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2020 Annual Survey: Recent Developments in Sports Law

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SURVEY

2020 ANNUAL SURVEY: RECENT DEVELOPMENTS IN SPORTS LAW

INTRODUCTION

This survey highlights sports-related cases decided by courts between January 1, 2020 and December 31, 2020. 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 2020. 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.

Ajzenman v. Office of Comm'r of Baseball[1]

Plaintiffs sued several Major League Baseball teams alleging various state law violations including unjust enrichment, civil conspiracy, the Consumer Legal Remedies Act (CLRA) and the Unfair Competition Law (UCL). This case is on a motion to compel arbitration, motion to dismiss for lack of subject matter jurisdiction, and motion to dismiss for failure to state a claim. The class action of Plaintiffs here purchased tickets to baseball games from both Oakland Athletics and the San Francisco Giants to games which were postponed as a result of the COVID-19 pandemic and never refunded. The Oakland tickets

1. No. CV203643DSFJEMX, 2020 WL 6647729 (C.D. Cal. Oct. 6, 2020).

were purchased directly from the team and the Plaintiff was found to have electronically signed the "Season Ticket Membership Agreement" binding him to arbitration. However, the Giants tickets were purchased through a third-party ticketing platform to which the Plaintiff was redirected to, the court held that here the Plaintiff was not bound to the arbitration agreement because various steps were required to find the terms of use which included the arbitration agreement. Ultimately, this second arbitration agreement was not applicable to these Plaintiff's because of the lack of constructive notice. The court dismissed with leave to amend the CLRA and UCL claims for failure to state a claim, the civil conspiracy and unjust enrichment claims were dismissed without leave to amend.

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 sports broadcasting as well as the NFL's practices.

Altitude Sports & Ent., LLC v. Comcast Corp.[2]

Altitude is a regional sports network (RSN) in Colorado and alleged that Comcast is guilty of monopolization and attempted monopolizations under §2 of the Sherman Act, adjacent Colorado law, tortious interference with contractual relations, and tortious interference with prospective business relations. Comcast had been engaged in an Affiliation-Agreement with Altitude to carry their programming; a relationship had existed between the parties since Altitude's conception in 2004. This dispute hinges on the fact that during contract extension negotiations the parties could not reach a deal and Altitude's programming was blacked out to Comcast subscribers. Altitude is alleging that the failure of Comcast to reach an agreement with them is a result of anti-competitive conduct intended to take over the relevant market. The court here granted Comcast's motions to dismiss on the Colorado state law and Sherman Act monopolization claims as well as the tortious interference with prospective business relations and contractual relations claims but allowed the Colorado and Sherman Act attempted monopolization claims to proceed.

2. No. 19-cv-3253-WJM-MEH, 2020 WL 8233320 (D. Colo. Nov. 25, 2020).

American Spirit and Cheer Essentials, Inc. v. Varsity Brands, LLC[3]

Defendants filed motion to transfer this matter to the Western District of Tennessee because there is a similar action proceeding in that court and it encompasses several Defendants' primary place of business. Class action Plaintiffs allege several claims, primarily that the Defendants have an unlawful monopoly in the competitive cheerleading market, exerting control over the governing bodies and functioning of the sport itself as well as other adjacent markets. Three similar suits have been consolidated and are being adjudicated in the court the Defendant is requesting transfer to. The court ultimately weighed the relevant factors and decided to grant Defendants' motion to transfer the case.

City of Oakland v. Oakland Raiders[4]

The city of Oakland sued the Raiders Football Club and the other 31 football clubs for moving to Las Vegas, claiming the NFL owner's three-quarter majority vote violated § 1 of the Sherman Act; was a breach of the NFL's relocation policy contract; and unjust enrichment for requiring the Raiders pay a $378 million fee for relocation. The city of Oakland claimed that in requiring the relocation fee, the NFL was imposing an anti-competitive restraint for cities that already have football club. The court dismissed the Antitrust claim because the city of Oakland did not have a claim of antitrust injury under the Clayton Act. The relocation fee was not an unreasonable restraint on trade and interstate commerce. The market the city of Oakland used as the relevant antitrust market for hosting professional football team was relevant, but the city of Oakland did not bring an antirust injury related to that market. Additionally, the court dismissed the claim that the relocation fee was a breach of contract and a breach of antitrust because allowing relocation to whichever city bids the highest is not enough to require rectifying.

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.

3. No. 1:20-cv-03088-SCJ, 2020 WL 8115878 (N.D.Ga. Oct. 27, 2020).
4. 445 F. Supp. 587 (N.D. Cal. 2020), *appeal filed*, No. 20-16075 (9th Cir. Jun. 1, 2020).

Caldwell v. Univ. Of N.M. Bd. of Regents[5]

In December 2019, Caldwell was accused of committing a battery against a non-student while attending and playing basketball for the University of New Mexico (UNM). Following the allegations, the Dean of Students imposed numerous bans including prohibiting Caldwell from coming to campus except for essential circumstances. Caldwell sued the university and the athletic director seeking injunctive relief and damages. He claimed violation of his substantive and procedural due process rights pursuant to the Fourteenth Amendment of the Constitution and a deprivation of privileges under Section 1983.The Court found UNM may have violated Caldwell's right to an education, but not his right to play basketball. In all, the athletic director's actions did not deprive Caldwell of a constitutionally protected right nor did UNM fail to provide substantive or procedural due process to Caldwell. Therefore, the university was granted judgment on the pleadings.

Doe v. Wash. Cty. Dept. of Educ.[6]

The court here held that Plaintiff's due process rights were violated when the school imposed 10 day and 1-year suspensions, from school and the football team, respectively, the Plaintiff was also required to attend an alternative school. The suspension was based on the allegation that him and two other students were involved in hazing at a school associated football camp. Plaintiff alleged that he was involved to a much lesser extent and he himself had suffered the same hazing the year prior. The court found that in instituting the suspension from school, Plaintiff was not afforded proper procedural due process and therefore was entitled to nominal damages, attorneys fees and costs, and to have his record amended to remove any reference to discipline other than his suspension from the football team which could not reference sexual assault.

Hecox v. Little[7]

Plaintiffs' challenge the constitutionality of an Idaho law which prohibits transgender women from competing on women's sports teams. Also, in challenge here is the dispute process which Idaho uses when a female athlete's gender is questioned. The athlete, as a result of their gender being disputed, could be forced to endure invasive gender identification processes. The main question of this case is whether plaintiff's have standing to challenge the law, if they properly state facial constitutional challenges, their likelihood of success

5. No. CIV 20-0003 JB/JFR, 2020 WL 7861330 (D.N.M. Dec. 31, 2020).
6. No. 2:16-CV-00272-CRW, 2020 WL 2479337 (E.D. Tenn. May 13, 2020).
7. 479 F. Supp.3d 930, 385 Ed. Law Rep. 657 (D. Idaho 2020).

based on the record, and if the law violates the Equal Protection Clause of the Fourteenth Amendment. In determining whether court should issue a preliminary injunction, the court mentioned the impact this case could have on sports moving forward and the overall constitutional rights of transgender athletes. Accordingly, the court granted the preliminary injunction and denied defendant's motion to dismiss the as-applied challenges. The court did grant the motion to dismiss with regard to the facial challenge. The case will move to a trial on the merits.

Kennedy v. Bremerton Sch. Dist.[8]

Plaintiff football coach was instructed to stop his routine of praying on 50-yard line following games. When he refused to refrain from doing so, he was placed on administrative leave. Both the coach and the district brought motions for summary judgment, the District Court granted Defendants motions on claims which included: §1983, the First Amendment, and Title VII and further found that his actions violated the Establishment Clause of the First Amendment.

Muniz v. City of San Antonio[9]

Plaintiff asserted both a First and Fourteenth Amendment claim against the enforcement of a City of San Antonio ordinance that went into effect prior to the 2018 NCAA Division I Men's Final Four Basketball Championship. Plaintiff, an Evangelical Christian, challenged the "clean zone" ordinances implemented by the City that restricted activities that require a license to sell and/or distribute goods or services inside the zone on or near the date of particular sporting events, including the Men's Basketball Championship when he was issued a citation for violating the ordinance. Though the citation was ultimately dismissed, Plaintiff brought claims seeking declaratory relief from the courts and injunctive relief to prevent the City from creating similar ordinances. The court found that the plaintiff's due process claim had merit as to the "vagueness" both on its face and as-applied. On these grounds, the court awarded declaratory relief to the Plaintiff, attorney's fees, and injunctive relief. The court found it unnecessary, after finding in favor of the plaintiff on his Due Process claims, to address any alternative claims by the plaintiff. The court denied any monetary relief sought by the plaintiff from the police officer who originally gave the plaintiff his citation.

8. 443 F. Supp. 3d 1223 (W.D. Wash. 2020), *aff'd*, No. 20-35222, 2021 WL 1032847 (9th Cir. 2021).
9. 476 F. Supp. 3d 545 (W.D. Texas 2020).

N.H v. Anoka-Hennepin Sch. Dist. No. 11[10]

Defendant moved to dismiss claims of sexual-orientation discrimination of a transgender student who was denied use of the locker room that coincided with their identifying gender. The student brought the claim and sought relief under Minn. Const. Art. I, § 2. The lower court denied the Defendant's motion and the court of appeals affirmed in part and reversed in part; remanding the case to the lower courts due to its use of strict scrutiny as opposed to the intermediate scrutiny that applies to the plaintiff's equal protection claim regarding gender and sexuality.

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.

All Olympia Gymnastics Center, Inc. v. Nassar[11]

Plaintiffs sued Michigan State University (MSU) as Larry Nassar's employer, alleging reputational harm as a result of the contractual relationship between the Plaintiffs and USA Gymnastics, where Nassar was also employed. MSU brought a motion to dismiss for lack of subject matter jurisdiction relying on MSU's sovereign immunity "as an arm of the State of Michigan."[12] The court ultimately granted MSU's motion to dismiss, not fully addressing the sovereign immunity as a result of the states proprietary functioning but holding that the claimant failed to meet the required notice provisions for maintaining a claim against the state and therefore the court lacked subject-matter jurisdiction.

Beaty v. Kansas Athletics, Inc.[13]

Plaintiff, Beaty, was the head football coach at the University of Kansas. He brought this action alleging that after his termination, Defendants failed to make certain payments in violation of their previous written agreements. In pertinent part, the employment contract included provisions requiring Beaty to promptly report any NCAA violations to his relevant superiors. The agreement provided for liquidated damages if Beaty was terminated without cause and procedural

10. 950 N.W.2d 553 (Minn. Ct. App. 2020).
11. No. 2:18-CV-10540-JLS-KES, 2020 WL 1955307 (C.D.Cal. Mar. 9, 2020).
12. *Id.* at *1.
13. 454 F.Supp.3d 1096 (D.Kan. 2020).

protection if he was terminated for-cause. Failure to report NCAA violations was considered for-cause. Beaty was informed that he was being terminated without cause and that he would receive his liquidated damages under the agreement, subsequently Beaty was informed that he was being investigated for failing to report violations. Ultimately, the NCAA concluded Beaty violated these rules and in turn his employment agreement and he was informed his termination was commuted to for-cause. Beaty chose not to appeal this decision. Plaintiffs partial motion for summary judgment on the breach of contract claim, the motion was overruled because genuine issues of material fact existed.

Benton v. Little League Baseball, Inc.[14]

This case involves the little league team, Jackie Robinson West, who was stripped of their 2014 Little League World Series title due to alleged issues with player residency. The Defendants include the league, the team and its corporate affiliate, and ESPN. This appeal follows after the trial court dismissed claims for defamation, negligent infliction of emotional distress. Additionally, the players wanted their championship victory reinstated. Claims brought on behalf of the children for breach of implied contract, promissory estoppel, and intentional infliction of emotional distress were allowed to proceed. This court ultimately affirmed the dismissal but noted that title reinstatement could be a potential remedy for the breach of implied contract and promissory estoppel claims.

Dogra v. Griffin[15]

Dogra was the agent for NFL player Robert Griffin III. In 2014, Dogra was employed by CAA sports and was the agent chosen by Griffin. CAA Sports helped contract multi-million-dollar endorsement deals for Griffin. Upon his termination from CAA Sports, Dogra contends he is entitled to a commission of Griffin's marketing deals. An arbitrator ruled in favor of Dogra for this contractual dispute and CAA Sports assigned the contractual rights to Dogra as a result. Dogra now brings a lawsuit against Griffin for a breach of contract seeking unpaid commission. The main issue here is whether the statute of limitations applies to Dogra's recovery of the marketing commissions. Dogra argues that the statute of limitations does not bar his claim because of accrual, equitable tolling, and equitable estoppel. The Court was not persuaded by any of these arguments and granted summary judgment in favor of Griffin.

14. 2020 IL App. (1st) 190549.
15. No. 4:19-CV-00548-SRC, 2020 WL 5411187 (E.D. Mo. Sept. 9, 2020).

Five Star Athlete Mgmt., Inc. v. Davis[16]

Todd France was a player agent working for Five Star Athlete Management. France was contacted by Luther Davis who was managing the agent selection process for then Mississippi State football player, Fletcher Cox. Conversations were had about Davis serving as Cox's manager once he was drafted. There is a dispute regarding compensation of Davis for the services he would be rendered. All "agreements" were oral. Cox subsequently signed two contracts with the Philadelphia Eagles after being drafted, the second of which was worth 103 million dollars. Davis never received his claimed payment for these two contracts and filed suit against Five Star alleging fraudulent inducement, breach of contract, quantum meruit, and violation of the Georgia RICO Act. The trial court granted summary judgment on first and second claims but denied summary judgment on third and fourth claims. The Court found error in the trial court's decisions on the quantum meruit and RICO claim by finding an oral agreement as unenforceable under Mississippi Law and services failing to meet the definition of personal property, respectively.

Foundation for Glob. Sports Dev. v. U S. Olympic Comm.[17]

This case involves numerous agreements between the Foundation for Global Sports Development (GSD) and the United States Olympic Committee (USOC). Specifically, in 2016 the USOC requested GSD's financial support to implement measures to combat athlete abuse, particularly the SafeSport program. GSD agreed to contribute provided that the money go to achieving GSD's primary mission to preventing psychological and sexual abuse in youth athletics. A few years later, the Larry Nassar scandal broke, along with the USOC potential involvement in the cover-up. GSD urged the USOC to terminate all individuals involved in the scandal and implement programs to educate their staff. USOC refused and GSD brought claims against them for breach of contract, accounting, and the duty of good faith and fair dealing, as well as fraud. This case was currently on GSD's motion to compel the USOC's production of documents, which the court granted in part but also denied in part finding some of GSD's requests were not relevant to the matter at hand.

McIlwain, LLC v. Berman[18]

McIlwain, LLC claims that Berman breached an alleged contract to split the attorney's fees regarding several image and likeness suits against Electronic Arts

16. 845 S.E.2d 754 (App. Ct. Ga. 2020).
17. No. CV204782FMOPVCX, 2020 WL 6701453 (C.D. Cal. Nov. 13, 2020).
18. No. 18-CV-03127 CW, 2020 WL 1308342 (N.D. Cal. Feb. 10, 2020).

Inc. (EA), including Hart v. Electronic Arts Inc., Keller v. Electronic Arts Inc., and Alston v. Electronic Arts, respectively. McIlwain, LLC originally filed the Hart action and Berman represented the latter two actions. McIlwain withdrew from the Hart case in November of 2013. A Fourth action, O'Bannon v. NCAA, filed by Hausfeld, LLP which was later consolidated with the previous EA actions into a related class action captioned In Re NCAA Student-Athlete Name and Likeness Licensing Litigation. Hausfeld, LLP and Berman were appointed as co-lead counsel in the consolidated case splitting both antitrust and right-of-publicity claims. A global settlement with EA was reached and the Court approved the settlement. McIlwain argues that Berman breached a contract, breached the covenant of good faith and fair dealing, and committed interference with prospective economic advantage (IIEPA) according to the fee splitting-agreement. The court here granted summary judgement in favor of Berman for all contractual claims finding the fee-splitting agreement was unenforceable due to a violation public policy, thus making the covenant of good faith and fair dealing claim null without an enforceable contract. Finally, the court granted Berman's motion for summary judgment regarding McIlwain's IIEPA claim against Berman, as it fails as a matter of law.

Preferred Cap. Funding of Nev., LLC v. Howard[19]

Defendants, Philip Howard, Jeff Kuhn and Howard & Associates, filed several motions to dismiss, to strike, for sanctions, and for a more definite statement, which were all denied. Preferred capital's motion for leave to file an amended complaint was granted. Plaintiff alleges that they were referred players by the Defendants to receive loans for litigation funding. Preferred Capital claims that Howard's firm committed fraud providing false statements regarding medical information to the Plaintiff so that they would provide loans to certain players. Plaintiff further alleges that Howard would use those funds for personal expenses and to pay other settlement advances after having the players direct the loans to Howard.

Williamson v. Prime Sports Mktg. LLC.[20]

Plaintiff sued former agents to void agent contract and for related damages. Plaintiff alleged that Defendants misrepresented their experience and capabilities to induce an athlete-agent relationship. Plaintiff terminated the contract and requested the Defendants cease any work on his behalf. Plaintiff's attorneys further stated the contract violated the North Carolina Uniform Athlete Agents Act (UAAA), thus resulting in an invalid and unenforceable contract.

19. No. 19 C 6245, 2020 WL 127952 (N.D. Ill. Jan. 10, 2020).
20. No. 3D20-0197, 2020 WL 1975406 (Fla. Dist. Ct. App. Dec. 2, 2020).

The parties unsuccessfully attempted to resolve the situation through negotiation. Defendants' arguments for dismissal of the complaint included lack of subject-matter jurisdiction, failure to join others in the action, and *forum non conveniens*. Defendants did not meet their burden for any of these arguments, thus their motions were denied.

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 the disputes the CAS heard in 2020.

Andrea Iannone v. FIM & WADA v. FIM and Andrea Iannone[21]

During the FIM World Championship MotoGP, Mr. Iannone was subjected to a urine test which revealed the presence of Drostanolone in his system, a second sample was tested confirming these results. Mr. Iannone was prohibited from participating in any of the events. Despite Mr. Iannone's argument that it was the contamination of the meat he was eating in Malaysia where the tournament was held, he failed to demonstrate that he had *"No Fault or Negligence."* He is challenging his suspension of 18 months and disqualified tainted competition result. The CAS rejected Mr. Iannone's appeal, set aside the eighteen-month suspension and instituted a four-year suspension.

Blake Leeper v. Int'l. Ass'n of Athletics Fed'ns[22]

Mr. Leeper is appealing a decision by the International Association of Athletics Federation (IAAF), which stated that it was against their competition rules to use the type of passive-elastic carbon-fibre running prostheses which Mr. Leeper uses to compete in the 400-metre events. The rule prohibits "assistance" and declared that his protheses fall under such assistance. The CAS is determining the meaning of the rule and the allocation of the burden of proof as well as the application of the rule to Mr. Leeper. Ultimately, the CAS only partially upheld the appeal. Ruling that while it is unlawful for the burden of proof to be allocated onto the athlete to prove that the aid will not provide a competitive advantage, the IAAF did establish that Mr. Leeper would have an advantage using these specific protheses and therefore he is not allowed to use them.

21. CAS 2020/A/6978, CAS 2020/A/7068.
22. CAS 2020/A/6807.

Manchester City FC v. UEFA[23]

Manchester City Football Club (MCFC) is appealing a UEFA decision that found that MCFC had misrepresented income as being from a sponsorship when submitting their financials to monitoring. The Adjudicatory Chamber of Club Financial Control Body of the UEFA decided to prevent MCFC from playing in any of their sponsored competitions for two years and imposed a EUR 30,000,000 fine. The CAS partially upheld UEFA's decision by setting aside their decision, confirming that MCFC did violate the Club Licensing and Financial Fair Play Regulations but only imposing a fine of EUR 10,000,000 plus EUR 100,000 in legal fees, both to be paid within 30 days of this decision.

Nadja Peter Steiner v. FEI[24]

Ms. Steiner is a Swiss equestrian who was subject to the FEI Equine Anti-Doping and Controlled Medication Regulations (EADCMRs), during an event, Ms. Steiner's horse tested positive for the presence of O-Desmethyltramadol both her and the horse were provisionally suspended by the Fédération Equestre Internationale. The testing of the B-Sample confirmed the results of the first test. Ultimately, after already being provisionally suspended for nine months and the suspension being lifted for extraordinary circumstances, FEI determined that Ms. Steiner was to be ineligible for two years and was to pay CHF 7'500 in fines and CHF 2'000 in legal fees. The parties entered into a settlement agreement that was confirmed by CAS.

Shayna Jack v. Swimming Australia & Australian Sports Anti-Doping Auth.[25]

Ms. Jack is challenging his four-year ineligibility period, instituted under the *Swimming Australia Limited Anti-Doping Policy* for testing positive for the presence of Ligandrol in his system. Based on the Panel's decision, Ms. Jack is requesting arbitration. The CAS ultimately determined that a violation had occurred but modified the period of ineligibility to two years.

ŠK Slovan Bratislava v. UEFA & KÍ Klaksvík[26]

A Slovakian football club is appealing a decision by the Union des Association Européennes de Football (UEFA) and their opposing team when the UEFA declared that the Slovakian team had forfeited and was deemed the

23. CAS 2020/A/6785.
24. CAS 2020/A/6853.
25. CAS A1/2020.
26. CAS 2020/A/7356.

losers. The match was cancelled after several of the players on the Slovakian team had tested positive for COVID-19, despite having been given two opportunities to bring players in for the match. According to the rules of the league, the team which makes the game impossible to play is the one who is responsible. The CAS dismissed the Slovakian teams appeal and confirmed the UEFA decision.

World Anti-Doping Agency v. Russian Anti-Doping Agency[27]

The World Anti-Doping Agency's (WADA) goal in these proceedings is for the CAS to find that the Russian Anti-Doping Agency (RUSADA) had been non-compliant with the World Anti-Doping Code (WADC) as it relates to the data provided to WADA from the Moscow Anti-Doping Laboratory which WADA alleges is inauthentic. RUSADA denies these claims. The Panel found that RUSADA failed to deliver authentic data to WADA and was therefore non-compliant. The court provided lengthy orders which will be in effect for two years from the time of the decision. To qualify for reinstatement as a signatory the conditions must be satisfied within the period the decision is in effect. The CAS also made orders regarding allocation of fees and fines to be paid to WADA.

CRIMINAL LAW

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

U.S. v. Avenatti[28]

Plaintiff, a licensed attorney in California, was charged with a variety of crimes including extortion and wire fraud. Plaintiff threatened Nike with reputational harm if the company did not agree to make multimillion dollar payments. This was done in relation to the Plaintiff's representation of a client, referred to as Franklin. Franklin met with the Plaintiff to discuss a previous sponsorship agreement with Nike that had since ended. It was at this meeting that the Plaintiff learned information about Nike employees that he later used to threaten the company. Plaintiff spoke with Nike's counsel to settle the sponsorship agreement issue and proceeded to demand upwards of 3 to 7 million dollars from Nike for his services. Plaintiff sought to have all counts dismissed

27. CAS 2020/O/6689.
28. 433 F. Supp. 3d 552 (S.D.N.Y. 2020).

after contending that he was unconstitutionally targeted. The court denied Plaintiff's motion to dismiss.

U.S. v. Estrada[29]

Defendants, a baseball trainer and manager, were charged and convicted of smuggling Cuban baseball players into the United States. These players were smuggled in to avoid the "unblocking" licenses required of players before they could enter free agent contracts with MLB teams. The Defendants took part in this smuggling operation on multiple levels. Defendants appealed their convictions arguing the district court erred by rejecting their CAA and the Wet-Foot/Dry-Foot policy arguments, insufficient evidence to support the convictions, and evidentiary errors. The court was not convinced by any of these arguments and affirmed the Defendant's convictions.

DISABILITY LAW

The Americans with Disabilities Act (ADA) prohibits discrimination against those with disabilities in terms of employment, education, and access to public services.[30] In the sports context, the ADA requires sports organizations to also make reasonable accommodations to allow disabled athletes to participate. The following cases illustrate how the ADA was implicated in the sports context during 2020.

Cano v. Harlandale Indep. Sch. Dist.[31]

Plaintiff was a high school senior on the dance team who was asked to perform a stunt she knew was dangerous, without a protective mat underneath her. Plaintiff suffered a concussion and other symptoms as a result or performing the stunt and claims she was not properly attended to by her coach, the school nurse, or the school in general. She is bringing claims under the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act (ADA), the Rehabilitation Act of 1973, and Title IX of the Education Amendments of 1972. The court granted Defendant's motion to dismiss the Title IX and the United States Constitutional claims.

29. 969 F.3d 1245 (2020).
30. Americans with Disabilities Act of 1990, 42 U.S.C.A. §12101 et seq. (2021).
31. No. SA-19-CV-01296-ESC, 2020 WL 7385843 (W.D. Tex. Dec. 16, 2020).

Tveter v. Pinkerton Acad.[32]

Plaintiff suffered a head injury while playing field hockey. This injury qualified the Plaintiff as a student with a disability that required an IEP accommodation plan for schooling. Plaintiff's mother required the IEP include a plan for extracurricular activities. From 2014 to 2016, Plaintiff participated in various ways on Defendants' sports teams. During this time, Plaintiff's mother filed numerous grievances with the school ranging from discrimination to retaliation. Upon graduating, the Plaintiff filed a lawsuit claiming the Defendants "denied [the Plaintiff] her right to a FAPE under the IDEA, and discriminated against her, harassed her, and retaliated against her in violation of the ADA, Section 504, Title IX, the Fourteenth Amendment, and New Hampshire law."[33] On the first claim, the court found the inclusion of sport participation is not necessary to further a child's education goals, thus defeating that claim. The ADA and Section 504 claims required the Plaintiff to exhaust the administrative remedies, which was not done in this case. The court determined the remaining claims did not require a trier of fact. Ultimately, the court granted the Defendants' motion for summary judgment.

Williams v. NFL Player Supplemental Disability Plan[34]

Plaintiff, a former NFL player, sued the Defendant for additional disability benefits. The current disability plan has four categories for disability benefits, at issue here are two: Active Football and Football Degenerative benefits. While playing for the NFL the Plaintiff sustained a serious neck injury that led to his retirement. Plaintiff attempted to claim disability benefits but was denied. He applied again after the plan was amended in 1995 and was awarded Football Degenerative benefits with an undecided effective date. The amended plan allowed for retroactive payments that applied to the Plaintiff, but he was denied these benefits. Plaintiff alleged the disability plan's Board abused its discretion, the lower court agreed granting summary judgment, which a later court reversed. Ultimately, issue preclusion barred the Plaintiff from relitigating whether the Board had abused its discretion. The court granted the Defendants' motion to dismiss with prejudice.

32. No. 16-CV-329-PB, 2020 WL 6395507 (D.N.H. Nov. 2, 2020).

33. *Id.* at *5.

34. No. 19-CV-04236-LHK, 2020 WL 43113 (N.D. Cal. Jan. 3, 2020), *appeal dismissed*, No. 20-15141, 2020 WL 2128792 (9th Cir. Feb. 20, 2020).

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[35] and Title VII of the Civil Rights Act.[36] In the sports context, discrimination can affect athletes, coaches, administrators, and other employees, as the following cases illustrate.

Clemons as next friend of T.W. v. Shelby Cnty. Bd. of Edu.[37]

T.W. was a high school tennis player who suffered from anxiety and was diagnosed with Asperger's Syndrome Disorder. She moved schools at the start of high school and during her third-year on the team and under a new coach, T.W. began to have panic attacks, so T.W.'s mom told the coach to give her positive encouragement, but the coach did not and ignored her during matches. After losing her regionals spot and hearing it from another teammate, T.W. told her mom if she died, it was the coach's fault. T.W. withdrew from school and was homeschooled. The coach did not invite the T.W. to the end of season banquet. The mom told the superintendent about all the harassment and bulling from the coach. T.W. returned to school the following year and tried out for the team, but the coach claimed she was not good enough even though T.W. claims he was treating her more harshly. After making the team, the coach continued to be harass T.W. which included ignoring her at matches. The mother sued to school for violation of Title IX and Section 504 of the Rehabilitation Act of 173, the Equal Protection Clause, and the Kentucky Constitution. The court held that holding tryouts for the girls' tennis but not boys' tennis was not a violation of Title IX because fewer boys signed up so there was no reason for tryouts. The court did find a prima facie case for discrimination based on Section 504 of the Rehabilitation Act by excluding T.W. from the team and treating her differently knowing her diagnosis. The court finally did not find an Equal Protection claim because there was a rational related purpose to keep her safe, which is a governmental purpose.

DJ by and through Hughes v. Sch. Bd. of Henrico Cnty.[38]

DJ was a 12-year-old African American who was considered to have special needs with ADHD. DJ played football at Short Pump Middle School, which

35. 42 U.S.C.A. §§ 1981, 1983 (2021).
36. Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000 *et seq.* (2021).
37. 818 Fed. Appx. 453 (6th Cir. 2020).
38. 488 F. Supp. 3d 307 (E.D. VA, Richmond Div.).

receives federal funding. In the locker room after the game, at least one white player used a racial slur and derogatory language which led to a physical altercation between the white player and one of the African American players in the locker room. The football coach was made aware of the incident by DJ's father, and the coach determined the players must be supervised whenever they are in the locker room, but that did not last. The bullying, harassment, simulation of sex acts, racial slurs, ridiculing, and taunting continued. A video of the final incident was put onto social media. The Plaintiffs sued for § 1983 for deprivation of rights, violation of their due process right, violation of Title VI, Title IX, the Rehabilitation Act and state law. The court held that the § 1983 for both violation of bodily integrity and knowledge of the principal and coach of the bullying and doing nothing was sufficient. The court held there was enough to show a deliberate indifference element and a causation element on a supervisory liability claim. Because these were related to African Americans, the Plaintiff stated a claim under Title VI for racial discrimination. The court held that there was no discrimination under the Rehabilitation Act, so this claim was dismissed.

Ghioroaie-Panait v. Rolle[39]

Ghioroaie claimed Title VII discrimination and retaliation by Auburn University head track and field coach Spry when Ghioroaie's contract for employment as assistant coach was not renewed. Auburn University and Spry advanced multiple legitimate causes for termination of Ghioroaie and moved for summary judgment. Ghioroaie also accused assistant coach Rolle of discrimination against Ghioroaie and did they not move for summary judgment. There are other state law claims which Ghioroaie had pending against Rolle. The court granted summary judgment for Auburn and Spry due to Ghioroaie's inability to overcome the burden of disputing the material facts of the case.

Joll v. Valparaiso Comm. Sch.'s[40]

After twice applying and being passed over for younger males for an assistant coaching position for high school-cross country, Plaintiff, a female, brought Title VII discrimination claims against the school district. Plaintiff alleges that she was discriminated against based on both her sex and age. Prior to this appeal, the Defendants were granted summary judgment, the 7th Circuit reversed and remanded on the sex discrimination claim but affirmed the summary judgement granted on the age discrimination claim. The 7th Circuit found that the district court erred in concluded that sufficient evidence was not

39. No. 3:17-cv-00698-ALB-WC, 2020 U.S. Dist. LEXIS 4285 (M.D.Ala. Jan. 10, 2020).
40. 953 F.3d 923 (7th Cir. 2020).

offered which would allow a jury to find sex discrimination. Ultimately, the Court of Appeals felt that this question should have been put to a jury.

Morgan v. U.S. Soccer Fed'n, Inc.[41]

Women of the U.S. National soccer team brought a class action against their employer, the United States Soccer Federation (USSF), alleging a violation of the Equal Pay act and Title VII. Plaintiffs moved for partial summary judgment alleging that the USSF discriminated against its female players by paying them less than what the male players under the same federation and subjecting them to unequal working conditions. The Plaintiffs claim that the terms of relevant CBAs had established an undisputed fact that they were being paid less, specifically regarding the CBAs bonus provisions and their potential earnings under the terms of the Men's CBAs. Defendant argues that considering total compensation the Women's National Team (WNT) was compensated more than the Men's. The court found in favor of the Defendant on this issue and granted summary judgment. Finally, Plaintiffs contended that the Defendant subjected them to discriminatory working conditions. The court found that the Plaintiff's brought a proper claim based on travel conditions and insufficient personnel and support services, and thus denied the Defendant's motion for summary judgment on this issue.

Nakhid v. Am. Univ.[42]

American University sought to dismiss the claim filed by Plaintiff David Nakhid alleging that the University discriminated against him based on his race, ethnicity and national origin by denying his employment as an NCAA coach. Defendant alleged that the Plaintiff failed to state a claim because he had not (1) alleged he was qualified for the position of coaching an NCAA team, (2) was unable to show any facts demonstrating he was "significantly more qualified" than other candidates, and (3) that the employer even knew the race of the Plaintiff. The court denied defendant's motion to dismiss, finding that (1) the plaintiff had shown his qualifications, (2) met the threshold in comparison to other candidates, and (3) there was a high probability the employer knew the plaintiff's race during the hiring process.

41. 445 F. Supp. 3d 635 (C.D. Cali. 2020).
42. No. 19-cv-03268 (APM), 2020 U.S. Dist. LEXIS 49608 (D.D.C. Mar. 23, 2020).

Radice v. Eastport South Manor Cent. Sch. Dist.[43]

Plaintiff is a lesbian and was a full-time health teacher and part time athletic trainer for the District. She began in the late 90's and continued her work at the District throughout the early 2000's, as the program grew there was an increasing need for an athletic trainer to be present at more practices and games. There were numerous discussions between the District and the Plaintiff regarding the need for Plaintiff's presence at more events, but Plaintiff felt that if this was the case then she should be compensated for such, District personnel felt and articulated that she was already paid too much. In 2014, a position was created for a full-time athletic trainer, still including a part-time position. Plaintiff was informed that she would not be able to work both the full-time trainer and full-time teacher positions. Plaintiff continued in her part time capacity. During her time at the District, Plaintiff filed several grievances and complaints, one for sexual misconduct and another for compensation. Plaintiff and union filed a grievance claiming that the District changed and reconfigured the position because they did not want Plaintiff to hold it. In 2015, Plaintiff stopped serving as athletic trainer in any capacity. The court granted the Defendant's motion for summary judgment on all claims which included claims for retaliation, sexual orientation discrimination, sex discrimination, § 1983, and violations of the N.Y. State Constitution.

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.

Pacernick v. Bd. Of Educ. of Waukegan Cmty. Unit Sch. Dist. No. 60[44]

Plaintiff sought reinstatement of his employment as a teacher at Waukegan High School after members of the girls' track team claimed he made sexual comments towards them, sexually harassed them, and caused them emotional distress thus leading to the Board of Education dismissing him. Plaintiff claims that the board acted arbitrarily in that the dismissal was erroneous where it found Plaintiff's sexual harassment was irremediable and that the board did not strictly comply with its' procedures for the dismissal of tenures teachers for cause without notice. The court disagreed with the Plaintiff's first argument, noting

43. 437 F. Supp. 3d 198 (E.D.N.Y 2020).
44. 2020 IL App (2d) 190959 (Dec. 1, 2020).

that the Plaintiff's conduct harmed both the students and the school. Further, it was determined the Plaintiff's behavior would not have changed or been corrected even if he had received a warning. Finally, the court found the Board did not act arbitrarily in its application of procedures, as the Board approved the motion with sufficiently specific charges as well as mailed a notice of the charges and bill of particulars to the plaintiff within the appropriate time period. Thus, the court affirmed the circuit court's decision.

GAMBLING/SPORT BETTING

Gambling involving bets on sports games has been a topic which has garnered a lot of attention in the sport industry in recent years. Relevant state and federal laws regulating gambling frequently cause problems throughout many facets of the college and professional sports industries.

Dew-Becker v. Wu[45]

Plaintiff sued the Defendant after the Plaintiff lost $100 to the defendant in an NBA daily fantasy sports contest on FanDuel. Each party paid $109 to FanDuel as an entrance fee. Plaintiff understood that the winner would get $200, FanDuel got $18, and the loser got nothing. Defendant claimed to not know it was illegal and thought that if he lost, $100 would go to the other party. Gambling on sports is illegal under Illinois law. The court held that the parties did not engage in "gambling" because daily fantasy sports passed the predominate purpose test which makes it exempt to gambling laws and was not considered "gambling" for the Loss Recovery Act. However, the court held that daily fantasy sports is not per se inapplicable with gambling on third-party websites like FanDuel. The court held that Plaintiff is entitled to the money.

Harrop v. R.I. Div. of Lotteries[46]

Plaintiff in this case is challenging 2018 Rhode Island legislation permitting sports gambling in casinos. Rhode Island passed legislation in 1994 requiring any state gambling activity to be approved by way of public referenda. In 2018, sports wagering legislation was passed allowing bets to be placed in casinos. Claiming this was done sans the vote required, Plaintiff brings suit to enjoin the sports betting. Defendant, the state lottery, moves to dismiss on grounds that Plaintiff's claim is not justiciable and that he is estopped from making this claim. The court rejected these two arguments and analyzes the constitutionality of the sports wagering legislation. The Court found that sports wagering falls into the

45. No. 124472, 2020 WL 1880804 (Ill. Apr. 16, 2020).
46. No. PC-2019-5273, 2020 R.I. Super. LEXIS 45 (Super. Ct. June 1, 2020).

category of casino games which was approved by vote in 2016. The Court ultimately concluded that the Sports Wagering Act was constitutional and denied Plaintiff's motion for summary judgment.

Nat'l Collegiate Athletics Ass'n. v. Murphy[47]

Defendant, New Jersey Thoroughbred Horsemen's Association Inc., (NJTHA) alleged that plaintiffs, the National Collegiate Athletic Association, National Basketball Association, National Football league, the National Hockey League, and the Office of the Commissioner of Baseball were liable to the NJTHA for damages due to the granting of a temporary restraining order that prevented the NJTHA from conducting sports gambling within the state. NJTHA alleges the Plaintiffs obtained the order in "bad faith" and thus the organization is entitled to "immediate judgement" on a bond of $3.4 million. The court found that the NJTHA had not properly stated any legal claim for bad faith damages amounting to $3.4 million. Thus, the motion was denied to the extent of damages sought after the temporary restraining order period. The court concluded it would hold an evidentiary hearing pursuant to FRCP 65 and 65.1 to determine proper provable damages sustained during the temporary restraining order.

Oliver v. Houston Astros, LLC[48]

Anthony Oliver, Plaintiff, submitted application to proceed in forma pauperis and complaint. Plaintiff claims to have placed two losing bets, one totaling $7,500 and another totaling $6,000 against both the Houston Astros as well as the Boston Red socks during the 2017- and 2018-Word Series games. Plaintiff argues he lost these bets due to both teams' respective cheating scandals, and thus violated the Racketeer Influenced and Corrupt Organizations act, specifically the conspiracy to violate (18 U.S.C § 1962(c)) and unjust enrichment (d). The court found here that the Plaintiff was unable to show a *direct* victimhood under the RICOA. None of the Plaintiff's exchanges were direct enough to qualify for an RICOA claim, as they were done through a third party. As an incarcerated individual, Plaintiff's application to proceed in forma pauperis was granted and the court dismissed the Plaintiff's claims without prejudice and to further amend the complaint to address the issues discussed above.

47. No. 14-06450 (FLW), 2020 U.S. Dist. LEXIS 227058 (D.N.J. Dec. 3, 2020).

48. No. 220CV00283APGVCF, 2020 WL 1430382 (D. Nev. Mar. 23, 2020), *aff'd*, No. 220CV00283APGVCF, 2020 WL 2128656 (D. Nev. May 5, 2020).

Olson v. Major League Baseball[49]

Fantasy sports players brought a putative class action against Major League Baseball, the Boston Red Sox, the Houston Astros, and MLB Advanced Media, L.P. after losing money through "DraftKings" and the controversial "sign stealing" on the part of the two co-defendants. Plaintiffs allege that the Defendants, specifically the MLB, had knowledge of the sign stealing and intentionally took no action to stop it to protect their own financial interest and investment in Draft Kings. Further, Plaintiffs claim that the defendants made false statements, omissions, and concealed facts regarding the sign stealing for the purpose of encouraging fans to play Fantasy League MLB through DraftKings. Plaintiffs allege common law fraud, negligence, and unjust enrichment claims on the defendants, and bring claims of consumer protection violations. The court here ruled that the Plaintiffs failed to state a claim for all four of their claims, namely because there was no duty to disclose, or any duty owed them by the Defendants nor any reliance on the affirmative representations of the Defendants. Furthermore, the court found that the Plaintiff's failed to demonstrate that Defendant's enrichment came at their expense. Thus, the court granted the Defendant's motions to dismiss.

White v. Cuomo[50]

Plaintiffs sued New York Governor and Gaming Commission under the theory that fantasy sports contests with monetary prizes violated the anti-gambling provision found in the state's constitution. The lower court partially granted both parties' summary judgment motions. At issue here was whether interactive fantasy sports (IFS) contests constituted gambling pursuant to the state constitution. Article 14 of the law, along with the state Legislature, stated these contests did constitute gambling. In addition, Article 14 provided for consumer safeguards, minimum standards related to the contests, registration, regulation, and taxation of IFS providers. However, the court found these contests did in fact violate the state constitution's anti-gambling provision. It also concluded that it would not remove the provision from Article 14 because it would invalidate the majority of the article in the process.

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

49. 447 F. Supp. 3d 159 (S.D.N.Y. April 3, 2020).
50. 181 A.D.3d 76 (2020).

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.

Asfall v. Los Angeles Unified Sch. Dist.[51]

Plaintiff brought Title IX violations against school district alleging that the girls' soccer team was receiving inferior treatment relating to scheduling, facilities, and equipment. The issue came to a head when the Plaintiff got into a physical altercation with other coaches, Plaintiff was subsequently fired and claimed it was in retaliation for his complaints of unequal treatment. The jury awarded the Plaintiff $100,000 in damages for the retaliation claim. The aim of Plaintiff's motion is to require various additional Title IX trainings at the school. Ultimately, the court denied Plaintiff's motion due to failure to preserve the issue and it being beyond the scope of the litigation. Currently, this case is on appeal to the 9th Circuit after the District court awarded Plaintiff attorney's fees and costs.

Doe 1 v. Baylor Univ.[52]

In this consolidated case, fifteen former students sued Baylor University under two different Title IX actions related to sexual assault that was perpetrated by a Baylor student. The first claim was a "port-reporting" claim stating that Baylor did not respond to their claims of sexual assault and deprived them of an education because of their gender. The second claim was a "heightened risk" claim that prior to the sexual assault, Baylor was discriminatory toward students who reported sexual assault which increased the risk of sexual assault. The Plaintiffs sought damages and injunctive relief. The court held that Baylor's motion to dismiss Plaintiff's claims for injunctive relief was granted. The Plaintiffs could not show that they would return to Baylor and even if they amended the complaint to only include those who are returning, those students would be graduated by then. The court granted the Baylor's motion to dismiss punitive damages with hesitation because the Plaintiffs could not show authority that Title IX cases allow for punitive damages. The court held the Plaintiffs retain their claims for actual, compensatory, and nominal damages along with court and litigation costs, expert fees, attorney's fees, statutory interest, and specific injunctive relief to remove discipline and academic notations on the Plaintiff's records. The court granted the plaintiffs motion to amend the complaint for the claims.

51. No.: CV 18-00505 CBM, 2020 WL 2951920 (C.D.Cal. Feb. 11, 2020).
52. No. 6:16-CV-173-RP, 2020 WL 1557742 (W.D. Tex. Apr. 1, 2020).

Du Bois v. Bd. of Regents of Univ. of Minn.[53]

Du Bois was a cross country athlete for the University of Minnesota Duluth (UMD). During the 2018 outdoor track and field season, the head women's cross-country coach was put on administrative leave as she was investigated for a claim of sexual harassment. Du Bois supported the coach during investigative hearings. The following semester, during the women's cross-country season, the athletes were informed that the coach would not be returning to the program. Distraught, Du Bois decided to leave the institution and seek another while maintaining eligibility by way of redshirting. Du Bois claims that in denying her redshirt, UMD was retaliating against her for supporting the cross-country coach. Du Bois is suing the school for Title IX violations in response. Upon failing to adequately allege seven different factors as laid out by the court, the claim was dismissed against UMD.

Gregor v. W. Va. Secondary Sch. Activities Comm'n.[54]

This is a Memorandum and Order concerning Plaintiff's motion for a temporary restraining order (TRO). Plaintiff is an accomplished soccer player and female student-athlete. She was invited to practice with the boys' team during the summer and to officially join the team for the season. School officials would not allow her to do so, not even allowing her to practice with the boys' team any longer. Plaintiff alleges violations of her Fourteenth Amendment rights, her rights to Equal Protection under West Virginia law, the West Virginia Human Rights Act, Title IX and Retaliation. The court here denied her request for a TRO for failure to show likelihood of success, irreparable harm, and lack of information regarding the balancing of the equities and public interest.

Kesterson v. Kent State Univ.[55]

The Sixth Circuit reversed in part and affirmed in part the district court's granting of the Defendant school and coach's motion for summary judgment. Plaintiff, Kesterson, was a softball player at Kent State, she alleges that her coach's son raped her and she informed her coach of this and several other mandatory reporters, but the university was not made aware until two years later. Kesterson's claims included violation of her right not to be retaliated against for reporting her rape under the First Amendment, Title IX, and a violation of her equal protection rights. The Sixth Circuit held that the retaliation claims are successful at this stage.

53. 439 F.Supp. 3d 1128, 378 Ed. Law Rep. 274 (D. Minn. 2020).
54. No. 2:20-CV-00654, 2020 WL 5997057 (S.D.W. Va. Oct. 9, 2020).
55. 967 F.3d 519 (6th Cir. 2020).

Niblock v. Univ. of Kentucky[56]

Plaintiff alleged that the University of Kentucky discriminated against female students on the basis of sex by providing fewer and poorer opportunities in sports than the male students. Plaintiff asserted three Title IX claims arguing that the Defendant failed to provide equal athletic participation opportunities, failed to provide equal allocation of athletic financial assistance, and failed to provide "equal athletic benefits." Finally, Plaintiff claimed a violation of her 14th Amendment Equal Protection rights arguing that the university failed to provide female students with equal opportunities and financial assistance in athletics. The Defendant moved the court to dismiss these claims. The Court granted the Defendant's motion as to Niblock's Equal Protection claim, however denied the Defendant's motion on Niblock's Title IX claims. The court found that Niblock's Title IX claims were not so insufficient as to be dismissed in their entirety in the early stages of litigation.

Ohlensehlen v. Univ. of Iowa[57]

Plaintiffs filed a class action suit against the University of Iowa following the university's decision to eliminate women's swimming and diving as a varsity intercollegiate sport for the 2021 to 2022 academic year. Plaintiffs allege the university violated Title IX by failing to provide equal participation, treatment, and scholarship opportunities, motioning for a temporary restraining order and preliminary injunction. The Court granted the motion for preliminary injunction, noting that the Plaintiffs have demonstrated that the university was not providing the female students with equal athletic opportunities and thus have a sufficient likelihood of succeeding on their Title IX claims. The court notes that the Plaintiffs would suffer irreparable harm should the swimming and diving team be eliminated, and that there had not been a proper balance of equities on the part of the school. Finally, the court found that it was in the public's interest to eliminate forms of sexual discrimination at a public institution. Thus, the court granted the Plaintiffs' motion for preliminary injunction.

56. No. CV 5:19-394-KKC, 2020 WL 7028707 (E.D. Ky. Nov. 30, 2020).
57. No. 320CV00080SMRSBJ, 2020 WL 7651974 (S.D. Iowa Dec. 24, 2020).

Ollier v. Sweetwater Union High Sch.[58]

Plaintiffs filed a class action alleging that the Defendant violated Title IX due to unequal athletic opportunities for female students at Castle Park High School. The lower court found in favor of the Plaintiffs and held that they were entitled to injunctive relief due to Defendant's failure to provide equal treatment and benefits to their female athletes. Defendant moved to amend their complaint for additional or new findings under FRCP 52(b) and 59(a)(2). During the pending of their appeal, Defendants were further found not yet in compliance with Title IX under their permanent injunction and the Judge ordered Defendant to show cause as to why it had failed to comply with the injunction. The parties eventually filed a Final Joint Compliance plan in February of 2014, and now seek for the Court to approve the withdrawal of the Plaintiff's enforcement motion and discharge the order to show cause issued along with the order granting the enforcement motion. Finding that circumstances since the original complaint had changed considerably, the court recommended the district court issue an order that approved adopting of the Report and Recommendation, which granted the parties joint motion to withdraw the enforcement motion as well as vacate the order to show cause, approve the withdrawal of the plaintiff's motion to enforce a permanent injunction, and finally discharge the order to show cause.

Portz v. St. Cloud St. Univ.[59]

Former and current female student-athletes from St. Cloud State University (SCSU) who participated in tennis and Nordic skiing teams sued SCSU for cutting both women's teams due to claims of declining enrollment. The Plaintiffs requested a preliminary injunction saying the university violated Title IX. After the preliminary injunction granted in 2018, the university eliminated the women's golf team. The court held that the women's golf team being eliminated did not violate the permanent injunction because the reason was to bring itself into compliance with Title IX. However, the court held the university did violate the preliminary injunction by cutting both the Nordic ski team and the tennis team. The Nordic ski team was still poplar, contrary to the university's arguments, so there was no reason to cut the team. The tennis team was cut wrongfully because the university did not try find a new coach after the coach passed and the members were then denied basics to maintain the team.

58. No. 7-CV-00714-L-JLB, 2020 WL 3892800 (S.D. Cal. July 9, 2020), *report and recommendation adopted sub nom.* Ollier v. Sweetwater Union High Sch. Dist., No. 07-CV-00714-L-JLB, 2020 WL 4336169 (S.D. Cal. July 28, 2020).

59. 470 F. Supp. 3d 979 (D. Minn. 2020).

Posso v. Niagra Univ.[60]

Plaintiffs brought claims against the university for a variety of Title IX issues. First, the Plaintiffs claim that after the university was told to create programs and systems for Title IX requirements, the university failed to do so. The university created a co-ed swim team that was male dominated. The swim coach had knowledge of harassment but did nothing about it. Plaintiffs also alleged that the university, including the Assistant Athletic Director and the Dean, did not take-action relating to incidents of sexual harassment and failed to try to remedy it. The swim coach also made comments about the males having sex with female recruits and did not stop the male swimmers from making derogatory comments to the female swimmers. A Plaintiff who was not on the swim team was sexually assaulted by a male swimmer and the university allowed the student to remain on the team and continue to intimidate her. Another Plaintiff claimed that there was a breach of contract with her scholarship that she forfeited because she was sexually harassed by swim team members. The court's main issues in this stage of the case were related to the last two Plaintiffs. The court held Defendant's motion to dismiss was granted with respect to Plaintiff who was sexually assaulted because the amended complaint failed to state a claim for post-assault deliberant indifference, however, the court did deny the motion to dismiss for pre-assault claim of deliberate indifference. The court also held the Plaintiff who forfeited her scholarship did not state a claim for breach of contract and dismissed the claim completely.

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.

Martin for C.M. v. Hermiston Sch. Dist. 8R[61]

A sophomore student suffered a head injury during his J.V. football game. The student brought suit against the school, district, coaches, and athletic trainers for putting him back into the game even though he was acting unusually and uncharacteristically after the collision. Plaintiff had suffered a mild concussion and continued to suffer symptoms for days after the event. His

60. No. 19-CV-1293-LJV-MJR, 2020 U.S. Dist. LEXIS 205260 (W.D. N. Y. Nov. 2, 2020).
61. No. 3:18-CV-02088-HZ, 2020 WL 6547638 (D. Or. Nov. 4, 2020).

concussion tests cleared him a few days later and the Plaintiff was able to play in games again, where he suffered another head injury. Since the injuries, Plaintiff has attempted suicide multiple times and suffers from issues including anxiety, memory loss, and depression. Doctor assessments state that the first concussion was not treated properly and resulted in severe issues. Plaintiff is suing for §1983 due process violations and several state law negligence claims. Here, the court granted the Defendant's motion for summary judgment on nearly all claims, except for denying the summary judgment motion on Plaintiff's negligence claims.

Richardson v. Se. Conf.[62]

Plaintiff was one among a class of University of Florida football student-athletes. He alleges that the NCAA and the Southeastern Conference (SEC) committed negligence, fraudulent concealment, breach of contract, express and implied, breach of express contract as a third-party beneficiary, and unjust enrichment. The claims arose out of Plaintiff's concussions and on-going symptoms which include memory loss and severe headaches daily. Plaintiff argues that the Defendant's protocols for concussion management were inadequate and they were aware of the risks of brain injury and failed to mitigate them. The court here granted the SEC's motion to dismiss for lack of personal jurisdiction and granted and denied in part the NCAA's motion to dismiss for failure to state a claim.

Weston v. Big Sky Conf.[63]

Plaintiff, a former college football player, sued the NCAA and Big Sky Conference alleging failure to adopt and implement concussion treatment, concussion protocols, and return-to-play guidelines. Plaintiff sustained repetitive concussions while practicing and playing collegiate football. Despite these severe concussions, Plaintiff was expected to return to practices and games without proper treatment. This resulted in long-term injuries ranging from severe anxiety and memory loss to neurological disorders. Evidence showed both Defendant entities were expected to protect the health and safety of collegiate athletes as a whole. Responding to the lawsuit, Big Sky moved to dismiss for lack of personal jurisdiction. The motion was granted because Plaintiff had failed to establish the federal court in Indiana maintained jurisdiction over the matter. The NCAA sought to dismiss the claims for failure to state a claim upon which relief can be granted. Unlike Big Sky's, the NCAA's motion was denied.

62. No. 16 C 8787, 2020 WL 1515730 (N.D. Ill. Mar. 30, 2020).
63. 466 F.Supp. 896 (2020).

IMMIGRATION LAW

Immigration law can have an impact in the sports industry because of the volume of players which come from different countries at both the college and professional level.

Doe 1 v. U.S. Dep't. of Homeland Sec.[64]

International students who were supposed to attend college at University of California, Los Angeles and Loyola Marymount University were unable to enter the United States for school because of the COVID-19 pandemic. Classes were moved online due to the pandemic and the Plaintiffs were not allowed to be on campus as required for training, practice, or participation in athletics at their respective universities. Schools operating completely online were told not to issue Form I-20s for those international students. In the Frequently Asked Questions issued in August 2020, Defendants argue that it stated that new or initial students in a hybrid program of both in-person and online were able to still maintain F-1 or M-1 nonimmigrant status. The Plaintiffs sought a preliminary injunction because they are being treated different from regular students as international students. The court denied the Plaintiff's motion for preliminary injunction for two main reasons. First, because the Plaintiffs could not show likelihood of success on the merits. Second, because balancing the Plaintiff's want to participate in athletics against the unprecedented pandemic presents a risk that the court felt was beyond the court's interest and authority.

Guida v. Miller[65]

This is an Order of a Magistrate Judge denying Plaintiff's motion for summary judgment and granting Defendant's. Plaintiff is a high skilled equestrian vaulting coach. Originally from Argentina, he has been in the United States on a non-immigrant work visa for those with extraordinary ability. He wished to immigrate to the country permanently and applied for an EB-1 visa, also known as an "extraordinary ability" visa. There are three factors which the applicant must prove in order for the United State Citizenship and Immigration Service (USCIS) to grant the visa, Plaintiff only successfully proved two and therefore his application was denied. Plaintiff's burden of proof was by the preponderance of the evidence. The court here found that the decision of the agency was not arbitrary or capricious and granted their motion for summary judgement, denying the visa.

64. No. 2:20-cv-09654-VAP-AGRx, 2020 WL 6826200 (C.D. Cal. Nov. 20, 2020).
65. No. 20-cv-01471-LB, 2020 U.S. Dist. LEXIS 249955 (N.D.Cal. Feb. 16, 2020).

Victorov v. Barr[66]

Plaintiff challenges the denial of his EB-1 "extraordinary ability" visa petition. Plaintiff is a handball player with the LA Team Handball Club. After submitting his initial visa application, the USCIS requested further evidence to make their decision. This additional information was reviewed, and his application was denied for multiple reasons. The Plaintiff appealed to the USCIS Administrative Appeals Office (AAO), which was dismissed. Despite multiple attempts to satisfy the criterion for the EB-1 visa, the court affirmed that the denial was not arbitrary, capricious, or contrary to law. This decision was made because the Plaintiff failed to establish that he had received a particular type of award and he had not met three or more of the criteria required by 8 C.F.R. § 204.5(h)(3)(i)-(x) for this visa.

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.

Boesen v. United Sports Publications, Ltd.[67]

Defendant is moving to dismiss copyright infringement claims brought by Plaintiffs for embedding their copyrighted photograph in an article the Defendant published without Plaintiff's permission. The court ultimately held that the Defendant's use of the photograph was a fair use and granted the motion to dismiss. Defendant also sought bond in this matter but court denied the motion because of claim dismissal.

Park Ridge Sports, Inc. v. Park Ridge Travel Falcons[68]

Plaintiffs moved for a preliminary injunction against the Defendants regarding the use of the "Park Ridge Falcons" mark, which was used for more than 50 years with competitions both within the state of Illinois and in other states. Further, both renditions of the mark are copies of the NFL club logo: the

66. No. CV 19-6948-GW-JPRX, 2020 WL 3213788 (C.D. Cal. Apr. 9, 2020).

67. No. 20-CV-1552(ARR)(SIL), 2020 WL 6393010 (E.D.N.Y. Nov. 2, 2020), *reconsideration denied*, No. 20-CV-1552(ARR)(SIL), 2020 WL 7625222 (E.D.N.Y. Dec. 22, 2020).

68. No. 20 C 2244, 2020 WL 6265133 (N.D Ill. Aug 2020).

Atlanta Falcons. The court here found that the mark "Falcons" was arbitrary because it did not "describe or convey the nature of the services organizing and conducting a youth football program." Still, the court found that the "Falcons" symbol did not identify the Plaintiff's football team, but the Defendant's football program of which the Plaintiff is no longer a part of despite the brief merger of the programs in 2015. Further, the court found it was unlikely that the Plaintiff's request for a preliminary injunction would hold under a "likelihood of confusion" test, and thus recommended their preliminary injunction be denied.

Sportvision, Inc. v. MLB Advanced Media, LP[69]

Plaintiffs filed an action claiming patent infringement, misappropriation of trade secrets, and breach of contract. Plaintiffs completed development on a virtual strike zone graphic, which ESPN began using in 2001. Plaintiff's engineer began developing a patent based on similar technology and design. This work eventually became the full pitch patch tracking system called "PITCHf/x." In 2005, Plaintiffs proposed that the defendants should permanently install PITCHf/x in every MLB stadium and in other various ways. The parties entered into an agreement on February 7, 2006. The agreement term went through 2019, but the Defendant abandoned the agreement after the 2016 baseball season. Instead, the Defendant hired someone to develop a competing system to PITCHf/x using Plaintiff's trade secrets and reverse engineering tactics. Defendants moved to compel arbitration on the first two claims and dismiss the third, all of which were denied.

Upper Deck Co. v. Panini Am., Inc.[70]

Plaintiff sued Defendant alleging claims under the Lanham Act and relevant state law. Plaintiff has exclusive license to the name, image, and likeness of Michael Jordan as it relates to trading cards. Defendant is one of Plaintiff's competitors and does not have a license to use Jordan's name, image, and likeness for their own trading cards. Regardless, Defendant produced some cards that featured Jordan in one way or another. In response to the lawsuit, Defendant filed a motion to dismiss for failure to state a claim. The court upheld the following causes of action: false endorsement, false advertising, trademark infringement, trademark dilution, commercial misappropriation, and right of publicity. The court dismissed in part the intentional interference with prospective economic relationship and intentional interference with contractual

69. No. 18 CIV. 3025 (PGG), 2020 WL 1957450 (S.D.N.Y. Apr. 23, 2020).
70. 469 F.Supp.3d 963 (2020).

relationship causes of action. The court granted the motion to dismiss in part and denied in part. Plaintiff was granted leave to amend the complaint.

House v. Players' Dugout, Inc.[71]

Plaintiffs, House and the National Pitching Association (NPA), are the creators of a pitching program called the Personally Adaptive Joint Threshold Training (PAJTT program) method. NPA owns its' trademark to be used as a logo on various apparel. Plaintiffs granted the exclusive license to Players' Dugout, Inc. (PDI) for commercialization purposes of the PAJTT program. The agreement included provisions for royalties to be paid and made no mention of whether or not PDI could use the NPA trademark or Dr. House's name. Chief among the Plaintiff's complaints are the breach of license agreement and failure to pay royalties and trademark infringement. Upon review, there were too many disputed issues of material fact for the court to grant summary judgment in regard to the breach of the license agreement. Additionally, Plaintiff's motions for summary judgment on both intellectual property issues were denied following detailed analysis.

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. The following cases highlight the intersection of labor and employment law and sports.

Frisby v. Seattle Univ.[72]

Frisby, a former women's tennis coach at Seattle University (SU), appeals the finding of summary judgment in favor of SU. Frisby was terminated for cause by SU when he violated the terms of his employment agreement. A student athlete, J.J., alleged multiple counts of sexual harassment against Frisby, for which Frisby was put on administrative leave pending investigation. During that time, Frisby violated the terms of his leave by contacting student athletes in creative ways. Pursuant to this and in addition to an independent investigator's report, Frisby was terminated. The court agreed with the trial court in granting

71. 440 F.Supp.3d 673 (W.D. Ky. 2020).
72. 13 Wash.App.2d 1070 (Ct. App. Wash. 2020).

summary judgment based on Frisby's lack of ability to produce evidence to support a finding otherwise.

Hudson v. NFL Mgmt. Council[73]

Plaintiff is a retired NFL player who is alleging a breach of fiduciary duty against the NFL Management Council under the Employee Retirement Income Security Act (ERISA). Hudson argues that the Council should have known that a failure to explain "changed circumstances" in the NFL retirement plan would harm plan participants like Hudson. An additional complaint alleges that the Council should have known that because larger number of complaints were being filed regarding plan benefits, they should have realized the language was vague and difficult to understand. Based principally on Hudson's failure to state a claim and prove evidence of an injury-in-fact as a result of this alleged action, the Court dismissed the claim and closed the case. Hudson had already been given a chance to amend his complaint and was not given the chance to do so once more.

Mickell v. Bell / Pete Rozelle NFL Players Retirement Plan[74]

Darren Mickell, a former NFL player, sought permanent disability benefits under the NFL Player Retirement Plan. His application was denied and the district court upheld the Board's decision. Mickell sought review under the ERISA. Mickell claims the Board incorrectly interpreted and applied the definition of "disability" under the Player Retirement Plan. Further, he argues that the Board abused its discretion through the adoption of "Plan Neutral Physicians" and ignoring submitted evidence, as well as by not considering the cumulative effects of his impairments. Though the court here concluded that the board did not err in applying the definition of disability under the plan, they did conclude that the board abused its discretion in not considering the relevant evidence submitted by Mickell as well as failing to consider the cumulative effects of Mickell's NFL injuries. Thus, the court reversed the district court's decision and remanded the cases to the court for further review.

Warmington v. Bd. of Regents of Univ. of Minn.[75]

Former women's cross country head coach alleged she was constructively terminated in violation of Title VII, Title IX, and the Equal Pay Act. Further Plaintiff alleged sexual discrimination and a hostile work environment during

73. No. 1:18-cv-4483-GHW2020 U.S. LEXIS 57120 (S.D.N.Y. Mar. 31, 2020).
74. 832 Fed.Appx. 586 (11th Cir. 2020).
75. 455 F.Supp.3d 871 (2020).

her time as head coach. Despite success in her position, Plaintiff was put on administrative leave following athlete complaints regarding coaching. After an investigation into these complaints, Defendant found cause for discipline and allowed the Plaintiff to resign. The court found her complaint either missed essential elements of the claims or was barred by statute of limitations. With the Title VII claim, the Plaintiff did not sufficiently provide evidence or facts permitting the inference of discrimination based on sex. In addition, the hostile work environment claim, falling within Title VII, was also not plausible established within the Plaintiff's complaint. Plaintiff's Title IX claims faced the same result. The Equal Pay Act claim was rejected because of the timing alleged in the Plaintiff's complaint. Ultimately, the Defendants' motion to dismiss upheld.

MISCELLANEOUS

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

Doe v. Patrick[76]

Track student athlete brought claims under Title IX, 42 U.S.C §1983, the Equal Protection Clause, the Due Process Clause, and several state law tort claims resulting from a bus trip to track meet that occurred in January of 2017. The high school track team was riding to a meet at a school approximately 2 hours and 45 minutes away, on previous trips to this same school the bus had stopped to use the restroom. This time James Doe and another student both requested numerous times to stop to use the restroom, each time being told to hold it a little longer. Eventually, when the bus had nearly reached its destination James Doe was pleading with the driver and coach to stop but they refused and James Doe urinated himself on the bus. The next day the student's parents contacted the administration requesting the coach be fired, the coach was suspended for the remainder of that season. James Doe felt isolated from the rest of his teammates as they would not speak to him when he returned to practice and chose to complete the season with individual practices. This case was currently on motion to dismiss from both the District, the coach, and the bus driver collectively. In this action, the court granted Defendant's motion to dismiss all federal claims and declined to exercise jurisdiction over the accompanying state law claims.

76. 437 F.Supp.3d 160, 377 Ed. Law Rep 1028 (N.D.N.Y. 2020).

Gilbert v. USA Taekwondo, Inc.[77]

This is Plaintiff, Gilberts, third amended complaint and the case is on Defendant's motion to dismiss all claims. Plaintiff alleges that USA Taekwondo (USAT) knew or should have known that employee Steven Lopez and his brother Jean were engaging in sexual abuse of competitors and they failed to take action and further that USAT benefitted from allowing Lopez to remain employed. The Plaintiffs alleged suffered from this abuse. The claims brought by Plaintiffs here are numerous, they include four claims of state law negligence violations, and four claims of violations of the TVPRA including 18 U.S.C. §§ 1589(b), 1590(a), 1590(b), 1591(d), 1595(a), and 2255. The court granted the motion to dismiss with respect to the state law claims for failure to establish a legal duty but allowed the federal law claims to proceed.

Intercollegiate Women's Lacrosse Coaches Ass'n v. Corrigan Sports Enterprises, Inc.[78]

Corrigan Sports (CSE) filed this motion to dismiss all claims which arose out of an agreement to manage and host an Intercollegiate Women's Lacrosse Coaches Association (IWLCA) tournament. This was an ongoing relationship between the parties, CSE having hosted events for IWLCA since 2009. When the COVID-19 pandemic began IWLCA contacted CSE to cancel several events and issue refunds to the teams. CSE refused and informed participants that the tournaments were still to be played and removed IWLCA's name from the announcement but continued to use their alleged trademark. The court granted CSE's motion to dismiss with respect to claims for conversion, breach of fiduciary duty, constructive fraud, breach of the covenant of good faith and fair dealing, trademark dilution, and all individual claims outside of ones for Lanham Act and the Unfair Deceptive Trade Practices Act (UDTPA) violations. The Defendant's motion was denied in relation to claims for violations of the UDTPA, constructive trust, unjust enrichment, breach of contract, and the Lanham Act. The court also denied Defendant's motion to strike Doc. 35.

In re USA Gymnastics[79]

Following the multiple sexual assault allegations against team physician Dr. Larry Nassar, USA Gymnastics filed for chapter 11 bankruptcy in order to provide a single forum to resolve all abuse claims. Blanchette attempted to certify a class and gain access to an untapped pool of insurance money worth

77. No. 18-CV-00981-CMA-MEH, 2020 WL 2800748 (D. Colo. Jan. 30, 2020).
78. No. 1:20-CV-00425, 2020 WL 7220686 (M.D.N.C. Dec. 4, 2020).
79. No. 18-09108-RLM-11, 2020 WL 1932340 (Bankr. S.D. Ind. Apr. 20, 2020).

upwards of fifteen million dollars. USA Gymnastics objected to this claim stating among other factors that the claim would adversely affect the administration of the case. The purpose of a bankruptcy action is to provide a uniform forum for all parties to gain what they are seeking. Accordingly, the Court denied Blanchette's (claimant) motion for class proof of claim and sustained USA Gymnastics' objection to the class certification.

Lontex, Corp. v. Nike, Inc.[80]

The court here issued a memorandum regarding the Defendant, Nike's, motion for sanctions. The basis of the motion is that the Plaintiff sent letters and subpoenas to professional sports athletic trainers seeking their declarations regarding Lentox's use of the trademarks involved in the litigation. Nike claims that this improper because it was outside of the discovery deadlines in violation of several rules of Federal Civil Procedure. The court ultimately denied to all motions for sanctions citing the timing difficulties that the COVID-19 pandemic has brought about and the notion that a party is permitted to continue their investigation and solicitation of witnesses outside of the court's discovery deadlines.

Marculetiu v. Safety Ins. Co.[81]

The underlying claims which are still pending involved, L.C., a ballet student at Marculetiu's dance studio, accusing Marculetiu of raping her while on a trip for a competition. Marculetiu countersued for defamation, intentional interference with advantageous relations and abuse of process. The current action involved Marculetiu's insurance company and his claim that both the policy covering the studio and his homeowner's policy required them to defend the action and indemnify if necessary. Admitting no duty to defend regarding the rape allegations, Marculetiu contends that the duty arises regarding the other claims such as negligence, false imprisonment, and breach of fiduciary duty. Separately, the insurance companies filed motions to dismiss for lack of duty and their motions were granted. After his motions for reconsideration were denied, Marculetiu appeals this decision. Although on different grounds, this court affirmed the two lower courts judgments dismissing the claims. Included in the studio's general liability policy and his personal homeowner's insurance policy, there are specific exclusions which deal with the conduct involved in the underlying suit.

80. No. CV 18-5623, 2020 WL 6786134 (E.D. Pa. Nov. 18, 2020).

81. 98 Mass. App. Ct. 553, 157 N.E.3d 644, *review denied*, 486 Mass. 1108, 159 N.E.3d 653 (2020).

Radwan v. Univ. of Connecticut Bd. of Trustees[82]

Plaintiff was a female soccer player at Defendant university. Her membership on the team and accompanying scholarship were terminated after she stuck her middle finger up to the camera after a game which was being broadcast on live television. Plaintiff claims violations of Title IX, 43 USC §1983, the First and Fourteenth Amendment, breach of contract, and negligent infliction of emotional distress. Both parties are moving for summary judgment. The court granted Defendant's motion and denied Plaintiff's.

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 earnings and sports facilities

ABC Inc. v. Dept. of Revenue[83]

Plaintiff, ABC, consists of numerous entertainment businesses which include television and radio broadcasters, most pertinently for this discussion, ESPN. This case is on motions for summary judgment regarding whether Plaintiff is an "interstate broadcaster" under the relevant Oregon statute, whether the interstate broadcaster apportionment formula applies to all entities under Plaintiff or only ones that engage in broadcasting, and whether a substantial nexus exists between the State and the Plaintiff. The court here denied Plaintiff's motion for partial summary judgment and granted in part and denied in part Defendant's motion for summary judgment; holding that the broadcaster statute could be applied to Plaintiff's businesses as a whole and that the Plaintiff was an interstate broadcaster but the court declined to say as a matter of law that ESPN and Oregon have a substantial nexus.

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.

82. 465 F.Supp.3d 75 (D.Conn. 2020).
83. No. TC-MD 170364, 2020 WL 3412334 (Or. T. C. Apr. 22, 2020).

Aldrich v. Nat'l Collegiate Athletic Assoc.[84]

The court here is addressing Defendants' NCAA and track and field coach's motions to dismiss for lack of personal jurisdiction and failure to state a claim. Plaintiffs in this case were student-athletes alleging that this coach has a pervasive history of grooming young women and ultimately engaging in abusive sexual relationships with these students. The court notes that this case focuses in on whether the NCAA has a responsibility in the prevention of this type of conduct. While the court did agree that it did not have personal jurisdiction over NCAA Defendant, the case was transferred to the Southern District of Indiana for further evaluation. The court denied the coach's motion to dismiss for failure to state a claim holding the claims were not time-barred and that the Plaintiffs have pled sufficient facts for a false imprisonment claim.

Asprou v. Hellenic Orthodox Cmty. of Astoria[85]

Defendant appeals denial of their motion for summary judgment. This action arose out of an incident where Plaintiff was playing basketball, he slipped on water leaking from the ceiling and sustained injuries. This court affirmed the dismissal of the motion. The crux of Defendants' argument is that they had no actual or constructive notice of the leaking ceiling causing the wet floor and that the Plaintiff assumed the risk. The court noted that here, Defendants were able to meet their burden by showing that they did not create or have actual notice of the condition but there were remaining triable issues of fact as to whether they had constructive notice of the condition. Further, Defendants did not meet their burden for summary judgment on the assumption of risk defense.

Bradley v. Nat'l Collegiate Athletic Assoc.[86]

Plaintiff was a member of her University's field hockey team and allegedly suffered a concussion as a result of a collision during a game. Plaintiff and Defendants, NCAA, University, and Government, all filed cross-motions for summary judgment on the matter. The Government is a party to this case because, pursuant to the Westfall Act, they substituted themselves in as the owner of the practice which the doctor who initially evaluated the Plaintiff was affiliated with. The court granted both the University and the NCAA's motions for summary judgment, denying Plaintiff's motions as moot. As for the Government, the court denied their motion and granted Plaintiff's motion for summary judgment relating to the Government's affirmative defenses.

84. 484 F.Supp3d 779 (N.D.Cal. Sept. 3, 2020).
85. 185 A.D.3d 641, 127 N.Y.S.3d 584 (2020).
86. 464 F.Supp.3d 273 (D.D.C. 2020).

Brandt v. Davis[87]

Plaintiff, student-athlete, was injured when a teammates bat hit her in the head at the teams softball practice. The injured player sued the teammate for negligence, and sued the teammate, the university, and the head coach for gross negligence and recklessness. The lower court granted Defendants' motion for summary judgment and this court affirmed.

Burdick v. Romano[88]

Plaintiff sued Defendant for a broken shoulder and brain injury sustained from falling off of the Defendant's house. Plaintiff was an expert horse rider and trainer. One of the Defendant's horses was known to the Plaintiff as being aggressive. While riding together, Plaintiff asked to see a trick with the Defendant's aggressive horse. Plaintiff claims that the Defendant did not tie up the aggressive horse, brought the barrel over, spooked the aggressive horse and resulted in Plaintiff falling off the calm horse she was riding. Defendant claimed she had the horse with her and the Plaintiff lost her balance on her horse and that was the reason for her fall and injuries. The court had to determine whether the trial court abused their discretion by not reading the negligence jury instruction because the parties were participating in a sport. The court held that the parties were participating in a sporting activity, but that reading the negligence instruction would have mislead the jury. Rather, because the Plaintiff was an expert in riding and training horses, knew of the aggressive horse's temperament, and knew there was a risk, the court held the trial court did not abuse their discretion of not reading the negligence instruction. The Plaintiff incurred the risk.

Camlin v. Office of Comm'r of Baseball[89]

Plaintiff was struck by a foul ball while attending a Pittsburgh Pirates game at PNC Park in Pittsburgh, Pennsylvania. Plaintiff sustained a concussion and as a result, was deemed unable to return to her occupation as Director of Patient Care Services for Obstetrics and Newborn Services at UPMC. MLB was dismissed from the case and the Pirates and Allegheny county settled with the Plaintiff. However, Plaintiff maintained her claim against Promats, the company who installed the netting behind home plate which failed to stop the foul ball from striking her. After reviewing all the facts, the court affirmed the ruling finding no negligence on the part of Promats.

87. 159 N.E.3d 191, 98 Mass. App. Ct. 734 (2020), *review denied*, 486 Mass. 1111 (2021).
88. 148 N.E.3d 335, *transfer denied*, 2020 Ind. App. LEXIS 184.
89. 239 A.3d 62 (Pa. Super. Ct. 2020), *appeal denied*, 244 A.3d 814 (Pa. 2021).

Chisholm v, St. Mary Sch. Dist. Bd. of Edu.[90]

A football coach had a history at other schools, including St. Mary's, of belittling and swearing at his football players. The coach returned to St. Mary's and would call the players two players derogatory names and swear at them. One player, Chisholm, was accused by the coach of throwing a game and was voted off the team. The two Plaintiff's dads wrote a letter to the school complaining about the coach's actions, but the school found no discipline for the coach was required. On appeal the court focused on the Plaintiff's federal Title IX claim and the state intentional and negligent infliction of emotional distress. The court held the Plaintiffs were not targeted for sexual discrimination because the comments did not rise to the level of severity. Similarly, the court held the comments and Chisholm being voted off was not severe enough to cause severe emotional distress.

Cruz v. New Centaur, LLC[91]

An experienced jockey, Marcelle Martins, was licensed in Indiana by the Indiana Horse Racing Commission and was exercising horses for Michael E. Lauer Racing Stables. Plaintiff Cruz was exercising a horse at the same time as Martins on a track owned by Indiana Grand when Martins' horse went out of control and Martins was thrown from the horse. The horse ran towards the Plaintiff and the Plaintiff's horse collided with Martins' horse causing the Plaintiff to be thrown off and injured. Plaintiff sued Indiana Grand for premise liability and negligence claims. Plaintiff also sued the Lauers, who owned the horse that Martins' was exercising for the negligent hiring of Martins. On appeal for the motion for summary judgment, there was no evidence that there was a breach of the assumed duty of care, Martins had enhanced liability protection, and the Plaintiff offered no evidence that Martians was acting outside of the scope of employment that would make the Lauers liable. There were no genuine issues of material fact which would not allow the court to grant the Defendant's motion for summary judgment on the negligence claims.

Dahl v. Mandrusiak[92]

While at a Topgolf Las Vegas, a golf club flew out of Defendant's hand and struck the Plaintiff's face while the Plaintiff was working as a waitress. The Plaintiff sued for the injuries she sustained. The Defendant claimed that his

90. 947 F.3d 342 (6 Cir. 2020).

91. 150 N.E.3d 1051 (Ind. Ct. App. 2020).

92. 2020 U.S. Dist. LEXIS 250068 (D. Nev., May 28, 2020), *summary judgement denied*, 2020 U.S. Dist. LEXIS 250067 (D. Nev., May 28, 2020).

hands were greasy from eating and that caused him to lose grip. The court held there were questions outstanding relating to the Defendant's breach of increased risks inherent to golf. Plaintiff was also denied summary judgment as the act was not res ipsa loquitur.

Dent v. Nat'l Football League[93]

Plaintiff sued the NFL in May 2014 in a class action suit for negligence related to the NFL trainers handling out controlled substances to dull players' pain that violate the CSA and the FDCA. In this appeal, the Plaintiff claimed that the NFL knew that this was happening in order to keep key players out on the field and increase revenue. The court held that the NFL not properly regulating the Clubs' distribution of controlled substances was not enough for a per se negligence claim. The court affirmed the dismissal of negligence per se and special relationship claim, however, the court reversed the district court and held that Plaintiff and pled a proper voluntary negligence claim. The court remanded the to the lower court to determine if the negligence claim was preempted by the Labor Management Relations Act.

Higgins v. Ky. Sports Radio, LLC[94]

Higgins was a referee for an Elite Eight game in the 2017 NCAA tournament between Kentucky and North Carolina. Kentucky, upon losing the game in the final seconds, criticized Higgins based his willingness to call fouls. Kentucky Sports Radio host, Jones, broadcasting to more than 40 Kentucky radio stations also criticized the officiating. Where the cause of action comes in is the behavior of fans upon hearing the radio broadcasts. Higgins also owned a roofing company which received many complaints, poor reviews, harassing phone calls, and other beratement as a result of his supposed poor officiating. His business received 181 poor reviews on yelp and he ultimately had to take down his Facebook page. The radio station reacted to these comments sent in by viewers and expressed on different occasions how humorous they found everything. Higgins advanced various claims against Kentucky Sports Radio including but not limited to harassment, intentional infliction of emotional distress, and defamation. The Court held that Kentucky Sports Radio and their comments were protected under the First Amendment of the United States Constitution. While they were sensitive to Higgins' feelings, they pointed out the dangers of being in the public light and what that entails.

93. 948 F.3d 1126 (9th Cir. 2020), *vacated*, 2021 WL 662173, slip op. (N.D. Cal. Feb. 19, 2021).
94. 951 F.3d 728 (Ct. App. 6th Cir.).

In re C.G. Minor[95]

C.G. was a freshman in high school attending basketball practice. During a layup drill, the coach was playing defense at the basket and attempting to swat away shots. In doing this, a ball flew into C.G.'s head causing a concussion. Both parties agree that the action was not intentional. Despite this, C.G. contends that the coach's behavior could be seen as reckless and therefore not receive immunity. The school vigorously contends that blocking shots is well within the course of ordinary conduct of basketball and through their participation, C.G. accepted that risk. The Court rejected all of C.G.'s arguments trying to convince them of the coach being reckless and affirmed summary judgment for the school corporation.

Jensen v. U.S. Tennis Assoc.[96]

This case is on Defendant's motion to dismiss both Plaintiff's negligence and Trafficking Victims Protection Reauthorization Act (TVPRA) claims. Plaintiff was a tennis player who alleges that the Defendant, United States Tennis Association (UTSA), was negligent in failing to protect her from sexual abuse at the hands of her coach. On the negligence claim, the motion to dismiss was denied because the court found that Missouri law and statute of limitations applied, not Kansas as the Defendant contends and Missouri's statute of limitations had not expired. On the TVPRA claim, the motion was granted because the Plaintiff failed to show that "UTSA knew or recklessly disregarded the fact that [her coach] was abusing [her]."[97]

Kandolin v. Wesleyan Univ.[98]

Plaintiff was the parent of the individual participating in track and field events at the Wesleyan Spring Class Invitational and she was injured when she was struck by a hammer during a hammer throw event while she was standing in an area open to viewers. Plaintiff alleges that Wesleyan failed to take adequate safety precautions to protect bystanders from these types of risks. Wesleyan filed an apportionment claim against U.S.A. Track and Field (USATF) due to them having sanctioned the event and for alleged failure to proceed safely and warn spectators of risks. Plaintiff then filed an amended complaint adding USATF. USATF filed a motion to dismiss the relevant counts of Plaintiff's amended complaint and Wesleyan's apportionment complaint. The court

95. 157 N.E.3d. 543 (Ct. App. In. 2020).
96. No. 20-2422-JWL, 2020 WL 6445117 (D. Kan. Oct. 30, 2020).
97. *Id.* at *5.
98. No. X06UWYCV176038936S, 2020 Conn. Super. LEXIS 1396 (Super. Ct. Oct. 28, 2020).

granted the motion with regard to counts three and four Plaintiff's amended complaint because she had not submitted evidence that indicated she was aware of USATF's involvement in the event. The court denied the motion with regard to Wesleyan's apportionment complaint due to the presence of genuine issues of material fact.

Northstein v. U.S.A. Cycling[99]

Plaintiff brought suit against Defendant, U.S.A. Cycling alleging defamation and invasion of privacy. Northstein claims that the defendant published false information as well as leaked confidential and misleading information to the media regarding apparent sexual misconduct on the part of the Plaintiff. The Plaintiff alleges that the Magistrate Court erred in denying his motion to compel the Defendant to produce the identity of the reporters. Further, the Plaintiff argues that the court erred in finding that the Defendant had properly "clawed back" the reference to the reporter and the order that the Plaintiff must refile his submissions without the name of said reporter. The Eastern District overruled the objection by the Plaintiff to compel, yet sustained the objection regarding the "claw back" issue. The district court found that the "highly sensitive nature" of the reporter's identities outweighed the relevancy of the information on proving the Plaintiff's claims. As to the claw-back issue, the court here found that U.S.A. Cycling had no basis for clawing back the initial names that were inadvertently disclosed to the Plaintiff. Further, it found that there was no effective use to the name regarding any motion for summary judgment. Thus, the claw-back was improper and the Plaintiff's second objection was upheld, while his first objection was denied.

Plakorus v. Univ. of Mont.[100]

After a complaint from soccer players that the Plaintiff was messaging the student-athletes too much or too late at night, an investigation was done by the university. The university did not find any violations there but did find that there were several text messages by the Plaintiff to individuals from a Las Vegas escort service on the university-issued phone. The university decided not to renew the Plaintiff's contract that would be expiring in five-months and that the Plaintiffs would not tell anyone why. A local newspaper published the story stating the reasoning for the Plaintiff being fired due to the texts. The court held the Plaintiff did not have a reasonable expectation of privacy because in the contract between the parties and Plaintiff is a public employee and records found in an investigation are subject to public release. The court also held that the

99. 337 F.R.D. 375 (E.D. Penn. 2020).
100. 2020 MT 312, 403 Mont. 263, 477 P.3d 311 (Dec. 15, 2020).

Plaintiff did have a claim for defamation and intentional interference and remanded those claims.

Relevent Sports, LLC v. U.S. Soccer Fed'n, Inc.[101]

The court granted the Defendant's motion to compel arbitration and dismissed Plaintiff's antitrust claim. The United State Soccer Federation (USSF), on behalf of Fédération Internationale de Football Association (FIFA) is able to sanction events in the United States. Soccer clubs are in violation of FIFA statutes if play in unsanctioned international games. Plaintiff is a third-party promoter, through a FIFA authorized match agent, they have hosted several sanctioned games. The USSF denied Plaintiff's application for a sanctioned game citing potential violations of FIFA directives. Plaintiff brought an antitrust and tort claim against USSF.

Summer J. v. U.S. Baseball Fed'n.[102]

The Plaintiff, a 12-year-old child, was seriously injured by a line drive foul ball while attending a baseball game sponsored by the Defendant. Plaintiff sat in a section of the seats that was not covered by protective netting. The lower court issued a judgment in favor of the Defendant relying on the primary assumption of risk doctrine. In addition, the Defendant argued the possibility of injury was open and obvious, which removed any duty to warn or correct the dangerous condition. On appeal, the court reversed and remanded the judgment. This decision relied on the fact the Plaintiff had adequately alleged duty and breach. Furthermore, the court concluded any issue of "open and obvious danger" cannot be resolved by demurrer.

Szarowicz v. Birenbaum[103]

Plaintiff sued the Defendant after sustaining a serious injury following an intentional "check" during a "no-check" hockey league game. The lower court issued summary judgment in favor of the Defendant based on the primary assumption of risk doctrine. Both parties brought in expert witnesses and well-versed hockey players to discuss the severity of the injury and overall situation. At issue here is whether the Defendant increased the risk of injury inherent to "no-check" hockey that negated summary judgment. The court concluded the Plaintiff presented triable issues of material fact. In addition, the Defendant was denied summary adjudication and prayer for punitive damages upon appeal.

101. No. 19-CV-8359 (VEC), 2020 WL 4194962 (S.D.N.Y. July 20, 2020).
102. 45 Cal. App. 5th 261 (2020).
103. 58 Cal. App. 146 (2020).

Williams v. Cty. Of Sonoma[104]

Plaintiff was seriously injured after her bicycle struck a pothole. The road containing the pothole is maintained by the Defendant. Plaintiff sued for the dangerous condition on public property pursuant to Gov. Code, § 835. Plaintiff won the lawsuit resulting in a sizeable judgment, which Defendant appealed on the basis of the primary assumption of risk doctrine. The court had to determine whether Defendant owed a duty to the Plaintiff to not increase the inherent risks of long-distance, recreational cycling. It concluded Defendant did owe a duty to maintain safe roads for all foreseeable uses. Moreover, Defendant owed a duty to repair the pothole, which directly relates to the duty owed to the Plaintiff. This failure to repair the pothole resulted in a breach of Defendant's duty. The Court denied Defendant's argument that the Plaintiff's claim was barred by the primary assumption of risk doctrine.

CONCLUSION

The sports-related cases adjudicated in 2020 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 2020, it does briefly summarize a few interesting and thought-provoking sports law cases.

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104. 55 Cal.App.5th 125 (2020).