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2017 Annual Survey: Recent Developments in Sports Law

Jordan Lysiak

Katherine Hampel

SURVEY

2017 ANNUAL SURVEY: RECENT DEVELOPMENTS IN SPORTS LAW

INTRODUCTION

This survey highlights sports-related cases decided by courts between January 1, 2017 and December 31, 2017. 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 2017. 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.

Dye v. Sexton[1]

Plaintiff and Defendant were both sports agents, individually operating two competing sports agencies, until a merger agreement was reached in 2010. Here, Plaintiff brings claims for breach of contract under Georgia law, for unjust enrichment through use of Plaintiff's confidential information to secure players from the National Football League ("NFL"), and for violations of the Georgia

1. No. 1:16-CV-00035-LMM, 2017 WL 7615571 (N.D. Ga. Dec. 13, 2017).

Trade Secrets Act.[2] Defendant moved to require arbitration under the Federal Arbitration Act[3] ("FAA"), arguing that the NFL's collective bargaining agreement required resolution via arbitration. Plaintiff asserts that the agreement between the parties does not contain an arbitration agreement, however, their relationship as advisors to players of the NFL subjects them to NFL regulations and procedures and therefore granted Defendant's motion to dismiss.

State ex rel. Pinkerton v. Fahnestock[4]

Plaintiff Steven Pinkerton brought this action to overrule a motion to compel filed by Aviation Institution of Maintenance ("AIM"), after graduating from AIM's aviation maintenance and technician's program and failing to find employment in the aviation field. Based on this failure, Plaintiff filed suit against AIM. AIM moved to dismiss, or to compel arbitration. The court agreed with Defendants that the arbitration agreement included in Plaintiff's enrollment paperwork "clearly and unmistakably" evidenced the parties' intent to delegate threshold issues to the arbitrator, and thereby granted AIM's motion to compel arbitration and denied Plaintiff's claim for a preliminary writ.

ANTITRUST AND TRADE LAW

Antitrust and trade regulation law exists to protect consumers from unfair 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.

Deppe v. NCAA[5]

Deppe, a high school punter, looked to play at the collegiate level and was recruited by a handful of universities before accepting a preferred-walk on position at Northern Illinois University ("NIU"). After being promised a scholarship from NIU's special teams coach and sitting out his first year as a red-shirt, the special teams coach left the school and the Head Coach did not

2. O.C.G.A. § 10-1-760 (West 2018).

3. 9 U.S.C. § 1 (West 2018).

4. 531 S.W.3d 36 (Mo. 2017).

5. No. 1:16-cv-00528-TWP-DKL, 2017 U.S. Dist. LEXIS 31709 (S.D. Ind. Mar. 6, 2017).

honor the scholarship promise. Deppe filed a complaint asserting that the NCAA violated the Sherman Act by limiting the number of available scholarships and by enforcing transfer rules. The court held that the NCAA's actions were not anticompetitive and that Deppe lacked standing by which he could be granted relief.

Evans v. Ariz. Cardinals Football Club, LLC[6]

Defendants, the thirty-two clubs of the NFL, were subject to a class action alleging intentional misrepresentation and conspiracy. Plaintiffs, twelve retired NFL players and the estate of one former player, claim that NFL clubs publicly prioritize health of NFL players, but that the conduct of the teams suggests otherwise. Plaintiffs allege that the NFL and its league clubs have acted in violation of the Racketeer Influenced and Corrupt Organizations Act of 1970 ("RICO") by urging Plaintiffs to provide their player services under non-guaranteed contracts and clearing players to return from injury before they were fully healthy. The Court dismissed the amended complaint alleging RICO and conspiracy violations, but held that if discovery produces evidence of conspiracy between league clubs, the Court would consider allowing Plaintiffs to amend their claim with a conspiracy claim. However, the Court dismissed Defendants motion regarding the state-law intentional misrepresentation and concealment claims against several NFL teams (specifically, the Lions, Raiders, Broncos, Packers, Seahawks, Dolphins, Chargers, and Vikings), but granted the motion to dismiss for all other teams. The Court allowed for more substantial discovery procedures and for Plaintiffs to amend their claims for intentional misrepresentation and concealment.

Golden Boy Promotions LLC v. Haymon[7]

This antitrust action alleges attempted monopolization and unfair competition in the management and promotion markets for professional boxing. Plaintiffs, including Golden Boy Boxing, allege that Defendants, including Haymon entities, have attempted to monopolize the market for "Championship Claiber Boxers" through long-term exclusive contracts with boxers and networks and acting both as a boxing manager and promoter in violation of the Muhammad Ali Boxing Reform Act, 15 U.S.C. §§ 6301. Though Plaintiffs could have damages done onto themselves, they were unable to prove harm to competition. The court granted summary judgment for the Defendants on the

6. 231 F. Supp. 3d 342 (N.D. Cal. 2017).

7. CV 15-3378-JFW (MRWx), 2017 U.S. Dist. LEXIS 29782 (C.D. Cal. Jan. 26, 2017).

Sherman Act Section 1 and 2 claims, and declined to exercise jurisdiction over state law claims.

In re NFL Sunday Ticket Antitrust Litig.[8]

This suit was consolidated after twenty-seven related class action suits were filed against a conglomerate of business entities related to the production and distribution of NFL football games. Here, a group of commercial and residential plaintiffs alleged the agreement between the NFL (including its agents and subsidiaries) and DirectTV that ultimately produced the exclusive, subscription-based "Sunday Ticket" service was a violation of antitrust law. The US District Court for the Central District of California granted NFL's motion to dismiss based on the Plaintiff's failure to prove the existence of a 'relevant market' over which the NFL exercised market power, regardless of the Plaintiff's ability to adequately prove their alleged claims under Sections 1 and 2 of the Sherman Act.

Kelsey K. v. NFL Enters. LLC[9]

Plaintiff cheerleader Kelsey K. brought an action alleging violations of the Sherman Act and the Cartwright Act by the National Football League ("NFL") and twenty-seven of its league clubs. Plaintiffs allege that the NFL and its member clubs acted in concert to keep cheerleader compensation at a level below the fair market value of their services. Because Plaintiffs were unable to provide evidence as to the existence of an agreement between NFL governance and its teams to suppress cheerleader earnings, the court dismissed the allegation under Section 1 as Plaintiff failed to state a claim.

Miranda v. Selig[10]

In this action, the court examined whether professional minor league baseball is exempt from federal antitrust law. Ruling in favor of the Defendants, the court held that the antitrust exemption created in 1922 extended to minor league baseball. The court reasoned that the 1988 Curt Flood Act[11] established that the "conduct, acts, practices, or agreements" involved in the production of Major League Baseball are in fact subject to antitrust laws, though it explicitly maintained the baseball exemption for "anything related to the employment of

8. ML 15-02668-BRO (JEMx), 2017 U.S. Dist. LEXIS 121354 (C.D. Cal. June 30, 2017).

9. No. C 17-00496 WHA, 2017 U.S. Dist. LEXIS 81503 (N.D. Cal. May 25, 2017).

10. 860 F.3d 1237 (9th Cir. 2017).

11. Curt Flood Act of 1998, Pub. L. No. 105–297, 112 Stat. 2824 (codified at 15 U.S.C. § 266 (2018)).

minor league baseball players."[12] Based on the congressional intent to exempt minor league baseball from antitrust scrutiny, the court affirmed the decision in favor of Defendants.

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.

Kennedy v. Bremerton School District[13]

Appellant Kennedy brings this appeal from a district court decision denying his request for a preliminary injunction that would allow Kennedy to kneel and pray on the field after Bremerton High School ("BHS") football games, regardless of the opposition of the school district. The court found that granting Kennedy an injunction against the school district would constitute a violation of the Establishment Clause that requires governments to "make no law respecting an establishment of religion"[14] and consequently denied his appeal.

Kesterson v. Kent State Univ.[15]

Plaintiff Lauren Kesterson, a student at Kent State and former student-athlete, filed a motion for leave in order to file an amended first and supplemental complaint, after alleging that Defendant Kent State University sexually discriminated against her under Title IX, violated her constitutional rights under the First Amendment, and broke her Fourteenth Amendment guarantee of equal protection. Defendants contrarily moved to strike fifteen (15) paragraphs from the amended and the supplemental complaint, arguing that the internal investigation at the heart of Kesterson's complaint was unrelated to Kesterson's sexual assault case. The court granted Plaintiff's motion to amend in part and ruled that the case would proceed to determine the status of the equal protection and First Amendment claims.

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12. *See* 15 U.S.C.A. § 26b (West 2018).

13. 869 F.3d 813 (9th Cir. 2017).

14. U.S. CONST. amend. I.

15. No. 5:16-cv-298, 2017 U.S. Dist. LEXIS 37186 (N.D. Ohio Mar. 15, 2017).

CONTRACT LAW

Contract law plays a pivotal role in every facet of the sports industry given that contracts are the foundation for sponsorships, construction and renovation of sports facilities, insurance agreements, and employment and uniform player agreements.

Feleccia v. Lackawanna Coll.[16]

Plaintiffs were injured during their participation in a tackling drill at a college football practice. The court found that summary judgment was improper and that the waiver in question was not clear as to its coverage of gross negligence and reckless conduct claims. Further, the court held that recklessness could not be waived and that the waiver could not release Defendant from reckless conduct. The court reversed and remanded back to the trial court to determine if Defendant's use of unlicensed medical trainers was considered reckless behavior.

In re Walthall[17]

Donald Walthall was a successful real-estate entrepreneur and agent before being charged with racketeering a felony theft in 2007 and losing his real-estate license in 2011. In 2014, Walthall requested an informal opinion to determine his ability to apply for and receive proper registration to become an athlete agent. The informal opinion recommended a denial of Walthall's potential application. Though the court commended Walthall's pursuit of education and employment following his prison sentence for the crimes listed above, the risk to the public of registering an athlete agent with such a criminal past would be unacceptable. The court held that the standards of review do not allow for substitution of the commissioner's judgment in lieu of the court's and he decision was affirmed.

COURT OF ARBITRATION FOR SPORT (CAS)

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 some of the disputes CAS heard in 2017.

16. 156 A.3d 1200 (Pa. Super. Ct. 2017).

17. A16-0626, 2017 Minn. App. Unpub. LEXIS 148 (Minn. Ct. App. Feb. 13, 2017).

Chunhong Liu v. International Olympic Committee[18]

Chunhong Liu was a weightlifter that participated in the 2008 Summer Olympics in Beijing, China. Following her event, Liu was required to undergo doping tests and did not test positive at the time. However, as required by the IOC, Liu's and other samples were collected and stored to be re-tested at a later date. The sample was re-tested in the spring of 2016 before the Olympic Games 2016 in Rio de Janeiro, Brazil, and two prohibited substances were identified. Appellant Liu did not challenge the validity of the results, rather that the substance in question was not listed on the 2008 banned substances list and that the re-analysis was unjustified. The Sole Arbitrator found that the substance was indeed listed on the 2008 banned substance list, and that testing procedures were proper, upholding the IOC Disciplinary Commission's prior findings.

Danis Zaripov v. International Ice Hockey Federation[19]

Appellant Danis Zaripov is a Russian professional hockey player of the Kontinental Hockey League ("KHL") that was subject to an anti-doping control test after a KHL match. Respondent International Ice Hockey Federation (IIHF) notified Appellant of his positive test for Hydrochlorothiazide and Pseudoephedrine, both of which are included on the list of prohibited substances as promulgated by World Anti-Doping Agency ("WADA"). The player failed to attend his hearing before the IIHF Disciplinary Board and was subsequently handed a two-year ban from competition. Appellant and the IIHF reached a settlement agreement after the player submitted extensive documentation explaining the situation. The settlement agreement was later approved by CAS, and the player's ban was lifted.

Drug Free Sport New Zealand v. Karl Murray[20]

Appellant Drug Free Sport New Zealand ("DFSNZ") brought this case after charges against cycling athlete Karl Murray were dismissed under the jurisdiction of the Sports Tribunal of New Zealand ("STNZ"). Murray tested positive for anabolic steroids after participating in the 2013 Tour of New Caledonia, and received a ban of two-years from competition which ended in April of 2016. CAS ruled that the decision of the STNZ would be set aside, that Murray would be subject to a two-year ban for violating the Sports Anti-Doping

18. CAS 2017/A/4973 (July 31, 2017).

19. CAS 2017/A/5280 (Nov. 21, 2017).

20. CAS 2017/A/4937 (Dec. 15, 2017).

Rules New Zealand, and that Murray was to pay NZ$3,500.00 to DFSNZ as a contribution payment for the arbitration proceedings.

International Association of Athletics Federation (IAAF) v. Russian Athletic Federation (RUSAF) & Anna Pyatykh[21]

This case was submitted for arbitration by the Russian Athletics Federation (RUSAF) on behalf of Ms. Anna Pyatykh, a Russian triple jump athlete competing under the rules promulgated by International Association of Athletics Federations (IAAF). Before the arbitration panel were two distinct issues of doping stemming from a sample collected in 2007 and a washout test in 2016. After competing in the 11th IAAF World Championships in Osaka, Japan, Pyatykh submitted a doping sample without any finding of a prohibited substance. In 2016, the sample was re-tested, revealing a prohibited substance known as DHCMT, a prohibited form of Androgenic Anabolic Steroid. Pyatykh received a provisional suspension after failing to respond to the notification from the IAAF. Separately, the arbiters found that Moscow had systematically engineered a process by which to swap dirty samples from Russian athletes with clean samples to produce compliant results. The IAAF asserted that Respondent committed two separate violations and the conduct should be punished with the "most severe sanction." CAS ruled that the Appellant had violated IAAF rules and submitted a four-year ban on the athlete. However, CAS was unwilling to impose retroactive sanctions as there was insufficient evidence that Pyatykh had participated in the washout scheme between 2007 and 2013.

International Ski Federation (FIS) v. Therese Johaug & The Norwegian Olympic and Paralympic Committee and Confederation of Sports (NIF); Therese Johaug v. The Norwegian Olympic and Paralympic Committee and Confederation of Sports (NIF)[22]

Appellant, the International Ski Federation ("FIS"), is the governing body for skiing and snowboarding and filed an appeal with CAS against Norweigan cross-country skier Therese Johaug and the Norwegian Olympic and Paralympic Committee and Confederation of Sports/Norges Idrettsforbund ("NIF"). Johaug was a highly experienced and successful competitor for almost decade. Johaug sustained sunstroke while training in 2016 and was given a substance by the team doctor. The cream given by the team doctor triggered a positive doping test months later, and led to two separate two-month bans for Johaug. The primary issue at hand was the applicable standard of care to be

21. CAS 2017/O/5039 (Aug. 18, 2017).

22. CAS 2017/A/5015 (Aug. 21, 2017); CAS 2017/A/5110 (Aug. 21, 2017).

used by Johaug. CAS determined that Johaug failed to meet the necessary standard of care by failing to read the clearly printed doping warning on the outside of the substance box, and submitted a suspension for a period of eighteen (18) months.

Lei Cao v. International Olympic Committee[23]

Lei Cao was a weightlifter that participated in the 2008 Summer Olympics in Beijing, China. Following her event, Cao was required to undergo doping tests and did not test positive at the time. However, as required by the IOC, Liu's and other samples were collected and stored to be re-tested at a later date. The sample was re-tested in the spring of 2016 before the Olympic Games 2016 in Rio de Janeiro, Brazil, and a prohibited substance was identified. Appellant Cao did not challenge the validity of the results, rather that the substance in question was not listed on the 2008 banned substances list and that the re-analysis was unjustified. The Sole Arbitrator found that the substance was indeed listed on the 2008 banned substance list, and that testing procedures were proper, upholding the IOC Disciplinary Commission's prior findings.

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[24] and Title VII of the Civil Rights Act.[25] In the sports context, discrimination can affect athletes, coaches, administrators, and other employees, as the following cases illustrate.

Cross v. Nike, Inc.[26]

Plaintiff James Cross filed suit against Nike for alleged discrimination against "black inventors" after Cross submitted multiple designs to Nike and they were returned without consideration or compensation. Though Cross asserted a violation under 42 U.S.C.A. § 1981, the complaint was woefully incomplete, and did not "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"[27] The court held that

23. CAS 2017/A/4974 (July 31, 2017).

24. 42 U.S.C.A. §§ 1981, 1983 (2018).

25. Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000 *et seq.* (2018).

26. No. 3:16-CV-588 RLM-MGG, 2017 WL 4340191 (N.D. Ind. Sept. 29, 2017).

27. *Id.* at *2.

Plaintiff Cross had not identified any facts or a legal theory that would support a claim for damages or injunctive relief, and thereby granted Nike's motion to dismiss.

Dawson v. National Collegiate Athletic Association[28]

Plaintiff Lamar Dawson, a former student-athlete at the University of Southern California ("USC"), brought a putative class action suit against the NCAA and PAC 12 Conference. Dawson argued that while he was a player for USC, he was not fairly compensated, referencing the Fair Labor Standards Act ("FLSA") and the California Labor Code. The court found that there was no legal basis by which to find Dawson was an "employee" under the FSLA, and because the claims under the California Labor Code were derivative, all claims were dismissed without leave to amend.

Doe v. Sevier Cty.[29]

Plaintiffs, former students at a Tennessee high school, were members of the school basketball team when they were charged with aggravated rape. As a condition of their bond, Plaintiffs were prohibited from attending the high school, but the charges were resolved after that parties reached a settlement agreement. After Plaintiffs were denied re-enrollment at their former high school they brought suit against the county, School Board, and its superintendent for violations of 42 U.S.C. § 1983, claiming a restraint of their First Amendment rights and a violation of the Fourteenth Amendment. The court held that Plaintiffs failed to show through evidence that the case at hand required a preliminary injunction, and subsequently denied Plaintiffs' motion for preliminary injunction.

Marshall v. New York State Public High School Athletic Association[30]

The plaintiff in this case suffered from various health issues that prevented him from carrying on a full course load in high school and subsequently required a fifth year to for him to finish his courses. The plaintiff played basketball all four years of high school, and sought extended eligibility to participate during his fifth year. The district submitted an application for extended athletic eligibility and never got response. It submitted a second application ten months later, requesting a reasonable accommodation under the ADA that was denied.

28. 250 F. Supp. 3d 401 (N.D. Cal. 2017).

29. No. 3:17-CV-41, 2017 U.S. Dist. LEXIS 110436 (E.D. Tenn. July 17, 2017).

30. 290 F. Supp. 3d 187 (W.D.N.Y 2017).

The plaintiff alleged this was discrimination against him because of his disabilities in refusing to grant reasonable modification in violation of Title II of ADA and section 504 of the Rehab Act. The court rejected the commissioner's argument that plaintiff was not denied extended eligibility *because of* his disability, finding that there was a plausible inference that disabilities were at least minimally connected to the requested accommodation. The court denied the plaintiff's motion for a preliminary injunction, finding that he failed to carry his burden of showing a clear or substantial likelihood of success on the merits. It determined that the plaintiff was not likely to succeed in establishing that the restrictions on the amount of years a student could participate in was not an essential eligibility requirement and his request to waive is "reasonable accommodation."

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.

Ludman v. Davenport Assumption High Sch.[31]

Plaintiff Spencer Ludman, a high school baseball player, brought this action after suffering a skull fracture during the course of a game. Plaintiff was struck by a foul ball while standing by the dugout, removed from the field. Plaintiff alleges that the unfenced portion of dugout in which he was standing constitutes the basis for a premises liability claim against Assumption High School, as it shows the high school breached their required duty of care. The court held that Defendant was negligent in their construction and maintenance of the dugout facility and that the condition constituted an unreasonable risk of injury. However, the court made clear that the district court failed to properly instruct the jury on the Plaintiff's duty to maintain a proper lookout and that the district court abused its discretion by not allowing Defendants to introduce evidence as to the customary practices of other high schools. The decision was reversed and remanded for further proceedings.

31. 895 N.W.2d 902 (Iowa 2017).

Radwan v. University of Connecticut Board of Trustees[32]

Plaintiff Radwan was a student-athlete at the University of Connecticut ("UCONN") that received a full scholarship through a conditional 'out-of-state grant-in-aid.' Plaintiff later made an obscene gesture after a soccer game that was captured on camera and widely distributed through the media. The Head Coach of the soccer team subsequently suspended Plaintiff from all team activities, yet Plaintiff alleged that no indication was given that Plaintiff's scholarship would be pulled. Plaintiff alleged that Defendants had violated Title IX, her First Amendment rights, and violated her procedural due process rights. The court found that only the Title IX claim against UCONN could stand, holding that Plaintiff could seek recovery in an individual capacity against the Head Coach.

White-Ciluffo v. Iowa Dep't of Educ.[33]

Plaintiff White-Ciluffo was a member of her high school track and field team when she participated in a collegiate-sponsored meet before the beginning of her high school season. Plaintiff was contacted by her coach, notifying her that competing against college-level athletes was prohibited. Regardless, Plaintiff went on to compete in similar-style collegiate-sponsored events and was subsequently ruled ineligible and stripped of her 2014 state track record. Plaintiff filed for judicial review of the Iowa Department of Education's decision, only to be dismissed by the district court, finding that the additional evidence submitted by Plaintiff was not submitted in a timely manner and therefore could not be considered. Moreover, the district court found that Plaintiff did not have a claim for a violation of substantive due process rights and that Plaintiff was unable to prove that she was "similarly situated" to other individuals to prove a claim for equal protection. The appeals court sided with the district court's ruling, holding that the district court was within its discretion to determine the additional evidence to be immaterial.

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.

32. No. 3:16-cv-2091(VAB), 2017 WL 6459799 (D. Conn. Dec. 14, 2017).

33. 902 N.W.2d 590 (Iowa Ct. App. 2017).

Arceneaux v. Assumption Parish Sch. Bd.[34]

This case concerns Defendant's motion for summary judgment, where Defendants contend that Plaintiffs must be unsuccessful in pleading their claim that the Assumption Parish School Board ("APSB") violated Title IX and the Fourteenth Amendment through gender discrimination. Plaintiff's daughter Rebekka was removed from the cheer squad after she was cited by administrators for her unacceptable behavior at a school function while wearing her cheer uniform. Rebekka and her mother had both signed the cheer rules and regulations promulgated by the Ascension High School ("AHS") cheer sponsor, which specifically states that members would be dismissed from the team if unacceptable behavior in uniform occurred. The court did not find evidence of intentional discrimination and could not plead and prove a prima facie case of discrimination. Based on the fact that no genuine question of fact remained, the court ruled that summary judgement in favor of Defendants was appropriate and dismissed Plaintiffs claims with prejudice.

Doe v. Purdue University[35]

Plaintiff John Doe filed a complaint against Purdue University and its agents, after John Doe's sexual partner attempted suicide in his presence, leading to the partner, Jane Doe, notifying university personnel of John Doe's alleged sexual misconduct. Plaintiff only sought a claim for injunctive relief in response to Defendant's motion to dismiss all claims and argues that Defendant Purdue University violated Title IX through disciplinary action predicated on Plaintiff's gender. Though the determination may have been averse to Plaintiff, he ultimately failed to show any connection between the outcome of the decision and bias based on his gender. Accordingly, the court granted Defendant's motion to dismiss the Title IX claim with prejudice.

Hernandez v. Baylor Univ.[36]

Plaintiff Hernandez was a student at Baylor University that suffered a sexual assault at the hands of student peers and brought this suit against the University, Head Football Coach Art Briles, and former Athletic Director Ian McCaw. Plaintiff sought to hold Defendants liable under the Title IX requirement that no person be discriminated against on the basis of sex. The court denied Defendant's motion to dismiss, and thereby granted Plaintiff's

34. No. 16-6554 Section "S," 2017 U.S. Dist. LEXIS 34310 (E.D. La. Mar. 10, 2017).

35. 281 F. Supp. 3d 754 (N.D. Ind. 2017).

36. 274 F. Supp. 3d 602 (W.D. Tex. 2017).

post-assault claim. However, the court found that Plaintiff's claims for intentional infliction of emotional distress would overlap with the Title IX claims, and thereby dismissed. Finally, the court denied Defendant's motion to dismiss Plaintiff's state law claims as they were filed within the five-year statute of limitations.

Neal v. Colo. State University-Pueblo[37]

Plaintiff Grant Neal, a student at Colorado State University-Pueblo, was alleged to have committed rape of an anonymous female student. Plaintiff maintains that any sexual conduct was consensual and that the CSU-Pueblo Code of Student Conduct and Sexual Misconduct Policy provided standard procedures to students that were not afforded to him. The court concluded that Plaintiff had successfully alleged discrimination based on his gender under Title IX, and thereby dismissed the CSU-Pueblo Board of Governors' motion to dismiss Plaintiff's Title IX claim.

Nungesser v. Columbia Univ.[38]

Plaintiff Paul Nungesser alleges that Columbia University violated his rights under Title IX after the school had found him not responsible following an internal investigation for allegations that he had raped a fellow student. The female student that had accused Plaintiff maintained her story despite the findings of the University investigation and developed a series of activist protests and campaigns to combat sexual assault on campus. Plaintiff alleged that Defendant Columbia University violated his rights under Title IX because the University permitted the female student's activist actions in the face of the conclusive investigation. The Court granted Defendant's motion to dismiss as Plaintiff could not overcome the high bar for recovery under Title IX.

Tackett v. University of Kansas[39]

Plaintiff Daisy Tackett brought this suit claiming that Defendant University of Kansas provided a hostile educational environment under Title IX and retaliated against her for her sexual assault claim against a Kansas football player. The University sought to dismiss these claims asserting that the University did not have notice of the ongoing harassment by the football player and that Plaintiff failed to allege facts that the University was deliberately

37. No. 16-cv-873-RM-CBS, 2017 U.S. Dist. LEXIS 22196 (D. Colo. Feb. 16, 2017).

38. 244 F. Supp. 3d 345 (S.D.N.Y. 2017).

39. 234 F. Supp. 3d 1100 (D. Kan. 2017).

indifferent to her complaint against the football player. The court weighed whether housing football players in the Jayhawk Towers, where the sexual assault occurred, and encouraging female athletes to attend and cheer at football games amounted to institutional liability for rape against female athletes, finding that it does not. The court held that Plaintiff pled sufficient facts to support her claim that the university was deliberately indifferent to her after her rape claim and will not dismiss the claim of sexual harassment against Plaintiff's coach. The court granted Plaintiff's claim of Title XI retaliation, and her motion for leave to file a second amended complaint, finding no undue prejudice or delay in allowing the amendment.

Thomas v. Town of Chelmsford[40]

Plaintiffs allege that Chelmsford public schools took improper action in protecting a student from sexual assault at a school-sponsored football camp. Here, there were fourteen claims brought forth by the Plaintiffs against the municipal defendants, including, but not limited to, violation of substantive due process right to bodily integrity, First Amendment right to free speech, Title IX claim, claim for IDEA reimbursement, conspiracy to violate federal constitutional rights, conspiracy to violate the Massachusetts Civil Rights Act, defamation, and intentional infliction of emotional distress. Ultimately, the court largely dismissed claims against individual Defendants in the case, but allowed claims under First Amendment retaliation, Title IX, and for negligence to survive.

Working v. Lake Oswego Sch. Dist.[41]

Student athletes filed suit against Lake Oswego School District to enforce "the equal treatment and benefits that must necessarily accompany an equal opportunity to participate in athletics" guaranteed to them under Title IX of the Education Amendment of 1972 ("Title IX").[42] The student athletes sought leave from the court in order to amend the complaint to include not only members of the Lake Oswego High School ("LOHS") softball team, but all LOHS female athletes. The Court concluded that the student athletes did have standing to pursue the claims of equal treatment and effective accommodation and granted the motion for leave to amend the complaint to include the larger group of female student athletes.

40. 267 F. Supp. 3d 279 (D. Mass. 2017).

41. No. 3:16-cv-00581-SB, 2017 U.S. Dist. LEXIS 106408 (D. Or. June 29, 2017).

42. 20 U.S.C. § 1681 (2018).

HEALTH & SAFETY LAW

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.

Hites v. Pennsylvania Interscholastic Athletic Association, Inc.[43]

Plaintiffs were sports participants enrolled in Pennsylvania high schools under the Pennsylvania Interscholastic Athletic Association ("PIAA") that suffered concussions during high school sport activities. This is an interlocutory appeal to determine if the lower court erred in overruling preliminary objection in the negligence suit filed by Plaintiffs Hites, Zingaro, and Teolis. Defendant PIAA asserts that Plaintiff's allegations failed to show that conduct by PIAA was the proximate cause of Plaintiff's injuries and that the concussion suffered were a result of their participation in sports. The court disagreed and affirmed the trial court's order as Plaintiffs provided facts sufficient to show that PIAA's conduct was a substantial factor in Plaintiff's injuries.

In re NHL Players' Concussion Injury Litig.[44]

Plaintiffs are former National Hockey League players who argue neurological damage sustained throughout their careers has caused (or will cause) significant brain injury. Plaintiffs allege that Defendants knew or should have known the body of scientific work that support an increased risk of neurodegenerative diseases to players subjected to repetitive brain injuries. Here, Defendants sought the production of certain documents from Boston University ("BU", a non-party in this litigation) Center for the Study of Traumatic Encephalopathy. Plaintiff's stood with BU against the production of such documents, arguing that their inclusion would distort the litigation into an analysis of the actual existence of Chronic Traumatic Encephalopathy ("CTE"). The court largely denied Defendant's motion to produce documents but did find a "limited subset" of information that was to be produced and required NHL to reimburse BU for such documents.

43. 178 A.3d 966 (Pa. Commw. Ct. 2017).

44. No. 14-2551 (SRN), 2017 U.S. Dist. LEXIS 63465 (D. Minn. Apr. 26, 2017).

Mann v. Palmerton Area School District[45]

Plaintiff Sheldon Mann, a football player in the Palmerton Area School District (the "District"), brought suit against the District and his coach after suffering potentially concussion-like symptoms in practice. Plaintiffs assert that the coach's decision to have Mann return to practice following these concussion-like symptoms led to Mann's eventual diagnosis of traumatic brain injury and constituted a violation of his constitutional right to bodily integrity. The district court granted Defendant's motion to dismiss, finding that the constitutional right was not established at the time the injury took place in 2011. Here, though the court acknowledged the potential success of a trial in state court, the issue at hand required the court's dismissal, as no evidence existed showing recurring head injuries in the District or deliberate exposure of injured players to a continual risk of harm.

Swank v. Valley Christian Sch.[46]

Plaintiff Swank died after injuries received during a high school football game and seeks recovery under Washington State's Zackery Lystedt Law ("Lystedt Law")[47], which was passed to reduce the injury risks of athletes who had suffered previous concussions. Washington's Lystedt Law requires the removal of athletes from play after a suspected head injury and requires written clearance from a licensed health provider in order to return to play. The trial court entered a judgment against Plaintiff on all claims, which was affirmed by the Court of Appeals. The court reversed in part and affirmed in part, finding that the trial court erroneously granted summary judgment on the issue on the existence of an implied cause of action under the Lystedt Law as it met the *Bennett* Test[48], and reinstated Plaintiff's claims against the school and coach.

INTELLECTUAL PROPERTY

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.

45. 872 F.3d 165 (3d Cir. 2017).

46. 398 P.3d 1108 (Wash. 2017).

47. WASH. REV. CODE ANN. § 28A.600.190 (LexisNexis 2018).

48. Bennett v. Hardy, 784 P.2d 1258 (Wash. 1990).

Bennett v. Forbes[49]

Plaintiff Bennett, a sports event host, brought an action against Defendant Forbes and volleyball business We Are Volleyball Elite ("WAVE") alleging contract interference and infringement, among other claims. Bennett, an owner of multiple events, made an arrangement with Forbes in order to help grow his business with an understanding that the parties would share revenues, costs, and profits equally. After Plaintiff terminated the relationship with WAVE, Defendant Forbes attempted to assert ownership over certain marks and ventures created over the course of the relationship between Plaintiff and Defendant. Because Plaintiff Bennett did not provide sufficient evidence to establish that he had a protectable ownership interest in the mark, and that the Defendant's use was likely to cause consumer confusion, the motion to dismiss was granted in favor of the Defendants.

Daniels v. FanDuel, Inc.[50]

Plaintiffs in this action were college football players at schools governed by the National Collegiate Athletic Association ("NCAA"), when their names appeared on Defendant's gambling website, which they allege constitutes a violation of their right of publicity under Indiana state law.[51] Defendants argued that the case should be dismissed, as Plaintiffs failed to state a claim by which they could be granted relief. In examining the state law right of publicity, the court found that certain exemptions existed that demanded the granting of Defendant's motion to dismiss. The court concluded that Plaintiff's right of publicity claim was defeated by the "newsworthiness" and "public interest" exceptions as included in the Indiana statute.

Gaelco S.A. v. Arachnid 360, LLC[52]

Plaintiffs Gaelco S.A. and Gaelco Darts S.L. brought suit against Defendant for patent infringement violating 35 U.S.C. § 271(a) in the implementation of a scheme for officiating dart games from an off-site location similar to Plaintiff's product. The court held in favor of the Defendant Arachnid 360, as Plaintiff's patent claims on the dart machines failed to show an "inventive concept sufficient to transform the claimed abstract idea into a patent-eligible

49. No. 17CV0464-MMA (KSC), 2017 U.S. Dist. LEXIS 90102 (S.D. Cal. June 12, 2017).

50. No. 1:16-cv-01230-TWP-DKL, 2017 WL 4340329 (S.D. Ind. Sept. 29, 2017).

51. IND. CODE § 32-36-1-1 et seq. (2018).

52. No. 16 C 10629, 2017 U.S. Dist. LEXIS 209914 (N.D. Ill., E. Div. Dec. 21, 2017).

application."[53] The court thereby granted Defendant's motion to dismiss as the scoring system was considered an abstract idea that could not be successfully protected under US patent law.

Hosszu v. Barrett[54]

Plaintiff Katinka Hosszu is an Olympic and World Champion swimmer and brought this action for defamation and portrayal in a false light against sportswriter Casey Barrett under 28 U.S.C. 1332(a) and Arizona law. Barrett published an article in *Swimming World Magazine* in which Plaintiff alleged that Defendant improperly implied Plaintiff's performance could be attributed to the use to performance-enhancing drugs. The court determined that the speech was protected under the First Amendment, concluding that Barrett's writings were not conclusive statements, rather that they were an assertion of facts so that the reader could make their own decision regarding the truth in the matter. The court held that the district court appropriately dismissed the case for failure to state a claim.

HSK, LLC v. United States Olympic Comm.[55]

Plaintiff Zerorez brought an action seeking a declaration that his business could use social media to discuss the Olympics without violating USOC trademarks and the provisions of USOC's U.S. Olympic and Paralympic Brand Usage Guidelines. Zerorez filed before the opening of the 2016 Summer Games in Rio de Janiero, Brazil, and sought to use social media to discuss the event with "hashtags" like #RIO2016 or #TeamUSA. In weighing the USOC's motion to dismiss Zerorez's claims due to a lack of subject matter jurisdiction, the court looked to determine if an "actual controversy" existed between the parties. The court found that even if Zerorez's allegations of the USOC exaggerating the strength of its legal rights over the trademark, no actual controversy existed, requiring that the court grant the USOC's motion to dismiss.

LPD N.Y., LLC v. Adidas Am., Inc.[56]

Plaintiff LPD New York, a "streetwear" manufacturing company, brought suit against Adidas America and its German affiliate alleging breach of contract, defamation, and unjust enrichment. Defendants approached Plaintiffs with

53. *Id.* at *20.

54. No. 16-16571, 2017 U.S. App. LEXIS 25202 (9th Cir. Dec. 13, 2017).

55. 248 F. Supp. 3d 938 (D. Minn. 2017).

56. No. 15-CV-6360 (MKB) (RLM), 2017 U.S. Dist. LEXIS 45034 (E.D.N.Y. Mar. 27, 2017).

ideas for a collaborative project, and after significant communication between the parties regarding designs and implementation strategy, Plaintiffs created a series of provocative advertisements that upset certain Adidas representatives. The controversy led to questions from LPD's buyers concerning the legitimacy of the collaboration and refusals of delivered products. The court dismissed Plaintiff's claims but granted leave to amend the Complaint to assert quasi-contract claims.

Maloney v. T3Media, Inc.[57]

Plaintiff student-athletes Patrick Maloney and Tim Judge brought this suit to recover damages alleging statutory and common law right of publicity violations and unfair competition under California law. Plaintiffs argue that Defendant T3Media's sale of consumer licenses to download photos of Plaintiffs from the National Collegiate Athletic Association's ("NCAA") Photo Library. Plaintiffs were unable to show a reasonable probability of success on their state law claims, and more importantly, because the subject matter of the state law claims falls within Section 301 it must be preempted by Federal Copyright Act.[58] Moreover, because the Plaintiffs' rights are not elevated because of their status as a student-athlete under Title IX, there is no remedy available for Plaintiffs Maloney and Judge. Thus, the District Court decision was affirmed, and granted Defendant T3Media's motion to strike.

NBA Properties, Inc. v. Yan Zhou[59]

Plaintiffs, owners of multiple professional sports trademarks including NBA Properties, MLB Advance Media, and NHL Enterprises, brought suit against several Defendant online retail merchants for trademark infringement and the sale counterfeit products. Defendant online retailers operated in the United States, offering clothing and hats bearing the registered trademarks of the multiple Plaintiff's professional leagues, and at no time were granted license or otherwise authorized to sell merchandise with Plaintiff's marks. Plaintiffs were able to prove that they possessed a "protectable trademark" and that the Defendants unauthorized use created a likelihood of confusion among consumers. The court granted Plaintiffs' motion for summary judgment and their request for a permanent injunction, as well as a ruling that Plaintiffs were entitled to statutory damages, attorney's fees, and other associated costs.

57. 853 F.3d 1004 (9th Cir. 2017).

58. 17 U.S.C.S. § 301 (2018).

59. No. 16-cv-11117, 2017 WL 4074020 (N.D. Ill. Sept. 14, 2017).

Savannah College of Art and Design, Inc. v. Sportswear, Inc.[60]

The Savannah College of Art and Design ("SCAD") acted against Defendant Sportswear, Inc., an online retailer, after Defendant produced apparel bearing the federally-registered marks of SCAD without proper authorization or license. The district court granted summary judgment in favor of Defendants, accepting Defendant's argument that SCAD could not show common-law ownership of the marks, as Defendant's had used the marks earlier. Here, the court concluded that the issue was not based in common law ownership, and reversed and remanded, holding that a genuine issue of material fact existed as to if Defendant's products could reasonably cause consumer confusion in the marketplace as SCAD only held the marks "in connection with the provision of services, and held no registrations for goods, apparel, or promotional merchandise."[61]

Zimmerman v. Al Jazeera Am., LLC[62]

Plaintiffs Major League Baseball ("MLB") players Ryan Zimmerman and Ryan Howard claim that Defendant producers Al Jazeera America, Deborah Davies, and Liam Collins defamed them in the production and release of "The Dark Side," a documentary film highlighting performance-enhancing drug use among elite athletes. This suit was consolidated after Zimmerman and Howard brought separate claims against Defendants. Plaintiffs' claims for defamation and false light invasion of privacy were considered common law tort claims under District of Columbia law. The Court concluded that Plaintiffs had sufficiently alleged defamation and false light claims against Defendants as a reasonable jury could conclude that statements in the film were included with actual malice because of Defendant's lack of knowledge that certain allegations contained in the "The Dark Side" were actually true. Thus, the court dismissed the allegations against defendant Collins, but denied Al Jazeera and Davies motion to dismiss.

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

60. 872 F.3d 1256 (11th Cir. 2017).

61. *Id.* at 1263.

62. 246 F. Supp. 3d 257 (D.D.C. 2017).

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.

Boogaard v. National Hockey League[63]

This suit rose from the accidental death of Derek Boogaard, a former player for the Minnesota Wild of the National Hockey League ("NHL" or the "League"). Plaintiffs and personal representatives of Boogaard's estate, Len and Joanne Boogaard, sued the League, its Board of Governors, and its Commissioner for tort claims associated with the death of Derek Boogaard. In a previous suit on behalf of Plaintiff's estate, the NHL succeeded in removing the case, as the court agreed that Plaintiff's state law claims were largely preempted by § 301 of the Labor Management Relations Act ("LMRA"), though the claims that were not preempted were to be governed by Minnesota law. The court examined the Defendant's motion to dismiss the surviving claims, and Plaintiff's motion to remand the case back to state court. Defendants successfully argued that Plaintiff's failed to state a claim under Minnesota law, as the statute governing wrongful death claims requires the representation by a "trustee," not by appointed "personal representatives. The court granted Defendant's motion to dismiss and denied Plaintiff's motion to remand to state court.

Cleveland Browns Football Co., LLC v. Industrial Commission of Ohio[64]

The Cleveland Browns filed a petition to challenge the decision of the Industrial Commission which awarded permanent partial disability to a former football player. In response to this challenge, the Court, in dismissing the petition, held that because the former football player was unable to return to his former employment, he was entitled to receive temporary total disability benefits.

63. 255 F. Supp. 3d 753 (N.D. Ill. 2017).

64. 85 N.E.3d 1238 (Ohio Ct. App. 2017).

Hardie v. NCAA[65]

Plaintiff Dominic Hardie brought this appeal after the district court ruled for summary judgment in favor of the Defendant NCAA. Hardie alleged that the NCAA's policy excluding anyone with a felony conviction from coaching at NCAA-certified events was discriminatory under Title II of the Civil Rights Act of 1964.[66] The court held that regardless of the disparate-impact claims, Plaintiff failed to plead and prove a less restrictive alternative to the NCAA's Participant Approval Policy existed, and therefore ruled that summary judgement for Defendants was proper.

Indep. Sports & Entm't, LLC v. Fegan[67]

Plaintiff, management company Independent Sports & Entertainment LLC ("ISE"), alleged that Defendant, player representative Fegan, breached a non-compete included in an Asset Purchase Agreement ("APA" or "the agreement"). ISE and Fegan entered into an APA by which ISE acquired Fegan's business assets in exchange for cash and company stock. ISE alleged that Fegan had violated the non-compete clause included in the agreement by running a side business and filed for injunctive relief in state court as to compel Fegan to meet his obligations under the agreement. Fegan successfully removed the action to federal court after arguing that plaintiffs' arguments were precluded by § 301 of the Labor Management Relations Act ("LMRA").[68] The court concluded that ISE's claim for injunctive relief was not completely preempted by the LMRA, as the action concerns a union agent and a third party. Because ISE's claims were not based in a challenge to a players' union's authority over its agents or a union employee against their employer, ISE's claim was not preempted, the action was remanded to state court and denied Fegan's motion to dismiss as moot.

National Football League Players Association v. National Football League[69]

The union representing players of the National Football League (the "NFLPA") filed this complaint on behalf of running back for the Dallas Cowboys, Ezekiel Elliott, for a preliminary injunction on the NFL's imposition of a six-game suspension. NFL Commissioner Rodger Goodell handed down

65. 861 F.3d 875 (9th Cir. 2017).

66. 42 U.S.C. § 2000a(a) (2018).

67. No. CV 17-02397-AB (PJWx), 2017 U.S. Dist. LEXIS 82341 (C.D. Cal. May 30, 2017).

68. 29 U.S.C. § 185 (2018).

69. 874 F.3d 222 (5th Cir. 2017).

the suspension after an investigation into alleged domestic violence committed by Elliott. Elliott exercised his right to contest the punishment before an arbitrator, as guaranteed to him under the Collective Bargaining Agreement ("CBA"), though the arbitrator eventually upheld the NFL's decision. The court determined that the lawsuit on Elliott's behalf was filed prematurely, as Elliott had not yet exhausted his contractual remedies provided under the CBA. Based on these facts the court vacated the preliminary injunction from the district court and remanded with instructions to dismiss.

Senne v. Kan. City Royals Baseball Corp[70]

Plaintiff Aaron Senne brought this action against Defendant Kansas City Royals alleging unfair pay and hour requirements. In 2016, the Court denied certification for a class action suit. The court determined that the survey questionnaire ("Main Survey") of players produced by Plaintiff's expert witness would be sufficient to meet the applicable evidentiary standard under Federal Rule of Evidence 702 and Daubert v. Merrell Dow Pharms.[71] Further, the court found that the class action under Fair Labor Standards Act of 1938 was sufficient to satisfy the requirement that class members are "similarly situated" under § 216(b).

Squire v. Del. North Cos.[72]

Plaintiff brought this action under the Americans with Disabilities Act[73] after Defendant Delaware North Companies Inc.'s ("Delaware North") phased out her role and her employment contract was terminated. Plaintiff Lyn Squire was the merchandise manager for Defendant's retail locations when she received a diagnosis for multiple sclerosis ("MS"). The court denied Defendant's motion for summary judgment after finding circumstantial evidence enough to show that the Defendant's argued "legitimate, nondiscriminatory" reason for terminating Plaintiff was "mere pretext" based on Plaintiff's diagnosis.

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.

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70. No. 14-cv-00608-JCS, 2017 U.S. Dist. LEXIS 32949 (N.D. Cal. Mar. 7, 2017).

71. 509 U.S. 579 (1993).

72. No. 14-CV-00954A(F), 2017 U.S. Dist. LEXIS 95072 (W.D.N.Y. June 19, 2017).

73. 42 U.S.C. §§ 12101-12213 (2018).

Aloha Sports Inc. v. NCAA[74]

The plaintiff in this case was a former bowl-sponsoring agency that produced NCAA D1-A post season football bowl games. The plaintiff sued for claims of unfair methods of competition, tortious interference with prospective economic advantage, and breach of contract arising from the NCAA's decertification of plaintiff's two owned and operated NCAA Certified Postseason Football Bowl Games. The plaintiff further claimed that the NCAA engaged in unfair method of competition by refusing to permit transfer of ownership of postseason games without good cause. The jury returned unanimous verdict in NCAAs favor, awarded attorneys' fees and costs. On appeal the court found that the circuit lacked jurisdiction to enter award for attorneys' fees. As a result, the NCAA moved to reinstate order awarding fees and costs. The court determined that the plaintiff hadn't identified evidence showing that competition had been harmed. It reasoned that the plaintiff did not raise genuine issue of material fact as to nature of the competition: as is necessary for their UMOC claim, so the circuit did not err in granting summary judgment in favor of the NCAA.

GolTV, Inc. v. Fox Sports Latin America Ltd.[75]

Plaintiffs GolTV, a Florida television network, brought suit under the Sherman Antitrust Act and the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") against a competing business, asserting that the competitor was involved in an extensive bribery scheme that allowed the competitor to obtain exclusive broadcast rights outside the scope of the law. Though Plaintiffs argue that Defendant's activities within the state of Florida were sufficient to subject them to jurisdiction in Florida courts, the court disagreed, holding that the district court lacked personal jurisdiction for claims arising out of Federal law, granting Defendant's motion to dismiss.

Finkelman v. National Football League[76]

Plaintiff Josh Finkelman brought suit after buying two tickets to Super Bowl XLVIII alleging that the NFL's withholding of more than 5% of the available tickets constituted a violation of New Jersey's Ticket Law. Though the district court found that Plaintiff lacked standing in the matter, the court held that Plaintiff successfully offered "economic facts that are specific, plausible, and

74. 141 Haw. 143 (Ct. App. 2017).

75. 277 F. Supp. 3d 1301 (5th Cir. 2017).

76. 877 F.3d 504 (3d Cir. 2017).

susceptible to proof at trial" as to satisfy the Plaintiff's burden of proving standing.

Fox v. Pittsburg State University[77]

This employment discrimination suit was decided before a jury, that found Plaintiff Martha Fox, a custodial worker subjected to sexual harassment, successful in bringing an action under Titles VII and IX against Defendant Pittsburgh State University ("PSU"). Here, the court examined Plaintiff's motion to alter judgment for attorney's fees and costs, and Defendant's motion to strike the reply brief in support. The court noted that Defendant's legal strategy in asking that attorney's fees and costs be denied to Plaintiff was unreasonably lengthy, which led to the court granting Plaintiff an award larger than the normal standard award of reasonable attorney's fees. The court found that Plaintiff's requested fees were reasonable compared to attorneys with similar skills and experience in the Kansas City metro area, and thereby awarded more than $270,000 in reasonable attorney's fees to Plaintiff, denying Defendant's motion to strike.

Front Row Technologies LLC v. MLB Advanced Media, L.P.[78]

The case "having been heard and considered" was affirmed according to Rule 36 of the United States Code.[79]

In re Johnson[80]

Debtor Johnson was provided services by the firm of Hahn Loeser & Parks LLP (the "Firm") in his Chapter 11 bankruptcy, and the Firm brought this request before the court for compensation and reimbursement of expenses. The court held that attorney's fees should be reduced to by roughly $65,000 due to certain non-compensable services provided by the Firm. Further, the court held that the excessive staffing by the Firm did not warrant any further reduction of fee award.

77. 258 F. Supp. 3d 1243 (D. Kan. 2017).

78. 697 Fed. Appx. 701 (Mem), (Fed. Cir. 2017).

79. *See* Fed. Cir. R. Rule 36, 28 U.S.C.A. (2018).

80. 580 B.R. 742 (Bankr. S.D. Ohio 2017).

Kranos IP Corporation v. Riddell, Inc.[81]

This case contemplates the relationship between two competitor companies vying to produce football helmets used in the United States. Defendant Riddell, Inc., the national leader in football helmet supply, submitted a motion to dismiss, or to transfer the case to the Northern District of Illinois, where its principal place of business is located. The court acknowledged that the suit could have been validly brought in the Northern District of Illinois, and accordingly court held that Defendants successfully satisfied the burden to demonstrate that the Eastern District of Texas was "clearly more convenient in this case" as access to sources of proof and the low cost of attendance for witnesses existed in Illinois, thereby ordering the case to be transferred to the Northern District of Illinois in favor of Defendants.

Strikes for Kids v. NFL[82]

Plaintiff organization Strikes for Kids brought this suit as a result of the Defendant National Football League moving the planned upon venue for a charity event causing significant losses of revenue. Defendants informed Plaintiff that the proposed location would result in players committing violations of NFL Gambling Policy if they were to attend. The court determined that Defendant's removal of the case from state to federal court was within the stricture of the thirty-day removal window under 28 U.S.C. Section 1446(b).

Taylor-Travis v. Jackson State University[83]

In the suit preceding this action, the lower court decided that Defendant Jackson State University ("JSU") had not wrongfully terminated Plaintiff Coach Taylor on the basis of her gender, though the court did find that JSU's termination of Plaintiff was in violation of Plaintiff's employment contract. Here, the court reviews challenges from both sides in favor of a new trial, under Rules 50 and 59 of the Federal Rules of Civil Procedure. The court found the evidence presented by JSU as justifiable for terminating Plaintiff but asserted that it was not enough to grant Defendants judgment as a matter of law. Further, the court held that that Coach Taylor's Title IX retaliation claim lacked a chain of "but for" causation, and therefore denied her motion for a new trial.

81. No. 2:17-cv-443-JRG, 2017 WL 3704762 (E.D. Tex. Aug. 28, 2017).

82. No. 3:17-CV-0018B, 2017 U.S. Dist. LEXIS 79246 (N.D. Tex. May 24, 2017).

83. No. 3:12-CV-51-HTW-LRA, 2017 WL 6604567 (S.D. Miss. Dec. 22, 2017).

TCR Sports Broadcasting Holding, LLP v. WN Partner, LLC[84]

In this case, there was a contract dispute over telecast rights fees between TCR Sports Broadcasting Holding, LLP d/b/a the Mid-Atlantic Sports Network and the Baltimore Orioles and Washington Nationals. Prior to the issue of this case, the Orioles and TCR had established Orioles Television Network as a platform to broadcast Orioles games in seven states. MLB, TCR, the Nationals and the Orioles entered into a subsequent agreement converting TCR into two-club sports network MASN that provided terms of how much each club would be paid per game, and the methodology for determining future fees. MASN and the Nationals got in a dispute regarding future fees, and after negotiations failed and the parties waived mediation, the matter went to arbitration administered by MLB staff. The Nationals were represented by longtime outside counsel to the MLB, and MASN and the Orioles objected to this counsel's participation in the arbitration due to potential conflicts of interest. MASN on behalf of itself and Orioles commenced this proceeding seeking to vacate the arbitration award on basis that it was procured through bias, evidence partiality, misconduct, fraud, corruption, and undue means. They alleged that the MLB had a financial stake in the outcome of the arbitration, conflicts arose with the Nationals and the arbitrators using the same law firm, and the arbitrators used incorrect methodology as was dictated by the agreement. The lower court vacated the arbitration award as it found evident partiality but rejected the other challenges to the award. This court confirmed the vacation of the award, but refused to compel the parties to submit to arbitration to AAA to resolve the dispute, instead of the body the parties had agreed to in their agreement.

United States ex rel. Landis v. Tailwind Sports Corp.[85]

This action surrounds the doping activities of cyclist Lance Armstrong in relation to the cycling team's market value, and this memorandum opinion resolves Defendant Armstrong's motion to exclude certain expert testimony at trial. The previous court decision held that the government was unable to argue that the market value of the cycling team was zero. The court ordered that Defendant's motion to exclude testimony from three experts would be granted only in part, in that the experts would not be permitted to testify regarding negative opinions that would outweigh positive impressions of the team's sponsorship, and that expert Dr. Gleaves was unable to testify as to his opinion that performance-enhancing drugs had become widely used in cycling.

84. 59 N.Y.S.3d 672 (N.Y. App. Div. 2017).

85. No. 10-cv-00976 (CRC), 2017 WL 5905509 (D.C. Cir. Nov. 28, 2017).

Wirs v. United World Wrestling[86]

The plaintiff brought suit against United World Wresting based on its decision to no longer offer wrestling competitions for competitors over sixty years old. The plaintiff filed his amended complaint asserting claims on behalf of a class for violation of Section 2 of the Clayton Act and for failure to supervise, train, and discipline for breach of fiduciary duties. Plaintiff also filed a motion seeking a temporary restraining order and a preliminary Injunction, and summary Judgment on antitrust liability. The court denied these allegations because was unclear what specific relief the plaintiff was seeking. The court determined that the plaintiff had not established a substantial likelihood of success on the merits as he hadn't demonstrated that the ban was anticompetitive under antitrust law. Plaintiff also did not make a showing of irreparable harm as previous courts have held that ineligibility to participate in athletic competitions alone does not constitute irreparable harm.

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.

Davis v. Detroit Pub. Sch. Cmty. Dist.[87]

This suit arises out of a controversy surrounding the public tax contributions to fund the construction of Little Caesars sports arena in Detroit, Michigan. Plaintiffs allege that Defendants intent to use funds generated from the Detroit Public Schools operating millage was unlawful. The court found that Plaintiffs lacked standing, as they did not plead of prove a unique injury other than that of the entire electorate. Accordingly, Detroit Public Schools' motion to dismiss was granted in part and the court also granted intervenor Defendants' Detroit Downtown Development Authority and the Detroit Brownfield Redevelopment Authority motion for summary judgment.

Jacobs v. Comm'r[88]

Plaintiffs in this case are the owners of the Boston Bruins of the National Hockey League and were subject to tax scrutiny after deducting the costs of pregame meals for their employees at locations outside of Massachusetts.

86. No. 17-cv-01627-WJM-STV, 2017 U.S. Dist. LEXIS 216745 (D. Colo. 2017).

87. No. 17-cv-12100, 2017 U.S. Dist. LEXIS 114749 (E.D. Mich. July 24, 2017).

88. No. 19009-15, 2017 U.S. Tax Ct. LEXIS 26 (T.C. June 26, 2017).

Defendant Commissioner of Internal Revenue notified Plaintiffs of deficiencies from 2009 and 2010, arguing that pregame meals in away cities did not qualify as a de minimis fringe under section 274(n)(2)(B) of the Internal Revenue Code, which would trigger a 50% limitation on tax claims pursuant to section 274(n)(1). The court determined that the alleged deficiency was indeed a de minimis fringe under section 274(n)(2)(B) and therefore was not subject to the 50% requirement.

Mitchell v. NFL Player Annuity Program[89]

The case is rooted in a state-court divorce action that included a former NFL player and his spouse. Plaintiff Laura Mitchell was the spouse of retired NFL player Qasim Mitchell. Mr. Mitchell was a participant in the NFL Player Annuity Program ("Annuity Program") and the NFL Player Disability & Neurocognitive Benefit Plan ("Disability Plan"), and Plaintiff seeks certain compensation paid out to her through the divorce proceedings based on Mr. Mitchell's future awards under the Annuity Program and Disability Plan. Each plan is considered an employee benefit plan subject to the constraints of the Employee Retirement Income Security Act of 1974 ("ERISA")[90], and as such, ERISA preempted Plaintiffs claim for compensation. Plaintiff alleges a violation of a state court order by the NFL transferring more than $120,000 from the Annuity Program and Disability Plan to Mr. Mitchell during the course of divorce proceedings, but the court ruled that she was unsuccessful in proving that she is entitled to judgment against the plans as her claim was preempted by ERISA and she had not proved any valid claims under ERISA.

Town of Sterlington v. East Ouachita Recreation District No. 1[91]

Residents of Sterlington filed action against the recreational district, challenging proposed expenditure of tax proceeds as a way to finance the construction and improvements of facilities. The Court held that the recreational district acted within the purpose of the tax by utilizing the tax proceeds for sports tourism and the tax itself did not limit use of facilities to only members of the district.

89. 255 F. Supp. 3d 781 (N.D. Ill 2017).

90. 29 U.S.C. § 1001 (2018).

91. 215 So.3d 381 (La. Ct. App. 2017).

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.

A.M. v. Miami University[92]

A.M. brought a negligence claim against Miami University, alleging that the university breached their duty of care when A.M. was sexually assaulted at an off-campus residence. The Court ultimately held that in this situation, Miami University did not in fact owe A.M. a duty of care.

Bradley v. NCAA[93]

Plaintiff's claims against the NCAA and other defendants arose after receiving allegedly improper medical care when she suffered a head injury during a collegiate field hockey game. Though Defendants argued that the statute of limitations on Plaintiff's claim had run, the Court found that Plaintiff did act with reasonable due diligence as to preserve her ability to file suit against Defendants.

Cung Le v. Zuffa, LLC[94]

This case arose out of Plaintiff's motion to challenge the designation of certain documents as "work product." Plaintiffs allege that Defendant Zuffa created and maintained anti-competitive promotions and environment for professional Mixed Martial Arts bouts. Defendant's conduct was largely based a "fighter pay assessment" from a third-party researcher ("Mercer"). Plaintiffs allege that the assessment allowed Defendants to illegally eliminate competition and restrict access to necessary promotions. The court granted Plaintiff's motion and ordered Defendant to hand over three documents at the core of the dispute, and all documents that contained "facts and non-opinion work product" that led to the findings in the assessment produced by Mercer.

92. 88 N.E.3d 1013 (Ohio Ct. App. 2017).

93. 249 F. Supp. 3d 149 (D.D.C. 2017).

94. 321 F.R.D. 636 (D. Nev. 2017).

Foltz v. Johnson[95]

Plaintiff Foltz suffered an injury related to her riding a dirt bike alongside a former fiancé and brought this action against Defendant Johnson for negligence. Defendant Johnson argued that Plaintiff's primary assumption of risk exempted him from negligence liability. Plaintiff argued that while she was aware of the risks, the Defendant's promise of certain riding conditions raised the stakes and now should allow her to sue on his negligent promises. The court reasoned that Defendant's conduct did not increase the inherent risks associated with riding dirt bikes off-road, and that Plaintiff's subjective expectations cannot define the scope of primary assumption of risk. Therefore, the court affirmed the decision of the district court in favor of the Defendant.

Moje v. Federal Hockey League LLC[96]

Plaintiff Kyler Moje was a professional minor league hockey player for the Danville Dashers when he was struck in the face with an opposing player's hockey stick, causing serious injury and the loss of sight in one eye. In 2015, Moje successfully obtained an $800,000 judgment against the Federal Hockey League (the League), and now seeks a declaratory judgment against David Insurance Agency, as Plaintiff alleges the agency failed to provide the specific insurance as specified by the League. The David Agency asked the court to reconsider its duty to the League, rather than to the Plaintiff. The court determined that the standard "duty of ordinary care" was appropriate and dismissed the Agency's motion for reconsideration.

Pliuskaitis v. USA Swimming, Inc.[97]

Plaintiff Pliuskaitis brings this suit against USA Swimming as a result of an anonymous report detailing Plaintiff's alleged involvement in a sexual relationship with a minor athlete. Subsequently, USA Swimming filed a report alleging multiple violations of the USA Swimming Code of Conduct which eventually resulted in Plaintiff receiving a permanent ban from USA Swimming membership. Plaintiff appealed the decision, arguing improper procedure and illuminating the fact that USA Swimming had made a clerical error when citing to the appropriate code section. Defendants argued that Plaintiff's claims were barred under the Ted Stevens Olympic and Amateur Sports Act. The court

95. 224 Cal. Rptr. 3d 506 (Cal. Ct. App. 2017).

96. No. 15-CV-8929, 2017 WL 4005920 (N.D. Ill. Sept. 12, 2017).

97. 243 F. Supp. 3d 1217 (D. Utah 2017).

agreed that no private right of action was provided under the Act and granted Defendant's motion to dismiss.

Walker v. USA Swimming, Inc.[98]

USA Swimming is the national governing body for the sport as recognized under requirements of the Ted Stevens Olympic and Amateur Sports Act ("Sports Act"). Plaintiff Walker was a coach for USA Swimming when he was informed of his alleged violation of the USA Swimming Code of Conduct and eventually banned for a lifetime. After the decision was affirmed by USA Swimming's Board of Directors, Plaintiff sought review from the American Arbitration Association ("AAA") as required by the Sports Act and a temporary injunction on his inclusion in the USA Swimming banned list. AAA affirmed the decision, leading to Walker's claim before the court that the arbitrator failed to follow USA Swimming's procedural requirements. Defendants submitted a motion to dismiss for a lack of subject matter jurisdiction. The court disagreed with Defendant's rationale, finding that the court has jurisdiction to determine if USA Swimming's disciplinary procedures were properly imposed and denied Defendants motion to dismiss.

CONCLUSION

The sports-related cases adjudicated in 2017 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 2017, it does briefly summarize a number of interesting and thought-provoking sports law cases.

Jordan Lysiak, Articles & Survey Editor (2018–2019)
with contributions from Katherine Hampel, Managing Editor (2018-2019)

98. No. 3:16-0825, 2017 U.S. Dist. LEXIS 28943 (M.D. Tenn. Mar. 1, 2017).