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2021 Annual Survey: Recent Developments in Sports Law

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SURVEY

2021 ANNUAL SURVEY: RECENT DEVELOPMENTS IN SPORTS LAW

INTRODUCTION

This Survey highlights sports-related cases decided by courts between January 1, 2021, and December 31, 2021. While every sports-related case may not be included in this Survey, it briefly summarizes a wide range of cases that impacted the sports industry in 2021. The Survey intends to provide the reader insight into the important legal issues affecting the sports industry and to highlight the most recent developments in sports law. To better assist the reader, this Survey is arranged alphabetically by the substantive area of law of each case.

ALTERNATIVE DISPUTE RESOLUTION

Alternative dispute resolution involves an alternate form of adjudicating cases. Parties may choose to settle a dispute through arbitration instead of through the court system. These cases arose over contract disputes, in which the contracts involved an arbitration clause. If a party brings a dispute to court when the contract contains an arbitration clause, the opposing party may file a motion to compel arbitration. Other arbitration disputes arise over unfair arbitration decisions.

Gilbert v. USA Taekwondo, Inc.[1]

Plaintiffs, elite taekwondo athletes, are part of sexual assault and sex trafficking allegations. After a year of litigation, the plaintiffs and USAT have agreed to arbitration. USAT failed to notify their insurance provider, Markel Insurance Company, of the arbitration. Markel seeks to intervene and argues that they have a right and duty to defend USTA in litigation. USTA disagrees with Markel on this. Markel has been granted the request to intervene and represent USAT and all of their interests in this case.

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1. No. 18-cv-00981, 2021 WL 2621374 (D. Colo. June 25, 2021).

In Re National Football League's Sunday Ticket Antitrust Litigation[2]

The Court has been asked to compel arbitration by the defendants. The plaintiffs oppose arbitration. Plaintiffs argue that DirecTV's agreement with the NFL to broadcast certain NFL games violates the Sherman Act. The NFL moved to dismiss and then DirecTV moved to compel arbitration. After hearing arguments from both sides, the Court granted DirecTV's motion to compel arbitration.

Nyman v. U.S. Ctr. for SafeSport[3]

Amy Nyman is a gymnastic coach and member of USA Gymnastics. Defendant is the U.S. Center for SafeSport is a non-profit corporation which is responsible for investigating allegation of misconduct involving individuals involved in Olympic sports in the United States. In 2019, SafeSport received a report that Nyman had engaged in physical and emotional abuse of minor athletes. After investigation, Safesport concluded that Nyman violated USA Gymnastics policies and issued sanctions. Nyman requested arbitration. Now Nyman argues that the arbitrator exceeded his authority in issuing sanctions and that the Arbitration Award violates the arbitration rules that both parties agreed to. The Court ruled that the Arbitration Award is consistent with terms of the SafeSport Code; therefore, Nyman's motion to vacate the award is denied.

Sanderson v. United States Center for SafeSport, Inc.[4]

The Court is addressing the defendant's (United State Center for SafeSport, Inc.) response to plaintiff's temporary restraining order motion, which called into question the Court's subject matter jurisdiction. The Court held that there was a lack of subject matter jurisdiction, and the plaintiff's motion for Temporary Restraining Order is denied as moot.

ANTITRUST LAW

Antitrust and trade regulation law exists to protect consumers from unfair business practices and anticompetitive behavior. The Sherman Antitrust Act, alongside various state antitrust laws, prohibits monopolistic behavior and conspiracies to restrain trade. Courts have historically applied the Sherman Antitrust Act in a unique fashion within the sports industry, for example, Major League Baseball's antitrust exemption. Several antitrust cases during the year

2. No. 15-2668, 2021 WL 2350814 (C.D. Cal. Apr. 20, 2021).

3. No. 3:20-cv-2256, 2021 WL 857084 (N.D. Ohio Mar. 8, 2021).

4. No. 21-cv-01771, 2021 WL 3206322 (D. Colo. July 29, 2021).

pertained to the NCAA and alleged Sherman Act violations— one case in particular making its way to the Supreme Court.

House v. NCAA[5]

Defendant represents a group of student athletes who are restricted in using their name, image, and likeness for commercial gain while enrolled as a student at any school that is a member of the defendant, the NCAA. The bylaws for the NCAA prohibit any compensation for their NIL outside of scholarships, loans, and other school approved aid. However, the students here challenge that this rule violates federal antitrust laws because they fix the amount of compensation for NIL rights at $0 and foreclose student athletes from the market value for their NIL rights. This Court denied the NCAA's motion to dismiss the antitrust claim, on the grounds that the NCAA failed to make a showing that the class of injuries college athletes are suffering are not of the type that the antitrust laws were intended to prevent. This set the precedent for many compensation restrictions being lifted, paving the way for college athletes to financially benefit off their own name, image, and likeness.

NCAA v. Alston[6]

The NCAA issues and enforces rules regarding amateur sports at the college level. Part of these rules include restricting schools from over-compensating their student-athletes in various ways; therefore, depressing compensation below a market value for these student athletes. Shawne Alston was a college athlete, who represents on a grander stage all college athletes. He alleged the restrictions the NCAA impose on schools, and inversely on their students, is a violation of the Sherman Act by restricting compensation for athletes by the universities. The trial court held that schools cannot universally restrict education-related benefits that schools can offer. The NCAA appealed, seeking immunity from antitrust laws in order to retain a fair market on amateur sports. The Supreme Court affirmed and held, via the rule of reason analysis, the NCAA's restrictions violated Section 1 of the Sherman Act by limiting education-related compensation college athletes are permitted to receive from schools.

5. No. 4:20-cv-03919, 2021 U.S. Dist. LEXIS 154062 (N.D. Cal. June 24, 2021).

6. 141 S. Ct. 2141 (2021).

PBTM LLC v. Football Nw., LLC[7]

PBTM is an LLC that develops and creates designs used for Football Northwest, LLC, otherwise known as the Seattle Seahawks. PBTM created marks involving the number 12 with the word "Volume," referring to the Seahawks fanbase. The two parties entered into an agreement that gave the Seahawks the exclusive right to use the trademark in 2011. Three years later, the two entered into negotiations for purchasing the trademark from them, but they did not materialize. Afterwards, PBTM filed antitrust and contract claims, with the antitrust claims alleging unlawful restraint of trade and monopolization. The Seahawks claimed immunity under the Noerr-Pennington doctrine, which is a judicially created defense against antitrust liability. However, this Court held that the way in which the submarket was defined was too narrow as it was by a single number attached to only one team. On the antitrust claim, the Court dismissed the action because PBTM failed to adequately plead a relevant product market, a requirement under Sections 1 and 2 of the Sherman Act.

CONSTITUTIONAL LAW

The U.S. Constitution and state constitutions serve to protect individuals from certain government acts. Constitutional claims are common in the context of sports law because public universities and most state athletic associations are considered state actors, and therefore, are bound by the Constitution. During 2021 many cases challenging COVID-19 protocols were decided. The following cases highlight claims for violations of the First Amendment, Fourth Amendment, Equal Protection and Due Process Clauses of the Fourteenth Amendment, and various state constitutional provisions.

Chavez v. Bennett[8]

Appellant is a professional boxer, and his promotor requested a permit for a boxing match taking place at the MGM in Las Vegas. Respondent represents the Nevada State Athletic Commission (NSAC), who attempted to perform a random drug test on Mr. Chavez. The executive director of the NSAC barred the plaintiff from competing due to their refusal to submit to a drug test. Mr. Chavez filed a claim alleging this disciplinary action was unconstitutional, and the suspension was a violation of the boxer's right to due process The district court determined that Mr. Chavez had failed to exhaust all administrative remedies and sided with the NSAC. The Court of Appeals for Nevada affirmed, holding the Court did not have jurisdiction over the matter.

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7. 511 F. Supp. 3d 1158 (W.D. Wash. 2021).

8. 489 P.3d 912 (Nev. 2021).

Chung v. Wash. Interscholastic Activities Ass'n[9]

Current and former student-athletes, who were Seventh-day Adventists who observed Sabbath, brought action against WIAA alleging that WIAA violated federal and state constitutions, as well as Washington state law, by scheduling tennis tournament on student-athletes' Sabbath and prohibiting one students-athletes from withdrawing from postseason tennis play for religious reasons. Student-athletes moved for summary judgment. The district court denied the motion.

Let Them Play MN v. Walz[10]

This case concerns Minnesota's requirement of youth athletes wearing face coverings while participating in organized sports. The plaintiffs are a nonprofit corporation that opposes this requirement, and allege these restrictions violate their children's Equal Protection and Due Process rights under the Fourteenth Amendment. The defendant in this case is the Governor of Minnesota, Tim Walz. The Court determined that denying the plaintiffs motion for a preliminary injunction was correct, because plaintiffs likely would not have succeeded on their constitutional claims. The plaintiffs could not show irreparable harm. After a balancing the potential harms to each party it was held that the state's interest outweighed the plaintiff's potential injuries. The Court also mentioned that the correct forum for this type of concern is not in the federal court system.

Let Them Play MN v. Walz[11]

Following the denial of the preliminary injunction the plaintiffs filed another complaint with updated facts. This case is the same controversy as stated above although the Court here determined it is not a case or controversy as is required for this issue to be adjudicated in federal Court. The quarantine and mask rules did not cause continuous harm to the plaintiffs and in fact, by the time the hearing was held the mask mandate was lifted by Governor Walz. The Governor's motion to dismiss was granted. This is because of a lack of subject matter jurisdiction and the claims are mott but the Court still analyzed the claims and explains why the plaintiff still did not assert an actionable claim.

9. No. 19-5730, 2021 WL 185471 (W.D. Wash. May 10, 2021).

10. 517 F. Supp. 3d 870 (D. Minn. 2021).

11. 556 F. Supp. 3d 968 (D. Minn. 2021).

S.C.B. v. Minn. State High Sch. League[12]

S.B. is a minor high school quarterback who received two unsportsmanlike conduct penalties and was ejected from the state tournament semifinal game and suspended for one game. The minors' parents are seeking a preliminary injunction against the Minnesota State High School League who is enforcing the suspension which is preventing S.B. from playing in the State Championship. They claim S.B.'s right to due process under the Fourteenth Amendment was violated as he was unable to challenge the penalties, or suspension. The Court determined that the factors have not been met to impose an injunction. The Courts states there is no property interest in interscholastic competition. Even if he did have one, the one game suspension does not deprive him of that interest. Additionally, penalties are best left to the judgment of a referee or official of the game and are not and should not be reviewable. Although S.B. faces irreparable harm, when the Court balances the harm against both parties it ultimately weighed in favor of denying the injunctive relief.

Sw. Ohio Basketball, Inc. v. Himes13

Appellants and Lance Himes represent the Ohio Department of Health, and appellees represent a group of youth athletic organizations. After the COVID-19 breakout, all sporting events were suspended. In August 2020, Himes issued guidance for contact sports practices and non-contact sport competitions (Director's Order). The Director's Order permitted the return to normal activities, including contact and non-contact sports so long as safety protocols are followed; the protocols were different for contact and non-contact sports, however. Contact sports were limited to practice and intra-club competition, while non-contact sports were allowed to compete interscholastically. The basketball club sued and alleged their Equal Protection and Due Process rights were violated. This Court held in favor of the Ohio Department of Health and Himes because the Director's Order was upheld because it served a rational, legitimate government interest.

Williamson v. Nettleton Sch. Dist.[14]

Plaintiff was a father who had just found out his wife had been cheating on him with his son's high school soccer coach, who was also an employee of defendant. During a soccer away game, the plaintiff physically attacked the coach, and the school banned the father from all school sporting events,

12. No. 21-2553, 2021 WL 5545118 (D. Minn. Nov. 26, 2021).

13. 167 N.E.3d 1001 (Ohio Ct. App. 2021).

14. No. 1:20-cv-60, 2021 U.S. Dist. LEXIS 156702 (N.D. Miss. Aug. 19, 2021).

including practices. Williamson appealed to the School Board, who upheld the decision. His suit against the district alleged violation of his procedural and substantive due process rights under the Fourteenth Amendment. He claimed the constitutional right to his children's care, custody, and education was violated. The Court held, on motion for summary judgment, that Williamson had no due process right to attend these sporting events, and even if he did, the federal courts are not substitutes for sporting referees or school boards.

CONTRACT LAW

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

Adidas Am. Inc. v. Shoebacca Ltd.[15]

Adidas alleges that Shoebacca tortiously interfered with the Agreement between the parties. Adidas alleges that Shoebacca induced a third party to transfer merchandise to them in violation of the Agreement. Shoebacca requested summary judgment, the Court denied the motion because Adidas adequately stated a claim for tortious interference with a contract.

Bell v. Univ. of Hartford [16]

Student Athletes brought a variety of claims against their university and the board of regents including fraud and breach of contract when the board voted to switch the university from Division I to Division III. The defendants moved to dismiss based on lack of standing and a failure to state a claim. The Court held that the student athletes had standing but that they failed to state a fraud claim. This was because they failed to show that the university owed them the fiduciary duty necessary for a fraud claim under state law. The athletes failed to state a claim that the university breached their contracts. Lastly, the athletes failed to show a breach of implied covenant of good faith and fair dealing. The only claims plausibly alleged was by the men's lacrosse team for negligent misrepresentation and breach of contract. Otherwise, the motion to dismiss was granted.

15. No. 3:20-cv-03248, 2021 WL 4399745, (N.D. Tex. Sept. 27, 2021).

16. No. 3:21-cv-0934, 2021 WL 6063214 (D. Conn. Dec. 22, 2021).

Big Noise Sports, Inc. v. Beijing Media Network[17]

Big Noise Sports filed a complaint against Beijing Media Network for breach of contract. The parties entered into an agreement in August of 2018 that called for Big Noise Sports to arrange professional box Mike Tyson's appearance at a sports event to be televised on Beijing Media Network. Big Noise Media alleges that Beijing Media Network missed payments. Beijing Media Network never responded to the complaint nor appeared in Court. The Court grants plaintiff's motion for default judgment.

Chattanooga Pro. Baseball LLC v. Nat'l Casualty Co.[18]

The owners and operators of several professional baseball teams appealed the district court's order granting National Casualty Company motion to dismiss the Teams' claim for breach of contract. The teams argued that virus exclusion in their insurance policies does not preclude all coverage for their claimed losses. The Court affirmed the decision on appeal.

Daly v. Nexstart Broad., Inc.[19]

Daly brought suit against Nexstar for defamation, wrongful termination, breach of contract, and tortious interference with business after the company ran a news report that Daly had used a racial slur during a live radio interview thirty-five years ago. Nexstar moved to dismiss the suit and for summary judgment. The Court granted Nexstar's summary judgment.

Haney v. PGA Tour, Inc.[20]

PGA Tour and SiriusXM Radio have a business relationship that is memorialized by a License Agreement. Hank Haney a host of the PGA SiriusXM Radio made negative statements while on air which SiriusXM and PGA Tour jointly addressed. Haney brought a breach of contract claim against PGA Tour for his suspension from the radio. The Court ruled the PGA Tour is entitled to summary judgment on plaintiffs' tortious interference with a contract claim.

17. No. 20-cv-06439 2021 WL 4267628 (S.D.N.Y. Sept. 2021).

18. 2021 WL 4493930 (9th Cir. Oct. 1, 2021).

19. F. Supp. 3d (S.D. Ind. 2021).

20. No. 19-cv-63108, 2021 WL 3709213 (S.D. Fla. Aug. 10, 2021).

Hutsonville Cusd No. 1 v. Ill. High Sch. Ass'n[21]

Petitioner filed a complaint against Illinois High School Association alleging breach of contract between IHSA and its members by affecting Hutsonville's eligibility to participate in the state series. The Appellate Court reversed the trial court's decision and remanded the case to adjudicate the merits of the case.

Lee v. Brothers[22]

David Lee is an agent certified by the NBPA. In 2017, Lee agreed to represent Mitchell Robinson. Three months before the NBA draft, Robinson terminated his agreement with Lee, allegedly because the Raymond Brothers promised to buy Robinson a new Chevrolet Silverado if he switched to the defendant's agency. Lee alleges that this inducement violates the NBPA regulations. Defendants moved to dismiss the complaint for failure to state a claim. The Court granted the motion.

McKinney, Tex. v. KLA Int'l Sports Mgmt., LLC[23]

The City of McKinney appeals the trial court decision of its plea for immunity grounds based on a breach of contract claim. The City of McKinney requested the KLA develop and improve new and/or existing youth soccer field in the City. The City issued a notice of default to KLA. After mediation, the parties were not able to resolve their issues. The City issued a notice of termination directing KLA to stop all work and vacate the fields. KLA then sued the City for breach of contract seeking performance, damages, attorney's fees, and injunctive relief. The City argues that the claims of KLA arise from the City's performance of a government function for which there is no waiver of immunity. The Court ruled that the City was engaged in governmental function but has waived its immunity. The decision is affirmed.

Rapaport v. Barstool Sports, Inc.[24]

Michael Rapaport and his production company brought this case against Barstool Sports and its employees for breach of contract, fraud, and defamation arising out of Barstool's termination of its contract with Rapaport. Barstool brought counterclaims for breach of contract against Rapaport and that Rapaport

21. 2021 IL App 210308-U (Oct. 19, 2021).

22. No. 21-cv-4213, 2021 WL 4652336 (S.D.N.Y. Oct. 6, 2021).

23. No. 05-20-00659-cv, 2021 WL 389096 (Texas App. Feb. 4, 2021).

24. No. 18 Civ. 8783, 2021 WL 1178240 (S.D.N.Y. Mar. 29, 2021).

must repay Barstool because he was terminated for cause. Each party moves for summary judgment. Rapaport's motion for summary judgment was denied, and Barstool's motion for summary judgment was granted.

Sterman v. Brown Univ.[25]

Students recruited by a private university to play varsity squash brought an action against the university arising from its decision to transition squash teams from varsity to club status, alleging claims under Rhode Island law for breach of contract, promissory estoppel, fraudulent and negligent misrepresentation, and breach of a fiduciary relationship, and seeking a preliminary injunction enjoining university from transitioning teams. University moved to dismiss for lack of subject-matter jurisdiction and failure to state a claim.

Store SPE LA Fitness v. Fitness Int'l, LLC[26]

Store Master was formerly the landlord of a commercial property that tenant was Fitness and Sports, a fitness gym. The party's relationship is governed by an Amended and Restated Lease. There are three properties, each property is governed by an individual lease, totaling three different agreements. The defendants, Fitness International closed on March 16, 2020, due to the pandemic, at this time, the party stopped paying their lease, while closed. On June 1, 2020, Fitness International reopened and began paying their lease again. The plaintiff argues that the defendant breached their contract and that there was a breach of covenant of good faith and fair dealing. The defendant filed an opposition of the plaintiff's request for summary judgment. The Court denied the defendant's request.

Unifycloud LLC v. Sports 1 Mktg. Corp.[27]

Unifycloud LLC provides technology and consulting services for Sports 1 Marketing Corp., a sports marketing and business consulting company. Unifycloud and Sports 1 Marketing agreed that Unify would create a mobile application for Sports 1 Marketing. Unify alleges that they performed their obligations, but that Sports 1 Marketing failed to pay. Unifycloud sued Sports 1 Marketing. Unify moved to enter default judgment. The Court denied the motion to enter default judgment.

25. 513 F. Supp. 3d 243 (D. R.I. Jan. 14, 2021).

26. No. 20-963, 2021 WL 3285036 (C.D. Cal. June 30, 2021).

27. No. 2:19-cv-01519, 2021 WL 3617201 (W.D. Wash. Aug. 16, 2021).

Westwood One Radio Networks, LLC v. NCAA[28]

The 2020 NCAA college basketball tournament was cancelled due to COVID-19. Westwood One Radio did not satisfy its financial obligation to the agreement with the NCAA. Both the NCAA and Westwood filed suit. The trial court denied Westwood's request for injunctive relief. The NCAA argues that the trial court correctly denied injunctive relief. The Court agreed with the NCAA and affirmed the division.

Williamson v. Prime Sports Mktg., LLC[29]

Plaintiff and defendant entered into a marketing agreement, while plaintiff was a student at the Duke University. The plaintiff seeks to have the agreement be void as a matter of law and that the defendant engaged in prohibited conduct under North Carolina's UAAA. The defendant responded with a counterclaim requesting that the agreement is valid. The plaintiff's motion is granted.

COURT OF ARBITRATION FOR SPORT

The Court of Arbitration for Sport (CAS) is based in Lausanne, Switzerland and has jurisdiction to settle disputes amongst international sport federations through arbitration. This includes all Olympic federations. It also acts in compliance with the World Anti-Doping Agency (WADA). The cases stated below include many of the decisions from the Tokyo 2020 Olympic Games held in the summer of 2021.

Agapitov v. Int'l Olympic Comm. [30]

Maxim Agapitov, who is a Board member of the International Weightlifting Federation (IWF), Acting President of the European Weightlifting Federation (EWF) and President of the Russian Weightlifting Federation (RFUF), had his accreditation as an IWF official for the Tokyo 2020 Olympics withdrawn by the IOC on July 15, 2021. The IOC stated that Agapitov did not meet the criteria for accreditation of IWF officials because officials must not have a personal history linked to any anti-doping rule violation and/or sanction, and Agapitov was suspended for a doping offence twenty-seven years ago. On appeal, the Ad Hoc Division of CAS overturned the IOC's decision and instructed the IOC to reinstate Agapitov's accreditation of Russia's most senior weightlifting official on July 24, 2021.

28. 172 N.E.3d 294 (Ind. Ct. App. 2021).

29. No. 1:19-cv-593, 2021 WL 201255 (M.D.N.C. Jan. 20, 2021).

30. CAS OG 20/04 (July 24, 2021).

Harding-Marlin v. St. Kitts & Nevis Olympic Comm. & FINA[31]

Jennifer Harding-Marlin, a swimmer who holds dual citizenship with Canada and St. Kitts & Nevis, appealed a decision by the Saint Kitts and Nevis Olympic Committee (SKNOC) where she was not selected to compete in the 2020 Tokyo Olympics. This was the first case heard by the Tokyo 2020 Olympics CAS Ad Hoc Division, and they dismissed Harding-Marlin's appeal, confirming the SKNOC's decision to not select Harding-Marlin as a participant in the 2020 Olympic Games.

Islamic Republic of Iran Judo Fed'n v. Int'l Judo Fed'n/Islamic Republic of Iran Judo Fed'n v. Int'l Judo Fed'n[32]

At the 2019 World Judo Championships in Tokyo, Iranian judoka, Saeid Mollaei, deliberately lost his semifinal match in order to avoid a possible match against an Israeli opponent. Mollaei attested that he threw the match because high-ranking officials within the Iranian regime called him multiple times and told him to do so. The International Judo Federation (IJF) imposed a protective suspension against the Islamic Republic of Iran Judo Federation and the latter appealed the suspension to CAS. On March 1, 2021, CAS decided to refer the matter back to the IJF Disciplinary Commission for further decision making.

Kalashinikova & Gorgodze v. Int'l Tennis Fed'n, Georgian Nat'l Olympic Comm. & Georgia Tennis Fed'n[33]

Kalashnikova and Gorgodze, two Georgian tennis players, appealed a decision from the Georgian National Olympic Committee and Georgia Tennis Federation where they were not selected to compete in the 2020 Tokyo Olympics. Their appeal concerned the qualification system used by the International Tennis Federation (ITF) and the allocation of quota places. On July 23, 2021, the CAS Ad Hoc Division dismissed Kalashnikova and Gorgodze's appeal and confirmed the list of Women's Doubles participants for the Tokyo 2020 Olympics published by the International Tennis Federation.

McNeal v. World Athletics/World Athletics v. McNeal[34]

CAS upheld charges from the World Athletics Disciplinary Tribunal for the American track athlete who was charged with tampering with any part of

31. CAS OG 20/03 (July 19, 2021).

32. CAS 2019/A/6500 (Mar. 1, 2021); CAS 2019/A/6580 (Mar. 1, 2021).

33. CAS OG 20/05 (July 23, 2021).

34. CAS 2021/A/7983 (July 2, 2021); CAS 2021/A/8059 (July 2, 2021).

Doping Control under Article 2.5 of the Anti-Doping rules. McNeal was deemed ineligible for five years from August 15, 2020.

WADA v. Sun Yang & FINA[35]

Sun Yang, a Chinese swimmer, had a conflictual anti-doping test at his home that resulted in a test not actually being completed. FINA found that the testing protocol adopted by WADA had not been properly followed by Yang and that therefore the sample collection should be invalidated and that no anti-doping rule violation had occurred. WADA appealed this finding to CAS arguing that Sun Yang had voluntarily refused to submit to sample collection and requested that he be rendered ineligible to compete for a period between two and eight years. CAS found that Yang violated Article 2.5 of FINA DC (tampering with any part of doping control) and sanctioned him with a period of ineligibility of four years and 3 months, beginning on February 28, 2020.

World Athletics v. Lysenko[36]

CAS upheld charges by the Athletics Integrity Unit (AIU) for the Russian high jumper who was charged for Whereabouts Failure under Article 2.4 and Tampering under Article 2.5 of the Anti-Doping rules. Lysenko was deemed ineligible for six years from August 3, 2018, and his results from July 1, 2018 to August 2, 2018 were disqualified.

World Athletics v. Russian Athletics Fed'n & Soboleva[37]

Yelena Soboleva is a Russian track and field athlete that was involved in the Russian doping scheme. She was found guilty of anti-doping rule violations under Rule 32.2(a) of the IAAF Competition Rules 2006-2007 and under Rule 32.2(b) of the IAAF Competition Rules 2012-2013 and was deemed ineligible for eight years from April 7, 2021. Her results from May 1, 2011, to April 7, 2021 were disqualified.

World Athletics v. Wilson, Swiss Anti-Doping & Swiss Olympic/WADA) v. Wilson, Swiss Anti-Doping & Swiss Olympic[38]

Swiss track athlete Alex Wilson underwent an out-of-competition doping test in March 2021 that came back positive for trenbolone (an anabolic androgenic steroid on the WADA prohibited list). In April 2021, Anti-Doping

35. CAS 2019/A/6148 (June 22, 2021).

36. CAS 2021/O/7668 (May 21, 2021).

37. CAS 2020/O/6762 (Apr. 7, 2021).

38. CAS OG 20/06 (July 27, 2021); CAS OG 20/08 (July 27, 2021).

Switzerland imposed a provisional suspension on Wilson, which was lifted on appeal by the Disciplinary Chamber of Swiss Olympic on July 2, 2021. The CAS Ad Hoc Division reinstated the provisional suspension imposed by Anti-Doping Switzerland on July 27, 2021.

CRIMINAL LAW

The most common connection between the criminal law and the sports law world arises when individual athletes find themselves facing criminal charges. However, as the following case highlights, criminal law touches on the sports industry in unique ways.

U.S. v. Gatto[39]

James Gatto, Merl Code, and Christian Dawkins were convicted of engaging in a scheme to defraud three universities by paying tens of thousands of dollars to the families of high school basketball players to induce them to attend the universities, which were sponsored by Adidas, and covering up the payments so that the recruits could certify to the universities that they had complied with rules of the National Collegiate Athletic Association barring student-athletes and recruits from being paid. The Court ruled in against the defendant and reasoned that the U.S. proved beyond a reasonable doubt that defendants knowingly and intentionally engaged in a scheme, through the use of wires, to defraud the Universities of property, *i.e.*, financial aid that they could have given to other students.

DISABILITY LAW

The Americans with Disabilities Act (ADA) prohibits discrimination against those with disabilities in terms of employment, education, and access to public services.[40] In the sports context, the ADA requires sports organizations to also make reasonable accommodations to allow disabled athletes to participate. The following cases illustrate how the ADA was implicated in the sports context during 2021.

Black v. ESPN, Inc.[41]

Devyn Black filed an employment discrimination suit alleging that ESPN discriminated against him on the basis of his disability. ESPN moves to dismiss

39. 986 F.3d 104 (2d Cir. 2021).

40. Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 (2022).

41. 139 N.Y.S. 3d 523 (Feb. 19, 2021).

the case for failure to state a claim. Black opposes the motion and moves to amend the case to assert additional cause of action. The defendant's motion is dismissed, and the plaintiff's motion is granted.

Landis v. Wash. State Major League Baseball Stadium Pub. Facilities Dist.[42]

Wheelchair users brought action against entities which owned professional baseball stadium, alleged that spectators using wheelchairs at stadium had inadequate sightlines under the ADA, as implement by the Department of Justice's 1996 Accessible Stadiums document. The United States District Court for the Western District of Washington entered judgment for stadium owners, and wheelchair users appealed. The Court of Appeals held that the court had to consider whether a person using a wheelchair could see the playing surface over the heads of persons standing two rows in front.

Ray v. Human Rels. Comm.[43]

Plaintiff sought to participate in the Special Olympics and was required to pass a sports physical. Plaintiff did not pass the sports physical exam due to his difficulty verbalizing oral responses. Discriminatory comments were made to the plaintiff and thus he brought a suit. The trial court held that a place of public accommodation is not required to make reasonable accommodation based on disability, which the Appeals Court reversed and remanded.

DISCRIMINATION LAW

Federal and state antidiscrimination laws are intended to protect individuals from discrimination on the basis of race, national origin, sex, age, religion, and various other protected attributes. Discrimination claims generally center on the Equal Protection Clauses of the Fourteenth Amendment[44] and Title VII of the Civil Rights Act.[45] In the sports context, discrimination can affect athletes, coaches, administrators, and other employees, as the following cases illustrate.

Bletz v. Univ. of Pittsburgh[46]

Plaintiff, a former strength, and conditioning coach at the University of Pittsburgh, claimed that he was discriminated against when he was terminated

42. 11 F.4th 1101 (9th Cir. Sept. 1, 2021).

43. No. N20A-09-001, 2021 WL 5492664 (Del. Super. Ct. Nov. 22, 2021).

44. 42 U.S.C.A. §§ 1981, 1983 (2022).

45. Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000 (2022).

46. No. 2:19-cv-1572, 2021 WL 5920807 (W.D. Penn. Dec. 15, 2021).

for his age and race. The Court denied summary judgment for race and age discrimination claims.

Gough v. Rock Creek Sports Club[47]

Linda Gough brought an action against Rock Creek Sports Club where she was a group exercise instructor. Gough argues that she was discriminated against for her age. The defendants move to dismiss the case. The Court granted the defendant's motion.

Johnson v. Bd. of Educ. of Bowling Green Independent Sch. Dist.[48]

African American high school basketball coaches brought action against public school district and school district superintendent alleging racial discrimination under Title VII and the Kentucky Civile Rights Act, and retaliation in violation of Title VII, KCRA, Kentucky Whistleblower Act, and Title IX. Defendants filed motion for summary judgment. The motion is granted in part and denied in part.

Johnson v. S. Bend Cmty. Sch. Corp.[49]

Mark Johnson a high school basketball coach claims that he was forced to resign from South Bend Community School Corporation and give up his coaching job because he was white. He argues that he had to give up these positions because of racial discrimination, racial harassment, and retaliation. The South Bend Community School District requested a motion for summary judgment. The Court granted summary judgment because Mark Johnson's discrimination claim failed for lack of evidence.

GAMBLING

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

47. No. 19-3533, 2021 WL 795447 (D. Md. Mar. 2, 2021).

48. No. 1:17-cv-175, 2021 WL 1846564 (W.D. Ky. May 7, 2021).

49. No. 3:17-cv-825, 2021 WL 1812721 (N.D. Ind. May 6, 2021).

Melnick v. Betfair Interactive, LLC[50]

FanDuel was sued by user claiming deceptive trade practices, breach of contract and unjust enrichment. The user claims his losses are a result of FanDuel's failure to provide accurate information for live sporting events. FanDuel moves to dismiss the action for failure to state a claim. The Court held that the user did not state a claim for any of the claims brought. FanDuel's motion was granted.

N.H. Lottery Comm'n v. Rosen[51]

The Interstate Wire Act of 1961, often called the Federal Wire Act, is a United States federal law prohibiting the operation of certain types of betting businesses in the United States. The Act makes it a crime for a host entity in the business of betting to knowingly make interstate transmissions of any information that would assist with making bets. Because it is a federal law, the First Circuit held that the Wire Act's prohibitions can only be limited to interstate wire communications that relate to sports betting. In 2011, U.S Department of Justice's (DOJ) Office of Legal Counsel issued an opinion confirming the limitations to sports betting. All prohibitions in the Wire Act are applied to all forms of bets or wagers, with one exception. The ruling that the Wire Act only applies to interstate wire communications regarding sports betting sets the framework for states beginning to authorize online gambling activities.

Pepper v. Ky. Bar Ass'n [52]

An attorney, Pepper, had been sanctioned by the Kentucky Bar Association for conspiring to launder proceeds of an illegal gambling operation. Pepper plead guilty to this charge in federal court and was automatically suspended from practicing law in the state of Kentucky. Fighting the permanent ban on his bar admission, Pepper is requesting the Bar Association to suspend him for the length of his probation, determined by the federal court. The Kentucky Supreme Court held that attorneys' participation in serious criminal financial misconduct, consisting of crimes similar to this one, warrant at least a five-year suspension, rather than disbarment permanently.

50. No. 21-cv-1178, 2021 WL 4318075 (N.D. Ill. Sept. 23, 2021).

51. 986 F.3d 38 (1st Cir. 2021).

52. No. 2021-sc-0181, 2021 Ky. LEXIS 355 (Sept. 21, 2021).

U.S. v. Silveira[53]

Gregory Silveira moved to vacate his sentence based on ineffective counsel misguiding his guilty plea. Silveira plead guilty to money laundering in violation of 18 U.S.C. § 1956. Facts reveal that Silveira contributed to the illegal gambling scheme by betting and organizing bets on sporting games. He then received approximately $2.75 million into a bank account that he knew were from sports betting. He was transferring these funds into multiple accounts, knowingly for continuing illegal sports betting. The 9th Circuit ruled that the guilty plea that Silveira entered was proper, because based on the facts, Silveira likely would have likely accepted a plea rather than go to trial. The challenge was based on a challenge of the word "proceeds" under the plain language, and the Court recognized that the word is not ambiguous, and the defendant knew what illegal activity he was engaging in.

GENDER EQUITY & TITLE IX

Title IX of the Education Amendments of 1972 had a significant impact on female athletes' ability to gain equal rights to their male counterparts within the collegiate and high school settings. Despite the implementation of Title IX nearly fifty years ago, it is ever-changing and continues to be a hotly contested issue. Just one year prior to the fiftieth anniversary of Title IX, the abundant number of cases in 2021 shows the continuing benefit Title IX has on athletics.

Anders v. Cal. State U., Fresno[54]

In October 2020, Fresno State decided to cut the men's wrestling, men's tennis, and women's lacrosse teams at the end of the 2020-21 academic year. In February 2021 five members of the women's lacrosse team filed a class action against Fresno State alleging violation of Title IX and seeking a preliminary injunction barring the school from cutting women's lacrosse. The plaintiffs raised both an effective accommodation claim and an equal treatment claim. Regarding the effective accommodation claim, the Court denied the plaintiffs' motion and reasoned that the evidence indicated that Fresno State will satisfy the substantial proportionality standard in Prong One of the Title IX Three-Part Test when cuts to men's wrestling, men's tennis and women's lacrosse take effect in the coming 2021-22 academic year. Regarding the equal treatment claim, the Court granted the plaintiff's motion and reasoned that the plaintiffs set forth uncontroverted evidence that inequalities in the treatment of women's lacrosse in comparison to men's teams at Fresno State are substantial enough to

53. 997 F.3d 911 (9th Cir. 2021).

54. No. 1:21-cv-179, 2021 WL 1564448 (E.D. Cal. Apr. 21, 2021).

deprive members of the women's lacrosse team equal athletic opportunity. Regarding the latter holding, the Court ordered that for the remainder of the 2020-21 academic year, Fresno State shall provide a dedicated locker room and practice space for the women's lacrosse team; equip the women's lacrosse team for competition; and provide the women's lacrosse team with funding and benefits on par with the average in each respect provided to Fresno State's existing varsity teams.

Balow v. Mich. State Univ.[55]

Michigan State University (MSU) announced that it was going to discontinue the men's and women's varsity swimming and diving programs after the end of the 2020-2021 season. Members of the women's swimming and diving team brought suit against the university claiming that MSU discriminates against women, in violation of Title IX. More specifically, they claimed that MSU provides fewer opportunities for athletic participation and the opportunities provided are of lesser quality than those sports for men. Plaintiffs asked the Court for a preliminary injunction requiring MSU to maintain its varsity women's swimming and diving team for the duration of their lawsuit. The Court denied the plaintiffs motion for a preliminary injunction because although the plaintiffs have demonstrated a likelihood of irreparable injury in the absence of an injunction, the plaintiffs have not shown a likelihood of success on their claims. After all, MSU has not improperly inflated its participation opportunities for women and because a participation gap of 25, 35 or 12 is not too large for a school of MSU's size to satisfy the test for substantial proportionality.

Berndsen v. N.D. Univ. Sys.[56]

Plaintiffs were members of the women's ice hockey team, and they brought a judgment against their university system stating that university violated Title IX because if got rid of the hockey team. The Court in reviewing the dismissal of the case at the district court level held that the one test the district court utilized was not the only way. Title IX offers three ways to be compliant. Therefore, the lower court incorrectly dismissed the claim and this Court remanded as the female hockey players might have a workable claim.

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55. No. 1:21-cv-44, 2021 WL 650712 (W.D. Mich. Feb. 19, 2021).

56. 7 F.4th 782 (8th Cir. 2021).

B. P. J. v. W. Va. State Bd. of Educ.[57]

A transgender female high school student brought an action against the West Virginia State Board of Education, the West Virginia Secondary Schools Activities Commission (WVSSAC), the state school superintendent, and other defendants, alleging that state law, which required athletic teams to be designated based on biological sex and addressed who may participate on each team, violated the Equal Protection Clause of the Fourteenth Amendment and Title IX. The student filed a motion for a preliminary injunction. The Court granted the student's motion for a preliminary injunction and reasoned that she had a likelihood of success on the merits of both her equal protection and Title IX claims, and further, that she would likely suffer irreparable harm absent a preliminary injunction and that a balance of equities and public interest weighed in favor of a preliminary injunction.

Cohen v. Brown Univ.[58]

Brown University made changes to what sports had varsity status and the previously settlement agreement between parties was relooked at after over twenty years. After a new settlement was negotiated some female athletes in the class negotiating the settlement objected the new agreement. The settlement was ultimately approved but the women appealed. This Court once again approved the settlement agreement. The Court refuted the arguments that the representatives of the class in negotiation were inadequate. Overall, the district court did not err it using its discretion to hold that the new agreement was fair and should be approved.

Doe v. Bd. of Regents of Univ. of Wis.[59]

Jane Doe was sexually assaulted and was photographed while she was being raped. Two football players were involved. One of the players was expelled and the other was put on probation. After the expelled player was found not guilty on criminal charges, the plaintiff alleges that there was a public outcry to reinstate the player claiming Doe falsely accused him. UW readmitted the player by overturning the Title IX investigations finding of sexual assault and accepting his petition to return to school. This decision caused many alleged issues for the plaintiff. Doe brought claims that the school violated Title IX for deliberate indifference and an erroneous outcome. Additionally, Doe brought a claim against the school Chancellor for violating her due process rights. The

57. No. 2:21-cv-00316, 2021 WL 3081883 (S.D.W. Va. July 21, 2021).

58. 16 F.4th 935 (1st Cir. 2021).

59. No. 20-cv-856, 2021 WL 5114371 (W.D. Wis. Nov. 3, 2021).

Court here is reviewing the defendant's motion to dismiss. The Court holds that the plaintiff has sufficiently plead a claim of deliberate indifference based on UW allegedly forcing her to attend school with the player when he was allowed to return. Given that football is a predominantly male sport and a motivation to have the player return is because he was a star player, it is reasonable that the issues caused to the plaintiff were gender-based and the school could have made an erroneous decision. Lastly, the due process claim is dismissed because Doe received no promises to be a part of the reinstatement of the football player.

Du Bois v. Bd. of Regents of Univ. of Minn.[60]

Plaintiff was a female college athlete that brought action against her university's (the University of Minnesota) governing body alleging retaliation for her supporting her coach in a sexual harassment investigation by not allowing her to redshirt, and sex discrimination under Title IX. The Court granted the university's motion to dismiss and held that: 1) regardless of which test governs a Title IX retaliation claim, the plaintiff failed to meet the first element of such claim under any test, as she never complained of sex discrimination and, thus, did not engage in protected activity under Title IX; 2) participation in a sexual harassment investigation on the side of the accused is not protected activity under Title IX; and 3) the plaintiff failed to plead sufficient facts to support her claim of sex discrimination in violation of Title IX.

Duguid v. State Univ. of N.Y. at Albany[61]

A group of female tennis players brought suit against their school, the State University of New York at Albany, alleging that the University violated their rights under Title IX when they cancelled the women's tennis program in the spring of 2016. Their coach, Gordan Graham, joined the suit, adding claims that the University discriminated against him because of his sex and violated his right to equal protection when the University fired him because of his age. This initial group of female tennis players have since graduated and have been replaced by another group of plaintiffs who contend that the University violated Title IX by failing to provide women with opportunities to participate in intercollegiate athletics in numbers proportionate to their representation in the student body. Graham remained in the suit. The plaintiffs sought injunctive relief and the defendants sought summary judgment. The Court denied plaintiffs' injunctive relief and granted defendant's motion for summary judgment.

60. 987 F.3d 1199 (8th Cir. 2021).

61. No. 117-cv-1092, 2021 WL 2805637 (N.D.N.Y. July 6, 2021).

Fader v. Telfer[62]

Back in 2014, University of Wisconsin-Whitewater (UWW) wrestling coach Timothy Fade failed to inform the school of a sexual assault allegation by a wrestling recruit against the team's former manager. UWW is no stranger to controversies. After a meeting among leadership and Fader, Fader was suspended and ultimately his contract was not renewed. Fader is brining claims under First Amendment retaliation, wrongful termination, and defamation cases. In this summary judgment analysis, the Court determined that Fader did not show a prima facie case of retaliation. Fader was not fired for any protected speech it was simply that he did not follow university policy. The Court did not consider the state law claims of wrongful termination and defamation because the federal law claim failed. The defendant's summary judgment motion s granted.

Gagliardi v. Sacred Heart Univ.[63]

Plaintiff was the former men's tennis head coach at Sacred Heart University who brought action against the university, alleging gender discrimination and retaliation under Title VII and Title IX. He asserted that he was subject to gender-based discrimination because of his part-time classification, as well as the level of pay and resources provided to him as a coach, when compared to similarly situated female coaches, and further, that he was retaliated against for reporting his inequitable treatment, which resulted in his termination. The Court granted summary judgment in favor of the university because the plaintiff did not establish a prima facie case of gender discrimination and failed to show that the university's proffered legitimate, non-retaliatory reason for his termination was pretextual.

Gordon v. Jordan Sch. Dist.[64]

Parents of a group of female high-school students filed a class action lawsuit against the state high school activities association and school districts alleging that failure to sanction and offer girls tackle football as a high school sport violated the Equal Protection Clause of the Fourteenth Amendment as well as Title IX. The Court held that neither the Equal Protection Clause nor Title IX were violated. Regarding the Equal Protection Clause, the Court reasoned that the defendants did not classify students on the basis of sex in determining who may play high school football and that girls are actually permitted to play

62. No. 16-cv-1107, 2021 WL 4991418 (E.D. Wis. Oct. 27, 2021).

63. 855 Fed. Appx. 1 (2d Cir. 2021).

64. No. 217-cv-00677, 2021 WL 777581 (D. Utah Mar. 1, 2021).

football and do in fact play, despite in extremely limited numbers. Regarding Title IX, the Court reasoned that although the plaintiffs demonstrated some degree of unmet interest in girls tackle football and there may be a sufficient ability to sustain teams, the plaintiffs failed to demonstrate a reasonable likelihood of competition.

Lazor v. Univ. of Conn.[65]

Plaintiffs were members of the women's rowing team at the University of Connecticut who brought action against the university claiming that their decision to eliminate the women's rowing team violated Title IX. The plaintiffs moved for a temporary restraining order (TRO) to maintain the status quo pending a ruling on their motion for a preliminary injunction. The Court granted the plaintiffs motion for a TRO on the grounds that: 1) the plaintiffs established that they were likely to succeed on the merits of the claim; 2) they established irreparable harm in the absence of a TRO; 3) the balancing of equities supported issuance of a TRO; and 4) public interest supported the issuance of a TRO.

Portz v. St. Cloud State Univ.[66]

Student athletes brought action against their university claiming gender discrimination under Title IX when the university canceled some women's sports teams. The female student athletes received a favorable action, but the defendants appealed. The Court of appeals found that the findings of the district court were partly erroneous. The analysis of the treatments and benefits incorrectly relied on the facts of the case, which led to an incorrect scope of the decision. The injunction currently in place demands more than Title IX. This Court states that the university does not need to provide equal treatment and benefits amongst the tiered system. Additionally, the district court neglected to include facts regarding the volleyball team. The case is remanded to decide these issues. However, the Court did not err in finding that the tiered system the university uses was being used to allocate resources for teams within the same school. This fact was correctly applied to the necessary analysis by the district court, and they correctly concluded that the school did violate Title IX as it didn't give equal opportunities for women and men to participate.

65. No. 3:21-cv-583, 2021 WL 2138832 (D. Conn. May 26, 2021).

66. 16 F.4th 577 (8th Cir. 2021).

Soule by Stanescu v. Conn. Ass'n. of Schs., Inc.[67]

Plaintiffs claimed that the transgender policy of the Connecticut Interscholastic Athletic Conference, which permits high school students to participate in sex-segregated sports consistent with their gender identity, puts non-transgender girls at a competitive disadvantage in girls' track and therefore violates Title IX, which requires that if a school provides athletic programs or opportunities segregated by sex, it must do so in a manner that gives the sexes equal athletic opportunity. The Court dismissed the action on the grounds that it is moot due to the graduation of the two students whose participation in girls' track provided the impetus for this action.

Warmington v. Bd. of Regents of Univ. of Minn.[68]

Plaintiff is a former head coach for the University of Minnesota's women's cross-country and track-and-field teams who alleges that the university violated Title IX because she was constructively terminated based on sex discrimination and she was subjected to a hostile work environment on account of her sex. The Court granted the university's motion to dismiss and reasoned that the plaintiff's complaint did not plausibly give rise to an inference of discrimination on the basis of her sex as the reason for her termination, and that her allegations were insufficient as a matter of law to state a hostile work environment claim.

Wiler v. Kent State Univ.[69]

Plaintiff was a former women's field hockey coach at Kent State University and alleged that the university was in violation of Title IX because they paid her less than her male counterparts and because they constructively discharged her following her complaints about the unequal treatment she alleged, retaliated against her, and otherwise engaged in unlawful sex discrimination. The Court granted the university's motion to dismiss and reasoned that the plaintiff failed to state a plausible claim for discrimination based on facts separate from wage discrimination.

INTELLECTUAL PROPERTY LAW

Trademarks, copyrights, and patents generate billions of dollars in revenue for the sports industry in the form of sponsorship deals, advertisements, licensing agreements, and merchandise sales. Therefore, these intellectual

67. No. 3:20-cv-00201, 2021 WL 1617206 (D. Conn. Apr. 25, 2021).

68. 998 F.3d 789 (8th Cir. 2021).

69. No. 5:20-cv-490, 2021 WL 809350 (N.D. Ohio Mar. 3, 2021).

property rights have become a highly contested issue within the sports context as entities seek all available measures to protect their intellectual property, as illustrated by the following cases.

Antetokounmpo v. Searcy[70]

NBA Player Giannis Antetokounmpo brought suit against Kenneth Searcy for misuse of his registered trademark the "GREEK FREAK" for selling a variety of items on Redbubble.com with the Greek Freak mark. Searcy did not timely answer, so Antetokounmpo moved for a default judgement, statutory damages, pre-judgment interest, attorneys' fees and costs, and injunctive relief. The Court ruled in favor of Antetokounmpo due to a likelihood of confusion between the marks and granted him $9,235.50 in statutory damages, $9,730.20 in attorney's fees, and a permanent injunction requiring Searcy to stop selling and immediately recall all the products bearing the "GREEK FREAK" mark.

Phillies v. Harrison/Erickson [71]

The Philadelphia Phillies mascot was designed by Harrison and Erickson. The pair assigned the copyright of the design to The Phillies indefinitely. In 2020 the granted copyright was revoked. The Phillies then designed another mascot costume under the same name of Phillie Phanatic. The Phillies also brought an action against the original designers. The pair brought an infringement claim against the Phillies. Now, the Phillies motioned for summary judgment on their claims and dismissal of the counterclaim. The Court here deals with a significant number of claims but most importantly they recommend the dismissal of the Phillies claim against the copyright's validity and authorship. The Court should also find that the original artist validly terminated the Phillies rights to use works created after the date the copyright was originally granted. Additionally, they recommend the Court grant summary judgment for the Philie's as the new artwork is a derivative work. The motion to dismiss the copyright infringement case against the Phillies should be denied in part but granted in part when it comes to the use of the new mascot design created after the date of termination.

LABOR & EMPLOYMENT LAW

The National Labor Relations Act governs the relationship between private employers and their employees, which greatly impacts professional sports as most professional sports leagues are private entities. Further, most American

70. No. 20-cv-5055, 2021 WL 3233417 (S.D.N.Y. May 20, 2021).

71. No. 19-cv-7239, 2021 WL 5936523 (S.D.N.Y. Aug. 10, 2021).

professional sports leagues are unionized and covered by their respective collective bargaining agreements. Additionally, federal and state employment laws regulate employment relationships in the sports industry. The following cases highlight the intersection of labor and employment law and sports.

Cason v. NFL Players Ass'n[72]

Plaintiffs here are former NFL players who now suffer from "total and permanent" disability and receive benefits as retired players. The defendants are the NFL Players Association (NFLPA), representatives of the NFL teams and the active players' union. The collective bargaining agreement (CBA) was alleged by the plaintiffs to include a provision that would decrease or altogether eliminate their benefits. The CBA was negotiated and agreed upon by the NFL and the NFLPA. The new CBA was agreed upon in 2020, with the last agreement in 2011. The plaintiffs argue that the newer benefits are impermissibly reduced by the 2020 CBA, and they cannot be altered once plaintiffs qualified for them. The Court dismissed the claims because the plaintiffs lacked standing and failed to show they suffered an injury in fact.

Cruce v. Berkeley Cty. Sch. Dist.[73]

Former athletic director at the defendant's school district filed suit for wrongful termination and defamation. The athletic director, the plaintiff, was also a coach and teacher in the district for about 20 years. The coach sent emails to other coaches and employees regarding players' athletic eligibility and was later terminated. The district court held for the coach/athletic director, but the Court of Appeals reversed. The Appellate Court reasoned that the coach did not prove actual malice, and that he was barred from recovery against the district.

Johnson v. NCAA[74]

Student athletes brought claim against their universities claiming violations under the Fair Labor Standards Act and various state laws. The athletes alleging, they were employees of their universities, and the universities are violating FLSA by not paying the student's minimum wage. The defendants moved to dismiss claiming the students have not plausibly alleged that they are employees because the students are amateurs, and the Department of Labor has said athletes are not employees. The Court took the reasoning of prior precedent and rejected the idea of the tradition of amateurism in the NCAA that means the students are

72. No. 1:20-cv-01875, 2021 U.S. Dist. LEXIS 87595 (D.D.C. May 7, 2021).

73. 435 S.C. 7 (Ct. App. 2021).

74. 556 F. Supp. 3d 491 (E.D. Pa. 2021).

not employees under FLSA. The Department of Labor regulations the defendants rely on does not conclude that the student athletes are not employees. Finally, the factor test to determine if the students have plausibly alleged that they are employees shows that the plaintiffs did plausibly show they were employees and the motion to dismiss was denied.

Lukasak v. Premier Sports Events LLC[75]

In this case, the plaintiff is the founder of the defendants, a sports management company that was purchased by an event management company. This company has worked with the NFL, NCAA, MLS, and other sport entities on event management. At the time of the buyout, Lukasak signed an employment agreement with a bonus incentive agreement, and managed day-to-day operations. Plaintiff was later fired and sued his employer for employment discrimination under Title VII of the Civil Rights Act of 1964. Plaintiff alleges he was fired because Mr. Griffin, another executive who was superior to plaintiff, was after authority and control, and that is enough to constitute a Title VII violation. However, the Court denies the Title VII violation on grounds that the defendant was not plaintiff's true employer within the meaning of Title VII, and therefore Mr. Griffin cannot be liable for any violations that had occurred.

O.M. v. Nat'l Women's Soccer League, LLC[76]

The National Women's Soccer League (NWSL) and the NWSL Players Association (NWSLPA) agreed upon a collective bargaining agreement that includes an age rule. This rule determined that no players are eligible to play for the league until they are at least 18 years old. Plaintiff is a fifteen-year-old soccer player who argues if she remains barred from playing until 18, it will slow her development, delay her improvement, and impede her overall career. The defendants did not present any compelling evidence for why their policy supported any procompetitive justifications. The Court granted the TRO and defendants were enjoined from enforcing the age restriction rule, even though it was in their CBA with the NWSLPA.

TORT LAW

Tort law represents the most widely litigated issue within the sports context. Tort law governs the duty of care to participants, coaches, and spectators. Generally, courts must evaluate the inherent risks associated with the sports, in

75. No. 2:20-cv-00124, 2021 U.S. Dist. LEXIS 20081 (D. Me. Feb. 3, 2021).

76. No. 3:21-cv-00683, 2021 U.S. Dist. LEXIS 97840 (D. Or. May 24, 2021).

relation to the degree of safety due to others involved. The following cases illustrate how courts analyze tort claims within a wide variety of aspects of sports.

Adams v. BRG Sports, Inc.[77]

The plaintiffs, all former high school football players, sued BRG Sports and Riddell, Inc. which design, manufacture and sell football helmets. The plaintiffs allege that the football helmets had a design defect and failure to warn thus causing the plaintiffs to suffer brain and neurocognitive injuries. The defendants seek summary judgment. The Court granted summary judgment in favor of the defendants.

Barragan v. Cont'l Adult Soccer League[78]

Barragan was watching her son's nighttime soccer game from the sidelines. Two players chasing after the ball went out of bounds and collided with Barragan. Barragan sued Continental Adult Soccer League for negligence. The trial court granted Continental's summary judgment motion, finding Continental did not owe a duty to Barragan under the primary assumption of risk doctrine. On appeal, Barragan contends that Continental owed a duty not to increase the risks to spectators inherent in the game of soccer, and it breached that duty by failing to provide lighting on the field where her son's game was played. The Court of Appeals reversed the trial court's decision.

Bodden v. Holiday Mountain Fun Park Inc.[79]

Beginner skier and parent brought a negligence action against a ski park after the beginner skier suffered injuries from crashing into a safety fence after a ski instructor had improperly gauged the new skier's ability. The Court granted summary judgment in favor of the ski park. The plaintiffs appealed. The Court of appeals reversed.

Brown v. El Dorado Union High Sch. Dist.[80]

A high school student suffered a traumatic brain injury during a football game in which he played the majority of the plays before removing himself from the game and collapsing. Summary judgment was granted for the school district.

77. 2021 WL 1517881 (N.D. Ill. April 17, 2021).

78. 2021 WL 688539 (Cal. Ct. App. Feb. 23, 2021).

79. 200 A.D. 3d 1432, 160 N.Y.S.3d 433 (2021).

80. No. C088204, 2022 WL 908883 (Cal. Ct. App. Mar. 29, 2022).

The plaintiff appealed and the Court held that the school was not liable for gross negligence of the athlete's injury.

Colantonio v. Mount Sinai Union Free Sch. Dist.[81]

Student's mother brought a personal injury action against Mount Sinai Union Free School District for injuries sustain by student during physical education class. Mount Sinai Union Free School District requested summary judgment and was granted at the trial court and appellate court levels. The Supreme Court affirmed the decision and held that the school district is not liable for injuries sustained by student during physical education class.

Dean v. De La Salle of New Orleans, Inc.[82]

A child who attended summer football training camp at school seek to recover from injuries sustained in a physical altercation with another attendee that occurred in the locker room. The court granted summary judgment for the school. The plaintiffs appealed. The Court of Appeals affirmed.

Dennehy v. E. Windsor Reg'l Bd. of Educ.[83]

Student, who was struck in the back of the neck by an errant soccer ball while participating in field hockey practice on the school's renovated athletic field, brought action against the Board of Education, school, and field hockey coach, alleging negligence and negligence in hiring, retaining, training, and supervision of employees. The Superior Court denied student's motion for reconsideration of its previous order granting summary judgment to Board of Education and school. Student appealed. The Appellate Division held that coach as a public employee was subject to the duties, responsibilities, and immunities in the Tort Claims Act (TCA), rather than heightened recklessness standard applied to co-participants in sporting events. The Court reversed and remanded.

Donovan v. Sutton[84]

Skier brought negligence action against child who collided with her while learning to ski and child's father. The Third District Court granted summary judgment in favor of defendants. The skier appealed the decision. The Court of Appeals affirmed the decision. Certiorari was granted and the decision was affirmed.

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81. 193 A.D. 3d 1031, 147 N.Y.S. 3d 663 (2021).

82. No. 2021-ca-0388, 2021 WL 6051829 (La. App. Dec. 21, 2021).

83. 469 N.J. Super. 357, 264 A.3d 312 (App. Div. 2021).

84. 498 P.3d 382 (Utah 2021).

Elalouf v. Sch. Bd. of Broward Cnty.[85]

Elalouf played on his high school soccer varsity team. During a game, another player hit Elalouf while he attempted a shot on goal. The hit threw appellant int o an unpadded cement barrier near the soccer field. Prior to the game, Elalouf and his father singed a consent and release form liability form. Elalouf argues that for public policy reasons that consent and release from liability form should not be enforced. The appellant count affirmed that the form should be upheld.

Grady v. Chenango Valley Cent. Sch. Dist.[86]

High school baseball player brought action against school district seeking damages for injuries sustained to his right eye after being struck in the head by a baseball during practice. The school district requested a motion for summary judgement. The trial court granted the motion for summary judgement. The high school baseball player appealed. The Appellate Court held that the player voluntarily assumed the risk of injury of being hit by a baseball while at baseball practice.

Kumar v. Sevastos[87]

Zachary Kumar alleged that during an indoor soccer game at Lost Nation, Sevastos illegally slide tackled him cause Kumar to collide with an improperly placed padded boundary wall. As a result, form this collusion Kumar sustained injuries. The trial court ruled that Kumar's injury resulted from inherit risks of the game and Savastos was entitled to summary judgement. Kumar appealed, arguing that Lost Nation Sports Park is liable for the design of the wall and that an illegal tackle is not a primary assumption of the risk. The Appeals Court affirmed the trial court's decision.

Miller v. Cardinal Mooney High Sch.[88]

Megan Miller, a high school basketball player, brought suit against Cardinal Mooney High School alleging that the high school's negligence resulted in injury to her fingers. The injury occurred when another basketball player crashed into the locker room door as she was leaving. The door then slammed on Mooney's hand. The high school filed a motion for summary judgment, the

85. 311 So. 3d 863 (Fla. Dist. Ct. App. 2021).

86. 190 A.D. 3d 1218, 141 N.Y.S. 3d 513 (2021).

87. 174 N.E. 3d (Ohio Ct. App. June 3, 2021).

88. 168 N.E. 3d 1254 (Ohio Ct. App. Jan. 21, 2021).

motion was granted. Mooney then appealed. The Appeals Court affirmed the decision stating that this injury was customary and inherent part of the game.

Sch. Bd. of Broward Cnty. v. McCall[89]

McCall was attending a high school basketball game when he suffered injuries in a crowd of people leaving the school after the game ended. McCall alleges he sustained injuries from the school board failing to provide adequate security and crowd control. The school board requested summary judgment; the motion was denied. The school board appealed. The Court of appeals held that the school board owed a duty to provide security to attendees of game did not render sovereign immunity inapplicable, and school board's development of security plan for game was planning-level function shielded from tort liability be sovereign immunity.

Secky v. New Paltz Cent. Sch. Dist.[90]

A minor child sustained injuries from another child during a school basketball practice. The mother of the child that was injured brought suit against the school for negligence. The Court held that the child assumed the inherent risk of injury when participating in the basketball drill.

Spearman v. Shelby Cnty. Bd. of Educ.[91]

A middle-school student was struck by a shot put thrown by a track and field coach during tryouts leaving the child injured. The mother of the child brought a claim against the school system. The Court awarded the child $200,000 in compensatory damages. The school appealed the decision. The Appellate Court affirmed the decision.

Standish v. Jackson Hole Mountain Resort Corp.[92]

Skier sustained severe injuries to his right leg when his ski struck a ski-and-a-half foot stump covered with snow. The skier brought a negligence action against the owner and operator of the ski resort. The U.S. District Court granted summary judgment in favor of the owner and operator. The skier appealed. The Court of Appeals affirmed the judgment ruling that skiing into a snow-covered tree stump was an inherent risk of skiing assumed by the skier.

89. 322 So. 3d 655 (Fla. Dist. Ct. App. 2021).

90. 195 A.D. 3d 1347, 151 N.Y.S.3d 202 (2021).

91. 637 S.W. 3d 719 (Tenn. Ct. App. 2021).

92. 997 F. 3d 1095 (10th Cir. 2021).

Va. Banks Listach v. W. Baton Rouge Par. Sch. Bd.[93]

Minor child was injured when an employee of extracurricular activity provider kicked a football that hit the child in the eye. The child's father filed suit against the school board for gross negligence inf ailing to ensure that provider maintained ongoing liability insurance and in subjecting child to danger by failing to supervise and protect the child. The district court granted summary judgment for school board. The plaintiffs appealed, and the Appellate Court affirmed the decision.

CONCLUSION

The sports-related cases adjudicated in 2021 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 2021, it does briefly summarize a many of the interesting and thought-provoking sports law cases.

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93. 328 So.3d 450 (La. App. 2021).