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2022 Annual Survey: Recent Developments in Sports Law

Paul D. Kekich

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SURVEY

2022 ANNUAL SURVEY: RECENT DEVELOPMENTS IN SPORTS LAW

INTRODUCTION

This Survey highlights sports-related cases decided by courts between January 1, 2022, and December 31, 2022. 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 2022. 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.

*B.D. v. Blizzard Ent., Inc.*¹

Plaintiff were a father and son who made in-game video game purchases and filed suit against Defendant claiming the randomized value of the in-game purchases violated unfair competition law. Defendant filed a motion to compel arbitration based off a licensing agreement, which was denied by the district

1. 292 Cal. Rptr. 3d 47 (Cal. Ct. App. 2022).

court. On appeal, the appellate court reversed the district court decision and granted Defendant's motion to compel the parties into arbitration.

*France v. Bernstein*²

Plaintiff is an agent for professional football players and filed suit for confirmation and enforcement of an arbitration award against Defendant, another agent who poached a player away from Plaintiff. The district court had ruled in favor of the Plaintiff but on appeal the Third Circuit reversed the lower court's decision. The Third Circuit found that Plaintiff had committed fraud in the arbitration hearing by lying under oath and withholding important information, and that the fraud was not discoverable through reasonable diligence. The court further held that the fraud was materially relevant to the arbitration decision and remanded the case to the lower court to vacate the arbitration award.

*Galette v. Goodell*³

Plaintiff brought suit against several NFL teams and the Commissioner of the NFL claiming he was blacklisted from the NFL after speaking out on what he believed was discrimination by the Washington Commanders. The NFL clubs and the Commissioner all motioned for the case to be dismissed based on a failure to state a claim and based off of a prior arbitration decision between the parties involved. The court ruled that the prior arbitration decision was not mentioned in the original complaint making it too earlier to consider the decision in a motion to dismiss but did find that the Plaintiff had failed to state a claim, in turn dismissing all of Plaintiff's claims. However, plaintiff was represented '*pro se*' and had the ability to submit an amended complaint.

*Haney v. USA Gymnastics, Inc.*⁴

Plaintiff was a gymnastics coach who trained gymnasts from across the country, including Olympic athletes. Plaintiff was accused of verbal and emotional misconduct, and eventually was suspended by Defendant for a duration of eight years. After an appeal to an arbitrator the suspension was reduced to five years. The Plaintiff filed claims under the Ted Stevens Olympic and Amateur Sports Act for declaratory judgment and monetary

2. 43 F.4th 367 (3d Cir. 2022).

3. No. 22-cv-61565, 2022 WL 18002760 (S.D. Fla. Dec. 30, 2022).

4. No. 21-07213, 2022 WL 909871 (D.N.J. Mar. 29, 2022).

damages, arguing that Defendants ignored its own rules and the Act. Defendants filed for motion to dismiss for failure to state a claim, which the Court granted based on the Act did not provide a basis for a private lawsuit under the circumstances and the Plaintiff missed a deadline to challenge the arbitration decision.

*Noel v. Paul*⁵

Plaintiff, Nerlens Noel sued Rich Paul his former agent, for actions arising out of Paul's representation of Noel. Noel claims that Paul was unresponsive to calls for potential contract deals during free agency and neglected Noel as a client. Specifically, Noel filed claims for breach of fiduciary duty, negligence, gross negligence, and breach of the duty of good faith and fair dealing. Defendant filed a motion to dismiss, claiming the dispute should be resolved in arbitration as commanded by the representation contract between him and Noel. The court ruled in defendant's favor compelling the case to arbitration and dismissing all of Noel's claims with prejudice.

*Wildfire Prod. L.P. v. Team Lemieux LLC*⁶

Plaintiff was a limited partner in Defendant which was the controlling owner of the Pittsburgh Penguins at the time the action was filed. Defendant sold the team to a different investment group and Plaintiff filed suit challenging the transaction claiming that the transaction violated a previous partnership agreement and should be deemed null and void. The Defendant's filed a motion to compel arbitration based on the dispute resolution process outlined in the NHL constitution. The Court ruled in favor of the Defendant's, dismissing the case and compelling the parties to arbitration before the NHL commissioner.

ANTITRUST LAW

Antitrust and trade regulation law exists to protect consumers from unfair business practices and anticompetitive behavior. The Sherman Antitrust Act,⁷ alongside various state antitrust laws, prohibits monopolistic behavior and conspiracies to restrain trade. Courts have historically applied the Sherman

5. No. 3:21-CV-2485, 2022 WL 4125216 (N.D. Tex. Sept. 9, 2022).

6. No. 2021-1072, 2022 WL 2342335 (Del. Ch. June 29, 2022).

7. Sherman Antitrust Act, 15 U.S.C. §§ 1-38 (2023).

Antitrust Act in a unique fashion within the sports industry, for example, Major League Baseball's antitrust exemption.

*Hobart-Mayfield, Inc. v. Nat'l Operating Comm. on Standards for Athletic Equip.*⁸

Plaintiff makes safety gear for athletic equipment, namely football helmets and padding that goes inside the helmet and brought an anticompetitive suit against Defendant, an organization that establishes safety standards for athletic equipment. Plaintiff claimed that without Defendant's "seal of approval" the NFL would not use any of Plaintiff's products due to a lack of being seen as safe. The Sixth Circuit Court affirmed the district court's ruling to dismiss the case for a failure to state a claim.

*Hurley v. Nat'l Basketball Players Ass'n*⁹

Plaintiff brought suit against Defendant for rejecting his application to become a certified agent, claiming the NBA and NBPA violated the Sherman Act. Plaintiff's claims were dismissed in district court for a failure to state a claim and on appeal the Sixth Circuit affirmed the lower court's decision. The Sixth Circuit agreed that the Plaintiff's antitrust claims were barred based on the CBA between the NBA and the NBPA even if he was able to show their collective actions had anticompetitive consequences.

*Jones v. Varsity Brands, LLC*¹⁰

Plaintiffs were parents of competitive cheer athletes, brought a punitive class action suit against Defendant, a company which hosts competitive cheer camps and competitions. The parents made multiple antitrust claims under the Sherman Act section one, two, and three. Plaintiffs' claims centered around Defendant creating a system that artifactually increased the price of local cheer competition and camps, while funneling cheer athletes to Defendant operated businesses. Defendant motioned for dismissal for failure to state a claim, however the court ruled that the Plaintiffs had successfully alleged enough facts for some of their antitrust claims to continue.

8. 48 F.4th 656 (6th Cir. 2022).

9. No. 22-3038, 2022 WL 17998878 (6th Cir. Dec. 30, 2022).

10. 618 F. Supp. 3d 725 (W.D. Tenn. 2022).

*Nostalgic Partners, LLC v. Off. of Comm'r of Baseball*¹¹

Plaintiffs, four Minor League Baseball teams brought suit against the MLB for violating section one of the Sherman Act by excluding Plaintiffs from the MLB's Professional Development League. Although the minor league teams satisfied the standing requirement for an antitrust injury, Defendant moved to dismiss, claiming the MLB's antitrust exemption bared Plaintiff from bringing the suit. The Court found MLB's antitrust exemption applied and consequently, the complaint was dismissed, and the Clerk of Court was directed to close the case.

*Shields v. Fed'n Internationale de Nation*¹²

Plaintiffs are a group of professional swimmers that brought antitrust and tort claims against the Defendant over their control of international swimming competitions. Specifically, the Plaintiffs allege that the Defendant uses its power to prohibit swimmers from competing in other swimming competitions hosted by different organizers, and that it threatens swimmers with bans that could include the Olympics, if they do compete in any swimming competition not approved by the Defendant. The Plaintiffs motioned for class certification for anyone swimmers who had signed contracts with an opposing swimming competition organizer. The district court ruled in favor of Plaintiffs motion for class certification but created an Injunctive relief class not a damages class.

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 by 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.

*Elliot v. Pa. Interscholastic Athletic Ass'n, Inc.*¹³

Plaintiff had been a sports official and worked in other capacities for Defendant since 1998. Plaintiff brought suit after he was negatively impacted

11. No. 21-CV-10876, 2022 WL 14963876 (S.D.N.Y. Oct. 26, 2022).

12. No. 18-cv-07393, 2022 WL 425359 (N.D. Cal. Feb. 22, 2022).

13. 595 F. Supp. 3d 312 (M.D. Pa. 2022).

after supporting his brother's candidacy for a PIAA position and later ran for the position himself. Plaintiff claimed that he was retaliated against and received less favorable officiating positions after campaigning for his brother, in violation of his speech rights. The Defendant's motioned for dismissal based on a failure to state a claim and the court ruled that some claims were barred by qualified immunity, but Plaintiff had alleged enough facts to survive the motion. The Defendants were ordered to respond within twenty-one days to any of the surviving claims.

*Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*¹⁴

The Fellowship of Christian Athletes association requires students in leadership roles to follow a "Statement of Faith", which bans sexual relations outside of marriage. Defendant, the San Jose Unified School District, denounced the FCA as an official club claiming that the "Statement of Faith" violated the school district's non-discrimination policy. The Ninth Circuit found that the school district did not treat the FCA neutrally, as governed under the First Amendment. Thus, the district court's denial of FCA's motion for preliminary injunction was reversed and instructed that FCA be reinstated as an official student club.

*Kennedy v. Bremerton Sch. Dist.*¹⁵

Plaintiff, a high school football coach, was fired from his job after he knelt at midfield following games to offer a personal prayer. In response Plaintiff filed suit against Defendant claiming it violated his right to free speech and free exercise under the First Amendment. Both the district court and appeals court ruled in favor of Defendant's motion for summary judgment. The Supreme Court reversed both decisions, holding that the school district violated Plaintiff's right under the Free Exercise Clause by suspending him. The court further held that Plaintiff had engaged in private speech not government speech that could be tied to the school district, and that the suspension was therefore not warranted in order for the school district to avoid an Establishment Clause violation. Finally, the court held that Plaintiff's actions did not amount to government coercion when students chose to pray alongside him.

14. 46 F.4th 1075 (9th Cir. 2022).

15. 142 S. Ct. 2407 (2022).

*Kozlov v. City of Chicago*¹⁶

Plaintiff, a season ticket-holder of the Chicago Bulls and Chicago Blackhawks, sued the City and its officials over the city's Covid-19 vaccine mandate which mandated proof of vaccination to enter the United Center, where the teams played their home games. Plaintiff brought claims that the mandate violated his rights to due process and equal protection under the Fourteenth Amendment. The court ruled in favor of Defendant's motion to dismiss and terminated the case with prejudice. The court held that the City had the power and a rational basis for the enactment of the vaccine mandate.

*State ex rel. W. Virginia Sch. Activities Comm'n v. Cuomo*¹⁷

This case involved a high school student who transferred to a Catholic high school going into their eleventh-grade year. The student soon became aware that she may not be able to play sports at the Catholic school because of the WVSSAC's Residence-Transfer Rule which precluded transfer students from participating in sports for 365 days. When the student's mother made a request for a waiver to the rule, the WVSSAC Board of Directors denied the request and held that there was no undue hardship present. The student's mother sought injunctive relief after her request for appeal to the WVSSAC Review Board was denied. Consequently, the circuit court found in favor of the student by holding that the Waiver Rule was arbitrary and capricious and that it caused an undue hardship placed on the student.

*Ward v. Tenn. Secondary Sch. Athletic Ass'n*¹⁸

Two high school football players changed schools after moving to a different county in Tennessee. The students' new school was a member of the TSSAA, which restricted players from participating in high school athletics if they lived outside of the school's "territory". The school's athletic director fraudulently entered into the students' information, so the system believed the two players were eligible to participate. Soon after, the athletic director self-reported to the defendant. Plaintiffs argued that the court should issue a temporary restraining order on the defendant to allow the two boys to play because the Defendant had violated the Fourteenth Amendment. The court

16. No. 21-C-6904, 2022 WL 602221 (N.D. Ill. Feb. 28, 2022).

17. No. 22-0261, 2022 WL 16570555 (W. Va. Nov. 1, 2022).

18. No. 2:22-cv-02626, 2022 WL 5236834 (W.D. Tenn. Oct. 5, 2022).

denied the plaintiffs' motion after reviewing the likelihood of success on the merits.

CONTRACT LAW

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

*City of Oakland v. Oakland Raiders*¹⁹

This case resulted from a dispute caused by the relocation of the Oakland Raiders to Las Vegas. The city of Oakland filed claims against the NFL and its 32 member clubs, alleging breach of contract as third-party beneficiary, breach of implied covenant of good faith and fair dealing, and unjust enrichment arising from the team's relocation out of the city. The relocation policy did not make the City a third-party beneficiary because it had reasonable expectations. Thus, the Seventh Circuit found that the city failed to state a claim for unjust enrichment.

*Moreau v. U.S Olympic & Paralympic Comm.*²⁰

Plaintiff brought action against Defendant claiming they were wrongfully discharged in violation of public policy, abuse of power, and was extreme and outrageous conduct. In response the Defendant filed counterclaims of civil theft, breach of contract, and violation of multiple trade secret acts. Both parties filed a motion to dismiss the other parties' claims. The district court held that both motions were denied, in part to the fact that both sides provided enough facts to show that they might prevail on their respective claims and the district court would resolve these issues on a motion for summary judgement, not a motion to dismiss.

*Sportvision, Inc. v. MLB Advanced Media, LP*²¹

Plaintiff brought suit against Defendant claiming that Defendant abandoned the parties' Agreement, violating their contract. Plaintiff is a media company who created the "k-zone" that is shown on TV broadcasts of MLB

19. 299 Cal. Rptr. 3d 463 (Cal. Ct. App. 2022).

20. No. 1:20-cv-00350, 2022 WL 17081329 (D. Colo. Nov. 18, 2022).

21. No. 18-CV-03025, 2022 WL 19406558 (S.D.N.Y. Dec. 5, 2022).

games to help viewers see the strike zone. The parties' amended their agreement several times, which included an arbitration provision. Defendant brought a motion for sanctions claiming Plaintiff brought a frivolous suit. The court denied Defendant's motion for sanctions.

*Williamson v. Prime Sports Mktg., LLC*²²

Defendant entered into an agency agreement with Zion Williamson while he was a student-athlete at the university of Duke. A previous court ruling deemed that agreement was void and unenforceable, but now the Defendants brought numerous contract and tort claims in an effort to recoup payment for work already done for the Plaintiff. Both parties moved for summary judgment, but the court ruled in favor of the Plaintiff holding that the Defendant's had failed to show any material facts to support their claims.

*Vanguard Sports Group, LLC v. Smith*²³

Plaintiff had previously worked for Athletes First but started their own agency, which hired Defendant away from Athletes First. Both plaintiff and Defendant eventually had arguments over player representation and Defendants ownership status, until Defendant resigned from the agency. A lower court ruled in favor of Plaintiffs motion for summary judgment which Defendant appealed. The Court of Appeals of North Carolina reversed the lower court's ruling based on there was still an issue of material fact surrounding Defendants equity interest in the agency.

*USA Gymnastics v. Liberty Ins. Underwriters Inc.*²⁴

Plaintiff had filed for bankruptcy after it was sued by hundreds of athletes stemming from the sexual assaults conducted by Larry Nassar. Plaintiff had a directors and officers liability insurance policy with Defendant and submitted claims under the policy to help with its financial needs. A bankruptcy court and the district court found that the claims were timely made and the only claims that could be excluded were ones related to conduct Nassar was criminally convicted for. The Seventh Circuit on appeal, held that Plaintiff did submit their claims on time, that only ten instances of Nassar's sexual abuse were not covered by the policy, and that covered various government

22. No. 1:19CV593, 2022 WL 2802611 (M.D.N.C. July 18, 2022).

23. 868 S.E.2d 179 (N.C. Ct. App. 2022).

24. 27 F.4th 499 (7th Cir. 2022).

investigations. The case was remanded back to the district court for further proceeding as to the limit of the policy.

COURT OF ARBITRATION FOR SPORT

The Court of Arbitration for Sport (CAS) is based in Lausanne, Switzerland and has jurisdiction to settle disputes amongst 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 include many of the decisions from the XXIV Olympic Winter Games, hosted in Beijing China during February 2022.

*Adam Edelman / Bobsleigh Skelton Israel v. Int'l Bobsleigh & Skeleton
Fed'n*²⁵

Adam Edelman, a bobsleigh pilot for the Israel national team in the two-man bobsleigh, and Bobsleigh Skelton Israel (BSI) appealed the International Bobsleigh and Skelton Federation's (IBSF) decision to not allocate an unused quota in the 2022 Winter Olympics to BSI. BSI argued that there were seven athlete positions open and adding a two-man and four-man team would only fill six of the positions. On February 4, 2022, the CAS Ad Hoc Division ruled that even though traditionally an applicant would need to exhaust all internal remedies first, under the extreme circumstances of Covid and the case, exerting jurisdiction was acceptable in this instance. The panel however, dismissed the applicants case stating that although there were open athlete quota positions, the maximum number of crew and National Olympic Committees quotas were used, meaning there was no room for the BSI to receive a quota.

*Andrei Makhnev / Artem Shuldiakov / Russian Olympic Comm. v. Int'l Ski
Fed'n*²⁶

Andrei Makhnev and Artem Shuldiakov, two Russian mogul skiers, and the Russian Olympic Committee (ROC), appealed the International Ski Federation's (FIS) decision to not allocate two additional quota spots for the 2022 winter Olympics. The athletes and ROC argued that because of the vaccine restrictions in the United States and Canada, which caused the athletes to miss four qualification events, the FIS should have awarded the ROC

25. CAS OG 22/04 (Feb. 4, 2022).

26. CAS OG 22/02 (Feb. 1, 2022).

additional quota sorts for the athletes affected. On February 1, 2022, the CAS Ad Hoc Division dismissed the athletes and ROC appeal for lack of jurisdiction, stating that the issue arose before the Olympics had begun or the ten-day period before the Olympics begin, in order to give the CAS Ad Hoc Division jurisdiction.

*Evan Bates / Karen Chen / Nathan Chen / Madison Chock / Zachary Donohue / Brandon Frazier / Madison Hubbell / Alexa Knierim / Vincent Zhou v. Int'l Olympic Comm.*²⁷

Members of the United States Figure Skating team filed an application with the CAS Ad Hoc Division during the 2022 Winter Olympics requesting that the International Olympic Committee (IOC) be ordered to present the silver medals the athletes had won for the figure skating team event. The IOC had decided not to have medal and flower ceremonies for the figure skating competitions after a drug testing incident involving Russian figure skater Kamila Valieva. On February 19, 2022, the CAS Ad Hoc Division dismissed the application, ruling that the IOC had the sole discretion on issues regarding medal ceremonies, and that the IOC decision to treat an unprecedented situation in the manner that it did, did not constitute unjustified unequal treatment.

*Football Union of Russia v. Fédération Internationale de Football Ass'n*²⁸

The Football Union of Russia appealed to CAS, FIFA's decision to ban all Russian national and domestic teams from further competing in any FIFA competitions, including the World Cup, after Russia invaded Ukraine. Russia argued that FIFA's decision would cause irreparable harm to Russian teams and athletes, especially if they were to be banned from the World Cup in 2022 and the Women's World Cup in 2023. Russia suggested that games could be moved to neutral sites, and it would be willing to pay for any extra expenses associated with travel and security. On April 8, 2022, CAS dismissed Russia's application, noting that the balance of interest was strongly in favor of the respondents.

27. CAS OG 22/11 (Feb. 19, 2022).

28. CAS 2022/A/8708 (Apr. 8, 2022).

*Int'l Olympic Comm. / World Anti-Doping Agency / Int'l Skating Union v. Russian Anti-Doping Agency / Kamila Valieva / Russian Olympic Comm.*²⁹

Fifteen-year-old Russian figure skater old Kamila Valieva was provisionally suspended during the 2022 Winter Olympics for failing a drug test by the Russian Anti-Doping Agency (RUSADA); however, the suspension was lifted by RUSADA's Disciplinary Anti-Doping Committee. The International Olympic Committee filed an application with CAS that requested the Anti-Doping Committees' decision be set aside and for CAS to render a new decision based on a *de novo* hearing. On February 17, 2022, the CAS Ad Hoc Division dismissed the Olympic Committees application on the grounds that Valieva's provisional suspension was based on delayed results from a Stockholm lab that were unfair to her and that the RUSADA Anti-Doping Committees decision to lift the suspension was justified under the circumstances.

*Irish Bobsleigh & Skeleton Ass'n v. Int'l Bobsleigh & Skeleton Fed'n / Int'l Olympic Comm.*³⁰

The Irish Bobsleigh and Skeleton Association (IBSA) appealed the International Bobsleigh and Skelton Federation's decision to not allow an additional four quota placements for men's skeleton in the 2022 winter Olympics. The IBSA argued that although there was a quota of twenty-five total men and twenty-five total women allowed to compete in Skeleton, eleven National Olympic Committees (NOC) were given quotas to allow one woman to compete, while only seven NOCs were given a quota to allow one man to compete. On February 4, 2022, the CAS Ad Hoc Division dismissed the IBSA's application holding that there was no proof of discrimination against male athletes and that the quota system could not be exceeded under any circumstances.

*Jazmine Fenlator-Victorian v. Int'l Bobsleigh & Skeleton Fed'n*³¹

Jazmine Fenlator-Victorian, a member of the Jamaican two-man women's bobsleigh team appealed the International Bobsleigh and Skeleton Federation's (ISBF) decision to not grant her a position in the 2022 Winter Games, even though she was tied in qualifying point with the last athlete to

29. CAS OG 2022/08 (Feb. 17, 2022); CAS OG 2022/09 (Feb. 17, 2022); CAS OG 2022/10 (Feb. 17, 2022).

30. CAS OG 22/05 (Feb. 4, 2022).

31. CAS OG 22/07 (Feb. 9, 2022).

qualify for the event. Fenlator-Victorian argued that the IBSF incorrectly counted a qualification event twice which created a tie between her and the other athlete. On February 9, 2022, the CAS Ad Hoc Division dismissed Jazmine Fenlator-Victorian's application holding that the IBSF decision to count a qualification event twice was not arbitrary nor unreasonable and that the IBSF's Executive Committee had the discretionary power to grant such an exception under the circumstances presented.

*Megan Henry v. Int'l Bobsleigh & Skeleton Fed'n*³²

For the 2022 winter Olympics the International Bobsleigh & Skeleton Federation (IBSF) expanded the Qualification system by expanding eligibility from the top forty-five ranked women under the IBSF rankings, to the top fifty-five women. The IBSF awarded an extra quota spot to the U.S. Virgin Islands and Katie Tannenbaum, ranked 49th, was selected to participate in the Olympics. Megan Henry of the United States, the 15th ranked women in the world, argued that the IBSF enacted the change to the qualification system too late, which was unfair and prejudicial to her. She argued that there was a precedent that the next highest ranked athlete would be selected for any opening, meaning she should have been selected for the Olympics, not Tannenbaum. On February 1, 2022, the CAS Ad Hoc Division ruled in favor of the IBSF stating that the United States had already filled its quota of two athletes for the event and that the rules stated the quota could not be exceeded for any circumstances.

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 case highlights, criminal law touches on the sports industry in unique ways.

*United States v. P.R. Dep't of Sports & Recreation*³³

Defendant was contracted by the Puerto Rico Department of Education for nearly four million dollars of Title 1 funding, to carry out and implement a new health project for the territory. Within the contract Defendant was not allowed to subcontract any of its services but was allowed to fire personnel to

32. CAS OG 22/03 (Feb. 1, 2022).

33. No. 21-1248, 2022 WL 1665166 (D.P.R. May 25, 2022).

assist in carrying out services if it went through the proper bidding process. Defendant reached an agreement with a company to assist with the project for over three million dollars but did not go through any bidding process. The Government brought suit under the False Claims Act against Defendant claiming its actions amounted to defrauding the federal government. The district court ruled in favor of Defendants motion to dismiss, holding that under the False Claims Act Puerto Rico is considered a state and that under the Act even the Federal Government cannot bring claims against a state or its agencies.

*United States v. Vavic*³⁴

Defendant was a head college water polo coach who was charged with the conspiracy to commit wire fraud, conspiracy to commit bribery, and actual wire fraud based on a scheme to take bribes for placement of recruits on water polo teams for multiple colleges he worked for during the duration of the scheme. The Defendant filed a motion for judgment of acquittal or an alternative motion for a new trial. The district court denied the Defendant's motion for acquittal based on the fact there was enough evidence presented to support a conviction but granted the motion for a new trial because the government made misstatements of the law and facts in its closing argument.

DISCRIMINATION LAW

Federal and state antidiscrimination laws are intended to protect individuals from discrimination on the basis of race, national origin, sex, age, religion, and various other protected attributes. Discrimination claims generally center on the Equal Protection Clauses of the Fourteenth Amendment³⁵ 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.

*Abner A. v. Mass. Interscholastic Athletic Ass'n*³⁷

A fifth-year high school senior was denied the opportunity to compete on the school's football and basketball teams, based on Defendant's rule which

34. No. 1:19-cr-10081, 2022 WL 4276377 (D. Mass. Sept. 15, 2022).

35. 42 U.S.C. §§ 1981, 1983 (2023).

36. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 (2023).

37. 192 N.E.3d 1066 (Mass. 2022).

restricted eligibility to four years. The student challenged the MIAA's decision, claiming the decision would harm his mental health and progress he had made the previous year. A lower court had granted injunctive relief twice before the Defendant appealed to the Supreme Court of Massachusetts. On appeal the court found that the MIAA's decision was not arbitrary and capricious and therefore vacating the injunction and remanded the case to the lower court for further proceedings.

*Bassett v. Pa. Interscholastic Athletic Ass'n, Inc.*³⁸

Defendant first issued a written decision stating that the high school Plaintiffs' children attended had engaged in athletic recruiting. Plaintiffs then filed a Motion for Preliminary Injunction to dispose of the Defendant imposing sanctions on the Plaintiffs. The court's analysis first turned to how the high school voluntarily chose to be a member of the Defendant Association and thus was bound to the Association's by-laws and constitution. Plaintiffs' motion seeking a preliminary injunction was denied because they failed to demonstrate they could win on the merits and that it would be more likely than not to suffer irreparable harm as a result of not obtaining preliminary relief.

*Manassa v. Nat'l Collegiate Athletic Ass'n*³⁹

Plaintiff played basketball at Savana State University. During his second season the team was deemed ineligible for post season play based on the NCAA's Academic Performance Program. Plaintiff sought to represent a nationwide class of student-athletes that attended Historically Black colleges and universities whose teams were subjected to postseason bans. Plaintiff filed a motion to compel discovery which the district court granted. Defendant was ordered to complete an unequivocal response to Plaintiff's requests regardless of which academic eligibility program the document is related to.

*Vincent v. Jefferson Cnty. Bd. of Educ.*⁴⁰

Plaintiff was an athletic director employed to work at a high school in Defendant's school district. Plaintiff was offered the job title of assistant athletic director but eventually was asked to resign claiming it was based on

38. No. 3:22-cv-6, 2022 WL 420594 (W.D. Pa. Feb. 11, 2022).

39. No. 1:20-cv-03172, 2022 WL 2292833 (S.D. Ind. June 23, 2022).

40. No. 2:21-cv-00514, 2022 WL 107187 (N.D. Ala. Jan. 11, 2022).

football coaches being uncomfortable working with a woman. Plaintiff brought suit claiming discrimination under Title VII and Title IX. The Defendant's motioned for dismissal however, the court denied the motion in relation to Plaintiff's Title VII claims but granted the dismissal of Plaintiff's Title IX claim. The court held that Title VII was the exclusive remedy for claims of employment discrimination at a federally funded educational institution.

*Wiler v. Kent State Univ.*⁴¹

Plaintiff, the former coach of the women's field hockey team for Defendant, brought suit under the Equal Pay Act and Title VII claiming she was paid less than her male counterparts at the University. The University filed a motion for summary judgement which the district court granted in part and denied it part. The court ruled that the Plaintiff had shown a prima facie case for discrimination in comparison to some of her male counterparts at the school and that there were still issues of material fact on whether the University had justifications for its decisions or if their actions amounted to wrongful discrimination based on sex.

GAMBLING

Gambling involving bets on sports games has been a topic which has garnered a lot of attention in the sport industry in recent years. The trend continues as this year multiple state gambling laws were approved or came into effect. Relevant state and federal laws regulating gambling frequently cause problems throughout many facets of the college and professional sports industries.

*Griswold v. Barbato*⁴²

Co-personal representatives of their father's estate brought suit alleging counts for breach of contract, specific performance of contract, fraud, civil conspiracy, conversion, and abuse of probate process. While still alive the deceased father was carrying out an illegal sports betting business. The father was consequently indicted on Federal felony charges at the age of eighty-three years old. As a result, the government placed liens on certain property owned by the father. In order to avoid his children losing the property, the father

41. No. 5:20-cv-00490, 2022 WL 15633387 (N.D. Ohio Oct 28, 2022).

42. 190 N.E.3d 1117, (Mass. Ct. App. 2022) *review denied*, 193 N.E.3d 455 (Mass. 2022).

agreed to a plea bargain, which allowed him to avoid prison and have the government liens on the property released. However, he was then rejected from bank financing to help pay the \$500,000 fine from the plea bargain. The trial court found in favor of summary judgment for the Defendants. Plaintiffs' appeal was granted on the court's finding that certain counts alleged were in fact violated by the defendants.

*Maverick Gaming LLC v. United States*⁴³

This case concerned compacts made between twenty-nine federally recognized tribes and the state of Washington. There were amendments made to several compacts that allowed multiple tribes to offer sports betting at their casinos. Plaintiff filed a complaint stating that the compacts and the amendments made violated the Indian Gaming Regulatory Act (IGRA), the Equal Protection Clause, and the anti-commandeering doctrine of the U.S. Constitution. After some argument between the parties, the Shoalwater Bay Tribe filed a Motion for Relief from Summary Judgment Deadlines. This motion was granted by the district court and the parties were ordered to meet for the purpose of setting deadlines for dispositive motions and to submit a joint motion to the court within ten days.

*Olson v. Major League Baseball*⁴⁴

This case involved fans who paid to compete in a fantasy professional baseball league operated by DraftKings Inc. Issues arose when certain MLB teams engaged in electronic sign-stealing during the 2017-2019 seasons. Plaintiffs consequently alleged that the MLB fraudulently hid that player statistics were unreliable due to the League failing to take appropriate action to discuss the rule violations. The Second Circuit found in accordance with the district court by holding that the dismissal of Plaintiff's motion for reconsideration was lawful because Plaintiff's action was meritless.

*White v. Cuomo*⁴⁵

When New York Enacted Article 14 – Racing, Pari–Mutuel Wagering and Breeding Law, Plaintiff's claimed it violated the New York Constitution. Article 14 authorized certain interactive fantasy sport contests in New York.

43. No. 3:22-cv-05325, 2022 WL 3586995 (W.D. Wash. Aug. 22, 2022).

44. 29 F.4th 59 (2d Cir. 2022).

45. 192 N.E.3d 300 (N.Y. 2022).

These types of contests are not prohibited gambling activities because contestants use skill to select their rosters and create their fantasy teams, and therefore have influence over the outcome of the fantasy contests. The Court of Appeals for New York reversed lower courts' decisions ruling in favor of the Plaintiffs and granted the Defendant's motion for summary judgement.

GENDER EQUITY & TITLE IX

Title IX of the Education Amendments of 1972⁴⁶ had a significant impact on female athletes' ability to gain equal rights to their male counterparts within the collegiate and high school settings. Despite the implementation of Title IX fifty years ago, it is ever-changing and continues to be a hotly contested issue. 2022 marked the fiftieth anniversary of Title IX and the following cases show the continuing benefit Title IX has on athletics.

*A.B. v. Haw. State Dep't of Educ.*⁴⁷

Plaintiff brought class action against Defendant alleging unequal treatment under Title IX. This case was brought after female student athletes faced discriminatory deficiencies in their school athletic departments, specifically relating to benefits and participation. The district court of Hawaii denied the students' motion for class certification but on appeal the Ninth Circuit reversed the lower court's decision and ruled that the students had correctly satisfied the requirements for class certification.

*Balow v. Mich. State Univ.*⁴⁸

Plaintiffs were members of the Defendant's women's swimming-and-diving team and brought suit under Title IX when the University eliminated both the men's and women's swimming-and-diving teams. The Sixth Circuit vacated the district court's ruling to deny the Plaintiffs motion for preliminary injunction. The Court held that the district court was required to focus on the number of participation opportunities provided in numerical terms, not as a percentage, and that the district court should have compared the participation gap of a viable team rather than the size of an average team at the University. The Court remanded the case back to the district court for further proceedings.

46. Title IX of the Education Amendments of 1972, 20 U.S.C. ch. 38 §§ 1681-1689 (2023).

47. 30 F.4th 828 (9th Cir. 2022).

48. 24 F.4th 1051 (6th Cir. 2022).

*Brooks v. State Coll. Area Sch. Dist*⁴⁹

This case involved female students who sought a declaratory judgment to resolve alleged controversy about whether Defendant was in compliance with Title IX. Allegedly, the District had a continuous practice of stating that it had no Title IX responsibility for their club sports programs. In a reply brief, Defendant's stated that it assumed its Title IX responsibility. The Motion for Declaratory Judgement was denied because there remained a disagreement about whether the District's conduct violated Title IX. Thus, the court reasoned that the case would proceed to litigation to further resolve the issue.

*Dimas v. Pecos Indep. Sch. Dist. Bd. of Educ.*⁵⁰

Plaintiff brought suit after she was discriminated against for being in a same-sex relationship with her teammate on the basketball team. Plaintiff alleges that she was discriminated and "outed" by her coach to her teammates when she was singled out by not being able to sit next to her girlfriend on the bus. Defendant brought Motion for Partial Judgment, which was granted with respect to Plaintiff's Title IX claims.

*Doe v. BMG Sports, LLC*⁵¹

Plaintiff was a fourth-grade student participating in the Ohio school district's youth volleyball program. While plaintiff's team was competing against another school, there were sexual comments made by the referee. Plaintiff's parent was dissatisfied with the only reprimand being that the referee was fired. The parent was then told, without reason, that they could not attend Plaintiff's games the following season. This caused the parent to file many claims against the district school board and other individuals. The defendants moved to dismiss for failure to state a claim. Plaintiff and her father's motion to dismiss counterclaims for failure to state a claim was found to be without merit and the court granted Defendants' motion.

*Grabowski v. Ariz. Bd. of Regents*⁵²

Plaintiff was a former member of the University of Arizona cross-county and track & field team. Plaintiff was dismissed from the team and filed a Title

49. No. 4:22-CV-01335, 2022 WL 17363029 (M.D. Pa. Dec. 1, 2022).

50. No. 1:21-cv-00978, 2022 WL 816501 (D.N.M. Mar. 17, 2022).

51. No. 1:20-cv-688, 2022 WL 345178 (S.D. Ohio Feb. 4, 2022).

52. No. CV-19-00460, 2022 WL 1128936 (D. Ariz. Apr. 15, 2022).

IX suit claiming his dismissal was retaliation for making complaints about sexual harassment, bullying, and slurs that Plaintiff was subjected to while on the team. The district court granted Defendant's motion for Judgement of the Pleadings, based on Plaintiff's lack of showing he was engaged in a protected activity under Title IX.

*Grandison v. Ala. State Univ.*⁵³

Plaintiff was the former head coach of the women's golf team at Alabama State University, where the team won seven conference championship and Plaintiff was named coach of the year five times. Plaintiff's contract was not renewed in 2019 and subsequently brought suit under Title IX claiming he was fired based on his sex and that he was paid less than the coaches of men's teams. The district court ruled in favor of Defendant's motion for summary judgement, holding that the Plaintiff had not demonstrated enough facts to establish a prima facie case of discrimination, or show there was any discriminatory reason for his contract not being renewed.

*Matthews v. Calumet Coll. of St. Joseph, Inc.*⁵⁴

Plaintiff brought suit under the Equal Pay Act, claiming that she was paid less for being the Assistant Women's Basketball Coach, than the Assistant Men's Basketball coach, who was a man. The district court denied Defendant's motion for Summary Judgement, based on a genuine dispute of fact. Specifically, the court found that there was a dispute to the number of coaches that were hired at the time and what those coaches' specific duties were.

*NG v. Bd. of Regents of the Univ. of Minn.*⁵⁵

Plaintiff brought motion for Preliminary Injunction, which the court denied. Plaintiff brought suit after the Men's Gymnastics team was cut by the University to comply with Title IX in order to match the athletic department with the gender make-up of the student body. The Preliminary Injunction would allow the University to keep Men's Gymnastics at the school until the litigation ends. The court did not grant this motion because only four former athletes remained at the school, the rest graduated or transferred institutions,

53. No. 2:20-CV-483, 2022 WL 418689 (M.D. Ala. Feb. 10, 2022).

54. No. 2:19-CV-245, 2022 WL 196368 (N.D. Ind. Jan. 21, 2022).

55. No. 21-cv-2404, 2022 WL 602224 (D. Minn. Mar. 1, 2022).

the coaches found employment elsewhere, and the institution did not have a conference schedule set up after defunding the sport.

*Party v. Ariz. Bd. of Regents*⁵⁶

Plaintiff was a former student athlete at the Arizona State University, where he was suspended and then expelled stemming from a reported sexual incident involving a female student at the school. Plaintiff brought claims of economic damages and emotional damages under Title IX. Defendants filed a motion for summary judgment on the scope of damages available under Title IX. The court ruled in Defendant's favor, holding that under Title IX there were no longer any valid claims for non-contractual damages, including claims for damages related to emotional distress or reputational harm.

*Pease v. Whitewater Unified Sch. Dist.*⁵⁷

Plaintiff was hired first as a high school baseball coach and then became the school's athletic director. Afterwards, certain poor behavior between him and his coworkers began over budget issues. Plaintiff then brought suit for retaliation under Title IX. The argument was brought under Title IX because Plaintiff and the former District Administrator had discovered that the gymnastics flooring was in dangerous condition, which was a girls' sport at the school. The court ruled in favor of Defendant's Summary Judgement for Defendant because Plaintiff's claim failed to substantially show that the retaliation from his employer was connected to his opposition of discrimination in violation of Title IX.

*Portz v. St. Cloud State Univ.*⁵⁸

The Plaintiffs were female student-athletes who were members of the Defendant's varsity intercollegiate women's tennis or women's Nordic skiing teams. Plaintiffs brought suit alleging sex discrimination in the allocation of athletic participation opportunities and the allocation of benefits provided to varsity athletes. The trial court entered a permanent injunction finding that defendant had not complied with Title IX. Subsequently, the Eighth Circuit affirmed in part, vacated in part, reversed in part, and remanded the case. Defendant then filed a Motion to Dissolve the Permanent Injunction whereas

56. No. CV-18-01623, 2022 WL 17459745 (D. Ariz. Dec. 6, 2022).

57. No. 20-CV-103, 2022 WL 671226 (E.D. Wis. Mar. 7, 2022), *reconsideration denied*, No. 20-CV-103, 2022 WL 1598378 (E.D. Wis. May 20, 2022).

58. No. 16-1115, 2022 WL 4095912 (D. Minn. Sept. 7, 2022).

plaintiffs filed a motion seeking to modify the injunction. On review, the court adjusted the injunction in light of the Eighth Circuit's opinion.

*Oldham v. Pa. State Univ.*⁵⁹

Plaintiff, a private fencing coach was sexually assaulted by the Penn State University's fencing team assistant coach while on a flight back from a competition. Plaintiff then alerted the Penn State head coach of what happened, and he then dismissed her and encouraged her not to say anything further. Plaintiff was not a student or employee of the University at the time of the incident, resulting in the court's finding that her Title IX claim against Penn State lacked standing. Therefore, Plaintiff's claim that the University was in violation of Title IX was dismissed with prejudice.

*Radwan v. Manuel*⁶⁰

Plaintiff was a student-athlete on the University of Connecticut's women's soccer team. After a game in 2014 Plaintiff showed the middle finger that was captured by the television broadcast. She was suspended from further games and later her athletic scholarship was terminated. In turn the student-athlete sued the school and school officials for violating her First Amendment rights and violating Title IX. Plaintiff appealed the district court decision to grant the Defendant's motion for summary judgment. The Second Circuit upheld the district court's ruling on Plaintiff's first amendment claim based on qualified immunity but vacated the ruling on Plaintiff's Title IX claim because there was a triable issue of fact to weather the Plaintiff was subjected to a more severe punishment based on her sex.

*Soule by Stanescu v. Conn. Ass'n of Sch., Inc.*⁶¹

Four female cisgender high-school student athletes brought suit against the school conference and its member high schools due to an alleged violation of Title IX. The cisgender athletes competed against female athletes who were transgender in track and field. Plaintiffs sought for an injunction to remove records that were achieved by the transgender athletes. The court found that the Plaintiffs did not suffer any injury in fact from losing to the transgender athletes and that the Plaintiffs failed to show how their future employment

59. No. 4:20-CV-02364, 2022 WL 1528305 (M.D. Pa. May 13, 2022).

60. 55 F.4th 101 (2d Cir. 2022).

61. 57 F.4th 43 (2d Cir. 2022).

opportunities would be negatively impacted from losing. Ultimately, there was no intentional discrimination found and the court ruled that the conference's policy was not in violation of Title IX.

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.

*Adidas Am., Inc. v. Thom Browne Inc.*⁶²

Plaintiff brought suit against Defendant for trademark infringement, dilution, and unfair competition under the Lanham Act for similar use of Plaintiffs three-stripe mark. The Defendant's motioned to the court for dismissal based on a lack of stating a claim, lack of standing, and the courts lack of jurisdiction over a pending opposition decision in front of the Trademark Trial and Appeal Board. The court agreed that it lacked jurisdiction over an opposition case of an unregistered mark but denied the Defendant's motion in all other aspects.

*Boesen v. United Sports Publ'ns, Ltd.*⁶³

On appeal the Second Circuit affirmed the district court's ruling that denied Defendant's motion for attorney's fees under the Copyright Act after Defendant successfully defended itself against a copyright infringement action brought by Plaintiff. The Second Circuit agreed that the district court has the sole discretion when deciding if attorney fees should be awarded or not under the Act and in this case the district court did not abuse its discretion.

*Caroff v. Rutgers, State Univ. of N.J.*⁶⁴

Plaintiff, a student-athlete, brought a claim against the Defendant regarding a recorded football game. Plaintiff claims that the "All-22" video recording of the game is a public record and would like to show the game to

62. 599 F. Supp. 3d 151 (S.D.N.Y. 2022).

63. No. 21-1029-cv, 2022 WL 457281 (2d Cir. Feb. 15, 2022).

64. No. A-3773-20, 2022 WL 3363911 (N.J. Super. Ct. App. Div. Aug. 16, 2022).

family and friends for use of future career opportunities. The Defendant argued that the video is not open to public holding because it consists of proprietary information, trade secrets, and could give competitive advantages to others. The Superior Court of New Jersey upheld the lower court's ruling that in fact the recordings were not subject to public disclosure based on the information the video recordings contained.

*Canada Hockey, LLC. v. Tex. A&M Univ. Athletic Dep't*⁶⁵

Plaintiff sued Defendant after Defendant published a part of Plaintiff's upcoming book without permission focusing on Texas A&M's "12th Man" history focusing on E. King Gill. The Plaintiff filled multiple claims relating to copyright infringement and the Takings Clause under the Texas and United States Constitutions. The Fifth Circuit affirmed the district court's decision to dismiss the case for a failure to state a claim and sovereign immunity invoked by Defendant.

*DraftExpress, Inc. v. Whistle Sports, Inc.*⁶⁶

Plaintiff, was the owner of a copyrighted video of an interview with Giannis Antetokounmpo when Giannis was only a teenager preparing for the NBA draft. Defendant posted a highlight reel of Giannis's plays to Twitter where the first two seconds of the video was a clip of Plaintiff's interview with Giannis. Plaintiff sued for copyright infringement and the Defendant's responded by filing a motion to dismiss. The district court ruled in favor of dismissing the case, holding that Defendant's use of the video amounted to fair use.

*Hayden v. 2K Games, Inc.*⁶⁷

Plaintiff brought suit claiming his work, tattoo's done for professional athletes, is copyrighted. Plaintiff brought suit after his work was depicted on simulated images of players such as LeBron James in the videogame NBA 2K. Plaintiff brought a motion to deny expert testimony, which was denied. Expert testimony reflected that the Plaintiff did not lose business or money due to his work being shown on his clients.

65. No. 20-20503, 2022 WL 445172 (5th Cir. Feb. 14, 2022).

66. No. CV 22-488, 2022 WL 16962285 (C.D. Cal. Aug. 2, 2022).

67. No. 1:17CV2635, 2022 WL 2785836 (N.D. Ohio July 15, 2022).

*Major League Baseball Props. v. Corporación de Televisión*⁶⁸

Plaintiff brought suit against Defendant for violating their trademarks. Defendant is a media provider in the Dominican Republic, who also distributes its programming within the United States. Defendant failed to appear and pay Plaintiff the award. Plaintiff brought motion for sanctions and to compel deposition.

*PBTM LLC, v. Football Nw., LLC*⁶⁹

The court granted in part Defendant's motion to dismiss for failure to state a claim after Plaintiff brought suit over trademark licensing the term "Volume 12" to reference Seattle Seahawks fans. Plaintiff claims Defendant failed to deal in good faith when they refused to approve PBTM's advertising using the trademark "12" to damage Plaintiff's business. The Court granted Defendant's motion to dismiss for breach of the duty of good faith and fair dealing.

*Pro batter Sports, LLC v. Sports Tutor, Inc.*⁷⁰

Plaintiff brought this litigation for patent infringement for use of a patent that Defendant used and benefitted from for over twelve years. Previously courts had ruled that Defendant had infringed upon Plaintiff's patents. Since that decision Defendant did not stop use of patent or remedy the infringement until intervention by the court. The court ruled that Defendant owed Plaintiff royalties for selling infringing machines, that the damages are doubled based on Defendant willful and egregious misconduct and awarded Plaintiff \$776,427.05.

*Real USFL, LLC v. Fox Sports, Inc.*⁷¹

Plaintiff's filed suit against Defendant after the creation of a new upstart football league which used trademarks previously used and owned by the Plaintiff. Plaintiff claimed that Defendant and their new league was infringing upon Plaintiff's trademark and committed tortious interference with contract. Plaintiff filed a motion for injunctive relief to stop the Defendant from using the league name and logos for the new league. The court ruled that the Plaintiffs did show there was a likelihood of confusion but denied the motion

68. No. 1:19-cv-08669, 2022 U.S. Dist. LEXIS 157935 (S.D.N.Y. Sep. 1, 2022).

69. No. C19-2081, 2022 WL 670920 (W.D. Wash. Mar. 7, 2022).

70. 586 F. Supp. 3d 80 (D. Conn. 2022).

71. No. CV 22-1350, 2022 WL 1134487 (C.D. Cal. Apr. 14, 2022).

for injunctive relief based on a lack of showing of irreparable harm, hardship overwhelmingly favored the Defendant, and denying the injunction would be in the public's interest.

*Silver v. BA Sports Nutrition, LLC.*⁷²

Plaintiff sued for misrepresentation surrounding Defendants BodyArmor Sports Drink. Plaintiff alleged that Defendant sold a high sugar drink with no health benefits that Defendant labeled as a Sports Drink, when in reality it was no more than just a dressed-up soda product pretending to be a health drink. The Defendant's filed a motion for Summary Judgement, which the court granted based on Plaintiff's lack of showing that they were actually misled by what was actually contained in BodyArmor.

*Warrior Sports, Inc. v. Wilson Sporting Goods, Co.*⁷³

Plaintiff a large producer of lacrosse equipment brought suit for trademark infringement under the Landham Act against Defendant, a large producer of protective sporting gear across multiple sports. Defendant claimed they owned the trademark in question and that the trademark itself was incontestable in regard to use on any athletic protective equipment. Defendant argued it the mark covered all equipment including pads and guards, while the Plaintiff claimed it only covered shields as listed in the registration. Defendant moved for a motion to dismiss, which the court denied based on there still being a material question to the scope of Defendant's trademark registration.

LABOR & EMPLOYMENT LAW

The National Labor Relations Act⁷⁴ 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. 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.

72. No. 20-cv-00633, 2022 WL 1288982 (N.D. Cal. Apr. 29, 2022).

73. No. 22-11285, 2022 WL 16540666 (E.D. Mich. Oct. 28, 2022).

74. National Labor Relations Act, 29 U.S.C. §§ 151-169 (2023).

*Miles v. Nat'l Football League*⁷⁵

A professional football player brought suit against the NFL claiming that the NFL had committed disability discrimination under the New Jersey Law Against Discrimination (LAD) and that it had subsequently failed to make a reasonable accommodation. The court reasoned that an application of state law is preempted by federal labor law when the resolution of a state-law claim depends upon the meaning of a collective-bargaining agreement. Defendant's motion to dismiss was granted based upon plaintiff's lack of exhausting administrative remedies.

*Mussarova v. Garland*⁷⁶

Plaintiff, a former water polo athlete from Kazakhstan applied for a Visa as someone with "extraordinary ability" but was denied and subsequent appeals were dismissed as well. Plaintiff filed suit in order to reverse the decisions and have the ability to obtain her Visa. The district court ruled in favor of Defendant, holding that Plaintiff had failed to prove how her achievements she received as a former athlete would translate into having extraordinary ability as a coach. The court noted that although the Plaintiff had been a captain of a national polo team that did not establish Plaintiff's ability in leading an organization with distinguished organization. Ultimately, Plaintiff failed to show that she had extraordinary ability in being a coach and the Defendant's motion for summary judgement was granted.

*Porter v. Nat'l Football Players Ass'n*⁷⁷

Plaintiff brought suit after he was suspended by the NFLPA from being an agent after he was criminally indicted. Through arbitration Plaintiff was able to regain his license to be an agent but still claimed the NFLPA harassed him and interfered with his business. Specifically, Plaintiff filed claims of tortious interference with a business expectancy, breach of duty, and breach of contract. The district court held that Plaintiff's claims are preempted by federal labor law. Hearing this case on appeal Sixth Circuit affirmed in part, reversed in part, and remanded the case for further proceedings. The court held that some claims were preempted by federal law but did not preempt

75. No. 2:19-cv-18327, 2022 WL 17129225 (D.N.J. Nov. 21, 2022).

76. 562 F. Supp. 3d 837 (C.D. Cal. 2022).

77. No. 21-1420, 2022 WL 2666060 (6th Cir. July 11, 2022).

Plaintiff's breach of duty claim, however the issue of Plaintiff's motion to compel arbitration was remanded back to the district court.

*Senne v. Kansas City Royals Baseball Corp.*⁷⁸

Minor League baseball players brought a class action suit against MLB, the MLB Commissioner, and several MLB franchises for allegedly violating minimum wage, overtime, and recordkeeping requirements under the Fair Labor Standards Act and state laws. Court granted in part and denied in part motions brought by both parties.

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.

*Bauer v. Hill*⁷⁹

Plaintiff a former professional baseball player, filed a motion to dismiss all counterclaims of battery and sexual assault brought by the Defendant based on the issue of preclusion. Plaintiff argued that the claims were precluded by collateral estoppel based on a previous court's decision to deny the Defendant's request for a restraining order. The court held that the previous court's decision to not grant Defendant's restraining order did not necessarily decide that Plaintiff did not batter or sexually assault the Defendant, but that the previous court had the discretion to deny the request on other grounds. Since the previous court did not decide on the issue of battery or sexual assault, the Defendant's counterclaims were not precluded and Plaintiff's motion to dismiss was denied.

*Campagna-McGuffin v. Diva Gymnastics Acad., Inc.*⁸⁰

Parents of two gymnasts who attended Diva Gymnastics brought a negligence suit against the gymnastics studio. The parents alleged that their

78. 591 F. Supp. 3d 453 (N.D. Cal. 2022).

79. No. 8:22-cv-00868, 2022 WL 18399973 (C.D. Cal. Nov. 23, 2022).

80. 199 N.E.3d 1034 (Ohio Ct. App. 2022).

daughters suffered injuries resulting from excessive conditioning from coaches at the studio. The daughters claimed that excessive force was used as a punishment in the studio. The Ohio Court of Appeals affirmed the lower courts ruling to grant Defendant's motion for summary judgment. The court held that the negligence claims were barred by the assumption of risk and that there was insufficient evidence to raise issue of material fact.

*Clark v. Univ. of Or.*⁸¹

A negligence suit brought against the University of Oregon by a student athlete who suffered knee injuries while on a visit to the university. The Plaintiff was advised to complete a workout drill with the assistance coach. During this drill the assistant coach bumped into Plaintiff's chest causing Plaintiff to fall to the ground and twist his knee. The Court of Appeals of Oregon reversed the lower court's decision to grant summary judgment in favor of Defendant holding that a jury should rule on the reasonableness of the Defendant's conduct and foreseeability of the risk. The Appeals court remanded the case to the lower court for further proceedings.

*Est. of Blakely by & Through Wilson v. Stetson Univ., Inc.*⁸²

Estate sought to recover damages for negligence and breach of fiduciary duty by the Defendant. The estate alleged that the University was responsible for players death after he participated in practice that led to cardiac arrest. Damages include an array of issues that University failed to require proper cardiac arrest screening, training to staff to handle health condition properly and multiple ignored complaints from players with chest pains to trainers and coaches. The Florida Court of Appeals reversed the lower court's decision to grant Defendant's motion for summary judgment based on the fact that the University's medical release was not clear and unambiguous as to Plaintiff signing away his right to sue for negligence.

*Frederick v. U.S. Olympic Comm.*⁸³

Plaintiff brought suit against the US Olympic Committee and her former coach for alleged negligence and negligent infliction of emotion distress. Plaintiff claims that while she was a member of the Olympics gymnastics team

81. 512 P.3d 457 (Or. Ct. App. 2022).

82. 355 So.3d 476 (Fla. Dist. Ct. App. 2022).

83. No. 1:18-cv-11299, 2022 WL 4356468 (D. Mass. Sept. 20, 2022).

she was repeatedly molested, sexually abused and assaulted by her coach, Defendant Richard Carlson. The Olympic committee had already been voluntarily dismissed from the case and Defendant Carlson filed a motion to dismiss. The district court ruled in favor to dismiss the case for a lack of subject jurisdiction over Carlson in the state of Massachusetts.

*Harris v. U.S. Ctr. for SafeSport*⁸⁴

Plaintiff filed suit for slander against Defendant, after the Defendant made a statement in a publication that declared that the Plaintiff was suspended from boxing as a result of sexual misconduct. Plaintiff originally filled the case in state court, but the Defendant removed the case to federal court claiming there was a federal question involved. In response Plaintiff filed a motion to remand the case back to state court for lack of jurisdiction. The court held that because the claim asserted related to the responsibilities of Defendant and that the Defendant had moved the case to the district court of the United States in the district the action was originally brought, the court had original jurisdiction over the case.

*In re Nat'l Football League Players Concussion Inj. Litig.*⁸⁵

Plaintiff, a member of a class action, brought suit against the NFL to compensate for their head injuries caused by playing football. The class members were offered a settlement. Those that did not want to take the settlement were given the opportunity to opt out. Plaintiff opted out of the settlement agreement and argued that the award was less than his damages caused by medical expenses and lost wages. The court affirmed the district court's order denying Plaintiff's objection to his award.

*Lavallii v. Jackson*⁸⁶

Plaintiff was a football player at Central Michigan University who suffered from concussions and thought he would need to take a year off based on consulting with team doctors and coaching staff. Plaintiff received an outside medical opinion that he was medically clear to continue playing, however Defendant, a team doctor refused to give Plaintiff medical clearance. Plaintiff brought suit against Defendant claiming medical malpractice in not

84. No. 4:22-CV-1063, 2022 WL 16635126 (E.D. Mo. Nov. 2, 2022).

85. No. 22-2441, 2022 WL 17974457 (3d Cir. Dec. 28, 2022).

86. No. 354833, No. 354899, 2022 WL 127548 (Mich. Ct. App. Jan. 13, 2022).

clearing him to play. Defendant appealed the trial court's ruling denying his motion for summary disposition, but the Court of Appeals in Michigan affirmed the lower court's order and decline to address other Defendant's arguments for lack of jurisdiction.

*Mayes v. La Sierra Univ.*⁸⁷

A private university was sued for negligence after an attendee of the university's baseball game was hit in the face by a baseball. The spectator was seated in bleacher seats at the stadium when she was hit in the face by the ball. This resulted in extreme injuries such as skull fracture, cuts, eye damage, and even brain damage. Important objectives that Mayes argued on, was things such as "ballpark safety and management," including "foul ball safety." Plaintiff also argued that she never felt unsafe at games since all the other parks she had been to had safety implications such as nets and other protections. The University argument was that the incident was an assumed risk of attending a baseball game. The lower court ruled in favor of the university, but a California appeals court reversed the decision based on there were still issues of material fact on if the University should have had protective netting and other protective measures as well as if the University had a duty to warn spectators.

*Montador v. Nat'l Hockey League*⁸⁸

Plaintiff brought suit against Defendant for wrongful death after their son died from multiple concussions and brain trauma. Plaintiff alleged that Defendant promoted violence in the sport of Hockey and did not properly warn the players of the risks of brain injury that occur after multiple concussions. Defendant previously had the case moved to federal court. Plaintiff brought motion to remand the case back to state court based on a lack of a federal question, which was granted.

*Nat'l Collegiate Athletic Ass'n v. Finnerty*⁸⁹

Three football players brought a suit against the NCAA for health injuries including concussions that were sustained from playing college football. The concussions were not properly addressed or treated and resulted in detrimental

87. 288 Cal. Rptr. 3d 693 (Cal. Ct. App. 2022).

88. No. 21-C-06820, 2022 U.S. Dist. LEXIS 168119 (N.D. Ill. Sep. 16, 2022).

89. 191 N.E.3d 211 (Ind. 2022).

health injuries and issues to the players. Each of the three football players were student athletes at different universities but all suffered from the same diagnosis of CTA – one instance was fatal. The players main argument was that concussion management protocols should have been implemented by the NCAA. The NCAA had filed for a protective order which was denied by both the lower court and the court of appeals for Indiana. In this case the Indian Supreme court remanded the case back to the trial court to properly assess the NCAA’s motion for a protective order.

*Nix v. Major League Baseball*⁹⁰

Plaintiff a former major league baseball player filed suit against Defendants claiming they conducted a fraudulent scheme to portray the Plaintiff as a producer of banned substances or performance enhancing drugs. The Plaintiff claimed the supplements he sold were the same ingredients in some of the products that the league approved and endorsed. The Defendants filed a motion to dismiss which the district court granted, holding that many of Plaintiff’s claims were precluded based off previously failed suits against the same Defendants, and that Plaintiff had failed to state a claim which relief could be granted on all remaining claims. Plaintiffs’ claims were dismissed with prejudice and Plaintiff was declared a vexatious litigant by the court.

*Porter v. Ponca City Indep. Sch. Dist. I-71*⁹¹

This case arose from an alleged sexual assault that occurred when a freshman on the high school basketball team was assigned a hotel room with two upperclassmen. Plaintiff and his mother approached the school with the matter, which resulted in the upperclassmen being banned from playing sports for a year. However, the district court turned their attention to Claim Five regarding negligence of school employees. Plaintiff claimed that the school officials owed him a duty of reasonable care to protect him from harm. The court discussed how the school employees had no “special relationship” to Plaintiff and thus owed him no duty of care. Thus, the incident occurring off school grounds did not require the school officials to act within the scope of their employment.

90. No. H-21-4180, 2022 WL 2118986 (S.D. Tex. June 13, 2022).

91. No. CIV-21-00612, 2022 WL 1444471 (W.D. Okla. May 6, 2022).

*Powell v. Seton Hall Univ.*⁹²

Two former basketball players at Seton Hall University, one female and one male, both sued the university for injuries they sustained while playing for their respective teams. Both players claim that coaches and medical staff of the University misdiagnosed their knee injuries which resulted in both losing the opportunity to play professional basketball. Plaintiffs filed claims relating to gross negligence, breach of contract, breach of implied contract and breach of fiduciary duties, and in response Defendant's filed a motion to dismiss all claims. The district court ruled in favor of the Defendants and dismissed all the claims with prejudice except for one of the athletes' claims of gross negligence. The court held that by the University not recommending the athlete receive a second MRI and continued to implement an ineffective treatment, the athlete had stated enough plausible facts of gross negligence to survive dismissal.

*Owens v. Nat'l Collegiate Athletic Ass'n*⁹³

Plaintiff brought suit for personal injury and negligence against Defendant for the lack of proper concussion protocols. Both sides brought in expert testimony and in turn both parties motioned to exclude the other sides expert testimony. The court partially granted and denied both parties motions based on the weight of the evidence the experts could provide to a jury.

*Reighard v. ESPN, Inc.*⁹⁴

A University gymnastics coach brought suit against ESPN and an ESPN reporter for defamation related to the investigation of various gymnastics coaches for sexual assault. The reporter posted a tweet stating that the coach had been put on leave immediately after posting a separate tweet about different coaches being investigated. After evaluating the facts, the court held that the tweets were capable of being defamatory and that the implication of the two tweets being connected was false and with actual malice.

92. No. 2:21-cv-13709, 2022 WL 1224959 (D.N.J. Apr. 26, 2022).

93. No. 11-C-6356, 2022 WL 2967479 (N.D. Ill. July 27, 2022).

94. No. 355053, 2022 WL 1513112 (Mich. Ct. App. May 12, 2022)

*Rooney v. Battenkill Riv. Sports & Campground Holding Co., LLC*⁹⁵

Plaintiff sued Defendant for negligence after slipping on a rock located on a path while attempting to go water tubing. The defendant provided tubes and transportation to the tubing location. Defendants filed a motion to dismiss the case. The court ruled in favor of Defendant and dismissed the case ruling that the plaintiff had assumed the risks associated with water tubing. The court was convinced that the Plaintiffs prior experience with water tubing and using the path she slipped on, caused the Plaintiff to assume the inherent risk of her injuries.

*Saunders v. Nat'l Collegiate Athletic Ass'n*⁹⁶

Plaintiff brought suit against the NCAA for negligence, malicious interference with future employment, denial of due process, and usurpation of judicial function of the State after filing for bankruptcy. Plaintiff worked as an assistant football coach for the University of Louisiana and University of Mississippi, both member schools of the NCAA. After being found to have violated NCAA rules, the NCAA issued a show-cause order for any school wanting to hire Plaintiff in an athletics position from 2016-2024. Due to the expenses from fighting the NCAA and lack of income, Plaintiff brought this suit. The Court reversed and remanded the lower court's ruling and found that the lower court erred when they estopped the Plaintiff from bringing their claims.

*Suero v. Nat'l Football League*⁹⁷

Plaintiff brought suit against the NFL, New York Jets, New York Giants, and Meadowlands Stadium Company for consumer fraud and misrepresentation due to the fact that the Jets and Giants both play in New Jersey and are headquartered in New Jersey, not New York like their name suggests. Plaintiff's, who are New York City residents, did not know the Jets and Giants play in New Jersey and suffered significant losses in ticket price and travel time to attend a game out of state. Plaintiff's claim that if they had known the teams are not located in New York, they would not have purchased tickets to attend the game. The court dismissed the claim for lack of subject

95. 204 A.D.3d 1293 (N.Y. App. Div. 2022).

96. 352 So. 3d 618 (Miss. 2022).

97. No. 22-CV-31, 2022 WL 17985657 (S.D.N.Y. Dec. 16, 2022).

matter jurisdiction and failure to state a claim upon which relief can be granted.

*Srouy v. San Diego Unified Sch. Dist.*⁹⁸

Plaintiff, a student, brought suit against Defendant his former high school, seeking declaration that the school was obligated to indemnify Plaintiff for his defense costs arising out of a personal injury action that a football referee brought against Plaintiff. The appeals court affirmed the trial court's decision that the school did not owe a duty of free legal defense to the student or that the school had a duty to defend the student.

*Thomas v. D1 Sports Holding, LLC*⁹⁹

Plaintiff, a professional football player, invested \$200,000 with Defendant in the hopes that Defendant would then invest in a company that would open and operate a gym in Chicago. The company Defendant invested in never found a location for the gym and Plaintiff in turn sued Defendant for violating the Illinois Securities Act with the hopes of regaining the money Plaintiff originally invested in the Defendant. The Illinois appellate court affirmed the trial court's decision to grant Summary judgement in favor of Plaintiff. The court found that Defendant had materially misled Plaintiff as to the reality of the gym and that misrepresentation led to the Plaintiff investing money with the Defendant.

CONCLUSION

The sports-related cases adjudicated in 2022 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 2022, it does briefly summarize a many of the interesting and thought-provoking sports law cases.

Paul D. Kekich, Survey Editor

With contributions from Associate Editors: Alexandra N. Lear,
Kristin H. Payer & Monica M. Rayman

98. 290 Cal. Rptr. 3d 606 (Cal. Ct. App. 2022).

99. No. 1-20-1194, 2022 WL 1135682 (Ill. App. Ct. Apr. 18, 2022).