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# 2023 Annual Survey: Recent Developments in Sports Law

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SURVEY

# 2023 ANNUAL SURVEY: RECENT DEVELOPMENTS IN SPORTS LAW

## INTRODUCTION

This Survey highlights various sports-related court decisions between January 1, 2023, and December 31, 2023. While every sports-related case may not be included, it briefly summarizes a wide range of cases impacting the sports industry in 2023. This Survey's goal is to provide the reader insight into various legal issues and developments in sports law. For ease, the Survey is arranged alphabetically by the substantive area of law each case falls under.

## ALTERNATIVE DISPUTE RESOLUTION

Alternative dispute resolution, or ADR, provides alternative forms of resolving conflict without a trial. Parties typically are free to choose the venue, governing law, and other resolution procedures to resolve such conflicts. These agreements are typically laid out within contractual agreements, and thus, disputes from this field typically involve contractual disagreements.

### *TCR Sports Broad. Holding LLP v. WN Partner, LLC*[1]

TCR Broadcasting was established as the Orioles' Television Network in 2001 to broadcast Baltimore Orioles games in a seven-state television territory which included Washington D.C.. Following the MLB's purchase and relocation of the Montreal Expos to Washington D.C. as the Washington Nationals, the MLB, TCR, the Orioles, and the Nationals agreed to convert TCR into the Mid-Atlantic Sports Network (MASN). MASN is a two-team regional sports network to broadcast Orioles and Nationals games. TCR, the MLB, the Orioles, and the Nationals agreed the Orioles would be MASN's managing partner and supermajority owner and that the Orioles and Nationals would be paid the same amount for their telecast rights, but MASN's profits would be

[1] 40 N.Y.3d 71, 214 N.E.3d 1137 (2023).

split in proportion to the teams' ownership shares (favoring the Orioles). The agreement set forth the following procedure for resolving telecast fees disputes: (1) a 30-day mandatory negotiation period; (2) if negotiation failed, non-binding mediation before one of two forums; and (3) if mediation failed, mandatory arbitration before the MLB's Revenue Sharing Definitions Committee (RSDC) where the RSDC would determine the fair market value of the telecast rights fees.

The teams and MASN failed to agree on telecast rights fees for 2012-2016 period - MASN valued the telecast fees at $34 million in 2012 and about $45 million in 2016, but the Nationals valued their rights at more than $110 million per year. The parties proceeded to arbitration before the RSDC, who valued the telecast rights to be approximately $53 million. This first arbitration determination was vacated under the Federal Arbitration Act on conflict of interest grounds because the attorney representing the Nationals also concurrently represented the MLB and each team on the RSDC's three-team panel at the time, in unrelated matters. Arbitration was remanded back to the RSDC (with a new three-team panel as the previous teams' serving term) after the court determined the RSDC was the appropriate venue for arbitration under the FAA because that is what the parties agreed to.

The second arbitration before the RSDC concluded the value of the Nationals' television rights should be set to an average annual value of approximately $59 million. MASN and the Orioles again attempted to vacate the arbitral award on evident partiality grounds, claiming the RSDC was partial due to the previous conflict of interest and because of previous public statements by Commissioner Rob Manfred.

The Court confirmed the second arbitration award, finding that remanding arbitration back to the RSDC was proper because the evident partiality in the first arbitration had been remedied because the parties obtained new counsel and the RSDC panel members who presided over the first arbitration had been completely replaced by new arbitrators. Further, the Court affirmed that the MLB's RSDC was the proper forum to conduct arbitration because it was the arbitral body explicitly agreed to by the parties in their initial agreement.

## ANTITRUST LAW

The purpose of antitrust law is to protect consumers from unfair and anticompetitive business conduct that eliminates the benefits of competition. Monopolistic behavior is prohibited, as per the Sherman Antitrust Act.[2] In the world of sports, antitrust law is a popular area in the world of college athletics,

[2] Sherman Antitrust Act, 15 U.S.C. §§ 1-38 (2024).

but it is perhaps most famously used in Major League Baseball's antitrust law exemption.

*Cangrejeros de Santurce Baseball Club, LLC v. Liga de Béisbol Profesional de Puerto Rico, Inc.*[3]

The sole owner and operator of Cangreheros de Santucre Baseball Club, of the Liga de Beisbol Professional de Puerto Rico, Inc, alleged that the Puerto Rican baseball league, its teams, and owners conspired to boycott and exclude the plaintiff from competing in the league. The plaintiff asserted this constituted an unreasonable restraint of competition, conspiracy to monopolize, monopolization, and attempted monopolization, in violation of the Sherman Act and Puerto Rico's antitrust laws. The Court granted the defendants' motion to dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim, finding that the federal exemption of professional baseball from antitrust laws preempted claims for violation of the Sherman Act and Puerto Rico's antitrust laws.

*In re College Athlete NIL Litigation*[4]

This consolidated litigation started as two separate actions. The three plaintiffs, two current student-athletes and one former student-athlete, allegedly suffered because of certain NCAA rules restricting compensation that student-athletes can receive in exchange from the commercial use of their names, images, and likeness and prohibiting NCAA member conferences and schools from sharing with student-athletes the revenue they receive from third parties for the commercial use of student-athletes' NIL deals. Specifically, the claims asserted were for (1) conspiracy to fix prices in violation of Section 1 of the Sherman Act; (2) group boycott or refusal to deal in violation of Section 1 of the Sherman Act; and (3) unjust enrichment. Plaintiffs sought an injunction restraining defendants from enforcing the challenged NCAA rules and a judgment declaring the challenged NCAA rules void. The Plaintiffs moved for certification of three proposed damages classes under Rule 23(b)(3) concerning whether the court finds that the plaintiffs and others claiming similar harm may sue under a class action. The court concluded that the plaintiffs could sue under a class action, dividing those into the three proposed damages classes because the plaintiffs have shown that the questions of antitrust injury and damages for each of the three types of injuries at issue are capable of resolution on a class-wide basis with common proof.

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[3] No. CV 3:22-01341-WGY, 2023 WL 4195663 (D.P.R. June 27, 2023).
[4] No. 20-CV-03919 CW, 2023 WL 8372787 (N.D. Cal. Nov. 3, 2023).

*Ohio v. Nat'l Collegiate Athletic Ass'n*[5]

Plaintiffs filed suit against the NCAA, requesting a Temporary Restraining Order and Preliminary Injunction. Plaintiffs wished to enjoin NCAA Bylaws 14.5.5.1 (the Transfer Eligibility Rule) and 12.11.4.2 (allowing the NCAA to punish member schools if a court-ordered injunction is stayed), claiming that student-athletes would suffer irreparable harm if the former was not enjoined by discouraging student-athlete transfers, and member schools would be punished unfairly if the latter was not. The motion was granted in part, and a temporary restraining order was applied to Bylaw 14.5.5.1.

*Relevant Sports, LLC v. U.S. Soccer Fed'n, Inc.*[6]

Relevant Sports, LLC, a U.S.-based soccer promoter, alleged that FIFA and the United States Soccer Federation, Inc. (USSF) adopted and enforced a geographic market division policy in violation of Section 1 of the Sherman Act. The United States District Court for the Southern District of New York dismissed Relevant Sports complaint for failure to state a claim. Relevant Sports appealed, and the Second Circuit vacated and remanded the claim, concluding that the policy did in fact reflect a contractual commitment of head-to-head-competitors to restrict competition.

*Shields v. Fed'n Internationale de Natation, Int'l Swimming League, Ltd. v. Fed'n Internationale de Natation*[7]

In two separate but similar cases, federal antitrust claims were brought against Federation Internationale de Natation (FINA), a Swiss organization recognized by the International Olympic Committee as the governing body for international and Olympic aquatic sports. FINA develops rules for aquatic competition and manages such competitions at the Olympic Games. FINA also calendars international competitions, designed to prevent scheduling conflicts, ensure swimmers have opportunities to compete, and apply FINA rules consistently.

The International Swimming League (ISL), Thomas Shields, Michael Andrew, and Katinka Hosszu (Plaintiffs) wished to enter the market for international swimming competitions to compete with FINA. FINA did not recognize nor calendar the ISL into its schedule of events. Plaintiffs contend that selling their labor to ISL would suspend them from FINA and jeopardize their Olympic participation. FINA motioned for summary judgement for all

[5] No. 1:23-CV-100, 2023 WL 9103711 (N.D. W. Va. Dec. 13, 2023).
[6] 61 F.4th 299 (2d Cir. 2023).
[7] No. 18-CV-07393-JSC, 2023 WL 121985 (N.D. Cal. Jan. 6, 2023).

claims. Conclusively, Plaintiffs could not provide evidence to prove the relevant market of international swimming competition. The Court granted FINA's motion for summary judgement.

### *Smart v. Nat'l Collegiate Athletic Ass'n*[8]

Plaintiffs brought putative class action cases against the NCAA, alleging the NCAA and its member schools illegally conspired to fix the compensation of a certain category of Division I coaches at $0. Plaintiffs Taylor Smart and Michael Hacker (Smart Plaintiffs) sought to represent volunteer baseball coaches; Plaintiffs Joseph Colon, Shannon Ray, Khala Taylor, Peter Robinson, Katherina Sebbame, and Patrick Mehler (collectively "Colon Complaint") sought to represent volunteer coaches in sports other than baseball. The Smart Plaintiffs assert claims for (1) violation of Section 1 of the Sherman Act; (2) quantum meruit under various state laws; (3) unjust enrichment under various state laws; (4) violations of California's Unfair Competition Law (UCL); and (5) declaratory judgement. The Colon Complaint asserts one claim for violation of Section 1 of the Sherman Act. Defendant moved to transfer venue in both cases and separately moved to dismiss each claim.

Defendant's motions to transfer venue and motion to dismiss the Colon Complaint were denied. Defendant's motion to dismiss the Smart Complaint was denied in part and granted in part: denied as to Smart Plaintiff's Claim 1 (Sherman Act Section 1) and Claim 4 (California's UCL) and granted to all other claims.

## CONSTITUTIONAL LAW

Both the United States' and various states' constitutions protect individuals from certain government actions. Constitutional law plays an important part in sports law, as many high schools, high school athletic associations, and public universities constitute state actions, and thus, are bound by the United States' Constitution. The cases below highlight various constitutional lawsuits involving sports law.

### *A.K. v. Minn. State High Sch. League*[9]

Plaintiff A.K. transferred to a new school after participating in freshman football practices for another school for one week before the school year began. Later in the academic year, A.K. joined the varsity wrestling team for the new school he transferred to, ultimately learning he was ineligible for varsity sports

[8] No. 123CV00425WBSKJN, 2023 WL 4827366 (E.D. Cal. July 27, 2023).
[9] No. CV 23-1985, 2023 WL 5348866 (D. Minn. 2023).

because Defendant Minnesota State High School League rules deemed him a transfer student by reasons of participation in football practices for the previous school. A.K. alleged deprivation of his procedural and substantive due process rights, claiming he had a property interest in participating in varsity sports and that the League's action abiding by its rule was "truly irrational." The court concluded that A.K. did not possess a property interest in participating in varsity sports at the school he transferred to because he had an opportunity to participate in junior varsity or freshman-level interscholastic sports and that there is no property interest lost if one is not permitted to specifically participate in varsity interscholastic sports. Further, the Court emphasized that A.K. could not claim that the League acted capriciously or arbitrarily because he was deprived of a property interest, and thus, could not allege that the League violated his substantive due process rights.

*Cody through Szabo v. Kenton Cnty. Pub. Sch.*[10]

Plaintiffs Cody and Szabo were students at Dixie Heights High School in the Kenton County School district and members of the basketball team. Plaintiff Cody lived with plaintiff Szabo and the Szabo family, with Mr. and Mrs. Szabo serving as his legal guardians. Plaintiffs alleged they suffered discrimination based on plaintiff Cody's race and cognitive disabilities in connection with their membership on the basketball team. The court determined the §1983 claims failed as a matter of law as the plaintiffs failed to show they were deprived by the Defendants of any protected interests or rights without due process. Further the court determined the plaintiffs failed to establish a prima facie case of disability discrimination under Title II of the ADA or racial discrimination under Title VI of the Civil Rights Act of 1964. The court granted the defendants' motion for summary judgement on all claims.

*DeMarcus v. Univ. of S. Ala.*[11]

Plaintiffs were eight former and current women's volleyball players at the University of South Alabama. The plaintiffs alleged their head coach forced them to play through serious injuries, subjected the players to corporal punishment, and engaged in sexual harassment and other physical, verbal, psychological abuse. The plaintiffs asserted their claims under state law, Title IX, and deprivation of substantive due process under 42 U.S.C. § 1983. The court dismissed the Title IX claims with prejudice, finding the plaintiffs had failed to allege facts that establish adequate notice and deliberate indifference

[10] No. 220CV103WOBCJS, 2023 WL 1952791 (E.D. Ky. Feb. 10, 2023).
[11] No. CV 21-00380-KD-B, 2023 WL 2656749 (S.D. Ala. Mar. 27, 2023).

by the "appropriate persons" under Title IX as the school suspended and subsequently terminated the head coach following the first formal complaint by the plaintiffs. The court also dismissed the substantive due process claims with prejudice, holding the actions of the coach, while actionable as state law tort claims, did not rise to the level to demonstrate "arbitrary, egregious, and conscience-shocking behavior" required to establish a substantive due process violation. The court declined to assert jurisdiction over the state law tort claims and dismissed without prejudice.

### *McElhaney v. Williams*[12]

The plaintiff was an enthusiastic support of his daughter, who was an infielder for her high school softball team. His daughter was benched, and the plaintiff sent text messages to her coach criticizing his managerial decisions. In response, school officials banned the plaintiff from attending games for a week. The plaintiff alleged that the school officials retaliated against him, believing his speech was shielded by the First Amendment. Defendants moved for summary judgment on qualified immunity grounds. The plaintiff satisfied the clearly established prong of the qualified immunity inquiry because a school official may not retaliate against parents for the content of their speech. However, the Sixth Circuit stated that this claim is best suited as a breach of contract under state contract law rather than a 1983 action because the school officials conceivably could suspend the plaintiff from his reserved game seats due to a rule violation. The Sixth Circuit reversed in part, affirmed in part, and remanded for proceedings.

### *Moore v. Tangipahoa Par. Sch. Bd.*[13]

Plaintiff Taj Mikhail Jackson was a student within the Tangipahoa Parish Public Schools system that transferred between high schools within the district under a school-approved "Majority to Minority" (M&M) transfer, pursuant to the state's current desegregation order. Plaintiff Jackson was subsequently ruled ineligible to participate in athletics by the Louisiana High School Athletic Association under its transfer eligibility rules. The court ruled that the LHSAA would violate the intent of the desegregation order and ordered that the plaintiff be ruled immediately eligible for athletics and that the "Athletic Eligibility" provision as currently written (which applied LHSAA rules to desegregation transfers) be stricken from the desegregation order.

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[12] 81 F.4th 550 (6th Cir. 2023).
[13] 2023 U.S. Dist. LEXIS 2295 (E.D. La. Jan. 6, 2023).

### *Okla. v. U.S.*[14]

In 2020, Congress enacted the Horseracing Safety and Integrity Act to create a national framework to regulate thoroughbred horseracing. The Plaintiff claimed that the Act unlawfully delegated federal power to a private entity and unlawfully commandeered the States. In response to challenges like that of the Plaintiff, Congress amended the Act to give the Federal Trade Commission final say over implementation of the Act relative to the Horseracing Authority. The Plaintiff maintained that the Act remained unconstitutional. Because the Act's amendment gave full authority to the FTC regarding the substance of horseracing rules, the FTC is permitted to be the overseer of the Authority and implementation of the Act. Further, Oklahoma lacked standing to challenge its commandeering claim because the sanction power extends only to covered persons, not States.

### *Place v. Warren Loc. Sch. Dist. Bd. of Education*[15]

Plaintiff was a high school basketball player who claimed she was bullied by her coach on multiple occasions and was not treated fairly because she did not receive enough playing time. Her parents sent texts and emails to the coach, the principal, and the school's board of education concerning these issues. The First Amendment issue here rests with the parents' communications and whether they were constitutionally protected. The Court granted Defendant's motion for summary judgment because parents' concerns were not protected by the First Amendment as they were merely criticisms of the coaching decisions and methods and did not substantially disrupt the team.

### *Siegel v. Platkin*[16]

Plaintiffs sued under the First, Second, and Fourteenth Amendments, challenging New Jersey legislation on concealed handgun restrictions at youth sporting events. The court concluded that because youth sporting events involved interscholastic sports teams or nonprofit sport leagues, the restrictions were justified because these events intersected with schools. Thus, under Supreme Court of the United States precedent,[17] the Court determined that youth sports are a sensitive place for purposes of the restriction, and thus Plaintiffs could not meet their burden in this part of their suit.

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[14] 62 F.4th 221 (6th Cir. 2023).
[15] No. 2:21-CV-985, 2023 WL 4826292 (S.D. Ohio July 26, 2023).
[16] 654 F. Supp. 3d 136 (D.N.J. 2023).
[17] N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1, 30, 142 S. Ct. 2111, 2133, 213 L. Ed. 2d 387 (2022).

### *William Penn Sch. Dist. v. Pa. Dep't of Educ.*[18]

Petitioners were a collection of Pennsylvania school districts, parents, students/former students, and organizations, primarily representing the interests of rural or low-income districts/schools/students, who asserted a constitutional challenge to the Commonwealth's system for funding public K-12 education. The petitioners asserted that the current system of funding violated the Commonwealth's Constitution, specifically the Education Clause, which the petitioners claimed deprived students of their right to a public education that gives them a meaningful opportunity to succeed academically, socially, and civically.

The Court held, for the first time in the history of the Commonwealth, that the right to public education is a fundamental right explicitly and/or implicitly derived from the Pennsylvania Constitution. Further, the Court determined that under the current funding system, students who reside in school districts with low property values and incomes are deprived of the same opportunities and resources as students who reside in school districts with high property values and incomes. The court ordered that the Pennsylvania executive and legislative branches must provide a system of public education that does not discriminate against students based on the level of income and value of taxable property in the school districts.

## CONTRACT LAW

Contract law is used to provide parties with knowledge of their duties and responsibilities. In the context of sports law, contract law can involve player deals, marketing arrangements, sport facilities, insurance benefits, broadcasting rights, employment issues, sponsorship deals, and more.

### *Cloud v. Bert Bell/Pete Rozelle NFL Player Retirement Plan*[19]

The National Football League's retirement plan provides disability pay to hobbled NFL veterans whose playing days have ceased but are still living with debilitating, often degenerative injuries to brain and bodies. Claimant, a former NFL player, suffered multiple concussions during his playing career, leaving him physically, neurologically, and psychologically debilitated. There is no dispute between the parties that Claimant should receive disability benefits, but the dispute regards what level of benefits he should receive. Claimant attempted to prove changed circumstances from his 2014 application to his 2016

[18] 294 A.3d 537 (Pa. Commw. Ct. 2023).
[19] 83 F.4th 423 (5th Cir. 2023).

application for the retirement plan disability pay. However, the Fifth Circuit reversed the district court's decision because Claimant failed to prove his changed circumstances to the NFL's Retirement Board when trying to reclassify himself at a higher tier.

### *Fitness Int'l v. Nat'l Retail Properties, LP*[20]

Fitness International (tenant) operates the LA Fitness health club chain, including one location in Washington state with defendant, National Retail Properties (landlord), a property development and real estate investment firm. In March 2020, Washington Governor Jay Inslee issued a public health order that directed various businesses, including gyms and fitness centers, to close due to COVID-19. That order was in effect from March 2020 to August 2020, with a subsequent similar order in effect from November 2020 to January 2021. Fitness International paid the rent on the property as owed through November 2020, but subsequently sued for breach of lease under three causes of action: (1) breach of representations, warranties, and covenants; (2) failure to provide rent credits under the lease; and (3) failure to abate rent and further sought a declaratory judgement that it was not obligated to pay rent during the closure period of the grounds of frustration of purpose, or impracticability and/or impossibility. Summary judgement was granted in favor of National Retail Properties and was affirmed by the appellate court. The court held the landlord had not breached the covenant of quiet enjoyment in requesting rent during the closure period as the closure was not a result of the landlord's actions and that landlord was not obligated to provide rent credits or abatement, per the lease agreement. Further, the court held the government mandated closure did not discharge the tenant of its rent obligations because it only made tenant's operations more difficult than previously anticipated, not completely impossible as the premises was exclusively possessed by Fitness International and could have been used for other purposes during the temporary public health closure.

### *Fitzgerald v. Univ. of Hartford*[21]

Plaintiffs were student-athletes at University of Hartford who asserted claims of promissory estoppel arising from the University's decision to transition from Division I athletics to Division III athletics. The plaintiffs sought to enforce an alleged promise by the University that "there would be no change to [Plaintiff's] Division I athletics experience in 2021-22 school year." The court granted summary judgement for the Defendant, finding that no reasonable

[20] 25 Wash. App. 2d 606, 524 P.3d 1057, *review denied*, 532 P.3d 148 (Wash. 2023).
[21] No. 3:21-CV-00934 (MPS), 2023 WL 4865816 (D. Conn. July 31, 2023).

jury could infer a "clear and definite promise" by the defendant and finding that none of the plaintiffs had provided any evidence of reliance on the defendant's alleged statements.

*Jersey Basketball Ass'n, LLC v. Aronson*[22]

Plaintiff Jersey Basketball Association was formed as a limited liability company to "organize, conduct, and administer basketball leagues" and tournaments. Aronson and others served as founding members of the Board of Directors of the organization and owned part of the company. In its founding, the Association executed an operating agreement with its founding members that stated, "no members shall . . . do any act detrimental to the best interests of the company or which would make it impossible to carry on the ordinary purpose of the company." Further, each director was to treat "all written and oral communications between and among Association directors" as confidential information. Aronson and another founding member were terminated months after the Associations' formation. But both individuals continued their involvement in the League, although the Association notified Aronson that his participation violated the restrictive covenants. Aronson, along with the League he was involved in after his termination, filed a summary judgment application. Ultimately, the lower court granted summary judgment. This court affirmed in part, reversed in part, and remanded for further proceedings regarding the summary judgment being filed prematurely (prior to the completion of discovery) and the Plaintiffs' filing a motion for reconsideration respectively.

*Mountain E. Conf. v. Franklin Univ.*[23]

Franklin University - Urbana (formerly Urbana University and now a branch campus of Franklin University) was a member of the Mountain East Conference (MEC), an NCAA Division II athletic conference. On May 8, 2020, Franklin University - Urbana officially withdrew from the MEC and ceased all intercollegiate athletics operations. Pursuant to the MEC Constitution, the MEC demanded Franklin University - Urbana pay an exit fee of $150,000, which Franklin University - Urbana refused. The MEC subsequently sued the university for breach of contract. The court found the MEC Constitution and Bylaws constitute a valid, enforceable contract between the MEC and its member institutions and granted summary judgement in favor of the Mountain East Conference, directing the university to pay the exit fee.

[22] No. A-3887-21, 2023 WL 5425994 (N.J. Super. Ct. App. Div. Aug. 23, 2023).
[23] No. 1:21-CV-104, 2023 WL 2415277 (N.D. W. Va. Mar. 8, 2023).

### *NJ Coed Sports LLC v. ISP Sports, LLC*[24]

The Plaintiff alleged that in 2011 it contracted for the use of a sports facility and executed a non-disclosure agreement, agreeing to maintain confidentiality of the Plaintiff's proprietary information. The Plaintiff further alleged that the Defendants, upon a sale of the sports facility, were advised of the Plaintiff's proprietary information and agreed verbally and in writing to maintain confidentiality of this information. The Plaintiffs claimed that the Defendants, in a third-party sale of the use of the sports facility, breached this confidentiality when willfully and knowingly disseminating the confidential information to this third party. The Defendants moved to dismiss the Plaintiff's claim because the Plaintiff failed to state a valid claim under the Defend Trade Secrets Act. The Court granted the Defendant's motion to dismiss because the Plaintiff failed to allege that it was the owner of such information and that it had the "rightful legal or equitable title to, or license in" such information.

### *Nguyen v. Mercer Island Boys Basketball Booster Club*[25]

Plaintiffs, on behalf of their mother, signed the Football Junior Association League's Code of Conduct to participate in the league. One of the plaintiffs alleged that he was bullied, subjected to racial slurs, and/or physically assaulted by his teammates and one of the defendants, the coach. Plaintiffs asserted that the coach had a contractual duty to enforce the Code of Conduct and to ensure that discrimination and harassment were not tolerated, and that the coach breached this duty. The Court concluded that the Code of Conduct within the Family Handbook is an information and policy document and thus is a general statement of the club's policies that do not involve or require a meeting of the parties' minds. Therefore, Plaintiff's claim of Defendant's breach of duty failed as a matter of law.

### *Orduna v. Gray Media Group, Inc.*[26]

The Plaintiff, a sports anchor and reporter for a news station in Missouri, was terminated months after signing an employment agreement with the news station. Plaintiff alleged racial discrimination, retaliation, and a hostile work environment, all in violation of Title VII of the Civil Rights Act of 1964. The employment agreement contained a provision which waived the Plaintiff's right to a jury trial and submit any claims for a bench trial. The Defendant moved to strike the Plaintiff's jury demand because the employment agreement contained

[24] No. CV 22-06969, 2023 WL 3993772 (D.N.J. June 14, 2023).
[25] No. 2:23-CV-00855-RSL, 2023 WL 8449379 (W.D. Wash. Dec. 6, 2023).
[26] No. 23-2420-DDC-ADM, 2024 WL 21506 (D. Kan. Jan. 2, 2024).

a jury-waiver provision. The Plaintiff opposed, arguing that the waiver was ineffective due to not making it knowingly and voluntarily. The Court granted the Defendant's motion because the agreement's plain language outweighs the Plaintiff's demand for a jury trial and encompasses the broad category of disputes arising from the employment.

*Smith v. Adidas America, Inc.*[27]

Plaintiff brought forth this action against the Adidas America, Inc. ("Adidas") claiming that Adidas identified some of the NHL jerseys it manufactured and sold as "authentic," labeling and describing them as "the same as the one[s] . . . players wear when the puck drops." This labeling and description caused Plaintiff and others to purchase the jerseys in belief these were the same jerseys worn on-ice by NHL players. However, the jerseys differ from on-ice jerseys in several aspects. If it were not for this labeling and description, Plaintiff and others would not have bought the jerseys or purchased them for less money. This negligent misrepresentation claim failed, however, because Plaintiff could not demonstrate the existence of a special relationship with Adidas.

*Thomas v. Regents of Univ. of Cal.*[28]

Plaintiff was recruited to play on the women's soccer team at the University of California, Berkeley. She played for the team her freshman year, and in the spring of that year, was, "without warning or explanation," released from the team after being promised four years of playing. She sued the university, the head coach, and the Director of Athletics for failing to disclose that the plaintiff could be removed from the team for reasons beyond her failure to play competently and in accordance with the coach's instructions and meeting his standards of behavior.

*Yankees Entm't & Sports Network, LLC v. Hartford Fire Ins. Co.*[29]

Yankees Entertainment and Sports Network ("YES") sued Hartford Fire Insurance Company (Hartford) over a coverage dispute. YES purchased an insurance policy for business interruption coverage from Hartford, whose primary operations are in Connecticut. The policy was not negotiated in Delaware and does not cover losses to any property in Delaware. During the COVID-19 pandemic, YES filed a claim under the policy, and Hartford denied

[27] No. 6:22-CV-788, 2023 WL 5672576 (N.D.N.Y. Sept. 1, 2023).
[28] 97 Cal. App. 5th 587, 315 Cal. Rptr. 3d 623 (2023).
[29] No. 22-3121, 2023 WL 6291784 (3d Cir. Sept. 27, 2023).

coverage. YES then sued in Delaware Superior Court, alleging breach of contract. Hartford removed the case to federal court, moving to dismiss the complaint for lack of personal jurisdiction. The District Court affirmed Hartford's motion to dismiss, as Delaware's long-arm statute does not provide a basis to exercise jurisdiction over Hartford.

### COURT OF ARBITRATION FOR SPORT

The Court of Arbitration for Sports, CAS, settles international sports law disputes. The cases CAS handles include individual athlete disputes, national governing bodies (NGBs), doping agencies like WADA, and more.

#### *A.S. Roma v. Sporting Clube de Portugal*[30]

A.S. Roma (Roma) is a football club currently playing in the *Serie A*, the highest football league in Italy. Sporting Clube de Portugal (Sporting) is football club currently playing in the *Premiera Liga*, the highest football league in Portugal. Between September of 2014 and January of 2022, Etienne Catena, a youth amateur player, was registered as amateur with Roma's affiliate club. Prior to the 2021/2022 season, Roma sent Catena a letter inviting him to attend preseason training and stated, "On the basis of the bond of registration existing with our club, which expires on 30 June 2023, we wish to continue working with you, *keeping alive the option of offering you a professional contract at a later stage* (emphasis added)." In June 2021, Catena entered a contract to play for Sporting and was registered as a professional player for the first time, with Sporting. Following this contract, Roma requested that Sporting pay for training compensation for the player. FIFA Regulations on the Status and Transfer of Players (RSTP) state that training compensation shall be paid to a player's training club(s): (1) when a player is registered for the first time as a professional, and (2) each time a professional is transferred until the end of the calendar year of his 23rd birthday. However, if the former club does not offer the player a contract, no training compensation is payable unless the former club can establish a genuine and *bona fide* interest in retaining the services of the Player. After Roma requested the training compensation, Sporting declined to pay, and Roma filed a claim with the Dispute Resolution Chamber of the FIFA Football Tribunal (DRC). The DRC ruled Roma was not entitled to training compensation for the first registration of the player. Roma appealed to CAS. The CAS tribunal affirmed the decision of the DRC, finding that Roma had not offered the player an employment contract and failed to establish a *bona fide* interest in retaining the services of the player because the training invitation sent

[30] CAS 2023/A/9371.

to the player prior to the 2021/2022 season explicitly stated that Roma was "keeping alive the option of offering [the player] a professional contract at a later stage". Thus, Sporting was not required to pay Roma compensation for the players' training.

### *Hisham Nasr v. Int'l Handball Fed'n*[31]

Appellant was a member of the Board of Directors of the Egyptian Handball Federation (EHF) and was subsequently elected the President of the EHF. Respondent is the International Handball Federation (IHF) and is the governing body of handball at the worldwide level. The IHF sanctioned the EHF and a number of its officials for multiple alleged violations of IHF "Good Governance" principles during the period from 2017 until 2017, which included alleged violations of voting procedures of the EHF Electoral Congress (2017), failure to obtain approval of the IHF for amendments to the EHF Statutes (2017), failure to submit and obtain approval for amendments of the EHF Statutes (2019), failure to fill vacancies of the EHF Board of Directors, contrary to the EHF's Statutes (2020), and failure to obtain a quorum on the EHF Board of Directors due to the suspension of the Appellant and resignation of other EHF Board of Directors members (2020). In 2022, the IHF's Ethics Commission determined the EHF had breached provisions of the IHF Ethics Code and subsequently suspended the members of the EHF Board of Directors. The EHF subsequently appealed to CAS. The CAS Panel determined, with respect to the alleged 2017 violations, that the Respondent failed to establish the Appellant personally had any direct involvement with the alleged violations and thus could not be held liable for the alleged violations. With respect to the 2019 and 2020 alleged violations, the CAS panel found that EHF was only required to submit amendments to the IHF for *assessment*, not approval and thus that the 2019 Statutes had in fact entered into force and the EHF had not violated those provisions. The CAS panel annulled the Ethics Commission decision in its entirety and held that the sanctions imposed by the IHF were null and void.

### *Kanak Jha. v. USADA*[32]

Appellant Kanak Jha is an American Table Tennis athlete who competed for Team USA at the 2016 and 2020 Olympics. On December 1, 2022, Appellant received a provisional suspension from USADA for missing three drug tests within a twelve-month period, which is an anti-doping rule violation (ADRV) under the World Anti-Doping Code (WADC). As part of the

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[31] CAS 2023/A/9364.
[32] CAS 2023/A/9926.

suspension, Mr. Jha was prohibited from participating in any competition or activity organized by any organization that is a Signatory member of WADC, which USA Table Tennis (USATT) is a member. After receiving his provisional suspension, Mr. Jha participated in a sponsorship event organized by one of his sponsors, PingPod, on December 14, 2022. PingPod is affiliated with USATT and thus Mr. Jha was prohibited from participating in any exhibition or event organized by PingPod. After participating in the event, on December 17, 2022, Mr. Jha sought clarification from USADA on what events he was prohibited from participating in during his provisional suspension period. On March 15, 2023, Mr. Jha received a twelve-month suspension from USADA, with credit for serving the provisional suspension, dated back to Dec. 1, 2022. After the March 15 arbitration, USATT informed USADA that Appellant had participated in the December 14, 2022 event, in violation of the provisional suspension order. In May 2023, USADA charged Appellant with violating his provisional suspension and the parties agreed to an expedited arbitration before a CAS Sole Arbitrator. Per the WADC, any athlete who violates their provisional suspension receives no credit for time served under provisional suspension. Therefore, Mr. Jha's suspension would instead run from March 15, 2023 to March 15, 2024. The CAS Arbitrator ruled that Mr. Jha had violated the provisional suspension by participating in the PingPod event and that his misunderstanding of the specifics of the provisional suspension did not excuse the violation. Because Appellant had violated the conditions of his provisional suspension, Appellant received no credit for the period of the provisional suspension and was thus suspended from all related activities from March 15, 2023 through March 15, 2024.

*Musa v. World Skate*[33]

Eduardo Musa Costa Bravo (Musa) is a Brazilian national who served as President of the Confederação Brasileira de Skate ("CBSK"). In 2019, SC10 Economia Criativa Ltda. ("DC10"), STU Platform ("STU") and the World Skate hosted skateboarding championships in Rio de Janeiro, Brazil. July of that year, at the World Skate Ordinary Congress held in Bracelona, Spain, the affiliation of CBSK to World Skate was approved. In 2022, DC10, STU, and CBSK were engaged in discussions for hosting of national street and park skateboarding championships in Brazil in the latter part of 2022. World Skate approached these three entities to join discussions with a view to making these events world championships. In May, DC10, STU and Musa concluded an instrument titled Acknowledgement of Commitment and Acceptance relating to

[33] CAS 2023/A/9230.

the organization and hosting of the World Skate Park World Championships in October 2022. Fifty-five days before the start of the 2022 World Park Championships, World Skate sent the draft to the above-mentioned entities and Musa for review. Legal advisor to DC10 noted that the draft was far from what the parties understood to be reasonable for them to go ahead. The parties proposed a version executed by everyone for the 2019 World Championship of Park. Contract disputes were communicated back and forth between the parties until early September 2022 when World Skate issued an official statement cancelling the World Championships. This statement provided that the cancellation was a result of CBSK, DC10, and STU's "organizational and financial inability to comply with the terms and conditions of the signed [agreement] between World Skate and the Organizers." The same day, CBSK published a statement regretting the World Skate's decision to no longer participate and that the 2022 championships would take place without World Skate's involvement. World Skate alleged that CBSK and other affiliated parties were under investigation for slander, contract, bidding or agreements mystification, violation, breach and failure, insulting or publicly expressing non-ethic opinions about World Skate, and violation of ethics duties and values. Also, World Skate imposed a precautionary suspension against Musa for the entire investigation. The World Skate Executive Board decided to suspend Musa for three years based on the alleged violations from the investigation. Musa and affiliated parties submitted their appeal before the CAS. The CAS reversed the World Skate Executive Board's decision to suspend Musa because Musa's statements did not rise to the level of justifying the suspension, concluding that World Skate's reputation was not harmed.

PAOLO BARELLI V. FINA[34]

Appellant was elected as President of FIN in 2000 and still serves, and President of Ligue Européenne de Natation (LEN) in 2012 and served until 2022. Appellant was also the Honorary Secretary of FINA between 2009 and 2017 and VP of FINA between 2017 and 2021. Between 2009 and 2015, Appellant was providing FINA with invoices through his assistant for reimbursement costs related to secretarial services performed in favor of the Appellant in connection with his role as Honorary Secretary of FINA. As of 2016, FINA started making payments in the same amounts to C.I.R.AUR s.r.l. (the "Company"), an entity in which the Appellant held a majority stake. These were made by wire transfers to the Company's bank account against invoices issued by the Company. These wrongdoings were referred to the FINA Ethics

[34] CAS 2023/A/9519.

Panel for investigation and adjudication as per FINA Rules. The Ethics Panel concluded that the Appellant committed corrupt practices. Consequently, Appellant was banned from Aquatic-related activities under the auspices of World Aquatics for one-year fixed period. The Appellant filed with the Court of Arbitration for Sport (CAS). The CAS upheld Appellant's appeal and annulled the decision of the Ethics Panel.

*Pro. Football Agents Ass'n v. FIFA*[35]

The Professional Football Agents Association (PROFAA) is an association under Swiss law. FIFA (Respondent) is an association also under Swiss law. The dispute between the parties concerned the legality of the new FIFA Football Agents Regulations, that FIFA Council approved, in its 2022 meeting in Qatar. PROFAA proposed to FIFA that the FIFA Football Agents Regulations be assessed by CAS for legal clarity purposes prior to enforcement. FIFA countered with its proposal to CAS regarding the dispute. PROFAA then proposed modifications of FIFA's proposed conditions. After more modifications from both parties, the CAS was able to review for legality purposes the FIFA Football Agents Regulations. The CAS concluded that the FIFA Football Agents Regulations were incompatible with the MLS-MLSPA CBA along with numerous other decisions regarding jurisdictional issues, compatibility with EU Competition Law, and Abuse of Dominant Position.

*Yomov v. Union Européenne de Football Ass'n (UEFA)*[36]

Appellant Georgi Yomov is a professional football player and at the time of the events leading to this appeal, he was employed by PFC CSKA-Sofia. UEFA is the governing body of European football. This appeal to CAS followed a February 10, 2023, UEFA Appeals Body decision which found Appellant guilty of an intentional anti-doping rule violation (ADRV) for using a prohibited substance and suspended the Appellant for four years, starting August 25, 2022 and ending on August 25, 2026, based on the Appellant's failure to demonstrate that he acted unintentionally. Appellant tested positive for a banned substance (DHCMT) following a match on July 28, 2022. DHCMT and its metabolite are prohibited substances under the Anabolic Androgenic Steroid category of the World Anti-Doping Agency (WADA) Prohibited List. Appellant claimed that his brother, who lives with Appellant, had begun taking anabolic androgenic steroids for bodybuilding and that Appellant was unaware that his brother was taking the drug. Appellant claimed he must have inadvertently ingested the

[35] CAS 2023/O/9370.
[36] CAS/2023/A/9551.

banned substances through a shared blender when making smoothies, a shared shaker bottle, and leftover smoothies. While the CAS panel did not reach a unanimous decision on the origin of the substance, the majority view of the panel confirmed the intentional ADRV and four-year suspension because the Appellant failed to establish, on the balance of probabilities, that the ingestion of the substance was not intentional.

## CRIMINAL LAW

Criminal law typically involves sporting professionals facing criminal charges for their actions. However, as the following cases show, criminal law can touch this industry in a variety of ways.

### *In re DraftKings Inc. Sec. Litig.*[37]

This case involved alleged securities fraud after DraftKings, a provider of fantasy sports, sports entertainment, and sports betting services, went public. Plaintiffs alleged that after going public, DraftKings acquired a company, SBTech (Global) Limited that operated in black-market gambling jurisdictions, or places where gambling was illegal. The complaint alleged that DraftKings was subject to criminal risks because the revenue it acquired was because of illegal conduct, and that it traded shares at artificially inflated prices. The claim was dismissed with prejudice, as Plaintiff's claims were not supported on the record.

### *New Eng. Sports Network v. Alley Interactive LLC*[38]

New England Sports Network (NESN) filed a motion to recover for fraud, conversion, and misappropriation of at least $575,000 by a former employee. The Court considered a motion to stay discovery until resolution of parallel federal criminal proceedings in a criminal case involving the defendant.[39] The government sought to intervene under the Federal Rules of Civil Procedure 24(a)(2) to stay discovery until the criminal proceedings were complete. Courts consider various factors in determining whether to stay civil litigation parallel to criminal proceedings, including (i) interests of the civil plaintiff proceeding expeditiously with civil litigation, (ii) hardship to the defendant, (iii) convenience of both civil and criminal courts, (iv) third party interests, (v) public interests, (vi) good faith of the litigants, and (vii) status of both cases.

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[37] 650 F. Supp. 3d 120 (S.D.N.Y. 2023).
[38] No. 22-CV-10024-ADB, 2023 WL 2140474 (D. Mass. Feb. 21, 2023).
[39] U.S. v. Legassa, 24-1209.

The Court found the government's motion somewhat persuasive, granting in part and denying in part. The court found that because the substantially same facts underlined both criminal and civil actions, the government had sufficient interest to warrant intervention in the civil case, but staying the discovery process until the criminal proceedings completed was denied.

## DISCRIMINATION LAW

This area of law protects individuals from discrimination on the basis of race, national origin, sex, age, religion, and other protected classes. These cases range in a variety of areas, from Title VII of the Civil Rights Act[40] to the Americans with Disabilities Act (ADA).[41] In the sports law world, these laws can impact spectators, coaches, administrators, and student-athletes.

### *Cerda v. Chi. Cubs Baseball Club, LLC*[42]

Plaintiff sued the Chicago Cubs Baseball Club pursuant to the American with Disabilities Act ("ADA"), alleging that the Cubs' renovation project failed to meet the minimum number of accessible seats at Wrigley Field and failed to horizontally disperse the accessible seating around the stadium. The court determined that Wrigley Field was required to have 209 accessible seats based on the total capacity of the stadium. The court found the newly renovated Wrigley Field contained at least 210 accessible seats, and possibly up to 225, but declined to rule if fifteen select seats met the requirements under the ADA as Wrigley already met minimum requirements. Additionally, the court found the accessible seats were horizontally dispersed throughout the stadium. Ultimately, the court held the Plaintiff failed to meet his burden to prove a violation of the ADA by a preponderance of the evidence and entered judgement in favor of the Chicago Cubs.

### *Daly v. Kalamazoo Coll.*[43]

Plaintiff brought action under Title II of the Civil Rights Act, 42 U.S.C. § 200e, and the public-accommodations provisions of the Michigan's Elliott-Larsen Civil Rights Act (ELCRA) against Kalamazoo College and its agents. Plaintiff alleged that, as a student athlete, he was denied the ability to attend the college or play for its soccer team because of his religious beliefs and practices. Specifically, his religious beliefs prohibit him from receiving vaccines, and,

[40] Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000 (2024).
[41] Americans with Disabilities Act of 1990, 42 U.S.C.A. §§12101 – 12213 (2024).
[42] No. 17 C 9023, 2023 U.S. Dist. LEXIS 107124 (N.D. Ill. June 21, 2023).
[43] No. 1:23-CV-840, 2023 WL 5163255 (W.D. Mich. 2023).

thus, he cannot comply with the college's mandatory vaccine policy. He made this claim under Title II and under ELCRA believing that Defendants discriminated against him on the basis of religion by denying him the use and enjoyment of "public accommodations." Plaintiff moved the court for a temporary restraining order, seeking an order enjoining Defendants from enforcing their vaccination policy, and from requiring Plaintiff to be vaccinated before participating in sports. However, because Plaintiff failed to contend that the school denied him access to any public places or accommodations, the Court denied the motion.

*Doe 1 v. Univ. of San Francisco*[44]

The plaintiffs alleged that the USF head coach and assistant coach created a sexualized environment and berated and punished the players who did not participate in sexualized conduct. The plaintiffs sued the coaches, claiming Title IX discrimination and retaliation. The court accepted the plaintiffs' allegations in the complaint as true when they alleged that the university did not tell them about the policies or how to report harassment. The rest of the claims were dismissed on the grounds of being barred by the statute of limitations.

*Hernandez v. Off. of Comm'r of Baseball*[45]

The U.S. Court of Appeals for the Second Circuit affirmed the district court's decision to dismiss a racial discrimination lawsuit by umpire Angel Hernandez against Major League Baseball. Plaintiff contented that he was passed over for promotions and post-season assignments (which carry additional compensation and prestige) on the basis of his race/Cuban heritage. Plaintiff further contended "other, less experienced, generally white umpires" received these assignments and "the selection of these less qualified, which individuals over Hernandez was motivated by racial, national origin, and/or ethnic considerations." On appeal, the panel of circuit court judges wrote that "Hernandez failed to establish a statistically significant disparity between the promotion rates of white and minority umpires," and that "Hernandez has made no showing that Torre harbors a bias against racial minorities."

*Joseph v. Bd. of Regents of the Univ. Sys.*[46]

Plaintiff Joseph was the Women's Basketball Head Coach at the Georgia Institute of Technology ("Georgia Tech") from 2003 to 2019. Ms. Joseph

[44] No. 22-CV-01559-LB, 2023 WL 5021811 (N.D. Cal. Aug. 4, 2023).
[45] No. 22-343, 2023 WL 5217876 (2d Cir. Aug. 15, 2023).
[46] 2023 U.S. Dist. LEXIS 37223 (N.D. Ga. Feb. 3, 2023).

claimed that her termination violated Title IX, Title VII, and the Georgia Whistleblower Act as discriminatory on the basis of sex; that Georgia Tech's disparate allocation of resources to the Women's Basketball Team as opposed to the Men's Basketball Team was sex discrimination in violation of Title VII; and that Georgia Tech engaged in conduct that constituted a retaliatory hostile work environment. The court ultimately decided that none of these claims were substantiated and granted both the Georgia Board of Regent's and Georgia Tech's motions for summary judgement.

### *Kerkering v. Nike, Inc.*[47]

Plaintiffs are former employees who are suing Nike under discrimination claims arising under the ADA and Title VII of the Civil Rights Act of 1964 based on Nike's policy mandating that employees vaccinate against COVID-19. Defendant Nike filed a motion to dismiss, which was granted in part and denied in part. Motion to dismiss was granted in part regarding plaintiff's Kekering and Thibodo claims that defendant violated the ADA by firing them because of perceived disability - a deficient immune system - based on their decision not to vaccinate against COVID-19. The court rejected the defendant's arguments that a person has, or is perceived as having, a disability/impairment under the ADA by virtue of the person's unvaccinated status. The motion to dismiss was denied in part regarding plaintiff Rozwadowska's Title VII claims (Failure to Accommodate and Disparate Treatment) based on her sincerely held religious beliefs, finding that Nike's policy constituted a real threat of termination (adverse employment action).

### *Moore v. Tangipahoa Par. Sch. Bd.*[48]

Plaintiff was a student within the Tangipahoa Parish Public Schools system that transferred between high schools within the district under a school-approved "Majority to Minority" transfer, pursuant to the state's current desegregation order. Plaintiff Jackson was subsequently ruled ineligible to participate in athletics by the Louisiana High School Athletic Association under its transfer eligibility rules. The court ruled that the LHSAA would violate the intent of the desegregation order and ordered that the plaintiff be ruled immediately eligible for athletics and that the "Athletic Eligibility" provision as currently written (which applied LHSAA rules to desegregation transfers) be stricken from the desegregation order.

[47] No. 3:22-cv-01790-YY, 2023 U.S. Dist. LEXIS 133400 (D. Or. May 30, 2023).
[48] No. 65-15556, 2023 U.S. Dist. LEXIS 2295 (E.D. La. Jan. 6, 2023).

### *Powell v. Doane Univ.*[49]

Plaintiff is an African American female who began working for Doane University as the head coach for the women's basketball team. Plaintiff was an at-will employee. Plaintiff was terminated for many reasons, including baseless complaints about uniforms, technology, athletic training, and medical care, and allegations about plaintiff made by assistant coaches, student-athletes, and parents. Plaintiff disputes these allegations and instead claimed under Title IX that she was fired because of her sex and in retaliation for complaining of discrimination. Doane University moved for summary judgment. This court granted Doane's motion for summary judgment because plaintiff neither engaged in any statutorily protected conducted under Title IX and, even if so, the conduct was not the but-for cause of her termination.

## GAMBLING LAW

Sports betting has gained massive popularity in recent years. Ever since the 2018 Supreme Court decision struck down a federal prohibition on sports gambling,[50] the industry has expanded into a multi-billion-dollar industry. Legal and ethical issues have arisen in the world of sports ever since.

### *Maverick Gaming LLC v. U.S.*[51]

Plaintiff Maverick Gaming brought suit, challenging the state of Washington's tribal gaming monopoly, specifically that Washington's tribal compacts permitting sports betting were unconstitutional. Sports betting also became permissible after Washington passed a bill in 2020 allowing tribal casinos to do so. Joining the defendants were the Shoalwater Bay Indian Tribe, arguing that its sovereign status as a tribe would be undermined. The court held in favor of defendants, dismissing Maverick's claims without prejudice.

### *W. Flager Assocs., Ltd. v. Haaland*[52]

The D.C. Circuit Court of Appeals reversed the district court's opinion, finding that the district court erred in finding the Indian Gaming Regulation Act (IGRA) could independently authorize betting by people outside of tribal lands. The Court of Appeals held that the IGRA could not and did not allow online gambling off tribal lands. Therefore the U.S. Secretary of the Interior did not violate the APA by choosing not /to act and allow the IGRA to go into effect.

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[49] No. 8:20-CV-0427, 2023 WL 6445830 (D. Neb. Oct. 3, 2023).
[50] Murphy v. Nat'l Collegiate Athletic Ass'n, 584 U.S. 453 (2018).
[51] 658 F. Supp. 3d 966, 969 (W.D. Wash. 2023).
[52] 71 F.4th 1059 (D.C. Cir. 2023).

The Court of Appeals also found the IGRA did not violate the Wire Act or Unlawful Internet Gambling Act because the IGRA did not grant patrons the right to gamble off tribal lands, only on tribal lands.

### GENDER EQUITY & TITLE IX

This area of sports law continues to develop, as multiple states consider banning or limiting transgender athletic participation opportunities, which will undoubtedly expand Gender Equity & Title IX jurisprudence.

#### *B.P.J. v. W. Va. State Bd. of Educ.*[53]

B.P.J., an eleven-year-old transgender girl, expressed interest in trying out for her middle school's cross-country and track teams. B.P.J.'s ability to participate and compete on the teams depended on the outcome of House Bill ("H.B.") 3293, a bill pending in the West Virginia legislature, according to the school. The law, based on legislative findings and with litigation in mind, found that "there are inherent differences between males and females," "the inherent differences are a valid justification that the sexes are not similarly situated in certain circumstances," and "that in the context of sports, biological males and biological females are not in fact similarly situated." When the law passed, the school informed B.P.J's mother that B.P.J. would not be permitted to try out for the girls' teams. B.P.J., through her mother, alleged that Defendants deprived her of the equal protection guaranteed to her by the Fourteenth Amendment and that the State, State Board of Education, and the WVSSAC violated Title IX. The Court found that, under intermediate scrutiny, H.B. 3293 is substantially related to an important government interest. Defendants' motion for summary judgment was granted.

#### *D.N. by Jessica N. v. DeSantis*[54]

The Plaintiff, born male but identified as female, was prohibited from playing on her high school girls' sports teams because of a state law, Governor DeSantis signed, that was "in the interest of preserving and promoting the integrity of girls' sports leagues." The Plaintiff sued the state, claiming that the state's law violated her rights under Title IX and the Fourteenth Amendment of the U.S. Constitution. The Defendants moved to dismiss the Plaintiff's claims. The Court grants the Defendants' motion to dismiss on both counts because the law's sex-based classifications are substantially related to the state's important interest in promoting women's athletics and because transgender persons are

[53] No. 2:21-CV-00316, 2023 WL 111875 (S.D. W. Va. Jan. 5, 2023).
[54] No. 21-CV-61344, 2023 WL 7323078 (S.D. Fla. Nov. 6, 2023).

not inherently protected under Title IX against discrimination on the basis of sex, rather than gender identity.

*Doe v. Horne*[55]

Two transgender female students in Arizona sought to play on the girls' sports teams at their respective middle schools but were prevented from participating due to Arizona's Save Women's Sports Act. The Act requires that schools offer sports teams "expressly designated as one of the following based on the biological sex of the students who participate on the team or in the sport: 1) 'males,' 'men' or 'boys'; 2) 'females,' 'women' or 'girls,' and 3) 'coed' or 'mixed'." The act further required that students participate based on their biological sex and precluded transgender female students from playing on girls' sports teams. Plaintiffs sought a preliminary injunction preventing the Arizona Department of Education from enforcing the act and declaratory judgement that the Act violated the Equal Protection Clause and Title IX. The court granted the preliminary injunction, finding that both the Equal Protection and Title IX claims were likely to succeed on the merits. As to the Equal Protection claim, the court applied intermediate scrutiny and found the Act's ban on transgender girls from participating on girls' teams was "not a genuine justification" and further posited that the Act likely would not survive even rational basis review. The court, citing that the Ninth Circuit has held that discrimination based on transgender status also constitutes impermissible discrimination under Title IX, held that the plaintiffs were likely to succeed on the merits of their Title IX claim because the ban on transgender girls from participating on girls' teams deprives the plaintiffs from participating in activities their non-transgender classmates enjoy. The court granted the motion for preliminary injunction and that motion was subsequently appealed to the Ninth Circuit.

*Fisk v. Bd. of Trustees of Cal. State Univ.*[56]

Plaintiff Fisk, representing a class of similarly situated student-athletes, brought suit against Defendant San Diego State University, alleging a Title IX violation for failure to provide proportional financial aid opportunities, including scholarships, treatment, and benefits. The plaintiffs alleged a discrepancy of $1.2 million between 2018-20 between male and female student-athlete opportunities. The court rejected Defendant's Motion to Dismiss for

[55] No. CV-23-00185-TUC-JGZ, 2023 WL 4661831 (D. Ariz. July 20, 2023), a*ppeal docketed,* No. 23-16026 (9th Cir. Jul. 24, 2023).
[56] No. 22-CV-173 TWR (MSB), 2023 WL 2919317 (S.D. Cal. Apr. 12, 2023), *modified on reconsideration*, No. 22-CV-173 TWR (MSB), 2023 WL 6585821 (S.D. Cal. Oct. 10, 2023).

failure to state a claim, noting that there was enough of a factual basis to support unlawful allocation of funds under Title IX.

*Hecox v. Little*[57]

In early 2020, Idaho enacted the Fairness in Women's Sports Act (the "Act"), a categorial ban on the participation of transgender women and girls in women's student athletics. The Act bars transgender women and girls from participating in, or even trying out for, public school female sports teams at every age. The Act also provides a sex dispute verification process where anyone can question the sex of any female student athlete in the state of Idaho and undergo intrusive medical procedures to confirm their sex. Male student athletes are not subject to these requirements under the Act. The United States District Court for the District of Idaho granted plaintiffs' motion for preliminary injunction. The Ninth Circuit Court affirmed the preliminary injunction, stating that the Act does not pass heightened scrutiny because the Act on its face treats transgender persons differently than others.

*Navarro v. Fla. Inst. Of Tech.., Inc.*[58]

Florida Institute of Technology (FIT) announced it would discontinue five varsity sports programs, including men's rowing, and transition the teams to club-level programs. Plaintiffs were former members of the men's rowing team and sued, alleging three violations of Title IX, and sought a preliminary injunction to reinstate the men's rowing team. Plaintiffs argued that FIT could not cut a viable men's team because the school was already in violation of Title IX because intercollegiate level participation opportunities for male students for were not substantially proportionate to their enrollment numbers. Plaintiffs alleged that FIT had a shortfall of 117 opportunities for men in 2021-2022 and a shortfall of 121 opportunities for men in 2022-2023. FIT argued that it was following Title IX if the calculation included (1) the number of full-time undergraduates enrolled in FIT's online-only division, and (2) the male athletes on FIT's co-ed esports team.

Applying *Biediger v. Quinnipiac University* (holding that cheerleading does not qualify as a sport for the purposes of Title IX), the court held FIT's esports program does not provide genuine participation opportunities under Title IX. The court declined to rule on if online-only enrollment numbers count for the substantial participation prong under Title IX, but noted that no Title IX case to date has recognized online-only students for the purposes of the substantial

[57] No. 20-35813, 2023 WL 5283127 (9th Cir. 2023).
[58] No. 6:22-CV-1950-CEM-EJK, 2023 WL 2078264 (M.D. Fla. Feb. 17, 2023).

participation prong. The court granted the plaintiffs preliminary injunction motion and FIT reinstated its varsity men's rowing program for the 2023-24 season.

### *Ryan v. Pro. Disc. Golf Ass'n*[59]

Plaintiff Natalie Ryan is a transgender female professional disc golf player. Ryan competes on the Professional Disc Golf Association's (PDGA) Disc Golf Pro Tour (DGPT) in its Female Professional Organization (FPO). Ryan has been a member of the PDGA since 2019 and has at all times competed as female in accordance with her gender. On Dec. 12, 2022, the PDGA announced changes to its eligibility policy for transgender women set to go into effect in January 2023. Initially, plaintiff was informed that her eligibility would not be affected by the rule change, but on Feb. 7, 2023, Ryan was informed she would not be granted eligibility for upcoming FPO events. Plaintiff filed for a Temporary Restraining Order to allow her to compete in the FPO and it was granted on the basis that an injunction "is in the public's interest."

### *S.A. v. Sioux Falls Sch. Dist.*[60]

In a class action suit, Plaintiffs were students enrolled in the Sioux Falls School District's gymnastics program or those who had an interest and intent to participate in the program. The District cut the program funding and ultimately eliminated it. Plaintiffs and parents objected to the decision, and subsequently filed a Title IX complaint against the District. The Court found that the plaintiffs have a substantial probability of success on the merits because the District has not shown compliance with compliant of at least one of the Department of Education's three prongs of institution compliance: (1) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or (2) Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or (3) Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

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[59] No. 2:23-cv-00324-TLN-JDP, 2023 U.S. Dist. LEXIS 82987 (E.D. Cal. May 11, 2023).
[60] No. 4:23-CV-04139-CBK, 2023 WL 6794207 (S.D.S.D. Oct. 13, 2023).

### *Thomas v. Regents of Univ. of Cal.*[61]

Plaintiff was recruited to play on the women's soccer team at the University of California, Berkeley. She played for the team her freshman year, and in the spring of that year, was, "without warning or explanation," released from the team after being promised four years of playing. She alleged that the university's head coach harassed her "because of" her gender and that the university dismissed her and four other teammates while the men's team released only one player that spring. The trial court sustained the defendant's filed demurrer with leave to amend. This court concluded that the plaintiff sufficiently pleased a cause of action for sexual harassment and should have been granted leave to amend her complaint.

## INTELLECTUAL PROPERTY

Trademarks, copyrights, and patent rights serve as tremendous revenue generation in the world of sports. From protecting the name, image, and likeness of athletes and brands, to the design of products with patents, intellectual property is a critical area in sports law.

### *Adidas Am., Inc. v. Thom Browne, Inc.*[62]

Adidas America is appealing a January 2023 ruling that found luxury brand Thom Brown did not infringe or dilute Adidas' "Three Stripe Mark" trademark. Adidas is asserting that the initial trial suffered from erroneous jury instructions regarding the description of the *Polaroid Factors*. The Court instructed the jury to evaluate "whether the accused products and adidas products compete for the same consumers,"; adidas contends the jury should have been instructed to assess consumer confusion during the "initial interest" or "post-sale" phases of consumer engagement.

### *G&G Closed Circuit Events, LLC v. D. Franco & Investments, LLC*[63]

Plaintiff alleged that Defendant unlawfully intercepted, received, and published Plaintiff's nationally televised boxing program. The Court entered default judgment in favor of Plaintiff's claim. Plaintiff now moves for attorney's fees and costs to be added to the final judgment. The Court amends the Court's Order and Judgment to award the Plaintiff attorney's fees and costs because the total hours expended Plaintiff's counsel detailed were reasonable, the hourly

[61] 97 Cal. App. 5th 587, 315 Cal. Rptr. 3d 623 (2023).
[62] No. 23-166 (2nd Cir., filed Feb. 8, 2023).
[63] No. 22CV2597, 2023 WL 7002335 (D.N.J. Oct. 20, 2023).

rates Plaintiff's counsel charged were reasonable and appropriate in the relevant market of the District of New Jersey, and the requested additional costs were reasonable and necessarily incurred as part of this matter.

### *Hanagami v. Epic Games*[64]

Plaintiff Hanagami, registered copyright owner of a five-minute choreographed dance, sued the developer of the popular esports title "Fortnite," Epic Games (Epic), alleging that Epic released an emote copying a portion of his dance. To have a claim of copyright infringement, a plaintiff must show that the original work and the alleged infringing work is "substantially similar." Reversing the district court's opinion, the Court of Appeals for the Ninth Circuit held that the district court did not apply the substantial similarity test correctly, reversing and remanding for further proceedings.

### *Info. Images, LLC v. PGA Tour, Inc.*[65]

Information Images claims that PGA Tour's ShotLink System infringed both of the asserted patents (U.S. Patent No. 9,806,832 and U.S. Patent No. 10,270,552), both of which disclose "systems and methods of gathering, processing, and broadcasting real-time information of the sporting event to portable devices carried by spectators of the sporting event," allowing for the third-party system to capture and determine information about golf shots at PGA Tour tournaments and display it on mobile apps for devices. The court concluded that the PGA Tour did not induce infringement because PGA Tour did not put the system into service.

### *Innovative Sports Mgmt., Inc. v. Arias*[66]

Plaintiff Innovative Sports Management, Inc. is a commercial distributor and closed-circuit licensor of sports and entertainment television programming. Plaintiff sublicensed the rights to publicly exhibit the Brazil versus Columbia soccer game, telecast on October 10, 2021, to various entities throughout North America, including Defendant 818 Sports Bar & Grill and its CEO Ruiz Arias, after being granted exclusive nationwide commercial distribution rights of the game. Plaintiff alleged that defendants, who were not sublicensed, unlawfully broadcasted the game to patrons. Plaintiff was granted its default judgment motion in part and awarded damages because Defendant was properly served

[64] 85 F.4th 931(9th Cir. 2023).
[65] No. 6:20-CV-0268-ADA, 2023 WL 5186883 (W.D. Tex. Aug. 11, 2023).
[66] 2023 WL 3801917 (N.D. Cal. June 2023).

and the *Eital* factors weigh in favor of entering default judgment against defendants.

*Joe Hand Promotions, Inc. v. Side Pocket Billiards*[67]

Plaintiff Joe Hand Promotions, Inc., a closed-circuit distributor of sports and entertainment programming that markets and licenses commercials exhibitions of pay-per-view prizefight events, commenced this action under the Communications Act of 1934 after alleging that Defendants Side Pocket Billiards, LLC broadcasted Plaintiff's proprietary programming in a commercial establishment without authorization. Plaintiff moved for summary judgment on its claim. The Court granted the Plaintiff's motion because Defendant willfully broadcasted the pay-per-view prizefight event at issue without authorization, and thus, no genuine matter of fact was disputed.

*Kirkor v. Sports Mall, LLC*[68]

Krikor, photographer, and sister, business associate, used photographs of sports memorabilia to advertise and sell them on Sports Mall's website. Plaintiffs allege that Sports Mall's use of those photographs was unauthorized and unlawful. The plaintiffs assert claims for copyright infringement against Sports Mall, violations of California's Unfair Competition Law ("UCL"), and false advertising in violation of section 43(a) of the Lanham Act. The District Court granted Sports Mall's motion for summary judgment and dismissed plaintiff's claims under the UCL and the Lanham Act.

*Magee v. Nike Inc.*[69]

Plaintiff stated that he registered the trademark "HOOPLIFE" and that he has used the trademark in commerce since 2015. Plaintiff also allegedly discovered that Hooplife Basketball Academy, LLC (HLBA) was using the "HOOPLIFE" mark on clothing items. Nike provided the apparel to HLBA. Plaintiff found out that BSN Sports, LLC operated an online store which sold apparel and other sportswear using the "HOOPLIFE" mark. Plaintiff sued Nike, alleging trademark infringement, and alleging that the infringing activities were intentional and deceptive. (BSN Sports, LLC was dismissed due to lack of personal jurisdiction, and thus terminated from the case.). Nike filed a motion to dismiss plaintiff's claims because plaintiff failed to show that he owned a legally protectable mark and that Nike's use of the mark creates a likelihood of

[67] No. 16-CV-858-LJV-HKS, 2023 WL 5348874 (W.D. N.Y. Aug. 21, 2023).
[68] No. CV225600DMGMRWX, 2023 WL 2372068 (C.D. Cal. Jan. 24, 2023).
[69] No. 3:21-CV-01726-G-BT, 2023 WL 3357594 (N.D. Tex. Apr. 24, 2023).

confusion as to source, affiliation, or sponsorship. The U.S. Magistrate Judge's opinion concludes that Nike's Motion to Dismiss should be granted.

### *Pegnatori v. Pure Sports Technologies LLC*[70]

Plaintiff, inventor of the floating bat technology covered by a U.S. patent and President and primary partner of Monsta Athletics, gave permission to said company to use the patent. Defendant took a license to use the patent at issue in 2019 and thus had knowledge of the patent. The license expired, and currently the Defendant has no rights to use the patent. Defendant marketed and sold a bat Plaintiff claimed infringed the patent, and thus Plaintiff sought declaratory judgment and injunctive relief that Defendant should preliminary and permanently be enjoined from infringing the patent. The court concluded that the plaintiffs have not met the high standard required for a preliminary injunction to issue because they failed to demonstrate a likelihood of success on the merits required for the court to issue such an injunction. Therefore, the court denied the motion for preliminary injunction.

### *PUMA SE v. Brooks Sports, Inc.*[71]

Plaintiff PUMA SE is the owner of the entire right, title, and interest in U.S. Design Patent NO. D897,075 (D075 Patent). PUMA SE allege that Brooks Sports' Aurora BL running shoe is substantially similar to and therefore infringes the D075 Patent. Brooks Sports, Inc. moved for judgment on the pleadings, arguing that a physical sample "provides the Court with the best representation of the accused product's physical appearance and overall design" and would "aid the Court in deciding" the pending Rule 12(c) motion. The motion was denied because "courts regularly decide motions to dismiss design patent infringement claims by comparing the patented design to images of the accused product."

## LABOR & EMPLOYMENT LAW

Labor and employment law greatly impacts the sports industry, given that most American professional leagues are unionized and governed by collective bargaining agreements. Federal and state employment laws also regulate these employee-employer relationships. The cases below give a taste of the interactions of labor and employment law in the context of sports.

[70] No. 2:23-CV-01424-DCN, 2023 WL 6626159 (D.S.C. Oct. 11, 2023).
[71] No. 2:23-CV-00116-LK, 2023 WL 6066634 (W.D. Wash. Sept. 18, 2023).

*Bauknight v. Bd. of Educ. of Prince George's County*[72]

Plaintiff served as a referee at the school where he was employed. He applied to become the swimming coach at the high school and separately applied to become the Athletic Director. He was not selected for an interview for either position, and claimed he was denied interviews because of race. Subsequently, Plaintiff was placed on administrative leave twice from his job as a teacher due to an email he sent regarding this adverse employment action and his statements made regarding this interview decision in front of students. Thus, Plaintiff also claimed these placements on administrative leave were without basis. The Defendant motioned for summary judgment. The Court granted Defendant's Motion because there was no evidence to show that Plaintiff was discriminated against on the basis of race and the placements on administrative leave were justified.

*Benedict v. Manfred*[73]

Seventeen former MLB scouts filed the lawsuit, claiming they were discriminated against because of their age and named the league, its teams, and Commissioner Rob Manfred as defendants. The former scouts allege violations of the federal Age Discrimination in Employment Act of 1967 and violations of state employment laws in eleven states, as well as violations of New York City employment laws. The plaintiffs claim the league blackballed older scouts and prevented the reemployment of older scouts, under the pretenses of the COVID pandemic and the use of analytics in scouting. The plaintiffs seek class-action certification. The lawsuit has been docketed in the US District Court in Denver, with proceedings forthcoming.

*Bush v. Frederick Cnty. Pub. Sch.*[74]

Plaintiff was the head coach of the Frederick High School (FHS) girls' basketball coach, a temporary, at-will position in the Frederick County Public School District. The plaintiff was twice reprimanded for actions following two separated games in the 2018 and 2019 games and suspended with pay for the first game of the 2020 season due to a social media post that violated district rules. During the 2020 season, after three players had quit the varsity team citing the plaintiff's "emotionally and mentally abusive" coaching style, the plaintiff held a meeting with the remaining members of the varsity team. During this meeting the plaintiff was allegedly recorded using hate speech and two more

[72] No. CV TDC-20-3471, 2023 WL 5939666 (D. Md. Sept. 12, 2023).
[73] 1:23CV01563.
[74] No. 1:21-CV-01190-JRR, 2023 WL 170410 (D. Md. Jan. 12, 2023).

players quit the team. Following an investigation, the plaintiff was terminated as the varsity head coach. The plaintiff subsequently sued, alleging Title VII claims for race and sex discrimination, breach of contract, defamation, wrongful termination, and violations of the Maryland's Wiretapping and Electronic Surveillance Act. The court dismissed the Title VII claims based on the statute of limitations, dismissed the breach of contract claims because the plaintiff was an at-will employee, the defamation claim based on the statute of limitations, the wrongful termination claim due to claim preemption (under Title VII), and the wiretapping claim due to failure to state a claim.

### *Mathews v. USA Today Sports Media Grp., LLC*[75]

Plaintiff Mathews filed a motion to certify a collective conditionally. Defendants opposed, arguing that the Fair Labor Standards Act ("FLSA") does not authorize such collection certifications and that the plaintiff's motion must be denied or that limited discovery is necessary before determining whether plaintiff has demonstrated that her proposed collective meets FLSA's "similarly situated" standard. Plaintiff claims that she and those similarly situated to her were misclassified as independent contractors rather than employees are owed unpaid overtime. She alleges that she was employed from January 2017 through August 2021 by Defendant, a Site Editor for the "Seahawks Wire" website, which is the USA Today's website for the NFL's Seattle Seahawks. Plaintiff's motion was denied by the Court because Plaintiff's request for the *Lusardi* framework was deemed flawed. Instead, the Fifth Circuit's adoption of the FLSA's text is appropriate. With this test, courts may require limited discovery, targeted only at factual and legal considerations needed to make the "similarly situated" determination.

## TORT LAW

Tort law is considered the most widely litigated area of law in sports law. Tort law in the world of sports covers a wide variety of areas, including duties of care owed to participants, coaches, and spectators. The following cases illustrate tort claims in the world of sports law.

### *Askin v. Univ. of Notre Dame*[76]

Plaintiff brought personal injury action against the University of Notre Dame and the NCAA for head injuries and concussions that he suffered as a college football player in the 1980s. Plaintiff contended that past concussions

[75] 2023 WL 3676795 (E.D. Va. Apr. 2023).
[76] No. 2022-CA-0775-MR, 2023 Ky. App. Unpub. LEXIS 465 (Ct. App. July 28, 2023).

and head injuries have led to his current condition of CTE. The circuit court granted summary judgement in favor of Notre Dame on statute of limitations grounds. The Court of Appeals affirmed.

### *Bishop v. State of N.Y.*[77]

Plaintiff was injured, while snowboarding at a mountain ski center, operated by Defendant Olympic Regional Development Authority, owned by Defendant State of New York. Plaintiff made contact with a metal bolt protruding out of the side of a telephone pole. Plaintiff claimed that the Defendants breached their duty of care because the metal bolt was not clearly visible or not an inherent risk of snowboarding. The Court disagreed with the Plaintiff, because the metal protruding bolt was located on the outer limits of the ski trail and did not pose an unreasonably increase in risk or unique and dangerous condition.

### *Bowen v. Adidas Am., Inc.*[78]

Bowen was formerly a college basketball player who was recruited and committed to the University of Louisville in exchange for a four-year scholarship. However, prior to Bowen's first game, it was discovered that Bowen's father had accepted a bribe in connection with Bowen's commitment to Louisville. Bowen was dismissed from the Louisville team, lost his eligibility to compete in the NCAA, and subsequently transferred schools. Bowen commenced a civil suit under RICO against Adidas and individuals involved in the scheme. The court ruled that Bowen's claimed property interest loss, in the form of benefits through elite coaching and basketball development, under the scholarship agreement did not amount to a cognizable injury under the RICO statute because Bowen was never offered those benefits in the scholarship in exchange for his commitment, he was only offered full tuition. The court further held that the loss of Bowen's NCAA eligibility did not support a RICO action because the eligibility to compete did not confer a property interest right to compete. The Fourth Circuit affirmed summary judgement in favor of the defendants.

### *Bush v. Nat'l Collegiate Athletic Ass'n*[79]

Plaintiff, Reggie Bush, filed a defamation suit against the NCAA in response to a 2021 statement by the NCAA that stated Bush had engaged in "pay-for-play" activities. This statement was made after the Heisman Trust

[77] 219 A.D.3d 994 (N.Y. App. Div. 2023).
[78] 84 F.4th 166 (4th Cir. 2023).
[79] No. 49D01-2308-CT-033106 (Ind. Commercial Court filed Aug. 23, 2023).

stated it would return Bush's 2005 Heisman Trophy if the NCAA reinstated his college records, which had been wiped after the NCAA determined Bush had violated NCAA Bylaw 16.11.2.1. That rule forbids impermissible benefits but does not relate to pay for play. A complaint has been filed and this case is currently open.

*City of Baytown v. Fernandes*[80]

Fernandes was injured while riding a waterslide at a waterpark operated by the city of Baytown and sued the city for negligence. The trial court rejected the city's plea to assert governmental immunity, holding that "riding a waterslide" was not included in the state's Recreational Use Statute and thus governmental immunity did not apply. The appellate court reversed, holding that "riding a waterslide" was similar enough to "swimming" and "water sports" to incorporate that activity into the Recreational Use Statute. Because the Recreational Use Statute applied, the court held that the city was entitled to governmental immunity and that the record did not reflect evidence of gross negligence, which is required to waive governmental immunity.

*Cuvo ex rel. A.C. v. Pocono Mountain Sch. Dist.*[81]

Plaintiff was a high-school wrestler who suffered a broken leg during wrestling practice after the team's coaches had the wrestlers play a game of football without any protective equipment during practice. Plaintiff sued the Coaches and the District, asserting civil rights claims under 42 U.S. §1983 for the Coaches' alleged violation of the Plaintiff's substantive due process right to be free from state-created dangers. The District Court held that the Coaches were entitled to qualified immunity on the constitutional claims and granted summary judgement in favor of the Defendants. Plaintiff appealed whether the Coaches were entitled to qualified immunity. To determine if qualified immunity exists, the court uses a two-pronged test: "(1) whether the [state actor] violated a constitutional right, and (2) whether the right was clearly established, such that it would have been clear to a reasonable [state actor] that his conduct was unlawful." The Court of Appeals affirmed, finding that a "right to be free from playing dangerous sports without protective equipment where injury is foreseeable," is not recognized "beyond debate."

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[80] 674 S.W.3d 718 (Tex. App. 2023).
[81] No. 22-1576, 2023 WL 4994527 (3d Cir. Aug. 4, 2023).

*Lewis v. Ayersville Loc. Sch. Dist.*[82]

Plaintiff alleged that the track and field coach was not present and, in his absence but at his direction, certain team members took turns throwing a shot into a designated area, which led to the plaintiff's son being injured by another teammate. The school district and coach sought to dismiss the complaint based on immunity. The trial court granted the defendants' dismissal because of the plaintiff's failure to seek amendment of the complaint. Thus, the plaintiff failed to allege any set of fats under which they might plausibly demonstrate that exception to immunity is applicable.

*Meadows v. Sports Facilities Mgmt.*[83]

Sports Facilities Management, LLC (SFM) operates a recreational facility called Cedar Point Sports Center (CPSC) in Sandusky, Ohio. Meadows went to CSPC to use the rock-climbing wall. She signed a Waiver of Release and Liability before receiving some basic instructions. She was advised by a CPSC worker how to put on a harness and connect it to the auto belay system. She was also taught how to ascend and descend the wall. On her first climb, Meadows fell and suffered significant injuries. Meadows filed suit, asserting SFM's negligence caused her injuries, and SFM sought summary judgment. The Court held that SFM was not negligent because the Waiver Meadows signed was enforceable and its language signified that Meadows, upon signing, intended to release SFM from liability for any negligent act or omission that led to any injury to Meadows.

*Nigel B. v. Burbank Unified Sch. Dist.*[84]

Plaintiff suffered an injury in his eighth-grade physical education class during a mandatory touch football game. A student ran into the plaintiff at full speed, causing him to fly several feet in the air and land on his left side, causing him to suffer a tear in his anterior cruciate ligament. The student who ran into the plaintiff laughed in response and called the plaintiff a "baby." The plaintiff, on behalf of his parents, sued the classmate, the school district, and the physical education teacher, alleging negligence. The court found that the school district and physical education teacher did not breach their duty of care to the plaintiff because although they did not report the tortfeasor's (the other student) intimidating and disruptive conduct against the plaintiff before the incident, there was no substantial evidence that the school district and physical education

[82] 2023-Ohio-3685, 226 N.E.3d 438.
[83] No. 3:21-CV-1428, 2023 WL 6290645 (N.D. Ohio Sept. 27, 2023).
[84] 93 Cal. App. 5th 64, 310 Cal. Rptr. 3d 500 (2023), *reh'g denied* (July 25, 2023).

teacher knew or reasonably suspected the other student was engaged in this conduct prior to the injury. The plaintiff did not complain about this student to a teacher or school administrator. Also, there were no witnesses to this conduct. Therefore, their failure to report did not proximately cause plaintiff's injury.

*Nix v. Major League Baseball*[85]

Nix, a distributor of natural animal substances, brought numerous actions (nine in total, to date) in California federal court, New York state court, and this claim in Texas federal court against Major League Baseball (MLB), the players' union, various members of the employees of both the MLB and the players' union, media companies, and nutritional product sellers related to the MLB's ban on performance enhancing drugs, specifically insulin-like growth factor (IGF-1). Nix alleged the MLB's ban was "fake", tortiously interfered with his existing and future business relations and that all the defendants had engaged in defamatory conduct, common law fraud and vague RICO-like claims. The plaintiff's claims were dismissed with prejudice and imposed monetary and injunctive sanctions to prevent the plaintiff from continuing to engage in vexation, abusive, and harassing litigation against the MLB and the other defendants related to the League's drug enforcement policy.

*Olson v. Saville*[86]

The Appellant and the Respondent were surfing in a group when the Respondent's longboard—without a leash—propelled backward and struck the Appellant. The Appellant sued the Respondent for negligence, alleging that the Respondent displayed a wanton disregard for the safety of others by failure to use a leash to control his longboard. The Respondent moved for summary judgment under the primary assumption of risk doctrine. The Court of Appeals affirmed the decision of the lower court, granting the Respondent's motion for summary judgment on the grounds that not wearing a leash on a surfboard is not reckless as many other surfers do not use leashes and that the leash does not alter the nature of the sport. For that reason, the Respondent did not act recklessly or increase the inherent risks of surfing by not using a leash.

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[85] 62 F.4th 920 (5th Cir.), *cert. denied*, 144 S. Ct. 165, 217 L. Ed. 2d 62 (2023).
[86] No. 2D CIV. B324465, 2024 WL 177166 (Cal. Ct. App. Jan. 17, 2024).

*Ortiz v. Yakteen*[87]

Plaintiff was riding a horse at Santa Anita Racetrack when another horse, ridden by defendant, collided with the plaintiff's horse. Plaintiff alleged that defendant's horse was known to be a "crazy mare" with a propensity to run out of control or "resist the control of a rider unless properly guided and restrained." Defendant's employee had requested that a guide horse be used to control and limit the horse from making sudden or unexpected movements, but defendant declined that request. The trial court found the primary assumption of risk doctrine barred plaintiff's claims and granted defendant's motion for demurrer. The court of appeals affirmed, holding that failure to use a guide horse does not increase the inherent risk of exercising horse nor does that amount to reckless conduct. Being injured in a collision of horses is an inherent risk of horseracing activities and thus the primary assumption of risk doctrine applies.

*Patrick v. NFL*[88]

Plaintiff Aaron Patrick, an NFL player for the Denver Broncos, alleged negligence and premises liability claims against NFL when he was injured during a football game between the Denver Broncos and the Los Angeles Chargers at SoFi stadium. During a punt, Patrick attempted to tackle the Chargers' punt returner. While tackling, Patrick's momentum carried him off the field and onto the sidelines where, attempting to avoid contact with the NFL's TV Liaison, his cleats became lodged in the cords and cables connected to the NFL's instant replay monitor. As a result, Patrick suffered injuries serious enough to miss the remainder of the 2022-23 NFL season. The NFL and Chargers motioned to dismiss the claim. The Court granted the motion to dismiss because neither party's liability can be determined without interpreting the CBA, which both parties are bound to and must be moved to arbitration.

*Reed v. Chamblee*[89]

Professional golfer Patrick Reed brought suit against numerous writers, golf commentators, publishers, and media outlets alleging defamation related to over 50 statements pertaining to Reed's move to the LIV Golf Tour and other events during Reed's career. The court found that all but one of the statements were

[87] No. B316888, 2023 WL 194665 (Cal. Ct. App. Jan. 17, 2023), *reh'g denied* (Jan. 31, 2023), *review denied* (Mar. 29, 2023).

[88] No. CV231069DMGSHKX, 2023 WL 6162672 (C.D. Cal. Sept. 21, 2023).

[89] No. 3:22-CV-1059-TJC-PDB, 2023 WL 6292578 (M.D. Fla. Sept. 27, 2023), *reconsideration denied*, No. 3:22-CV-1059-TJC-PDB, 2024 WL 69570 (M.D. Fla. Jan. 5, 2024), *appeal dismissed in part*, No. 24-10058, 2024 WL 806194 (11th Cir. Feb. 27, 2024), *appeal dismissed*, No. 24-10058, 2024 WL 806194 (11th Cir. Feb. 27, 2024).

either related to LIV golf generally or were not defamatory because they were matters of opinion, permissible rhetorical hyperbole, or statements of fact that were not challenged. For the one remaining statement, the court ruled that Reed failed to prove actual malice because merely omitting possible exculpatory information or not speaking with other possible sources does not constitute malice, as a "publisher is not required to balance its reporting with potentially mitigating factors so long as the reporting [does] not purposely make false statements." The court granted the defendants' motion to dismiss.

### *R.K. v. United States Bowling Cong.*[90]

R.K alleged that he was sexually abused by his youth bowling coach between 1997 and 1999, when his coach was President of the Washington Young American Bowling Alliance (WS-YABA), a subsidiary of the national association Young America Bowling Alliance (YABA). YABA later became the United States Bowling Congress (USBC). R.K alleged that WS-YABA and YABA, and thus the USBC, were negligent in allowing the sexual abuse. The court affirmed the trial court's summary judgement ruling, holding that YABA (and USBC) did not owe a duty to protect R.K. because the national organization did not hire bowler's individual coaches and did not determine which coaches had custody of children at WS-YABA events. Further the court found YABA had no special relationship with the coach that created a duty to protect as YABA and the USBC were not aware of the coach's "dangerous propensities" and that the organizations were not vicariously liable for the coach's conduct because Washington law states that an employer is not strictly liable for an employee's intentional sexual misconduct.

### *Sanchez v. Glendale Union High Sch. Dist.*[91]

A high school football player died following a concussion he sustained during a Glendale High School District game. The parents alleged negligence on behalf of the district due to a lack of emergency protocols. There was no genuine issue of material fact regarding the district's actions before the player collapsed. The Superior Court granted summary judgement for the District on the grounds that the District was protected by statutory immunity. The Court of Appeals of Arizona affirmed the decision of the lower court.

[90] 27 Wash. App. 2d 187, 531 P.3d 901 (2023).
[91] No. 1 CA-CV 22-0424, 2023 Ariz. App. Unpub. LEXIS 196 (Ct. App. Feb. 28, 2023).

*Sinu v. Concordia Univ.*[92]

Sinu, a student-athlete at Concordia University of Nebraska, commenced action against Concordia University alleging negligence due to a weight room injury involving a resistance band. The student-athlete signed an "Assumption of Risk and Waiver of Liability Release" prior to practicing on campus. The court upheld the release, determining that the release did not violate public policy because it contained clear and unambiguous language and the release was not unconscionable. The court granted summary judgement in favor of the defendant.

*Spillane v. Hofstra Univ.*[93]

Plaintiff was injured while a spectator at a college lacrosse game held on Defendant's campus. The eight-year-old plaintiff was hit by a lacrosse ball that flew from the playing field. Defendant moved for summary judgment. Here, the Defendant failed to establish its entitlement to judgment as a matter of law based on the doctrine of assumption of the risk. Specifically, the Defendant failed to establish whether the Plaintiff's particular background and experience was enough to appreciate the consequences of standing where he did during warmups when he got hit and was injured. For these reasons, the Court denied the Defendant's motion.

*Vannote v. Hous. Auth. of Hoboken*[94]

Plaintiff appeals from the entry of summary judgment dismissing his complaint against defendants for injuries he suffered sliding into second base playing league softball when his cleats were caught in a divot in a six-foot ripped seam in the artificial turf along the base path on the infield side. Court affirmed the lower court's ruling, as Plaintiff failed to establish that either the Housing Authority or the City had actual or constructive notice of the alleged dangerous condition of the field. which resulted in Plaintiff's failure to establish a prima facie case against the municipal defendants.

*Wellsfry v. Ocean Colony Partners, LLC*[95]

Plaintiff Wellsfry alleged he injured himself when he stepped on a small tree root camouflaged in a grassy walking area while golfing at a course owned by the Defendant. Wellsfry sued Defendant for negligence by alleging its failure

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[92] 313 Neb. 218, 983 N.W.2d 511 (2023).
[93] No. 2020-08968, 2023 WL 5251741 (N.Y. App. Div. 2023).
[94] No. A-1841-21, 2023 WL 6861897 (N.J. Super. Ct. App. Div. Oct. 18, 2023).
[95] 90 Cal. App. 5th 1075, 307 Cal. Rptr. 3d 689 (2023).

to either remove or warn of the tree root. The decision affirmed the lower's court holding that the Defendant did not breach a duty of care because playing outdoor golf includes the inherent risk of injury caused by stepping on a tree root in an area used to access tee boxes. For that reason, the Defendant had not increased the inherent risk of injury and had not failed to take reasonable steps to minimize the inherent risk of injury that would not have altered the fundamental nature of golf.

*Wolf v. Paseo Aquatics Sports, LLC*[96]

Wolf was a swimmer with the Paseo and was injured during a warm-up for a meet when he collided with head-on with a teammate. Wolf's coach had instructed fifteen to twenty swimmers to "circle swim" counterclockwise in the team's assigned warm-up lane. The court affirmed summary judgement in favor of the defendant, holding that Wolf had assumed the inherent risk of colliding with another swimmer when he participated in the warm-up swim.

*Conclusion*

The sports-related cases adjudicated in 2023 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 2023, it briefly summarizes many interesting cases having a tangible impact in the industry moving forward.

Patrick K. Doll, Survey Editor
*With contributions from Senior Members*: Daniel E. Potter & Ryan J. Malliet

[96] No. 2D CIV. B324969, 2023 WL 8818751 (Cal. Ct. App. Dec. 21, 2023), *reh'g denied* (Jan. 16, 2024), *review filed* (Jan. 30, 2024).