowed the club to assign the player to the backup team, so the club did not infringe the player's rights because his wage did not change, he still practiced, and the assignment was only temporary. Therefore, the player did not have sufficient grounds to terminate the contract. However, the club was not entitled to termination compensation because the club put no value in the player's services.

Emirates Football Club Company v. Hassan Tir, Raja Club and Fédération Internationale de Football Ass'n (FIFA)[220]

A football player transferred to another team and signed an employment agreement. During the first year of the contract, the player was paid, but he was suspended for testing positive for using illegal drugs. While suspended, the player left the country with the club's permission, but did not return when he said he would. When he came back to the country, there was a hearing about the suspension, which resulted in a two-year ban. He then asked the club to leave the country again, and he received permission but never returned. The issue was whether the employment agreement was prematurely terminated. The panel found the player unilaterally and unjustly terminated the contract by leaving the country without contacting the team.

Club X. v. D. & Fédération Internationale de Football Ass'n (FIFA)[221]

There was an employment contract signed between a team and a player. The team agreed to pay the player EUR 20,000 for ten months. The team paid the first month of the contract but did not pay the next four months, so the player terminated his contract with a formal termination letter and signed with another team. After a hearing with FIFA, the club paid the player, so there was no longer a dispute between the parties. FIFA imposed sanctions on the club and was the reason for the CAS hearing. The panel found that FIFA could impose these sanctions and the sanctions were warranted and proportionate to the incident.

220. CAS 2014/A/3707.

221. CAS 2014/A/3765.

Kayserispor Kulubu Dernegi v. James Troisi[222]

This case involved the employment termination of a player from a team. The two parties came to a settlement agreement, which stated the team would pay the player a total of EUR 800,000 and EUR 500,000 as a penalty for late payments. The team paid the first payment on time, but the player's bank took out a wire transfer fee of EUR 120. The second payment was late and the player's bank took out EUR 105 for a fee. Since the second payment was late, the player asked for the EUR 500,000 penalty stipulated in the settlement agreement. FIFA ruled that the penalty should be reduced to EUR 300,000, but that the team must also pay the EUR 225 for the wire transfer fees along with 5% interest on both amounts. FIFA reduced the penalty because it thought the penalty was disproportionate and unreasonable. CAS agreed and affirmed this decision.

For further decisions involving Termination of Employment Contract, see the footnote below.[223]

TRAINING COMPENSATION

Bologna FC 1909 S.p.A. v. FC Barcelona[224]

222. CAS 2015/A/4135.

223. Al-Gharafa SC v. Nicolas Fedor & FIFA, CAS 2015/A/4153; Al Shaab FC v. Aymard Guirie, CAS 2015/A/4122; Ascoli Calcio 1898 S.p.A v. Papa Waigo N'diaye & Al Wahda Sports & Cultural Club, CAS 2014/A/3852; C. FC Steaua Bucuresti S.A. v. Cristiano Bergodi & Fédération Internationale de Football Ass'n (FIFA), CAS 2013/A/3364; Club Promotora del Pachuca S.A. de C.V. v. Facundo Gabriel Coria & Fédération Internationale de Football Ass'n (FIFA), CAS 2014/A/3643; Club Samsunspor v. Aminu Umar & FIFA, CAS 2015/A/4220; Damián Alejandro Manso v. Al Ittihad Club, CAS 2014/A/3573; FC Dinamo Minsk v. Christian Udubuesi Obodo, CAS 2015/A/4327; FC Dynamo Kyiv v. Gerson Alencar de Lima Júnior & SC Braga, CAS 2013/A/3309; Gaziantepspor Kulübü Derneği v. Darvydas Sernas, CAS 2015/A/4346; Hapoel Beer Sheva FC v. Ibrahim Abdul Razak, CAS 2015/A/4206; Hønefoss Ballklubb v. Heiner Mora Mora & Belén FC, CAS 2015/A/4083; Ibrahim Abdul Razak v. Hapoel Beer Sheva FC, CAS 2015/A/4209; Kasimpasa Spor Kulübü v. Fernando Varela Ramos, CAS 2015/A/3891; Khazar Lankaran Football Club v. Eder Jose Oliveira Bonfim, CAS 2015/A/3894; Khazar Lankaran Football Club v. FIFA, CAS 2015/A/4213; Leandro da Silva v. Sport Lisboa e Benfica, CAS 2014/A/3684; CAS 2014/A/3693; Nashat Akram v. Dalian Aerbin FC, CAS 2015/A/4039; Nigerian Football Fed'n (NFF) v. Fédération Internationale de Football Ass'n (FIFA), CAS 2014/A/3744 & 3766; PFC CSKA Sofia v. David Bernardo Tengarrinha, CAS 2014/A/3741; S.C. FC Brasov S.A v. Renato Ferreira Da Silva Alberto, CAS 2013/A/3444; Sofia v. Nilson Antonio De Veiga Barros & Fédération Internationale de Football Ass'n (FIFA), CAS 2014/A/3740; Talaea El Gaish Club v. Dodzi Dogbé, CAS 2014/A/3675.

224. CAS 2014/A/3710.

This dispute arose after a player, who signed with FC Barcelona at eight years old, signed with another team before the player's contract with FC Barcelona ended. The team then transferred the player to. Six months before the player's contract with FC Barcelona ended, the player signed a new agreement to play with Bologna FC. FC Barcelona believed it should receive training compensation for the player because it brought up the boy until he reached professional status. However, FIFA regulations under European Union regulations do not restrict the free movement of workers, so the panel decided instead that Bologna FC owed training compensation to FC Barcelona.

For further decisions involving Training Compensation, see the footnote below.[225]

WORLD RECORD RECOGNITION

British Swimming, Adam Peaty, Francesca Halsall, Jemma Lowe & Chris Walker-Hebborn v. FINA[226]

In competition, British swimmers broke world records in two different events, and after their event, the swimmers were submitted to a doping test. However, the doping test did not test for all prohibited substances necessary for its federation to confirm the world records. The swimmers were tested for most substances, but the samples did not undergo the necessary EPO testing because the organizing committee did not properly fill out the forms. CAS decided that the swimmers should not be punished for "an administrative oversight by an organizing committee."[227]

CONCLUSION

The sports-related cases adjudicated in 2015 and 2016 will likely leave a lasting impression on the sports industry and sports law. While this survey does not include every sports-related case decided in 2015 and 2016, it does briefly summarize a number of interesting and thought-provoking sports law cases from those years.

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225. CD Nacional SAD v. CA Cerro, CAS 2015/A/3981; FK Senica v. PFC Ludogorets 1945 & FIFA, CAS 2015/A/4195; Nõmme JK Kalju v. FK Olimpic Sarajevo, CAS 2015/A/4214; Sheffield Wednesday FC v. Louletano Desportos Clube & Internacional Clube de Almancil & Associação Académica de Coimbra, CAS 2015/A/4148 & 4149 & 4150.

226. CAS 2015/A/4189.

227. *Id.* at 26.

Katelynn Hill, Articles & Survey Editor (2016–2017)
with contributions from Zachary M. Bosch, Emily K. Hartsinck,
Charles A. Tortorici, and Andrew P. Trevino