

2019

2019 Annual Survey: Recent Developments in Sports Law

Audrey Johnson

Follow this and additional works at: <https://scholarship.law.marquette.edu/sportslaw>



Part of the [Entertainment, Arts, and Sports Law Commons](#)

Repository Citation

Audrey Johnson, *2019 Annual Survey: Recent Developments in Sports Law*, 30 Marq. Sports L. Rev. 435 (2020)

Available at: <https://scholarship.law.marquette.edu/sportslaw/vol30/iss2/8>

This Survey is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. For more information, please contact elana.olson@marquette.edu.

SURVEY

2019 ANNUAL SURVEY: RECENT DEVELOPMENTS IN SPORTS LAW

INTRODUCTION

This survey highlights sports-related cases decided by courts between June 1, 2019 and December 31, 2019. 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 2019. 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.

*In re Daily Fantasy Sports Litig.*¹

Over eighty plaintiffs consolidated their claims to form this lawsuit against FanDuel and Draft Kings, alleging, among other claims, improper and unlawful conduct. Draft Kings and Fan Duel argued that the plaintiffs were subject to the arbitration clauses found in the Terms and Conditions of their accounts. The court found that the plaintiffs were subject to valid arbitration clauses and the Defendants' motion to compel arbitration was granted.

1. No. 16-02677-GAO, 2019 U.S. Dist. LEXIS 206689 (D.C. Mass. Nov. 27, 2019).

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. Several recent antitrust cases focus on the NCAA's and NFL's practices.

*City of Oakland v. Oakland Raiders*²

The City of Oakland sued the Oakland Raiders and the NFL alleging the Raiders' move from Oakland to Las Vegas violated antitrust laws. The Raiders and the NFL brought motions to dismiss, claiming Oakland had not sustained the requisite antitrust injury. The court ruled the Oakland did not sustain an antitrust injury regarding the following claims: the NFL relocation fee, the thirty-two-team structure limitation, the damages theories, breach of contract, and quantum meruit and unjust enrichment. All claims were dismissed without prejudice except for the claim involving the thirty-two-team structure limitation.

*In re NCAA Grant-In-Aid Cap Antitrust Litig.*³

Current and former Division I football, and basketball student-athletes sued the NCAA and eleven conferences claiming the NCAA's rules limiting compensation the athletes may receive while playing college sports in exchange for their athletic services is violative of antitrust law. The Defendants claimed amateurism as a procompetitive justification. The California court found that the NCAA had not shown that restricting compensation of its student-athletes preserved its policy of amateurism and left it to each conference and member institutions to implement their own less-restrictive compensation regimes.

*In re NFL's Sunday Ticket Antitrust Litig.*⁴

A class action involving DirecTv's NFL Sunday Ticket subscribers sued alleging antitrust violations for eliminating competition in markets where fans want to watch teams in different regions of the United States. The District Court granted the Defendant's motion to dismiss. Here, the Court of Appeals of the Ninth Circuit reversed the decision, finding that the plaintiffs' claimed adequate

2. No. 18-cv-07444-JCS, 2019 WL 3344624 (N.D. Cal. July 25, 2019).

3. 375 F.Supp.3d 1058 (N.D. Cal. 2019).

4. 933 F.3d 1136 (9th Cir. 2019).

alleged both Section 1 and Section 2 violations, by alleging the requisite antitrust injury, showing the Defendants' market power for professional football television broadcasts, and by showing the NFL's and DirecTv's specific intent to maintain market power.

*Reapers Hockey Ass'n, Inc. v. Amateur Hockey Ass'n Ill. Inc.*⁵

Reapers Hockey Club brought this claim against Illinois's amateur hockey association and other associations, alleging the rule restricting the amount of teams permitted to be in the league violated both federal and Illinois antitrust law. The court here is asked to rule on the Defendants' motion to dismiss and the Plaintiff's motion for preliminary injunction. The Illinois District Court denied the Plaintiff's motions and granted the Defendants' motion to dismiss, reasoning that the associations' restrictions were reasonable, the plaintiff failed to establish the relevant market, and the plaintiff did not show that they were injured.

Shields v. Fed'n Internationale de Natations

Three professional swimmers brought antitrust violation and state tort claims against the Federation Internationale de Natation due to their control over international swimming competitions. The Court is asked to rule on the Defendant's motion to dismiss for both claims. The California court denied the motion to dismiss, finding that the plaintiffs plausibly alleged a Section 1 Claim and rejecting the Defendant's single entity argument.

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.

5. 412 F.Supp.3d 941 (N.D. Ill. 2019).

6. 2019 U.S. Dist. LEXIS 216079 (N.D. Cal. Dec. 16, 2019).

*Fiedler v. Stroudsburg Area Sch. Dist.*⁷

A former student sues her junior high school, school district, and school employees for claims arising under the American with Disabilities Act (“ADA”), the Rehabilitation Act, and federal constitution violations when her gym teacher had her engage in physical education activities, in which she was excused from by a doctor’s note, and from which her injuries were subsequently exacerbated. The Pennsylvania District Court ruled on the Defendant’s motion to dismiss, which was granted and denied in part. The Court, in dismissing the claims without prejudice and with leave to amend, found that the Plaintiff had not sufficiently plead a Section 1983 Due Process Claim due to lack of a showing her educational rights were infringed and was not intentionally discriminated against under the American with Disabilities Act.

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.

FanExpo, LLC v. NFLs

FanExpo, LLC brought a claim against the National Football League alleging tortious interference with a contract involving Electronic Arts, Inc. (“EA”). The Texas trial court granted the NFL’s motion for dismissal, and the Texas Court of Appeals is deciding on FanExpo’s appellate argument that there was a genuine issue of material fact. The Court found that the Appellant had not plausibly alleged or showed enough evidence that the NFL tortiously interfered with the EA contract with FanExpo, LLC.

*In re USA Gymnastics*⁹

This case was in front of the United States Bankruptcy Court for the Southern District of Indiana and it was deciding whether to recommend a motion for summary judgment. The case involves USA Gymnastics (“USAG”) and its insurer, Liberty Insurance Underwriters (“LIU”), and what was covered under the policy regarding the Nassar scandal. The LIU policy included a wrongful act exclusion to its policy, thus excluding coverage for any malicious

7. No. 3:19-cv-0983, 2019 WL 6699712 (M.D. Penn. Dec. 9, 2019).

8. No. 05-17-01304-CV, 2019 WL 2211084 (Ct. App. Tex. May 22, 2019).

9. No. 18-9108-RLM-11, 2019 Bankr. LEXIS 3972 (S.D. Ind. Oct. 24, 2019).

act or willful violation of the law if the existence of such was adjudicated as true. The court decided that the ten Nassar cases that had already been adjudicated at the time of trial were not covered by the LIU policy, but the nearly one hundred remaining claims were covered as they had not yet been adjudicated. In addition, the court also found that LIU had a duty to defend all claims against the USAG involving the Nassar claims.

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 2019 and 2020.

*Cameron v. UKAD*¹⁰

Liam Cameron is a professional boxer and is bringing this claim against the UK Anti-Doping Limited (“UKAD”). Cameron participated in a match on April 27, 2018 in which he won by knockout, successfully defending his Commonwealth Middleweight title. Cameron had a urine sample taken after the match which tested positive for benzoylecgonine, a metabolite form of cocaine.¹¹ He was charged with the anti-doping violation and the UKAD suspended him from all competition for four years. Cameron appealed the decision to CAS. Cameron contends that he inadvertently ingested the cocaine by touching money that he knew came from an area with high drug use. CAS held that the athlete had not shown any evidence to support the claim of unintentional ingestion of the prohibited substance. The CAS ruled that the result of the match was to be forfeited, along with any titles and prizes stemming from the match and upheld the four-year ineligibility period.

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 Amendment¹² and Title VII of the Civil

10. CAS 2019/A/6110 (Dec. 30, 2019).

11. *Id.* at ¶ 6.

12. 42 U.S.C.A. §§ 1981, 1983 (2019).

Rights Act.¹³ In the sports context, discrimination can affect athletes, coaches, administrators, and other employees, as the following cases illustrate.

*Mackey v. Bd. Trustees Cal. State Univ.*¹⁴

Five African American student-athletes at California State University at San Marcos brought this claim against their university and coach alleging racial discrimination and retaliation. The athletes claim the coach gave the five athletes fewer athletic opportunities, called them “the group,” and gave them harsher treatment as compared to their teammates that are not African American. The district court had granted summary judgment, which is reversed in part here when the Court found that the Board of Trustees did not show nonretaliatory reasons for the treatment alleged by the plaintiffs.

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.

*Z.H. v. Kentucky High Sch. Athletic Ass’n*¹⁵

The Plaintiff at the time of this case was a minor high school student bringing this claim, through his father, against the Kentucky High School Athletic Association after it denied him eligibility to play varsity sports for one year following his transfer of high schools. The Plaintiff sought a preliminary injunction so that he could play sports while the case is being litigated. The court found that the Plaintiff was not entitled to a preliminary injunction, because: he was not likely to succeed on the merits of the claim, the athlete may only have some irreparable injury not being able to play varsity sports, and there was no risk of substantial harm to others.

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

13. Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000 *et seq.* (2019).

14. 31 Cal.App.5th 640 (Ct. App. Cal. 2019).

15. 359 F.Supp.3d 514 (W.D. Ky. 2019).

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.

*A. B. by C.B. v. Hawaii State Dept. of Educ.*¹⁶

A class of female student-athletes brought this action against the Hawaii Department of Education and unincorporated athletic associations composed of their educational institutions for Title IX claims stemming from the schools' and Department's failure to provide equivalent athletic participation opportunities, playing facilities, travel opportunities, coaching, scheduling of practices and games, medical and training services; failure to take remedial action; and subsequent retaliation after submitting complaints of the unfair treatment. The Court here is ruling on the Department's motion to dismiss for failure to state a claim. The court held that the athletes had plausibly alleged a Title IX claim and that Title IX regulations applied to this unincorporated athletic association.

*D.M. by Bao Xiong v. Minn. State High Sch. League*¹⁷

Two male student-athletes sued the Minnesota State High School League alleging Equal Protection and Title IX violations because of the League's rule prohibiting males from participating on the competitive dance team. The district court refused to grant the boys' motion for preliminary injunction, in which they appealed. The Court here reversed the denial of the preliminary injunction, finding that the males had showed a likelihood of success on their claims, they would likely suffer irreparable harm, and it would be in the public interest to allow them to participate. The case was remanded back to the district court to issue the preliminary injunction.

*Gagliardi v. Sacred Heart Univ.*¹⁸

Plaintiff was fired as the head coach of the men's tennis program at Sacred Heart University, and subsequently sued the institution under Title VII, Title IX, and the Equal Pay Act of 1963 for disparate pay and being provided fewer resources than comparable female head coaches. The Defendant moved for summary judgment. The Court granted the motion for summary judgment after Sacred Heart University showed legitimate, non-discriminatory reasons for different pay and the lack of any evidence of either Title VII or Title IX violations.

16. 386 F.Supp.3d 1352 (D.C. Haw. 2019).

17. 917 F.3d 994 (8th Cir. 2019).

18. No. 3:17-cv-857, 2019 WL 3202742 (D. Conn. July 16, 2019).

*Gilbert v. United States Olympic Comm.*¹⁹

Female taekwondo athletes brought a class action against the USOC, USA Taekwondo (“USAT”), and others in their individual capacity, alleging violations of the Trafficking Victims Protection Act (“TPVA”) and the Racketeer Influenced and Corrupt Organizations Act. The athletes alleged that the coach and his brother committed numerous sex crimes against several taekwondo athletes and that the USOC and USAT obstructed anyone from making claims or removing the coach from USAT. The Defendants filed a motion to dismiss. The court found that the Plaintiffs had plausibly alleged violations contrary to the TPVA for forced labor and services, both by a primary offender and one who knowingly benefitted from the actions, and for human trafficking.

*J.D. 1-2 v. Reg. of Univ. of Minn.*²⁰

Jane Doe, a student at the University of Minnesota, reported to the Minneapolis Police Department and the University in the September of 2016 that nearly a dozen male football players had either encouraged or engaged in nonconsensual sexual acts with her. Upon an investigation by the University’s Office of Equal Opportunity and Affirmative Action, all eleven football players were initially suspended from the football team, and four were later expelled from the University. Plaintiffs allege that they were not given a fair and impartial hearing in violation of Due Process and sex discrimination in violation of Title IX. The Court granted the Defendant’s motion to dismiss, finding that: the Plaintiffs failed to state a Title IX claim because the University did not make archaic assumptions in disciplining the football players, did not electively enforce or give deliberate indifference to the athletes, and the University did not retaliate; nor did the Plaintiffs plausibly state a claim for Due Process violations as they did not exhaust all possible administrative remedies.

*Lozano v. Baylor Univ.*²¹

The Plaintiff sued Baylor University and the Baylor University Board of Regents alleging violations of Title IX, substantive due process, and Texas state law claims of negligence and negligent supervision. The Plaintiff was assaulted several times by a Baylor University football player, who she tutored and had a physical relationship with, and claims that the school knew of and perpetuated

19. No. 18-cv-00981-CMA-MEH, 2019 WL 4727636 (D. Colo. Sept. 27, 2019).

20. No. 18-1596, 2019 WL 2601801 (D.C. Minn. June 6, 2019).

21. 408 F.Supp.3d 861 (W.D. Tex. 2019).

the abuse. The Court found that the Plaintiff had plausibly alleged a Title IX claim stemming from the University's intentional discrimination in pursuing an investigation of the football player. The court also found that the Plaintiff had alleged a plausible substantive due process claim against the police department concealing alleged criminal conduct of student-athletes. Further, the Court found that the Plaintiff sufficiently alleged negligence and negligent supervision claims against the University against several employees and their failure to partake in any corrective action, investigation, or reporting.

*Pantastico v. Dept. of Educ.*²²

Plaintiff Pantastico participated in softball at her high school. She engaged in a sexual relationship with the assistant coach for the softball team. Plaintiff is suing the Department of Education and school employees and coaches in their individual capacities for Title IX claims, for the alleged sexual harassment and the school's failure to prevent the alleged conduct. The Court granted the State's motion for summary judgment of the Title IX sexual harassment claim because the State Defendants did not have actual knowledge of the alleged sexual harassment. The Court did not dismiss the Plaintiff's Title IX claim against the assistant softball coach, finding that she had sufficiently plead a violation of her bodily integrity.

*Portz v. St. Cloud Univ.*²³

A class of female student-athletes brought this action against St. Cloud University alleging that the university's elimination of two female sports in response to decreases in enrollment violated Title IX. The Court found that the University was in violation of Title IX regarding the amount of participation opportunities offered to female athletes and the benefits those female athletes received. The court also granted a preliminary injunction to reinstate the teams that were eliminated and ordered the University to take further steps to close the gap in the disparate participation opportunities offered at the University to become compliant under Title IX.

*Robb v. Lock Haven Univ. of Penn.*²⁴

Female student-athletes from numerous teams at Lock Haven University of Pennsylvania brought this action against the University alleging Title IX

22. 406 F.Supp.3d 865 (D.C. Haw. 2019).

23. 401 F.Supp.3d 834 (D. Minn. 2019).

24. No. 4:17-CV-00964, 2019 WL 2005636 (M.D. Penn. May 7, 2019).

violations after the institution announced its plan to eliminate or demote several of the female teams. While deciding on the motion to dismiss, the court found that the University was not effectively accommodating its female student athletes in its athletic program, and further violated Title IX by its disparate provision of athletic benefits.

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.

*Hanrahan-Fox v. Top Gun Shooting Sports, LLC*²⁵

Plaintiff sued Top Gun Shooting Sports, LLC after a visit to their shooting range resulted in irreversible hearing loss. The Plaintiff alleged that the Defendant did not provide adequate hearing protection under negligence and failure to warn theories. Top Gun Shooting, LLC claims that the Plaintiff waived all claims by an enforceable liability release waiver. The Defendants brought a summary judgment motion, in which the Court denied, finding that the liability waiver was ambiguous to the conduct included in the waiver.

*M.F. v. Jericho Union Free Sch. Dist.*²⁶

Minor plaintiff's ankle was injured during a high school junior varsity football practice when a tackling sled ran over his foot. The Plaintiff is suing for damages to compensate for his injuries. The Defendant argues that the Plaintiff assumed the risk and brought a summary judgment motion for dismissal. The motion was denied, and the Defendant appealed here. The Court found that the Defendant sufficiently showed that Plaintiff, as a bystander, primarily assumed the risk as the conduct that lead to his injury was a common risk associated with the sport, and found the absence of any negligence on the part of the Defendant.

*Mickell v. Bert Bell/Pete Rozelle NFL Players Retirement Plan*²⁷

Plaintiff was a football player in the NFL during the years of 1992-2001, and alleges he became permanently disabled due to his participation in the

25. No. 4:18-cv-01410-SRC, 2019 U.S. Dist. LEXIS 211458 (D.C. Mo. Dec. 9, 2019).

26. 172 A.D.3d 1056 (N.Y. 2019).

27. No. 15-62195-CIV-COHN/SELTZER, 2019 WL 656328 (S.D. Fla. Jan. 15, 2019).

League. The Plaintiff sought benefits from the Bert Bell/Pete Rozelle NFL Player Retirement Plan. Plaintiff was denied coverage under the Plan, and the Plaintiff appeals the Board's decision in this case. The Court ruled that the Board's decision to deny coverage was not arbitrarily based, and rather consistent with numerous neutral physician examinations.

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.

*Fleet Feet, Inc. v. Nike, Inc.*²⁸

Fleet Feet, Inc., owned two trademarks, "Change Everything" and "Running Changes Everything" in which both have been used in connection in the sale of athletic and running gear for several years. Nike recently started using the slogan "Sport Changes Everything" in an advertising campaign. Fleet Feet brought this motion seeking a preliminary injunction and claims trademark infringement. The North Carolina court granted Fleet Feet's request for a preliminary injunction, finding "that Fleet Feet had valid and enforceable trademarks for the two slogans, that there was a strong likelihood of confusion between their marks and Nike's use of "Sport Changes Everything," that the Plaintiff was likely to suffer irreparable harm, and that it was in the public interest to protect Fleet Feet's trademark rights.

*Hamilton v. Speight*²⁹

Plaintiff was a former professional wrestler who performed under the character name of "Hard Rock Hamilton." Hamilton claims that the Defendants violated his Right of Publicity and misappropriated the Hard Rock Hamilton character because of a character portrayed in the Defendants' video game, which was not a wrestler but a violent soldier. The Defendants claim that the First Amendment bars the Plaintiff's claim under a freedom of expression theory. The Court held that the Defendants' character was a transformative use of the

28. No. 1:19-CV-885, 2019 WL 6468114 (M.D. N.C. Dec. 2, 2019).

29. 413 F.Supp.3d 423 (E.D. Penn. 2019).

Plaintiff's character, and the Defendants' First Amendment freedom of expression rights outweighed the Plaintiff's right of publicity.

*SportFuel, Inc. v. PepsiCo, Inc.*³⁰

SportFuel, Inc. owns the trademark for "Sports Fuel" and is suing Gatorade through PepsiCo, Inc. for alleged trademark infringement and unfair competition when Gatorade used the slogan "Gatorade The Sports Fuel Company."³¹ The lower court found it to be a fair use, in which SportFuel appealed. The Seventh Circuit affirmed, ruling that Gatorade used the term fairly in good faith, used the term descriptively rather than suggestively, and overall did not use the slogan as a trademark.

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.

*Dawson v. NCAA*³²

Plaintiff, Lamar Dawson, as well as former Football Bowl Subdivision athletes brought this suit against the National Collegiate Athletic Association ("NCAA") alleging that student-athletes are employees of the NCAA and PAC-12 Conference under the meaning in the Fair Labor Standards Act and also under California Law. Further, the Plaintiffs allege that because they are employees under the FLSA and California law, that the NCAA failed to pay proper wages to the student-athletes. The district court granted the NCAA's motion to dismiss for failure to state a claim. The Ninth Circuit affirmed, holding that the Plaintiffs were not employees under the FLSA, as they had no

30. 932 F.3d 589 (7th Cir. 2019).

31. *Id.*

32. 932 F.3d 905 (9th Cir. 2019).

expectation of compensation apart from scholarship, the NCAA and PAC-12 had no hiring or firing power, and there was no showing that the NCAA and conference bylaws were intended to evade the law. The Ninth Circuit also found that the Plaintiffs were not employees under California law, finding that the legislature has specifically excluded student-athletes from the definition.

*Hamilton v. Pro-Football, Inc.*³³

Plaintiff sought wage loss benefits stemming from an injury to his right foot that was sustained while he was on the practice squad of Pro-Football, Inc. His request was denied after a finding that the Plaintiff did not market his residual capacity while he was unemployed. Plaintiff appeals in this case. The Court of Appeals of Virginia affirms, holding that the Plaintiff failed to market his residual capacity when he failed to gain employment for nearly a year after the injury occurred.

MISCELLANEOUS

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

*In re Pacquiao-Mayweather Boxing Match Pay-Per-View Litig.*³⁴

A class action comprised of fans, consumers, and various businesses brought this claim against Floyd Mayweather, and Manny Pacquiao arguing that the boxers defrauded the public and consumers when they failed to disclose Manny Pacquiao's pre-existing shoulder injury prior to the Pacquiao/Mayweather fight on May 2, 2015. The Plaintiffs claim that if they knew of the injury, they would have been more informed in their decision and would have refrained from buying tickets for the event. The district court dismissed the Plaintiffs' claims, holding that they had not suffered a cognizable injury and the "alleged misrepresentations and omissions implicate the core of athletic competition."³⁵ The Ninth Circuit Court affirmed the dismissal, finding that consumers have no right to sue based on a claim that the fight "fell short of viewer expectations."³⁶

33. 69 Va.App. 718 (Ct. App. Va. 2019).

34. 942 F.3d 1160 (9th Cir. 2019).

35. *Id.* at 1166.

36. *Id.* at 1172.

*Ryan v. NFL*³⁷

Plaintiffs brought a claim against the NFL arising out of the 2019 National Football Conference (“NFC”) championship between the New Orleans Saints and the Los Angeles Rams alleging that the Rams quarterback made illegal contact with a Saints receiver, thus interfering with a pass. The Plaintiffs are suing the NFL, the NFL Commissioner, the referees, the side judges, among others, for claims of detrimental reliance, misrepresentation, and breach of fiduciary duties. The Defendants brought a motion to dismiss for failure to state claim for which relief can be granted. The Court held that the Plaintiffs failed to state a claim for detrimental reliance because they could not show that they detrimentally relied on a promise or that a promise was made in which they could have reasonably relied on it. The Court also found that the misrepresentation claim was not sufficiently plead because there was no evidence that the Plaintiffs would have refrained from going to the game but for the referee’s missed call. The Court also dismissed the breach of fiduciary duty claim because there was no showing of a special relationship between the Plaintiffs and the NFL. All claims were thus dismissed.

*Sloane v. Tenn. Dept. of State, Bus. Servs. Div.*³⁸

Sloane was a sports agent for professional baseball players and in 2016, the Tennessee Secretary of State imposed \$25,000 in penalties for his violations of the Athlete Agent Reform Act of 2011. The Plaintiff violated the Act when he initiated contact with an athlete in Tennessee when he was not yet a registered agent and for carrying on as an athlete agent prior to becoming registered in Tennessee. The Plaintiff appeals the trial court’s affirmation of the Administrative Law Judge’s order that reduced his penalties to \$10,000 and \$740 in investigatory costs. The Court affirmed the order, citing the fact that it took the agent two years to become registered in the state from the date of first contact to the date of his registration.

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

37. No. 19-1811, 2019 WL 3430259 (E.D. Louis. July 30, 2019).

38. No. M2019-00126-COA-R3-CV, 2019 WL 4891262 (Ct. App. Tenn. Oct. 3, 2019).

illustrate how courts analyze tort claims within a wide variety of aspects of sports.

*Blanchette v. Competitor Group, Inc.*³⁹

Plaintiff was a professional wheelchair racer and was injured in a race operated by the Defendant when he went through the course boundaries and crashed into a car. At trial, the jury entered a verdict in favor of the Plaintiff's claims of negligence and awarded him over \$3 million in damages. Defendant appeals, arguing the company was neither negligent nor increased the risk during the race. The California Court of Appeal affirmed the jury's holding, finding that it was reasonable to find that the Defendant was grossly negligent, because they set the race up in a way that was a substantial departure from what was standard. The Court also found that the Defendant increased the inherent risk of the race when the advertised race conditions were different from the actual conditions present on race day.

*Borello v. Renfro*⁴⁰

Plaintiff was a high school hockey player and sustained a wrist injury when an opponent's skate sliced it open during play. Plaintiff is suing the opponent, his coach, the opponent's coach, the referees, and the rink for claims of negligence and recklessness for not protecting against injury and negligence and battery against the opponent. The trial court granted summary judgement of the action, and the Plaintiff appealed. The Appeals Court affirmed the dismissal, finding that the opponent did not act with recklessness because he did not act with "extreme misconduct outside the range of normal activity inherent in ice hockey."⁴¹ The Court also found that the coaches, referees, and the rink were not negligent or reckless in their conduct because of the lack of evidence showing otherwise.

*Feleccia v. Lackawanna Coll.*⁴²

Two former football student-athletes at Lackawanna Junior College brought this personal injury suit against the college, the athletic director, and others involved in the football program for claims of gross negligence and general negligence stemming from injuries the athletes sustained during practices. The district court granted summary judgment for the Defendant. The appellate court

39. D073971, 2019 WL 6167131 (Cal. App. Nov. 20, 2019).

40. 96 Mass.App.Ct. 617 (Mass. App. 2019).

41. *Id.* at 625.

42. 215 A.3d 3 (Penn. 2019).

reversed and remanded, finding that there was a duty of care owed and that the liability release form the student-athletes signed excluded claims of negligence, gross negligence, and recklessness. The Defendants' appeal is being heard in this case. The Superior Court of Pennsylvania ruled that there was a genuine issue of material fact whether the College did create duty of care to have licensed athletic trainers on staff by their actions and held that the liability release form bars recovery for negligent conduct, but not grossly negligent or reckless conduct. The Superior Court then remanded the case for further proceedings.

*Talley v. Time, Inc.*⁴³

Plaintiff Talley was a booster for the Oklahoma State University ("OSU") football program. There was a Sports Illustrated article published in 2013 purporting that OSU football players were being given compensation and bonuses from boosters and coaches, in violation of NCAA bylaws. The article stated the Plaintiff "allegedly 'grossly overpaid for jobs [OSU players] did or compensated them for jobs they didn't do.'"⁴⁴ Plaintiff is bringing this suit against Time, Inc., who operates *Sports Illustrated*, and the *Sports Illustrated* reporters alleging that the article invaded his privacy and put him in a false light. The district court had granted the Defendants' motion for summary judgment, in which the Plaintiff appealed here. The Tenth Circuit affirmed, holding that the Plaintiff could not show that Defendants acted with actual malice in publishing the article.

CONCLUSION

The sports-related cases adjudicated in 2019 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 2019, it does briefly summarize a few interesting and thought-provoking sports law cases.

Audrey Johnson, Survey Editor (2019–2020)

43. 923 F.3d 878 (10th Cir. 2019).

44. *Id.* at 882.