Sports Law
Year in Review

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Contents

This summary of illustrative and significant sports law developments has been compiled from publicly available sources, including media accounts, and drafted by Katie Hampel (Marquette Law '19); Ryan McNamara (Tulane Law '19); and Mercedes Townsend (Tulane Law '19) under the supervision of Prof. Gabe Feldman, Paul and Abram B. Barron Professor of Law and Director, Sports Law Program, Tulane University Law School, New Orleans, Louisiana; and Prof. Matthew J. Mitten, Executive Director, National Sports Law Institute, Marquette University Law School, Milwaukee, Wisconsin; Arbitrator, Court of Arbitration for Sport and American Arbitration Association National Sports Arbitration Panel.

Agents & Agent Regulation

- A federal court ruled that an agreement between NASCAR driver Kurt Busch and his former agent, Sports Management Network (SMN), was void because SMN had failed to disclose a conflict of interest to Bush. Specifically, SMN had been representing both Busch and Busch's racing team during the same time frame. The court, however, also ruled that Busch had failed to provide evidence that the conflict had actually harmed him. *Sports Management Network v. Busch*, 2019 WL 1057314 (E.D. Mich. 2019).

- Paramount Sports and Entertainment (PSE) filed a lawsuit against Sannat Shah. PSE entered into an agreement in 2014 to pay Shah a base salary of $5,000 per month in addition to commission for meeting certain benchmarks as well as a large earn-out for the assignment of contracts. PSE claims it lost $150,000 in revenue because Shah had been lowering commissions charged to players, including reducing the commission owed by Minnesota Vikings cornerback Xavier Rhodes. PSE is suing for breach of contract.

- Ravens' Robert Griffin III is being sued by his former agent, Ben Dogra, for $658,975.57 in unpaid fees. The suit was filed in Missouri, after Dogra claimed Griffin failed to pay him on several occasions. Dogra and Griffin entered into a contract during Griffin's rookie year in 2012 which was set to run until 2018. Dogra's agent certification was revoked in 2016 for violations of the NFLPA Regulations Concerning Advisors and was reinstated in 2017.

- NBA Agent, Brian Elfus, agent for Raptor's forward Kawhi Leonard, filed a complaint in federal court in Florida, bringing suit against his former agency, Impact Sports Basketball LLC, for withholding payment on commissions he says he is owed, including commission on Leonard's $94.3 million contract negotiated in 2015.

- In October 2018, Deryk Gilmore and approximately sixteen other NFL agents were suspended after the NFLPA implemented a requirement that all agents pass a recertification test every June in order to retain their certification.

- Juan Carlos Nunez is suing his former employer, ACES sports agency. Nunez took full responsibility for the cover-up following ACES client Melky Cabrera's positive test for testosterone in 2012. It was discovered that the agency attempted to exonerate Cabrera by creating a fake website and product that it claimed led to Cabrera's positive test. Nunez' suit claims that his former employers, Sam and Seth Levinson, urged him to engage in illicit and illegal activity. Nunez' culpability freed ACES from much of the blame in this incident, but this lawsuit claims not only were the Levinson brothers aware, they actively facilitated it. Nunez is seeking $3 million in compensatory damages and other damages to be decided at trial.

- Following an FBI investigation into the apparel payment scandal in college basketball, the NCAA has proposed several changes to the structure of basketball from the AAU level to the NBA. One of these changes includes certifying agents specifically to work with student athletes at the collegiate level..

Leagues - Labor Matters

Salary Cap

- The NHL salary cap projection for the 2019-2020 season is $83 million.

- The projected NFL salary cap for 2019-20 season is $188.2 million. This will be the sixth straight year the salary cap has gone up at least $10 million per franchise.

- The MLS has been steadily increasing its salary cap 5% since the first year of the CBA was executed, the last salary cap number for $8 million.

- The salary cap for the NBA in the 2019-2020 season is $109 million, with the luxury tax set at $132 million.

- The salary cap for the WNBA is $976,300 in 2019. The minimum salary for a player with 0-2 years of service will be $41,965 and $56,375 for players with 3 or more years.

WNBA

- In November 2018, the WNBA opted out of its CBA for 2019. The players are seeking greater financial transparency from the league improvements in salary and benefits. The NBA has claimed that the WNBA sustained a $12 million loss last season.

NHL

- The NHL and NHLPA are engaged in talks that would extend the current CBA beyond the 2019-20 season in order to prevent a potential work stoppage. The players and the league are both interested in the possibility of athletes participating in the 2022 Beijing Games, which may lead the union to agree to a trade-off in the form of a 2020 Hockey World Cup, where most of the revenue would go to the League. The NHLPA is also pushing for a change in the way that long-term injury payments are paid out and advocating a change to a 19 year old entry draft.

NBA

- The NBA G League announced an alternative to the college one-and-done route that would target elite basketball prospects. Starting in summer of 2019 this new program would offer "Select Contracts" to prospects who are at least eighteen years old but not yet eligible for the NBA draft. These contracts would be one year in length and worth $125,000, providing an option for prospects who do not want to attend college but want to be eligible to play in the NBA. This program would also allow the players to hire agents and to profit off of endorsement deals as they would not be subject to the NCAA amateurism rules. Following the one season on a G League Selected Contract, these athletes would become eligible for the next year's NBA draft.

NFL

- Colin Kaepernick settled his collusion suit against the NFL. Both parties signed a confidentiality agreement, so details regarding the amount of the settlement were not released.

- The Ninth Circuit United States Court of Appeals ruled that a lawsuit brought by former NFL players was not preempted by the Labor Management Relations Act (LMRA). Richard Dent and nine other retired NFL players filed a class action lawsuit in 2014 against the NFL alleging that the NFL distributed controlled substances and prescription drugs to players in violation of state and federal laws, and that the administration of such drugs left the players with permanent injuries and chronic medical conditions. The plaintiffs described being given large amounts of pain-masking medications, frequently without written prescriptions or any labeling on the drugs, and without warning of potential risks and side effects – an environment they claimed created by a "culture of drug misuse" courtesy of the NFL. The district court dismissed the complaint, finding the players' claims preempted by the LMRA and/or time barred. The appellate court reversed, however, finding that the claims raised by the players did not arise from the league's collective bargaining agreement, so they were not preempted by the LMRA.

- A federal district court judge dismissed most of the claims brought by NFL player Lane Johnson against the NFLPA and NFL in connection with his ten-game suspension for performance-enhancing drug use. Johnson had argued that the NFL violated the collective bargaining agreement with the NFLPA and that the NFLPA had violated its duty of fair representation and its duty to provide documents in connection with the arbitration proceeding for the appeal of his drug suspension. The court dismissed the duty of fair representation and failure to investigate/support claims because Johnson had not pleaded sufficient facts to plausibly suggest that any of the alleged deviations by the NFLPA from the drug testing policy constituted bad faith conduct that undermined the arbitration process. The court also denied Johnson's request to vacate the arbitration award. The court denied the motion to dismiss with respect to Johnson's claim that the NFLPA violated Section 104 of the Labor-Management Reporting and Disclosure Act (LMRDA) by refusing to provide a full copy of the operative collective bargaining agreement and any side agreements that modified the relevant drug policy. In a separate opinion, the court granted the NFL's motion to dismiss, holding that as a matter of law the NFL could not have violated a "hybrid Section 301/duty of fair representation claim" given that the NFLPA had not violated its duty of fair representation. The NFLPA has moved for summary judgment on the remaining LMRDA claim.

Leagues - Non-labor Matters

NFL

- On February 22, 2019, the Jupiter Police Department announced that New England Patriots owner Robert Kraft was one of nearly 300 individuals charged with misdemeanor solicitation of prostitution in connection with visits to the Orchids of Asia Day Spa in Jupiter, Florida. Jupiter police began investigating the Spa in November 2018 after they

received a tip that the Spa was involved in human trafficking and prostitution. Police obtained a warrant to secretly install surveillance cameras in the Spa in January 2019. Over the course of five days, the cameras recorded more than 20 men, including Kraft, allegedly engaging in sex acts at the Spa. Kraft was seen on the video visiting the Spa twice in a two-day span, with his last trip to the Spa on January 20th occurring hours before the Patriots played in the AFC Championship game in Kansas City. Kraft pleaded not guilty to the charges and filed a motion to suppress the video evidence on the grounds that it was illegally obtained. According to the motion, Jupiter police fabricated a bomb threat in order to clear out the Spa and install the surveillance cameras. A pretrial hearing was scheduled for early April.

- The City of Oakland on December 11, 2018 sued the NFL and its teams, alleging that the league violated antitrust law and its own relocation policies when the team owners voted to allow the Raiders to relocate to Las Vegas. According to the complaint, the NFL and its teams violated antitrust law by colluding to boycott Oakland during the negotiation process so that the owners of the other 31 teams would receive a large relocation fee. Furthermore, the league allegedly violated its relocation policy by not negotiating in good faith with Oakland and by ignoring a number of factors that the league is supposed to consider when a team wants to relocate, such as demonstrable fan loyalty and public financial support for the team. The Defendants filed a motion to dismiss in March 2019. *See* Oakland v. Oakland Raiders, 2018 WL 6505314 (N.D. Cal. Dec. 11, 2018).

- The Massachusetts Supreme Judicial Court on March 13, 2019 reinstated the first-degree murder conviction of former New England Patriots' tight end, Aaron Hernandez, who in 2015 was convicted of the murder of Odin Lloyd. Until this decision, courts in Massachusetts recognized the doctrine of *abatement ab initio*, which vacated a defendant's conviction if the defendant died before an appeals court certified the conviction. Hernandez committed suicide before an appeals court could certify his conviction. The Court held that the doctrine of *abatement ab initio* no longer applies in Massachusetts, noting that the doctrine is "outdated" and that many other jurisdictions have recently abandoned the doctrine. *See* Commonwealth v. Hernandez, 481 Mass. 582 (Mass. 2019).

- The Chicago Bears have ended a program that gave Bears season ticketholders the opportunity to watch pre-game warmups on the sidelines at Soldier Field. Russell Beckman, a Bears season ticketholder and diehard Packers fan, purchased one of the packages to watch the warmups before the 2016 Bears-Packers game, but the Bears refused to let him stand on the sidelines because he was wearing Packers gear. Beckman sued the Bears last year, alleging that because Soldier Field is a publicly owned and financed stadium, the Bears violated his First Amendment rights by not allowing Beckman to wear Packers clothes on the field. On December 13, 2018, United States District Judge Joan Gottschall denied Beckman's motion for an injunction and temporary restraining order that would have allowed Beckman to wear his Packers gear onto the

field before the Bears-Packers game that Sunday. The case is currently pending in the United States District Court for the Northern District of Illinois. *See* Beckman v. Chicago Bear Football Club, Inc., Case No. 17 C 4551.

- The United States Court of Appeals for the Third Circuit affirmed the dismissal of a lawsuit alleging that the NFL violated the New Jersey Ticket Law by selling only 1% of tickets to the Super Bowl to the general public. If tickets for an event are to be released to the general public, the New Jersey Ticket Law requires at least 95% of event tickets to be sold to the general public. The plaintiff, Josh Finkelman, originally brought suit in 2014, but the Third Circuit dismissed the case for lack of standing. Finkelman filed a second amended complaint in 2016, which argued that, had the NFL not withheld more than 5 percent of tickets from being sold to the public, then he would not have paid a higher ticket price on the secondary market. The Third Circuit held that Finkelman had standing, but certified the question of whether the NFL's sales process for Super Bowl 48 tickets ran afoul of the New Jersey Ticket Law to the New Jersey Supreme Court. The New Jersey Supreme Court answered the question in the negative, concluding that the law only limits "the withholding…of tickets that would otherwise be made available in a public sale." The Supreme Court noted that the 99% of tickets that were not sold to the general public were never intended to be sold to the general public. After it received the Supreme Court's answer, the Third Circuit affirmed the district court's dismissal of the lawsuit. *See* Finkelman v. Nat'l Football League, No. 16-4087, United States Court of Appeals for the Third Circuit.

- On September 26, 2018, United States District Judge Indira Talwani dismissed a former agent's lawsuit against the NFL and NFLPA claiming that the "Three Year Rule" in the CBA, coupled with the defendants' selective enforcement of the Rule, violated antitrust law. If a certified NFL agent fails to sign a client to the 53-man roster of an NFL team within three years after the agent is certified, the Three Year Rule provides that the agent's certification is automatically terminated. James Dickey became a certified agent in 2008, but was decertified pursuant to the Three Year Rule in 2011. Dickey successfully applied for re-certification, but was again decertified pursuant to the Three Year Rule in 2016. Dickey appealed the decertification and the NFLPA scheduled an arbitration hearing, but Dickey was unable to make the hearing date. After learning that the NFLPA had removed him from its official list of agents, Dickey sued both the League and the Union, alleging antitrust violations, breach of fiduciary duty, breach of contract, and breach of the implied covenant of good faith and fair dealing. According to Dickey, the Three Year Rule and its selective enforcement violated the Sherman Antitrust act by creating an artificial barrier to entry for new agents and undermining the "free competition of sports agents in the professional football industry." Judge Talwani dismissed Dickey's antitrust claims because they fell within the labor exemptions to antitrust law. The Court reasoned that the Three Year Rule was created as part of the collective bargaining process between the NFL and the NFLPA and was "designed to implement the union's bargained-for wages, hours, and other conditions of employment"

for the union's players. Judge Talwani also dismissed Dickey's state law claim, noting that all of the claims either failed on the merits or, because they were based on the NFL CBA, were preempted by Section 301 of the Labor Management Relations Act. Dickey appealed the dismissal to the United States Court of Appeals for the First Circuit on January 24, 2019. *See* Dickey v. Nat'l Football League, Civil Action No. 17-cv-12295-IT (D. Mass. Sept. 26, 2018).

AAF

- The Alliance of American Football suspended all operations on April 2, 2019 after less than one season of play due to financial difficulties. Bill Polian and Charlie Ebersol founded the AAF in March 2018, and Thomas Dundon, the owner of the NHL's Carolina Hurricanes, purchased a controlling stake in the league after the first week of the season. Instead of trying to compete with the NFL, the AAF's owners wanted to create a product that would serve as a complement to the larger league.

MLB

- The United States Supreme Court denied *certiorari* in two antitrust cases where Major League Baseball and its teams relied on the historic baseball antitrust exemption to escape antitrust liability. In the first case, Right Field Rooftops, LLC, owner of rooftop seating adjacent to Wrigley Field, alleged that the Chicago Cubs violated the Sherman Antitrust Act by constructing a video board in the stadium that obstructed the view of the field from said seats. The plaintiffs argued that attempting to set a minimum price for tickets, attempting to purchase all rooftop businesses, acquiring several rooftop businesses, threatening to obstruct views of rooftop businesses if they refuse to sell to the Cubs, and constructing the video board demonstrated monopolistic behavior. The Seventh Circuit Court of Appeals affirmed the district court's dismissal, holding that the alleged monopolistic behavior fell within the baseball exemption of antitrust laws, as the construction of the video board and other noted behavior was part of the "business of providing public baseball games for profit." *See* Right Field Rooftops, LLC v. Chicago Cubs Baseball Club, LLC, 870 F.3d 682 (7th Cir. 2017), cert. denied 138 S. Ct. 2621 (2018). In the second case, Jordan Wyckoff, a former scout for the Kansas City Royals, and Darwin Cox, a former scout for the Colorado Rockies, filed a class action lawsuit on behalf of other professional baseball scouts alleging that the League and its clubs violated the Sherman Act by conspiring to prevent scouts from moving to new teams. The Southern District of New York dismissed the antitrust claims, holding that the claims fell within baseball's antitrust exemption because the employment relationship between scouts and teams is central to the business of baseball. The Second Circuit Court of Appeals affirmed the district court's dismissal. *See* Wyckoff v. Office of Comm'r of Baseball, 705 Fed. Appx. 26 (2nd Cir. 2017), cert. denied 138 S. Ct. 2621 (2018).

- On October 25, 2018, a putative class action lawsuit was filed against MLB co-owned Rawlings Sporting Goods alleging that Rawlings engaged in unfair and deceptive trade practices and committed breach of warranty because Rawlings falsely advertised the weight of the 2018 Rawlings Youth 5150 USA baseball bat. According to the complaint,

the bat was 2.6 ounces heavier than the advertised weight of 16 ounces. Richard Sotelo, the plaintiff, originally bought a 5150 bat for his son because he thought that a lighter bat would help his son with his swing control. Sotelo discovered the weight discrepancy when he weighed the bat after his son's swing control did not improve. Sotelo then noticed that a number of reviews on Rawlings's Amazon page claimed that the 5150 bat was heavier than advertised. On February 15, 2019, Rawlings filed a motion to dismiss, claiming that they cannot be held liable for the misrepresentation, because it was made by third party retailers. The case is Richard Sotelo v. Rawlings Sporting Goods Company Inc., Case No. 2:18-cv-09166-GW-MAA, in the U.S. District Court for the Central District of California, Western Division.

- On January 7, 2019, the United States District Court for the Middle District of Florida consolidated two class action lawsuits brought against the Tampa Bay Rays alleging that the team violated the Telephone Consumer Protection Act (TCPA). James Thomas filed the first TCPA suit in May 2018. According to Thomas's complaint, the Rays violated the TCPA by sending unsolicited marketing text messages to members of class without their consent through an automatic dialing system for a period of four years. On September 11, 2018, Chad Fernandez filed the second putative class action lawsuit against the Rays, and alleged facts substantially similar to those alleged in Thomas's complaint. The Fernandez lawsuit survived a motion to dismiss in November 2018. United States District Judge Elizabeth A. Kovachevich exercised her discretion to consolidate the two cases, reasoning that consolidation of two cases with "nearly identical parties, facts, and legal issues" would "promote the interests of judicial economy and convenience. . . ." The case is Fernandez v. Tampa Bay Rays Baseball Ltd., Case No. 8:18--cv--02251, in the U.S. District Court for the Middle District of Florida.

- Major League Baseball changed the name of its previously-known "disabled list" to the "injured list" in February 2019. This change was made in response to concerns that were directed to the MLB by disability advocacy groups who were seeking for a more sensitive label to this list. This change was reflected at both the major and minor league levels within the MLB organization.

NHL

- The NHL Board of Governors on December 4, 2018 unanimously approved a new expansion team located in Seattle. The currently unnamed Seattle team will begin playing during the 2021-22 NHL season.

- On March 5, 2019, Bryan Hanley filed a proposed class action lawsuit against the Tampa Bay Lightning, alleging that the Lightning violated the Telephone Consumer Protection Act (TCPA) by sending Hanley daily telemarketing text messages without his prior

express written consent. Hanley apparently started receiving the text messages after he entered a sweepstakes for tickets and a "Tampa Bay Lightning Fan Pack" by texting the phone number on an advertisement for the contest. The plaintiff is seeking an injunction and up to $1,500 per willful violation of the TCPA. *See* Hanley v. Tampa Bay Sports and Entertainment, 8:19-cv-00550 (M.D. Fl. Mar. 5, 2019).

Soccer

- On January 2, 2019, New York Supreme Court Justice Andrea Masley dismissed a lawsuit filed by the North American Soccer League in New York state court against the United States Soccer Federation's board of directors, reasoning that the New York lawsuit was substantially similar to NASL's pending federal antitrust action against the USSF. In 2017, NASL brought a federal antitrust action against the USSF alleging that the federation misapplied its standards for divisional level designation in order to conspire against the NASL. The league claims that the USSF amended and executed its standards in a conspiratorial way to ensure that Major League Soccer is the only Division I league in the United States and United Soccer League Pro is the only Division II league. NASL argues that it applied for Division I status in 2015 and Division II status in 2017 and that these applications were unfairly denied to ensure that the MLS and USL had monopolies in those leagues, respectively. NASL has had to cancel its 2018 and 2019 seasons, but hopes to relaunch in 2020. The discovery deadline in the federal case is April 30, 2019. *See* N. Am. Soccer League, LLC v. United States Soccer Fed'n, Inc., 883 F.3d 32 (2nd Cir. 2018); N. Am. Soccer League, LLC v. Gulati, case number 650579/2018 (N.Y. App. Div. Jan. 2, 2019).

NBA

- The NBA G League announced an alternative to the college one-and-done route that would target elite basketball prospects. Starting in the summer of 2019 this new program would offer "Select Contracts" to prospects who are at least eighteen years old but not yet eligible for the NBA draft. These contracts would be one year in length and worth $125,000, and would be an option for prospects who do not want to attend college but want to be eligible to play in the NBA. This program would also allow the players to hire agents and to profit off of endorsement deals as they would not be subject to the NCAA amateurism rules. Following the one season on a G League Selected Contract, these athletes would become eligible for the next year's NBA draft.

Contracts

NFL

- On February 28, 2019, New Orleans Saints ticket holders dropped a lawsuit against the NFL that sought to compel the League to replay the final minutes of the 2019 NFC Championship game between the Saints and the Los Angeles Rams. During what could have been the Saints' game-winning drive, Saints quarterback Drew Brees threw a pass to wide receiver Tommy Lee Lewis. Before the ball got to Lewis, however, Rams

cornerback Nickell Robey Coleman blatantly interfered with Lewis's ability to catch the pass when Coleman made illegal helmet-to-helmet contact with Lewis. The referees did not call a penalty on the play. The Saints kicked a field goal with enough time left on the clock for the Rams to tie the game and then win in overtime. After the game, two Saints ticketholders, on behalf of the "Who Dat Nation," sued the NFL and commissioner Roger Goodell for a writ of mandamus to force the commissioner to invoke NFL Rule 17. Rule 17 requires the commissioner to investigate on-field calamities that unfairly altered a game and, if necessary, order the teams to replay all of part of the game. On January 31, 2019, District Judge Susie Morgan denied the plaintiffs' request for a writ of mandamus, stating that "a writ of mandamus may not be used to enforce a disputed right." Judge Morgan further noted that a writ of mandamus cannot be used to enforce any contractual rights that the plaintiffs may have against the league. At least one similar lawsuit is currently pending against the NFL in the Eastern District of Louisiana. *See* Badeaux v. Goodell, 2019 WL 398830, Civil Docket No. 19-566 (E.D. La. Jan. 31, 2019).

- The Massachusetts Appeals Court rejected a claim brought by a proposed class of New England Patriots fans regarding the team losing a first-round draft pick as a consequence of "Deflategate." The lawsuit, which sought damages and injunctive relief against the NFL, was dismissed by the lower court in 2017. The Massachusetts Court of Appeals rejected the appeal because the plaintiffs failed to file the appeal within the requisite time limits, and concluded that the plaintiffs were not entitled to a "three-day grace period" allowed for documents sent through the mail because the plaintiffs were not responding to a notice serve upon them by mail.

- On September 25, 2018 U.S. District Judge Christopher A. Boyko denied class certification to NFL fans who bought tickets to the cancelled 2016 Pro Football Hall of Fame Game, ruling that the NFL's reimbursement package offered to ticketholders was superior to the proposed class action lawsuit and that damages would be too difficult to calculate. Renovations began on Tom Benson Stadium in Canton prior to the 2016 Hall of Fame game between the Green Bay Packers and Indianapolis Colts, but construction was not completed in time for the game. Even though whole sections of seats remained uninstalled on the day of the game, the stadium grounds crew attempted to get the field ready for the game that evening by painting the logos on the field. The grounds crew then heated the turf field in an attempt to dry the paint before kickoff, but the heat caused the turf to melt. The crew then applied a substance to the field in an attempt to fix it, but they soon learned that physical contact with the substance would lead to skin burns. According to the complaint, the league decided to cancel the game a few hours before kickoff, but waited to tell attending fans about the cancellation so that the fans would purchase concessions and souvenirs. Greg Herrick first filed the putative class action lawsuit on behalf of ticketholders against the NFL and the National Football Hall of Fame in 2016 for breach of contract. The league was then dismissed from the action and an amended complaint was filed in March 2018 that named Carmelo Treviso as the class representative. In denying class certification, the court noted that nearly 90% of the

proposed class had already accepted the NFL's reimbursement package and that the reimbursement package saved plaintiffs the cost and time of class action litigation. Furthermore, the court found that the damages suffered by members of the class were highly individualized. The plaintiffs filed a revised motion for class certification on November 5, 2018. *See* Treviso v. Nat'l Football Museum, No. 1:17CV472, 2018 WL 4608197 (N.D. Ohio Sept. 25, 2018).

- James Gengo sued the New York Jets and Jets Stadium Development on April 18, 2018, alleging that the defendants breached an implied covenant of good faith and fair dealing and violated the New Jersey Consumer Fraud Act when the defendants changed their season ticket policy. Before 2018, any Jets fan who wanted to buy season tickets for seats in the 200-level of Met Life Stadium were first required to purchase a Personal Seat License (PSL) from the defendants. In January 2018, however, the defendants nixed the PSL requirement and began selling season tickets for 200-level seats to the general public. In his complaint, Gengo claimed that the defendants' actions rendered his PSL useless. On August 30, 2018, United States District Judge Stanley Chesler dismissed both of Gengo's claims. Regarding the breach of implied covenant claim, Gengo failed to allege bad faith and bad motive, both of which are required to state a claim for breach of implied covenant in New Jersey. Judge Chesler further noted that this claim would have been unsuccessful regardless of Gengo's failure to allege bad faith and bad motive because Gengo was still receiving the "reasonably expected fruits under the [PSL] contract." Despite the fact that the defendants began selling season tickets for some 200-level seats to individual's without PSLs, Gengo's PSL still gave him the "unimpaired licensing right to purchase season tickets for [his] two seats." As to Gengo's New Jersey Consumer Fraud Act claim, Judge Chesler held that the defendants did not violate the "clear and unambiguous terms" of the PSL contract. Additionally, Judge Chesler stated that Gengo failed to allege that the defendants made any misrepresentations that induced him to purchase a PSL as required by the Act. Gengo filed an appeal on September 27, 2018, and the appeal is currently pending in the United States Appeals Court for the Third Circuit. The case is Gengo v. Jets Stadium Development LLC et al., case number 2:18-cv-08012, in the U.S. District Court for the District of New Jersey.

- The Los Angeles Rams on December 5, 2018 reached a $24 Million settlement with a class of former St. Louis Rams fans who purchased Personal Seat Licenses (PSLs) from the St. Louis Rams before the team moved to Los Angeles. Anyone who bought a PSL was entitled to purchase one Rams season ticket per year until the 2024 season. Prior to September 1, 1995, the Rams sold PSLs to fans through an entity called FANS. After September 1, 1995, the Rams sold PSLs to fans directly. The FANS' PSL contracts contained a clause that invalidated the PSL and required the Rams to refund fans for any unused season remaining on the PSL if the Rams ever left St. Louis. The post-1995 PSL contracts contained no such clause, however, and instead required the Rams to use their "best efforts to secure tickets for seats" at the team's new location if the Rams ever relocated. When the Rams announced their move to Los Angeles, three different classes

of PSL holders sued the team under various theories of contract depending on the type of PSL that each class had purchased. The United States District Court for the Eastern District of Missouri consolidated the three cases, and the sides eventually settled. The Court gave initial approval for the proposed $24 Million settlement on January 24, 2019. *See* McAllister v. The St. Louis Rams, LLC, No. 4:16-CV-00172-SNLJ; Envision v. The St. Louis Rams, LLC, No. 4:16-CV-00262; Arnold v. The St. Louis Rams, LLC, No. 4:16-CV-00297, United States District Court for the Eastern District of Missouri.

MLB

- A New Jersey state court of appeals upheld a $1.5 million jury verdict finding that former Major League Baseball reliever Mitch Williams was wrongfully terminated by the MLB Network. The MLB Network had fired Williams following reports of his inappropriate behavior at his son's youth baseball games. The alleged inappropriate behavior included insulting a player, ordering a pitcher to throw a beanball, and an ejection from the game after berating an umpire. The jury ultimately concluded that the MLB Network had failed to prove that Williams violated the morals clause in his contract.

Big3 Basketball

- On August 21, 2018, Champions League Basketball, a startup professional basketball league, withdrew a lawsuit against the Big3 Basketball League which alleged that Big3 breached a contract between the two leagues that purportedly established rules that would allow the two leagues to coexist. Big3 filed a motion to dismiss in which they argued that Champions League was fake and that Carl George, the founder of Champions League, defrauded his league's investors. The day after Champions League withdrew its claim without prejudice, Big3 filed a motion to dismiss with prejudice and asked for the court to sanction George for committing fraud on the court. United States Magistrate Judge Katharine H. Parker on September 17, 2018 denied Big3's motion to dismiss with prejudice, reasoning that the plaintiff had already withdrawn its complaint and there were no exceptional circumstances present to justify granting Big3's motion after the complaint was withdrawn. Judge Parker also denied the request for sanctions because it was made after Champions League voluntarily withdrew their complaint. The United States District Court for the Southern District of New York affirmed Judge Parker's ruling on January 23, 2019. *See* Champions League, Inc. v. Big3 Basketball, LLC., No. 17 CV 7389-LTS-KHP, 2019 WL 293305 (S.D.N.Y. Jan. 23, 2019).

Miscellaneous

- FanDuel customers have argued in federal court that an arbitration provision was not sufficiently conspicuous to compel them to arbitrate their fraud claims. The underlying

lawsuit alleges that FanDuel defrauded customers by telling them that their fantasy games could be won by "average" players.

College Sports

Antitrust Litigation

- Former Ohio State football player Chris Spielman has settled his antitrust lawsuit against the university, which was patterned after Ed O'Bannon's successful suit against the NCAA arising out of the unauthorized use of college basketball and football players' images and likenesses without compensating them. Spielman will donate any money he receives from the settlement to the William White Family Fund for ALS and the Stefanie SPielman Fund for Breast Cancer Research.

- In March 2019, a California federal district court (Judge Wilken) held that NCAA rules 1) limiting the value of an athletics scholarship to the full cost of attendance; 2) prohibiting compensation and benefits unrelated to education over its value; and 3) limiting compensation and benefits related to education over its value for the services of Division I men's and women's and FBS football players "constitute horizontal price-fixing agreements enacted and enforced with monopsony power." It determined that none of these rules furthered the procompetitive objective of integrating these student-athletes into their respective academic communities and/or improved the academic outcomes or benefits they receive from a college education. The court concluded that the first two rules furthered the procompetitive objective of "help[ing] maintain consumer demand for college sports as a distinct product by preventing unlimited cash payments unrelated to education" and that there are no less restrictive alternatives for achieving this objective. It permitted the NCAA to continue limiting the value of athletics scholarships to not less than the full cost of attendance and prohibiting additional compensation and benefits unrelated to education, thereby rejecting plaintiffs' request for an injunction again enforcement of any NCAA rules limiting compensation for their services (which would have created a competitive market subject to regulation by its member conferences). Regarding the third rule, the court found no "procompetitive justification for caps on education-related benefits , , , inherently limited by their actual cost and that can be provided in kind, not in cash," enjoining the NCAA from prohibiting universities form providing tangible items related to the pursuit of academic studies (e.g., computers, musical instruments, science equipment), expenses for study abroad, and post-eligibility paid internships and scholarships to complete degrees at other institutions. Because such restrictions may maintain consumer demand for college sports, it permitted the NCAA "to limit academic and graduation awards and incentives . . . provided in cash or a cash-equivalent to a level that the record shows is not demand-reducing or inconsistent with NCAA amateurism." Because the NCAA currently permits student-athletes to receive cash-equivalent Visa cards valued at $5,600 for high levels of team performance in Division I basketball and FBS football (which expert testimony established had not reduced consumer demand for these sports), the court permanently enjoined the NCAA from limiting the annual value of university-provided academic and graduation awards and incentives to less than this amount. In summary, the court explained:" Restricting non-cash education-related benefits and academic awards that can be provided on top of a

grant-in-aid has not been proven to be necessary to preserving consumer demand for Division I basketball and FBS football as a product distinct from professional sports. Allowing each conference and its member schools to provide additional education-related benefits without NCAA caps and prohibitions, as well as academic awards, will help ameliorate their anticompetitive effects and may provide some of the compensation student-athletes would have received absent Defendants' agreement to restrain trade." *In re NCAA Athletic Grant-In-Aid Cap Antitrust Litigation*, 2019 WL 1747780 (N.D. Cal. March 8, 2019).

- In June 2018, the Seventh Circuit United States Court of Appeals denied Peter Deppe's appeal of the dismissal of a class action lawsuit he filed against the NCAA. After Deppe attempted to transfer from Northern Illinois University to the University of Iowa and maintain immediate eligibility to play on the Iowa football team, he learned that he would be ineligible to being playing immediately for Iowa due to the NCAA's year-in-residence bylaw. Deppe sued the NCAA, alleging that this bylaw violates § 1 of the Sherman Act, arguing that it unlawfully restrained student-athletes' ability to receive "more generous athletic scholarships" by inhibiting their ability to transfer among universities freely. The district court dismissed Deppe's complaint, determining the year-in-residence bylaw to be an eligibility requirement, and therefore is presumptively procompetitive following existing precedent. The Seventh Circuit affirmed this determination, pointing to the bylaw's purpose of preserving amateurism in college sports, by protecting against student-athletes being "traded" among universities within seasons and academic years in college that would equate the sport with its professional counterpart. *Deppe v. Nat'l Collegiate Athletic Ass'n,* 2018 WL 3102636 (7th Cir. 2018).

- The NCAA is facing an antitrust suit in Hawaii stemming from the organization's decertification of the 2003 Seattle Bowl. Following the 2002 Seattle Bowl, the Bowl's previous sponsor tried to sell the sponsorship rights, with the sale being contingent on the bowl game being recertified. The NCAA, instead, refused to recertify the game but privately offered the potential new sponsor the ability to sponsor the 2004 Seattle Bowl. The previous sponsor alleges that this action amounted to unfair competition in violation of Hawaii's antitrust law as the NCAA's conduct was done in attempt to disrupt their sale of the sponsorship rights.

College Basketball Corruption Scandal Update

- In August 2018, the NCAA approved new men's college basketball rules, including allowing certain "NBA-certified" athletes to be represented by agents, permitting undrafted athletes to return for college play despite declaring for the draft, increasing the number of visits prospective student-athletes can make to campuses, and imposing "more rigorous criteria" on university basketball events for high school students. The reforms also created two new enforcement bodies: (1) the Complex Case Unit, which will be composed of both NCAA enforcement employees and investigators that have no ties to NCAA institutions or conferences and will decide when cases need further investigation; and (2) the Independent College Sports Adjudication Panel, composed of fifteen members without affiliation to NCAA entities or universities, which will review the findings of the Complex Case Unit, oversee further hearings, and administer

punishments. Additionally, stricter penalties can be imposed on universities and their staffs; universities must pay tuition, books, and fees for basketball players on scholarship who left college but returned to the same institution within ten years; and coaches and other staff members are required to report athletics-related income, including deals with shoe and apparel companies, to college administraters.

- After their October 2018 convictions for funneling money to college basketball recruits in exchange for their promises to sign endorsement contracts with Adidas after turning pro, former company employees James Gatto (nine months), Merl Code (six months), and Christian Dawkins (six months) were sentenced to prison. All of them are appealing their convictions.

- Gatto has agreed to pay the University of Kansas, the University of Louisville, and North Carolina State University more than $300,000 to partially reimburse the schools for their legal fees and the scholarships they awarded to student-athletes who were eventually deemed ineligible as a result of their participation in this fraudulent scheme.

- Former University of Southern California associate head basketball coach Tony Bland, former University of Arizona basketball coach Book Richardson, and former Oklahoma State basketball coach Lamont Evans each pleaded guilty to one count of conspiracy to commit bribery for their respective roles in the college basketball corruption scandal and are awaiting sentencing.

- In November 2018, federal prosecutors authorized the NCAA, which has cooperated with their investigation of the college basketball corruption scandal, to begin investigating NCAA rules violations arising out of this scandal.

- Brian Bowen, a five-star recruit and former University of Louisville basketball player whose father received payments from Adidas representatives to secure his commitment to the university, filed a November 2018 federal lawsuit against Adidas in South Carolina, His complaint alleges the company engaged in bribery, fraud and money laundering, which precluded his participation in any basketball games for Louisville, harmed his athletic development, and deprived him of the opportunity to showcase his basketball skills to NBA scouts. Adidas publicly responded to the suit by denying that Bowen was a victim of the actions of its former employees, citing his father's involvement the scandal. Bowen denying knowing about his father's receipt of any money and now plays professional basketball in Sydney, Australia.

- In March 2019, federal prosecutors in New York charged attorney Michael Avenatti (who represented porn actress Stormy Daniels in lawsuits against President Trump) with conspiracy to commit extortion and other crimes by threatening to hold a news conference the day before Nike's quarterly earnings report and the beginning of the NCAA Final Four tournament to release information about a college basketball scandal involving Nike employees unless the company paid him and a co-conspirator $15 to $25 million to remain silent.

Proposed State Legislation Regulating College Sports

- A bill was proposed in the state of Washington that would allow student-athletes to receive compensation for endorsements they participate in. The bill would essentially circumvent NCAA rules that prohibit student-athletes from accepting payments for such services. The proposal would not require the universities to pay the student-athletes for these endorsements.

- A similar proposal was introduced in California less than one month later that would allow student-athletes who attend any of the state's twenty-four public colleges and universities to receive money as a result of the use of the athlete's name, image, or likeness. The "Fair Pay to Play Act" was introduced not for universities to directly pay student-athletes beyond their scholarships, but to allow the students a "larger piece of the pie by profiting off of their skills."

- Two senators in Colorado have drafted a similar bill in attempt to allow NCAA student-athletes to get paid by their universities, as well as to allow them to enter into endorsement deals. The senators come from both sides of the aisle in Colorado and have stated that the bill is about "getting the NCAA to do the right thing." They emphasize that they are attempting to equalize the share of revenue received in college athletics, claiming that the current system benefits "a bunch of rich, mostly white people at the expense of mostly minority students."

- A lawmaker in Maryland has proposed legislation that would allow student-athletes at all universities in Maryland to unionize. The proposal by Brooke Lierman follows the death of University of Maryland football player Jordan McNair as well as the publicity of Larry Nassar's sexual assault at Michigan State.

<u>NCAA and Conference Legislation and Rules Enforcement</u>

- In February 2019, a Missouri state senator introduced a resolution to condemn harsh NCAA sanctions, including postseason bans and recruiting restrictions, imposed on the University of Missouri's football, baseball, and softball teams for academic fraud, although it characterized the university's cooperation with its investigation as "exemplary." The university has appealed the NCAA's sanctions.

- The NCAA permanently adopted a pilot program that began in 2015 that allows families of student-athletes participating in men's and women's Final Four basketball games to receive stipends that make it easier to attend the games. This rule allows up to $3,000 in payments for the family of each participating student-athlete that can be used for transportation, hotel, and meals. Each university is in charge of how the funds granted under this rule will be distributed. The new rule also applies to the College Football Playoffs.

- The NCAA announced that it will not collect fees on organized gambling that occurs in college sports. Because the NCAA remains opposed to sports betting, it would feel "disingenuous" for the organization to take revenue from it. The chief financial officer of

the NCAA stated that it will be up to individual schools to decide if they want to pursue collection of fees on gambling if it continues to operate on a state-by-state basis. The decision not to pursue these integrity fees came following a study conducted by experts in its office to examine the potential impact legal sports gambling would have on college sports.

- In 2018, after the U.S. Supreme Court's invalidated a federal law prohibiting states from permitting sports betting, the NCAA's board of governors temporarily suspended its policy of not allowing NCAA championship competitions from being held in states that allow single-game sports betting. In May 2019, after it became likely Indiana would legalize sports betting, the NCAA eliminated this prohibition.

- A Washington city festival changed its name leading up to an event in order to comply with NCAA amateurism rules. What was initially promoted as "Gardner Minshew Days" in honor of the Washington State University quarterback Gardner Minshew was a planned event where the local Chamber of Commerce and local businesses would give away fake mustaches before a big football game. The festival was instead changed to "Mustache Madness" and photos and references to Minshew were removed from the marketing materials. The event continued to reference Minshew on its website, not by mentioning his name but instead reading that the event was "honoring our favorite WSU quarterback."

- The NCAA allowed a cross-country student-athlete at Canisius College to keep donations that she received through a GoFundMe campaign that was created by her roommate. Emily Scheck was financially cut off from her parents in August 2018 after she came out to them. Scheck's partial athletic scholarship left her with a full semester tuition payment of more than $18,000 that she was not able to pay on her own, despite the two jobs that she works when she isn't competing or in class. Her roommate set up a GoFundMe page asking for donations to support Scheck's ability to continue to attend college, and the page raised over $25,000 in just two days. Initially, the NCAA told Scheck that she would not be able to maintain her eligibility if she accepted the money, so she kept the money and left the team in order to maintain financial stability. The NCAA, however, reversed this initial decision and allowed Scheck to keep the donations and maintain her eligibility on the cross-country team.

- A University of Virginia basketball player had to remove his wedding registry to ensure NCAA amateurism rules were not violated. Kyle Guy and his fiancé were required to take down their wedding registry following a story on the website Busted Coverage that encouraged fans to purchase gifts from it for Guy. The university's compliance department asked Guy to take down the registry, out of fear that receiving gifts could amount to prohibited "extra benefits" that violate NCAA rules. The NCAA stated that receiving wedding gifts from family and friends is not what the rule is designed to prevent, and the NCAA has confirmed that gift-giving practices that result are in compliance with NCAA rules.

- Eight U.S. Senators sent a letter to the commissioners of the Power 5 conferences in February 2019, asking the commissioners to do more to address sexual assault in college

athletics, including evaluating existing policies and practices. The letter comes following action taken by some conferences and universities individually to proactively implement policies that combat sexual violence on their campuses. In the letter, the senators ask the commissioners for information that they can use to answer questions that have been received by students, including what steps have already been taken to combat these issues, what proposed future plans exist to further stop these assaults from happening, and what the universities and conferences are doing with regards to student-athletes that have criminal records or sexual assault backgrounds. The letter describes the previously-existing NCAA Commission to Combat Sexual Violence and the solutions that it had proposed, and inquires whether those attempts have proven successful.

- The Big Sky Conference enacted a "Serious Misconduct Rule," which prevents any current or prospective student-athlete who has been convicted of, pled guilty or no contest to a felony or misdemeanor involving serious misconduct, or has been disciplined by the university or athletic department, from receiving athletic financial aid or participating in practices or competitions. Serious misconduct is defined as "any act of sexual violence, domestic violence, dating violence, stalking, sexual exploitation, or any assault that employs the use of a deadly weapon or causes serious bodily injury." The rule was enacted to ensure a focus on the safety of student-athletes and responsibility for their actions.

<u>Larry Nassar Sexual Abuse Continuing Ramifications Update</u>

- In August 2018, the NCAA determined Michigan State University (MSU) did not violate any NCAA rules in connection with the Larry Nassar scandal. The clearance came following a review conducted by the NCAA into how the university handled the allegations against Nassar as well as allegations that involve football and men's basketball student-athletes. The NCAA determined that there was no need for any additional inquiry into MSU's actions regarding this matter.

- A report of an investigation conducted by the U.S. Department of Education report states that MSU failed to properly disclose complaints against Nassar by eleven victims who reported the abuse they suffered to campus officials in violation of the Cleary Act, a federal law requiring universities that receive federal financial aid to maintain and disclose crime statistics in the interest of providing transparency about the safety of the campus and its surrounding area. MSU is subject to a fine of over $55,000 per violation of this law.

- MSU is still dealing with the troubling aftermath of the extensive adverse publicity regarding Nassar's serial sexual abuse because its number of undergraduate applications fell in 2018 for the second year in a row. Applications to MSU fell 3.6 percent in 2017 and dropped 8.3 percent in 2018, although applications to other Big Ten Conference universities increased.

- A lawsuit was filed in September 2018 against Nassar, MSU, the university's board of trustee, and other university employees that accused Nassar of rape. Erika Davis was a seventeen-year-old field hockey player who was referred to Nassar by her coach for care

for a knee injury when Nassar performed a breast exam that was videotaped by another man. Davis alleged that Nassar drugged and raped her one week later. She allegedly reported the rape to the university police department who told her that the police were powerless to investigate misconduct occurring in the athletic department and suggested that she drop the charges. MSU's current police chief publicly stated that Davis' assertion that university police wouldn't have investigated her allegation was "nonsense."

- William Strampel, the former dean of MSU's medical school, has been charged with wilful neglect and a felony count of misconduct in office for permitting Nasser to continue seeing patients after a 2014 Title IX investigation into his sexual abuse without monitoring or enforcing conditions to follow when doing so.

- Kathie Ann Klages, a former head coach of the MSU gymnastics team who resigned in 2017 after the university suspending her for defending Nassar, was charged with two counts of lying to a peace officer after she denied having been told by witnesses about Nassar's abuse years ago. The charging document did not specify the number of witnesses that reported abuse to Klages or when they reported it, but a former gymnast publicly stated she told Klages about being sexually abused by Nassar in 1997 when she trained as a member of the Spartan youth gymnastics team.

- In November 2018, Lou Anna Simon, the former president of Michigan State who resigned January 2018, was charged with two felony counts and two misdemeanor counts for lying to the police. Simon stated she did not know anything about Nassar's alleged sexual abuse until 2016, but the prosecution alleges she knew Nassar was the subject of a Title IX investigation in 2014.

- John Engler, MSU's interim president from January 2018 through January 2019, resigned after making controversial comments about the victims of Nassar's abuse. In an interview with a Detroit newspaper, Engler suggested some of Nassar's victims were "enjoying" the "spotlight" they received from speaking up about the abuse that they suffered.

Operation Varsity Blues College Admissions Scandal

- In March 2019, federal prosecutors revealed a nationwide college admissions scam that allowed dozens of college students (including those whose parents were celebrities, including Felicity Huffman and Lori Loughlin) to be admitted under the false guise of being recruited student-athletes, in some cases with falsified college entrance exam scores. Numerous college coaches and athletics administrators accepted bribes from parents of students to create false athletic profiles and designate the students as recruits for various athletics teams, a status which facilitated the students' entrance into the universities. The parents worked with William "Rick" Singer, whose "charities" would receive "donations" funneled into the athletics programs at the universities. Singer has pled guilty to charges of racketeering, conspiracy to defraud and money launder, and obstruction of justice. Between 2014 and 2016, this scheme resulted in the collective payment of roughly $25 million to college coaches and athletics administrators to enable students to be admitted to several universities, including Georgetown, Yale, Stanford, UCLA, USC, Wake Forest and Texas. Criminal prosecutions against other involved

individuals are pending. A Florida business executive was indicted following accusations by the federal government that he bribed a basketball coach at the University of Pennsylvania in attempt to get his son admitted to the university. Philip Esformes allegedly gave $74,000 in cash and additional perks including limo services and private jet rides to a basketball coach in exchange for the coach placing Esformes' son on the list of "recruited basketball players" – a move which greatly increased the student's chance of being admitted to the university. Esformes is already in jail as he faces charges of Medicare fraud related to nursing homes and assisted-living facilities that he has owned. Esformes' son is a senior at Penn and has never played on the school's basketball team. U.S. Attorney Andrew Lelling said no universities are being prosecuted because they are the victims of this fraud.

- The U.S. Department of Education has opened an investigation encompassing the universities whose coaches and others participated in the scam. A class action lawsuit has been filed in California federal court by a group of prospective students who applied to the universities linked to the admissions scandal during the years 2012-2018, which alleges they did not receive "a fair admissions consideration process" and seeks damages.

Litigation (other than personal injury, health, and safety)

- In a July 2018 Kentucky state court suit, five former University of Louisville men's basketball players sued the NCAA in response to its vacating the university's 2013 National Championship and 123 wins because a team basketball administrator paid an escort service thousands of dollars to provide sex to players and recruits. They assert this punitive action places them in a "false light" and are seeking "a declaration that they are completely innocent of any wrongdoing as implied by the NCAA." They also want the court to restore the team's 2013 national championship and victories.

- Ian McCaw, the former athletic director at Baylor University, was subpoenaed to testify as part of a lawsuit by ten women suing Baylor over the university's failure to properly handle their allegations of sexual assault. McCaw testified that he resigned from his position with the university because of the "phony" investigation and scheme design that led to the university's black football players being designated scapegoats for what he stated was a decades-long problem of sexual assault at the university. He also admitted that the athletic department was not blameless in sexual assault problems that came to light in 2016. Baylor responded to McCaw's comments and allegations, stating that they were based purely on speculation and unconfirmed media reports.

- More than one hundred former Ohio State University athletes allegedly were sexually abused from 1979-1997 by former team physician Richard Strauss, who committed suicide in 2005. These allegations come following the opening of an investigation by the university into reports of sexual misconduct from former members of fourteen varsity sports teams. The university held interviews with more than two hundred former students and university employees who responded to the investigation. Two lawsuits have been filed against Ohio State by these former students who alleged university employees and officials knew about Strauss's abuse and failed to stop it.

- William Cameron, a former tennis player for the University of North Carolina at Charlotte, has filed a lawsuit against the school and the team's former coach. Cameron's complaint alleges he was kicked off the team for the purpose of freeing up scholarship money, but was actually done through actions against the former player of bullying. The complaint also alleges that when former players brought complaints about the head coach to the university, they were pressured into staying quiet out of fear that the complaints would go public.

- A former Western Michigan University football player has objected to a more than $208 million settlement from the NCAA that is scheduled to be distributed to more than 50,000 current and former college athletes, as well as to their lawyers. The lawsuit challenged the NCAA and eleven conferences' compensation limits for football, men's basketball, and women's basketball student-athletes. Darrin Duncan, the former student-athlete challenging the settlement, has appealed to the 9th U.S. Circuit Court of Appeals. The district judge who approved the settlement and award of attorney's fees and expenses totaling $45 million ruled that Duncan and/or his lawyer must post a $5,000 bond or withdraw their appeal. Attorneys for the athletes who could receive up to $6,000 each out of the $208 million have vigorously opposed Duncan's objection and have asked for sanctions to be imposed on him.

- A Wisconsin football player is suing the University of Wisconsin due to its investigation into an alleged incident of sexual assault. Quintez Cephus was charged in August 2018 with raping two women and was subsequently suspended from the football team. The university is conducting an internal investigation into the incident, and Cephus alleges that this investigation is unconstitutional because he cannot participate in the investigation without implicating himself in the criminal proceedings that are simultaneously being conducted against him. Because he alleges that participating in the university's investigation would violate his Fifth Amendment rights, he filed suit against the university alleging constitutional due process violations and is seeking damages for the emotional and psychological harm that he has suffered as a result of these parallel investigations.

- Paul Krebs, the former athletic director at the University of New Mexico, was charged with five felonies in February 2019 stemming from his time at the university. Krebs was charged with fraud, money laundering, evidence tampering, criminal solicitation, and producing public vouchers, charges that could lead him to face up to fifteen years in prison. The criminal complaint alleges that Krebs used his position through the university to fund a personal golf trip to Scotland for himself and his family and friends. Krebs allegedly misused public funds, circumvented the university's policy, and attempted to cover up his actions with false statements and donations that he solicited to "pay back" the university.

- The former football coach at the University of Kansas, David Beaty, filed a lawsuit against the university's athletic department, alleging that it created a false reason to terminate his employment in order to avoid a $3 million payout it was obligated to pay him for terminating his employment without cause. The university responded that it did not falsify a reason for terminating Beaty, but instead stated that NCAA rules violations

committed by Beaty came to light during routine exit interviews with football coaches and staff at the end of the 2018 season. The lawsuit alleges that when Beaty's employment was terminated in November 2018 and he was assured that he would receive $3 million per the terms of his contract as he was being terminated without cause. He states that he was instead informed in December that he would not receive his buyout due to the investigation the university was conducting into his staff. Beaty is alleging that this action amounted to a breach of his employment contract by the university.

- The University of Miami and Arkansas State University came to an agreement over a football game between the two schools that was cancelled in the wake of Hurricane Irma. Following a judicial order to enter into third-party arbitration, Miami agreed to pay Arkansas State $400,000 and, contrary to offers proposed by Miami, the parties decided that the game will not be rescheduled in a future season. This matter came about after Arkansas State sued Miami in February 2018 for its failure to reschedule the game.

- In October 2018, a California state superior court ruled that the NCAA's show cause order sanctions imposed on coaches and other university personnel that violate NCAA rules violate California's business and professions law because they constitute "an unlawful restraint on engaging in a lawful profession" and invalidated a one-year show cause penalty restricting his ability to be employed by NCAA universities. McNair's ability to pursue a lawful profession as a college football coach. *McNair v. NCAA*, 2018 WL 6719796 (Cal. Sup. Ct.). In January 2019, a Los Angeles County Superior Court judge granted former USC assistant basketball coach Todd McNair a new trial in his defamation case against the NCAA for sanctions imposed on him in connection with his involvement in "extra benefits" rules violations. In a May 2018 trial, the jury rejected his defamation claim because of insufficient evidence to prove the NCAA's findings regarding his involvement were false and that NCAA Committee on Infractions had acted with "actual malice" when issuing its decision. The judge indicated that the jury was compromised as a result of one juror whose firm had previously done work for the NCAA should have disqualified him from being on the jury.

- In September 2018, a Cook County judge issued a protective order prohibiting former assistant men's basketball coach Rick Carter, who was fired in June 2017, from having any contact with athletic director Jean Lenti Ponsetto or men's basketball coach Dave Leitao, or from coming within 10,000 of DePaul's campus or Wintrust Arena, where the team plays its home games. After his employment was terminated, Carter allegedly threatened to "physically bury" Leitao and to "run over" Lenti Ponsetto. Her "no contact" request referenced a September 15th tweet by Carter that without referencing herself or Leitao, read "I smell a massacre. Seems to be the only way to bag you bastards up," an apparent reference to Kanye West's song "Monster."

<u>High School & Youth Sports</u>

- A Minnesota appeals court rejected a defamation claim brought by a high school basketball coach in December 2018. The coach alleged that accusations brought by parents of members of his team defamed him and his case against them should have

proceeded to trial. The court instead determined that because the coach was a "public official" per the terms of his employment with the school, he had a burden to prove that false statements were made about him by the parents with actual malice. He failed to meet this burden, however, as the court found no evidence that the parents "knowingly and recklessly" made false statements about him.

- A New York district court granted a school district's motion to dismiss a lawsuit brought by a parent of a member of the school's basketball team, after the parent was banned from attending his daughter's basketball games. The parent was upset with his daughter's treatment by her coach and complained to the school's principal, the district's superintendent, and other school employees. Thereafter, he was informed that he would not be allowed to attend future basketball games. As a result, he sued the school district alleging that this violated his First Amendment and Fourteenth Amendment rights. The court did not grant the district's motion to dismiss on the First Amendment free speech claim, as the ban was not determined to be viewpoint-neutral, but it did dismiss the due process claim, finding that the parent's fundamental liberty interest in the care, custody, and management of his child was not implicated in the district's action because the ban was limited only to his attendance of basketball games.

- An Ohio district court granted a high school football coach's motion for summary judgment in a lawsuit against him that was filed by a quarterback on his team. The student alleged that he was being subjected to sex discrimination by the coach based on the coach's use of words that the student argued were gender stereotyping and derogatory to women. The court instead found the use of the words to be at most due to perception of the student's weaknesses on the field, particularly because the student did not present any evidence that he had gender nonconforming traits. Additionally, the fact that the coach verbally abused the entire team with these terms weakened the student's case, showing that he was not singled out by the coach for specialized harassment.

- A member of the Kathleen High School football team in Lakeland, Florida was victorious in his lawsuit against the Polk County School Board in which he alleged negligent hiring and retention of the school's head football coach, Irving Strickland. Strickland consistently physically abused and bullied the student, Devarus Robinson. After Robinson reported one instance of the abuse to the school administrators, Strickland was only given a written reprimand for his actions, and no further action was taken. After the school's failure to remove Strickland as its football coach, Robinson filed suit against the district, alleging that he suffered the abuse that he did as a result of the negligence of the school board in its hiring and retention of Strickland. The jury found for Robinson, and awarded him $125,000 in recompense for the board's failure to protect him from Strickland's abuse despite the board's previous knowledge of the abuse through the reprimand.

- A lawsuit filed by three families against the Sachem Central School District is moving forward, despite its seven-month late filing. The suit stems from the August 2017 death of a sixteen-year-old at a football offseason camp, where Joshua Mileto and four of his teammates were running and carrying a log over their heads that slipped and fatally hit Mileto on the head. The parents are alleging that the school district failed to provide

adequate mental health services to the students following Mileto's death, the teenagers suffering from post-traumatic stress disorder and sleep disorders. In order to sue the municipality, the families had ninety days to file a notice of claim. The New York Supreme Court, however, excused this tardiness and refused to throw the case out, citing several reasons for doing so, including that the basic facts of the plaintiffs' case were known shortly after Mileto's death, because the case involves children, and because the families reasonably believed that the school would be providing more services to the students.

- The University Interscholastic League (UIL), which governs athletic competition among Texas public high schools, is requiring the state's largest schools to report student-athlete concussions. Texas's approximately 825,000 interscholastic athletes is more than any other state, and the UIL's requirement is the nation's most significant effort to compile data regarding concussions suffered by young athletes.

- After he was prevented from participating in his final few basketball games for his high school, Jerome Kunkel is suing the Northern Kentucky Health Department for violating his First Amendment freedom of religion rights. Kunkel refused to be vaccinated for chickenpox because the vaccine goes against his religion beliefs. After thirty-two cases of chickenpox broke out in his city, the health department required all students to be vaccinated who were not already immune, otherwise they were prohibited from attending school until "twenty-one days after the onset of rash for the last ill student or staff member." Because he did not get vaccinated, Kunkel was barred from attending school, and subsequently was not able to play in the last three games of his season.

- A former girls basketball coach in a private Los Angeles high school is suing the school, its athletic director, and the archdiocese of Los Angeles, alleging that he suffered verbal abuse by the athletic director when he was a coach, and that the school and archdiocese condoned the athletic director's actions. The parents and students at the high school had previously accused the athletic director of failing to support the girls' basketball team, and spending all of his time focusing on the boys' team. The coach is seeking damages for pain and humiliation, as well as money he lost while coaching the team as he asserts that he did not receive any assistance in supporting and fundraising for the girls' team, and he was not given reimbursements for expenses he spent on the team that he had been promised. The coach also alleged that when he informed the director of his intention to end his coaching position, the director threatened him with physical violence and screamed at him within the earshot of students.

- The mother of a high school soccer player filed a lawsuit in Missouri after her son was not allowed to play on the junior varsity team. The school has an official policy that if a junior tries out for the varsity team and does not make it, he cannot participate on the junior varsity team. This is what happened to the woman's son in the fall of 2018. The school states that the policy is enforced to give the younger students the chance to improve their skills and prepare for varsity team tryouts as they advance through high school. The lawsuit does not seek monetary relief, but requests that the student be reinstated to the junior varsity soccer team.

- A Pike County Circuit Judge allowed an Alabama high school student to return to participating on her basketball team following a sixteen-game suspension. Maori Davenport was suspended by the Alabama High School Athletic Association (AHSAA following being mistakenly sent a check from USA Basketball. Once USA Basketball officials realized their mistake, the organization attempted to shield Davenport from punishment and she returned the check. The AHSAA still suspended Davenport and her family subsequently filed a lawsuit in attempt to overturn the suspension. In Davenport's first game following her suspension, she scored twenty-five points to contribute to her team's victory.

- In April 2019, the Archdiocese of Los Angeles agreed to pay $8 million to a female student who was sexually abused by the athletic director of the Catholic high school she attended. Juan Ivan Barajas began assaulting the girl when she was 15 years old, and there had been several complaints about his misconduct with female students. School officials apparently did not take appropriate steps to prevent female students from being sexually abused by him.

International & Olympic Sports

International Litigation, Court of Arbitration for Sport, and Tribunal Adjudications and Filings

- In October 2018, the European Court of Human Rights (ECHR) ruled that the Court of Arbitration for Sport (CAS) is a genuine independent arbitrational tribunal and that its procedures generally comply with due process rights required by the European Convention on Human Rights. The only CAS violation of the Convention was its requirement that hearings be public. German speed skater Claudia Pechstein sought to invalidate a CAS award imposing a 2-year suspension for her doping violation, which previously was confirmed by the Swiss Federal Tribunal and the German Federal Tribunal. (Romanian football player Adrian Mutu also challenged the CAS's independence in this proceeding.) The ECHR's determination that the CAS should have allowed Pechstein to have a public arbitration hearing has been implemented by new CAS rules allowing public hearings in disciplinary and/or ethics matters at the request of an athlete. In February 2019, Pechstein's request that the ECHR's Grand Chamber consider the case was denied, which effectively ended this proceeding.

- The Swiss Federal Tribunal (SFT) allowed a Peruvian soccer player to participate in the 2018 World Cup while the outcome of his doping appeal is pending. Paolo Guerrero had previously asked the SFT to freeze a fourteen-month suspension that he had been given in December 2017 following a positive test for cocaine metabolite benzoylecgonine. The SFT, in explaining the decision to pause the suspension, cited a previous CAS ruling in Guerrero's case that determined that he did not intentionally ingest the prohibited substance. Guerrero had previously claimed that he unintentionally consumed the banned substance from an aromatic tea that was made from coca leaves. The SFT Received a letter signed by the captains of all three teams Peru was set to face in the group stage of the Cup, showing their support for Guerrero's reinstatement. He was able to represent Peru in the 2018 World Cup, the team's first appearance in the tournament since 1982.

- The International Olympic Committee (IOC) filed suit against Tempting Brands, a Dutch company, for the company's attempt to trademark the name of Pierre de Coubertin, the founder of the Modern Olympic Games, in sixty countries. The IOC secured protection of the word mark in 2007, but the company is arguing that the IOC has not used the mark for five years, and therefore the company is entitled to register the mark under European Union rules. The IOC has accused the company of "commercial exploitation" from its attempted use of the mark.

- Operation Puerto, which was launched in 2006, is likely to be closed without publication of the names of the twenty-nine athletes involved. Following years of attempts to publish the names of those connected with the scandal, the Constitutional Court rejected WADA's hopes to use two hundred blood bags that were seized in police raids to identify the athletes. The court rejected this attempt because WADA's ten-year time limit on disciplinary action against the athletes has passed, and because there are currently no active cases against these athletes.

- A Barcelona soccer player was ordered to honor the contract he entered into with Adidas following a breach of contract lawsuit filed by Adidas. The suit was filed as a result of Rafinha sporting Mizuno shoes despite being under contract with Adidas. Rafinha indicated a desire to end his Adidas sponsorship arrangement as he felt he was not given enough support by Adidas following injuries he suffered in 2015 and 2017. The district court in Amsterdam ordered Rafinha to pay a fine of €10,000 for each day that he "continued to refuse" to honor his contract, up to a maximum of €1 million.

- A Mexican fencer filed a lawsuit against the Mexican Fencing Federation (FME) seeking damages that resulted from her false positive test in July 2016. Paola Pliego was suspended days before the Rio Olympic Games after she tested positive for modafinil. This finding was confirmed as false months later, and Pliego was cleared of any wrongdoing in November 2016. The lawsuit alleges that the FME did not allow Pliego to compete in the 2018 Baltimore Women's Sabre World Cup, and that the organization has not apologized for the negative impact that its false positive placed on her career.

- In a landmark April 30, 2019 award, a CAS panel determined that South American middle distance Caster Semenya (winner of two gold medals in the women's 8oo meters race) and Athletics South Africa ("ASA") did not establish that the IAAF's Eligibility Regulations for the Female Classification (Athletes with Differences of Sex Development) (the "DSD Regulations") are "invalid." The Panel found that the DSD Regulations are discriminatory but that on the basis of the evidence submitted by the parties, such discrimination is a necessary, reasonable and proportionate means of achieving the legitimate objective of ensuring fair competition in female athletics in certain events and protecting the "protected class" of female athletes in those events. The DSD Regulations establish requirements governing the eligibility of women with certain differences of sex development ("DSD") to participate in the female classification in eight events ("Restricted Events") at international athletics competitions, including the 400m, 800m and 1500m races in which Semenya regularly participates. The applicability of the regulations are limited to "46 XY DSD" (i.e., when the affected individual has XY chromosomes); no individuals with XX chromosomes are subjected to any restricted

eligibility conditions. Athletes with 46 XY DSD have testosterone levels well into the male range. Female athletes with 46 XY DSD who have a natural testosterone level of above 5 nmol/L and experience a "material androgenizing effect" from that enhanced testosterone level must reduce their natural testosterone level to within the normal female range (i.e. below 5 nmol/L) and maintain that reduced level for a continuous period of at least six months to be eligible to compete in a Restricted Event. There is no required surgical intervention to achieve this level. Despite its finding that the submitted evidence did not negate the prima facie proportionality of the DSD Regulations, the CAS panel noted that this conclusion may change without careful attention to the fairness of their implementation and application in individual cases.

- The CAS dismissed Jamaican sprinter Nesta Carter's appeal against his disqualification from the Bejing 2008 Olympic Games after he failed a drug test where methylhexaneamine was found in his urine sample. The detection of this substance was found in January 2017 as part of a re-analysis of samples taken in Bejing in 2008 conducted with modern detection technology by the International Olympic Committee (IOC). Carter was a member of the gold medal winning 4x100 meter relay team from Jamaica.

- Following the 2018 World Junior Championships, the International Ice Hockey Federation (IIHF) suspended three Swedish coaches who removed their silver medals during the official celebration, the IIHF citing its Championship Regulations. CAS overturned these suspensions, determining that the IIHF regulations only apply to players, and not to coaches. The IIHF, in response to the CAS ruling, has amended its regulations to explicitly include coaches and team staff in the scope of its governance.

- Three Russian athletes failed in their May 2018 appeals to CAS in attempt to overturn their individual disqualifications that were based on doping violations. All three athletes' samples tested positive for turinabol in retests that were conducted following their participation in previous Olympic Games. The athletes argued that the new methods of detection used in the retesting procedures on their samples were inaccurate and unreliable. CAS found that these athletes did not prove that the testing methods are not scientifically valid and in accordance with the required standards. The athletes will each lose medals that they won in previous Olympic Games.

- In October 2018, CAS issued decisions on three appeals filed against the American Arbitration Association (AAA) in April 2014, following sanctions issued by AAA against individuals of the US Postal Cycling team involved in the team's doping participation. In 2014, AAA ordered a ten-year ban of the former team director Johan Bruyneel, and eight-year bans individually against team doctor Pedro Celaya and a team trainer Jose Martí, for their respective participation in doping violations. Bruyneel and Martí individually appealed their AAA decisions to CAS in attempt to lessen their punishments, while the third appeal was filed by the World Anti-Doping Agency (WADA) in attempt to extend the punishments of the individuals to lifetime bans. CAS modified the AAA-imposed suspensions by extending Bruyneel and Celaya's punishments to lifetime ineligibility, and extended Martí's punishment to a ban for fifteen years. CAS determined that these individuals participated in an elaborate doping scheme within their organization, with

Bruyneel at the center of many of the violations and the other two as indispensable participants. Bruyneel responded to the decision made by CAS with a statement arguing that the United States Anti-Doping Agency (USADA) had no jurisdiction over him to issue any punishment against him because he is a Belgian citizen and because he lives in Spain. He stated that he never agreed to any arbitration arrangement with USADA, as well as argued against the procedures used being in violation of the statute of limitations and the proportionality of the sanction against him. USADA, on the other hand, was pleased with the CAS ruling as it welcomed the power of exposing the truth and importance of adhering to the rules of the organization.

- CAS ordered the Fédération Française de Cyclisme to compensate a former French cycler for damages following a one-year suspension that the Federation imposed on him in 2012. Christophe Bassons was an outspoken critic of the doping culture that existed in professional cycling, much to the dismay of his fellow cyclists. In 2012, Bassons did not complete a race that he was participating and chose to travel home before reaching the finish line. Two-and-a-half hours later he was informed that he had been selected for a doping control test, but by that time he was already traveling to his home and was not able to return in time to complete the test. As a result, the French federation issued him a one-year suspension for the missed test. Bassons appealed the suspension and despite the Federation's position that he was not singled out for the test because of his critique and was instead randomly selected and judged like any other rider, the CAS court ruled in favour of Bassons and awarded him €31,691 in damages.

- Madisyn Cox's urine sample collected in February 2018 tested positive for the presence of Trimetazidine, a substance on the World Anti-Doping Agency (WADA) Prohibited List. Her second sample also tested positive, and Cox was sanctioned with a two year ineligibility period starting on March 3, 2018. Cox appealed this sanction, but the FINA Doping Panel was not satisfied that Cox had proved how the substance entered her body, so the Panel refused to reduce her sanction. Cox submitted two bottles of the multivitamin that she had been taking for seven years, and the substance was detected in the multivitamin. Cox and FINA settled their dispute, reducing her two-year suspension to a six-month suspension, and in August 2018, a CAS arbitrator confirmed the terms of the reduced suspension.

- An appeal to CAS by the Kazakhstan Weightlifting Federation was dropped in March 2019 following an agreement with the International Weightlifting Federation (IWF). Kazakhstan is limited in the number of athletes it can send to the 2020 Tokyo Games due to a rule implemented by the IWF that restricts the numbers of weightlifters that could represent a country that had multiple doping offenses. Kazakhstan weightlifters had previously tested positive thirty-six times in the last ten years, more than any other country in the world. Details of the rationale for dropping the appeal have not been released, but the parties have allegedly agreed on a "framework for their continued cooperation towards protecting clean athletes and promoting clean sports."

- A Chinese swimmer faces a lifetime ban from Olympic competition following an incident where he allegedly destroyed a blood sample possessed by anti-doping testers. Sun Yang allegedly forced the testers to wait outside of his house for an hour while he questioned

their legitimacy and then broke several testing protocols including the destruction of a vial of his blood. A FINA doping panel accepted the testimony of the head of the Zhejiang Anti-Doping Centre that the nurse at the testing didn't have proper paperwork, and the panel ruled in favor of Yang. WADA has requested further information on this incident, indicating that it is not satisfied with the results of the panel.

- FIFA's Disciplinary Committee has banned the Palestinian Football Association President, Jibril Rajoub, from attending any football matches for one year and fined him $20,000 as a result of comments he made toward Argentinian football player Lionel Messi. Rajoub told fans to burn Messi pictures and shirts if Messi chose to play in an upcoming friendly match scheduled between Argentina and Israel. The match was subsequently cancelled. The terms of Rajoub's suspension mean that he will "not be able to attend football matches or competitions in any official capacity," which includes any participation in media activities prior to matchdays. The Disciplinary Committee found that Rajoub's statements incited hatred and violence towards Messi and the Argentinian team.

- In May 2019, a Rugby Australia tribunal found rugby union star Israel Folau, a fundamentalist Christian, guilty of a "high-level" breach of the Professional Players' Code of Conduct for his April 2019 homophobic social media post that saying "hell" awaited "drunks, homosexuals, adulterers" and others. This determination justifies Rugby Australia's termination of his player contract and subjects him to discipline by the tribunal, including a fine, suspension, or permanent ineligibility to play rugby union in Australia.

<u>Russian Doping Scandal Update</u>

- In September 2018, the World Anti-doping Agency (WADA) reinstated the Russian Anti-Doping Agency (RUSADA) (which was suspended in 2015 after a WADA-commissioned report found evidence of state-sponsored doping in Russian athletics) following a declaration by WADA's Compliance Review Committee (CRC) that it is compliant with WADA's anti-doping requirements, which angered sports bodies around the globe. Before it was reinstated, RUSADA agreed to provide access to analytical data and samples collected by the Moscow laboratory and there was admitted guilt for a pervasive system of doping violations, including involvement by the Russian Ministry of Sport.

- In March 2019, the International Association of Athletes Federations (IAAF) extended its ban of the Russian Athletics Federation, which prevents Russian track and field athletes from participating in the Olympic Games and other international competitions under the country's flag (those meeting strict anti-doping criteria are allowed to compete under a neutral flag). Apparently this ban will continue until Russia makes analytical samples and data from the Moscow Laboratory available to the IIAF and WADA and pays the IAAF's Russia Taskforce's costs.

- On March 15, 2019, the International Paralympic Committee (IPC) conditionally reinstated the Russian Paralympic Committee (RPC), which had been suspended since

August 2016, as a member based on its compliance with 69 of 70 reinstatement requirements. Because Russia did not accept the findings of the McLaren Report, the IPC will continue to supervise the RPC's actions and activities until 31 December 2022, a period that covers the Tokyo 2020 and Beijing 2022 Paralympic Games.

- In November 2018, Moscow's highest civil court refused to honor a CAS ruling confirming the IOC's imposition of a lifetime ban of Russian bobsledder Alexander Zubkov for doping violations and stripping him of two gold medals he won in the 2014 Winter Olympics in Sochi. The court agreed his Zubkov's argument that the CAS procedure was improper and refused to recognize the CAS award, although it continues to valid outside Russia. The IOC refuses to acknowledge the legitimacy of this judicial ruling and is continuing to request that Zubkov return his medals.

- In January 2019, the International Bobsleigh and Skeleton Federation banned Zubkov from any participation in the sport of bobsleigh until December 2020 as a result of his participation in the doping scandal at the 2014 Games, which precludes him from serving as president of the Russian Bobsleigh Federation until his suspension expires.

- CAS made its findings based on Based on the McLaren report findings and data from the Moscow Laboratory, the CAS, acting as a first instance tribunal, imposed suspensions ranging from two to eight years on 12 Russian track & field athletes for doping violations committed in 2012-2013.

- Following the Swiss Federal Tribunal's rejection of its appeal of a CAS award finding insufficient evidence of cross-country skier Alexander Legko's alleged doping violations, the IOC decided not to appeal CAS awards finding insufficient evidence of alleged doping violations by 27 other Russian athletes.

- The Switzerland Attorney General was authorized to open a criminal investigation into two Russians accused of planning a cyber attack of the WADA office and the Spiez laboratory. The alleged spies were arrested in connection with the planned attack early in 2018 following their attempt to hack into the laboratory's information. They are believed to be officers of the Armed Forces of the Russian Federation, working in the intelligence directorate.

<u>Other International Developments</u>

- China has criminalized doping, with jail time the default punishment for athletes who break the law. This 2019 law stems from the country's commitment to recognizing the severity of doping offenses and the effects that come along with them. China follows other countries that have made doping a criminal offense, including Germany, which passed a law in 2015 criminalizing the use of performance-enhancing substances. In the U.S, a bill was introduced in the House of Representatives in December 2018 that would establish criminal penalties for doping offenses.

- In August 2018, FIFA removed the word "corruption" from its Code of Ethics and inserted a new defamation clause. Under these updates, those who are bound by the Code

are not permitted to make any public statements of a defamatory nature towards the organization. Violators of the code can be banned from any football-related activities for a period of up to two years. The word "corruption" was previously used in the code twice – once as a header and once as a note regarding time limitations. A ten-year statute of limitations was also added to the Code, as the previous version did not include any time limit on bringing cases. Lastly, the Adjudicatory Chamber of the Ethics Committee deceased the amount of time it can use to complete cases of general breach from ten years to five years.

- Cristiano Ronaldo avoided serving a prison sentence when he was fined over $21 million for tax fraud. Ronaldo continued to deny any wrongdoing as he was accused of knowingly using a business structure to hide income that he received due to use of his image. Under Spanish law, a first offense for tax fraud carries with it a penalty of up to two years in prison, but Ronaldo's settlement terms ensure that he will not be required to serve a prison sentence. Following a nine-year career with the Real Madrid football club, Ronaldo left to join the Juventus club, the move in part because of the negative treatment that he claimed to have received by Spanish authorities in connection with these accusations.

- The president of the Japanese Olympic Committee (JOC) was indicted on charges of corruption in connection with Tokyo's bid for the 2020 Olympic and Paralympic Games. Tsunekazu Takeda is accused of arranging bribery payments of $2 million in attempt for Tokyo to secure the rights to host the 2020 Games. Takeda denied the report that he had been indicted and allegations that bribery had been involved in securing the host position.

- The Centre for Sport and Human Rights was created after two and a half years of development, in attempt to create a stronger respect for human rights in sports. The Centre was created by several sports organizations, governmental agencies, and national human rights institutions. Based in Geneva, Switzerland, the Centre will operate on a global spectrum and will promote governance, accountability, and sustainability of sports with a focus on the human rights that are involved of the many players within sports organizations. "The Centre will be a public good, working with sports bodies, event hosts, affect groups, and others to share knowledge, build capacity, and strengthen accountability."

- The Canadian sports system has enacted stronger measures to eliminate harassment, abuse, and discrimination in its sports. Federally-funded sports organizations in Canada must immediately disclose any known incident of harassment, abuse or discrimination, and must take all necessary safety measures to create environments that are free of these vices. These additions come out of the recognition that all sports environments should be free from harassment, abuse, and discrimination of any kind to promote the safety of their participants.

- Australia announced in February 2019 plans to create a new authority with the purpose of addressing match-fixing, doping, and organized crime in Australian sports. This plan comes following previous scandals of Australian athletes using supplements and tampering with equipment used in cricket matches. The Australian Sports Anti-Doping

Agency is expected to gain additional powers as a result of this plan, and will eventually work in tandem with this new authority. A new sports tribunal will also be created to investigate cases of doping issues within the country, and will engage in a two-year trial period.

- In March 2019, Canada announced a new national concussion strategy, aiming to provide a standardized approach of care and assessment across all of the country's sports. The director of sport medicine at the Canadian Sport Institute, Brian Benson, recognized the severe impact that concussions have on athletes and the large quantity of functions a brain injury can affect, and emphasized the importance of detection of concussions immediately upon injury. This belief supports the strategy focusing on understanding the athletes in their completely healthy state to better detect when they deviate and show symptoms of concussions after an injury. The program requires up to date concussion protocols be put in place immediately in over forty Olympic and Paralympic sports in the country.

- The German Federal Cartel Office significantly limited the scope of advertising restrictions on German athletes by Rule 40.3 of the Olympic Charter, which states: "no competitor, team official or other team personnel who participates in the Olympic Games may allow his person, name, picture or sports performances to be used for advertising purposes during the Olympic Games." Athletes will be able to participate in marketing campaigns during Olympic Games that use their names, images, and likenesses as well as use terms that previously had been restricted, including gold, silver, bronze, and medal. Thereafter, while recognizing the importance of the IOC's "solidarity model" of Olympic sports funding and the protection of its sponsors, IOC president Thomas Bach suggested that athletes negotiate with their respective National Olympic Committees (NOC) regarding the restrictions placed on them. Noting that "Rule 40 mainly protects the [NOC's] sponsors," he said "There is no one-size-fits-all solution for this because national laws and the relationship between athletes, their national federations and NOCs are very different."

- Global Athlete, an international athlete-led organization, was launched in February 2019 in attempt to give athletes a larger voice in the governance of international sports. The organization is focused on doping matters, athlete welfare, and ensuring athlete rights are not inhibited. Rob Koehler, the former deputy director general of WADA, and former Olympic cyclist Callum Skinner will lead the organization as it plans to work with already existing sports organizations that focus on athletes' concerns and representation.

U.S. Litigation, Arbitrations, Legislation, and Other Developments

Litigation

- In a §2 monopolization suit filed in the Northern District of California, which arose out of FINA's threatened discipline for their participation in an unsanctioned International Swimming League December 2018 event in Italy that was cancelled as a result, a group of U.S. swimmers allege "FINA's power over the swimming world is so strong that it

will crush ISL and destroy the careers of swimmers who want to compete in ISL meets." It "unlawfully wields its dominant influence to prevent outside organizations from expanding opportunities for hundreds of world-class swimmers and their millions of fans across the world." "FINA understands that a free market for top-tier international swimming competitions would preclude it from continuing to keep for itself the lion's share of profits earned from the swimmers' skills."

- The Ninth Circuit affirmed a district court holding that USA Track & Field is entitled to immunity from a chewing gum manufacturer's antitrust challenge to its restrictions on athlete sponsorships and advertisements during the Olympic Trials. The court found that these restrictions are valid ways to allow the USOC and its NGBs to generate sponsorship revenues to support U.S. teams' participation in the Olympic Games and that permitting antitrust challenges to them would unduly interfere with the USOC's fundraising mission, thereby diluting and devaluing the Olympic brand and harming relationships with USOC and NGB sponsorships. *Gold Medal LLC v. USA Track & Field*, 2018 WL 3732856 (9th Cir. 2018).

- A California appeals court reinstated a jury award for former USA Swimmer Dagny Knutson after finding that her former attorney breached the fiduciary duty owed to her. After Knutson graduated from high school, then-director of the USA Swimming National Team told her that USA Swimming would cover the costs of her tuition and room and board while she trained with the organization. The director was shortly thereafter let go and USA Swimming refused to enforce the oral agreement Knutson entered into. Knutson worked with an attorney, Richard Foster, to help her in this situation but Foster failed to disclose to her that he had a previous relationship with the USA Swimming organization that would amount to a conflict of interest. Knutson was the recipient of a deal with far worse terms than she was initially promised and filed suit against Foster for his failure to disclose this conflict. A California jury ruled that Foster breached the fiduciary duty he owed Knutson and awarded her over $600,000 in damages.

- A former laboratory director for the U.S. Equestrian Federation filed a lawsuit in Fayette Circuit Court alleging that he was made a "scapegoat" when he was fired by the federation in response to a horse-doping investigation. Cornelius Uboh was fired from his position when the federation learned that the lab had previously made errors in its handling of a blood sample in a 2017 case against a rider and trainer. The federation learned of a breach in the handling procedures in this case and subsequently voided the suspensions and penalties issued against the rider and trainer. Uboh alleges in his complaint that the federation then "knowingly and falsely" accused him on manipulating data involved in the investigation, and seeks a trial by jury, compensatory and punitive damages and attorney's fees.

- In March 2019, 51 current and former female gymnasts filed a lawsuit against the USOC accusing it of failing to prevent Dr. Larry Nassar's serial sexual abuse and demanding internal reform. It alleges the USOC negligently concealed known information about Nassar and criticizes the USOC board of directors' continued failure to implement effective reforms. They allegedly collectively suffered sexual abuse by Nasser and six coaches from the 1990s through 2018.

- In April 2019 lawsuit against the USOC, the Philadelphia Indemnity Insurance Company is seeking a determination it is not liable for sexual and physical abuse liability coverage claims because its director of risk management falsely stated it had no awareness of any sexual assault claims when filling out 2015 applications for insurance coverage. The lawsuit cites a report by the U.S. Senate's Energy and Commerce Committee stating that said the USOC had determined in 2010 that "the issue of sexual abuse is very real in sport and that a call to action is needed."

- All Olympia Gymnastics Center (AOGC) finalized a $1 million settlement with gymnast Mattie Larson as a result of a lawsuit filed against AOGC and its directors, Artur Akopya and Galina Marinova. The suit alleged the directors' treatment of Larson created an environment that subjected Larson to sexual harassment by Dr. Nassar, which "fueled an abusive, harassing and degrading environment" that "allowed, concealed and promoted abusive behavior" causing Larson and other gymnasts to become victims of Nassar's abuse.

- Olympic swimmer Ariana Kukors Smith filed a lawsuit in Orange County, California, against USA Swimming and one of its coaches, alleging that the organization had knowledge of abuse she suffered from a former coach and did not stop it. The alleged abuser, Sean Hutchison, has denied the allegations that he abused Kukors Smith. USA Swimming hired a private investigator in 2010 to investigate rumors that Kukors and Hutchison had a relationship outside of coach-player, and it closed the investigation after finding no misconduct between the two. Kukors Smith alleges the abuse began when she was sixteen years old.

- In July 2018, a complaint was filed against USA Diving alleging sexual abuse and exploitation by its coaches and failure to protect the athlete-victims. The plaintiff victim, Eszter Pryor, is seeking to represent a class of "hundreds, if not thousands" of female diving athletes who have been abused by their coaches. Pryor alleged that her coach coerced her into believing that she was obligated to perform sexual acts with him in exchange for her continued involvement in the sport. The complaint alleges that USA Diving knew or was willfully blind to complaints against the coach beginning in 2014, in addition to violations of the Trafficking Victims Protection Act. *Pryor v. USA Diving Inc.*, No. 18-2113 (S.D. Ind., filed July 11, 2018).

- Jennyfer Roberts, a weightlifter, filed suit against USA Weightlifting, the USOC, and a teammate she alleges raped her. filed a complaint within the USA Weightlifting organization two years prior to filing the lawsuit, the complaint was transferred to the U.S. Center for SafeSport, which took eleven months to be resolved. The lawsuit comes after two reports were issued by reporter Scott Reid, who spent six months investigating how SafeSport handles claims of sexual abuse. Following the eleven-month investigation, SafeSport banned the alleged abuser for twelve years. This punishment was appealed through arbitration and the suspension was reduced to eighteen months after it was determined that SafeSport had not proved the element of non-consensual sexual contact by the required preponderance of the evidence standard.

AAA Arbitration Awards

- In *Flory and USA Diving, Inc.*, AAA 01-180003-8879 (November 30, 2018), USA Diving imposed an interim and indefinite suspension on Maxwell Flory, one of its member athletes, pending the Center's investigation and final resolution of sexual misconduct allegations against him. Because this suspension denied Flory the opportunity to participate in a protected competition, the Arbitrator determined that his procedural right to arbitration under the Ted Stevens Olympic and Amateur Sports Act (ASA) and Section 9 of the USOC Bylaws was violated." The Arbitrator concluded that "Section 9 arbitral determination of the [appropriateness of an NGB's interim suspension pending the Center's investigation and adjudication of alleged Safe Sport allegations] does not contravene the Center's exclusive jurisdiction to investigate, resolve, and adjudicate the merits of . . . alleged sexual misconduct."

- An arbitrator ruled that USA Taekwondo, Inc. has valid authority to impose appropriate and proportionate interim measures on its members, including but not limited to athletes and coaches, to protect its current members, especially athletes, from an imminent threat of harm to their safety or well-being from SafeSport Code violations. To comply with the ASA and Section 9 of the USOC Bylaws, USAT's exercise of this authority to impose an interim suspension on one of its members pending final disposition or adjudication of a SafeSport investigation or proceeding by the U.S. Center for SafeSport (Center), civil litigation, or a criminal prosecution, which would preclude him or her from the opportunity to participate in a "protected competition" under the USOC Bylaws, must fully comply with the Center's SafeSport Practices and Procedures and its Supplementary Rules for U.S. Olympic and Paralympic Movement Arbitrations. The Arbitrator vacated the USAT's December 17, 2018 interim suspension of Steven Lopez because based on the record evidence it is an inappropriate and disproportionate interim measure that denies him the opportunity to participate in the February 28-March 3, 2019 U.S. Open Taekwondo Championships as an athlete without just cause. He also vacated USAT's January 25, 2019 interim suspension of Jean Lopez because it is an unauthorized, inappropriate, and disproportionate interim measure that denies him the opportunity to participate in future "protected competitions" as a coach (e.g., February 28-March 3, 2019 U.S. Open Taekwondo Championships) without just *cause. In the Matter of the Arbitration between Steven Lopez and Jean Lopez and USA Taekwondo, Inc*., AAA Case No. 01-19-0000-5335 (March 19, 2019).

Other Developments

- A December 2018 report by the law firm of Ropes & Gray detailed a "service-oriented" approach that was adopted to govern the national governing bodies (NGBs) for Olympic sports in the United States, which resulted insufficient oversight from the United States Olympic Committee (USOC) to ensure that the NGBs were creating effective and strong policies to govern their organizations. The report indicated that this model of providing resources to NGBs with "essentially no oversight" by the USOC enabled Nassar to engage in numerous instances of sexual abuse. Recognition of the deficiencies of this model has been an important element of the USOC's push for additional control over the NGBs that it governs.

- The former President and CEO of USA Gymnastics, Steve Penny, was arrested in October 2018 based on allegations of evidence-tampering. When Penny learned that the Karolyi Ranch training camp for USA Gymnastics was being investigated, he ordered the removal of documents from the site, which were delivered to the USA Gymnastics headquarters in Indianapolis.

- Debbie Van Horn, the former top medical officer of USA Gymnastics, was indicted on a charge of one count of second-degree child sexual assault in relation to the Larry Nassar abuse of gymnasts at the Karolyi Ranch in Texas. Van Horn had been in the same room as Nassar when he assaulted athletes under the guise of medical treatment. USA Gymnastics ended her employment with the organization in January 2018. Despite the indictment of Van Horn, several victims of Nassar's abuse were still angered by the inaction against the Karolyis who were not being held accountable for their knowledge of what Nassar was doing and their failure to report that information.

- In December 2018, USA Gymnastics filed for Chapter 11 reorganization bankruptcy, stating that doing so would enable it "to work with the United States Olympic Committee to determine the best path forward for the sport of gymnastics." Previously, the USOC had sought to revoke its status as the sport's national governing body. In March 2019, the USOC announced that it was no longer taking steps to do so.

- The Committee to Restore Integrity to the USOC submitted twelve recommendations to the chief executive of the USOC in attempt to better protect athletes within the organization. The recommendations emphasized the need to create an "athletes first" culture within the organization, rather than the existing "money and medals" and "anti-athlete" culture. Among the list of recommendations were calls for re-organizing the USOC, establishing stronger whistleblower protection, creation of an athlete advocate office, and severing all ties that the USOC has with "anti-athlete" lawyers and law firms. The recommendations, as a whole, are aimed to change the structure and governance of the organization, in attempt to "reduce the abuse and exploitation of all athletes."

- On November 1, 2018, the White House Office of National Drug Control Policy (ONDCP), together with the United States Anti-Doping Agency, convened a meeting at the White House to discuss the urgent need to reform the World Anti-Doping Agency (WADA). Representatives in attendance included Linda Helleland, WADA Vice President and Norway's Minister of Youth; fourteen members of the global athletic community; and Ministers of Sport and the leaders of National Anti-Doping Organizations from Australia, Canada, Germany, Ireland, New Zealand, Norway, and the United Kingdom. American Olympic athlete Katie Ledecky sent a video message of support to the attendees, all of whom were united in their call for widespread, athlete-centered reform of the WADA-led anti-doping system. "This meeting of representatives of the global athletic community and international sports leadership gathered today to demonstrate a consensus on anti-doping, and to emphasize an international commitment to clean sport and fair play," said U.S. Office of National Drug Control Policy Deputy Director James Carroll. "We are committed to ensuring there is a strong domestic and global anti-doping program in place. Young people

around the world should have the opportunity to experience all the benefits that clean competition gives them. We are united in calling for the World Anti-Doping Agency to provide stronger leadership on behalf of clean competition."

Title IX Sex Discrimination, Gender Inequality, and Civil Rights Violations

Judicial Rulings and Settlements

- The U.S. Court of Appeals for the Sixth Circuit ruled in September 2018 that during investigations of sexual assault on college campuses, universities must allow accused students to directly question their accuser in a live hearing. This came as a result of a lawsuit against the University of Michigan wherein a student who had been accused of sexual assault had been expelled and subsequently unable to challenge the picture that had been painted about him, as well as other university findings about the alleged incident. This decision has been hailed as a due process victory for students accused of sexual assault, but has also been sharply criticized by Title IX advocates, who believe that the decision goes too far and is too radical an interpretation of due process rights.

- In July 2018, the U.S. Court of Appeals for the First Circuit upheld a district court decision granting Brown University's motion for judgment on the pleadings in a case involving sexual assault. The plaintiff was a student at Providence University who was sexually assaulted by three members of the Brown University football team in a Brown University dorm. She filed suit against Brown University after Brown refused to conduct a Title IX inquiry but instead limited her recourse to the process detailed in the Brown University Code of Student Conduct. The plaintiff filed suit against Brown under Title IX and the First Circuit, following the district court found for Brown, holding that a student may not pursue a Title IX claim against a university she does not attend. The plaintiff's claim against Brown did not allege any facts that she was deprived of access to the educational opportunities or benefits provided by Brown, a requirement of a Title IX claim, and her lawsuit against Brown was dismissed. *Doe v. Brown University*, 896. F.3d 127 (1st Cir. 2018).

- Following a lawsuit brought by two female student-athletes, Eastern Michigan University (EMU) announced in November 2018 that it will reinstate its women's tennis program in the 2019 spring season. The lawsuit was filed after EMU decided to cut four sports programs (men's wrestling, men's swimming and diving, women's softball, and women's tennis) without any opportunity for the athletes to contest the decision. A district court in Michigan in September 2018 ordered a hold on the potential cut of the program, and required the university and the two student-athletes to come to a resolution, stating that the financial hardships alleged by the university as its rationale for cutting the programs were not a sufficient excuse for limiting opportunities for female student-athletes. Following this decision to bring back its women's tennis program, the university stated that it plans to continue to work with these students in order to create a permanent

solution that will provide the best environment for the students and maintain compliance with Title IX. The university did not discuss the status of its women's softball program.

- In February 2019, a judge in Michigan ordered EMU to reinstate both its tennis and softball programs. Following the November 2018 announcement, EMU was unable to have its tennis program up and running for the spring 2019 season. As a result, the judge ordered the university to use the funds that would have been allocated for the spring 2019 tennis team for recruiting and scholarships and to be ready to compete in the next season. EMU was also required to hire a softball coach by April 1, 2019. Despite EMU's previous arguments that it would not reinstate these programs because it desired to start a women's lacrosse program, the university responded to the February order ensuring that it is determined to meet its obligations to comply with Title IX. In March 2019, the Sixth Circuit Court of Appeals ruled that EMU did not need to comply with the order to hire a softball coach by April 1because of the university athletic department's financial issues.

- A district court in Florida ruled on a complaint that stemmed from a sexual relationship that allegedly began in the 1980s and lasted for more than sixteen years between a competitive figure skater and his coach. The figure skater filed multiple complaints in 1999 but they were denied as a result of being time barred and because they were not being presented with the required clear and convincing proof. In February 2018, the figure skater refiled the same grievances with the Center for Safe Sport, which suspended the coach from participating in any events or competitions sponsored or recognized by the United States Olympic Committee (USOC) or any of the National Governing Bodies, including United States Figure Skating (USFS). The coach was subsequently terminated from his employment as a figure skating coach. The coach filed suit alleging breach of contract as a result of SafeSport's suspension, as well as due process violations arguing that he was not given fair notice of the claims against him before the suspension was imposed. The court denied the coach's complaint and instead determined that Safe Sport's procedures requiring arbitration of disputes governed, as the coach's claim centralized on Safe Sport's internal procedures and arbitration rules. *Callaghan v. US Center for Safe Sport,* 2018 WL 4107951 (M.D. Fla. Aug. 29, 2018).

- In July 2018, Drake University settled a lawsuit filed by its former head athletic trainer following the firing of the trainer in late 2016. The trainer suffers from a medical condition that causes him to urinate more frequently and indirectly led to his termination from the university after he urinated in a training room whirlpool when he could not reach a bathroom in time. After he reported the incident to the athletic director, he was terminated by the university, determining he was unfit to remain in his position. He filed a complaint with the Iowa Civil Rights Commission in November 2016 alleging that his disability, age, and gender played a role in his dismissal from the university.

- A sexual harassment lawsuit filed against California State University Los Angeles and its former athletic director was settled in January 2019 for $2.75 million. The suit was filed by a former coach and associate director of athletics, Sheila Hudson, alleging violations of California's Fair Employment and Housing Act and intentional infliction of emotional distress. The suit alleged that the athletic director used degrading and sexist names when addressing women in the department, and that the university retaliated against Hudson

when she created a report that depicted the pay gaps between men and women in the department. In exchange for the money Hudson received, she is not allowed to discuss the litigation and is barred from applying for any position of employment within the California State University system.

- The District Court for the District of Columbia ruled that a Native American was not subject to harassment as a result of her co-workers discussing the Washington Redskins and displaying memorabilia at work. The court found that these acts by Jody TallBear's coworkers were not directed at her in a disparaging manner but were instead done to support the football team. It determined that a reasonable person would not determine that the work environment that these actions taken was racially hostile toward TallBear or other Native Americans. The court did, however, allow her retaliation claim to go forward as her complaints of bias against her and the exclusion she faced in work meetings and assignments were made close enough in time to the alleged actions by her coworkers. Other complaints that she alleged fell beyond the four-month limit that the court would allow between her protected activity and the retaliation she faced from her employer as a result.

- The former women's track coach at the University of Texas settled her lawsuit with the university following the termination of her employment in 2013. Bev Kearney filed a lawsuit alleging race and gender discrimination after she was fired from the university when it discovered that she had had a long-term relationship with a student-athlete a decade earlier. She received over $275,000 of a $600,000 settlement while the university spent over $500,000 over the course of several years dealing with the lawsuit. Kearney's termination in 2013 was a much more severe punishment than the university previously dealt to a white male football coach who was only required to undergo counseling following the discovery of his relationship with a student trainer. She had threatened to expose this and other inappropriate sexual relationships within the athletic department that were not reprimanded in attempt to prove that she had been singled out because of her race and gender in the treatment the university gave her. Kearney won six NCAA titles for the university and was honored as national coach of the year five times.

- A lawsuit filed against Wheaton University and four members of its football team following incidents of hazing within the football program was settled in September 2018. Charles Nagy filed suit following an incident in 2016 where he was abducted from his dorm and physically abused by members of the football team. His lawsuit alleged that hazing of this type was common within the football program and was routinely ignored by coaches and other officials. Four members of the football team plead guilty to misdemeanor charges in connection with the event. The lawsuit was seeking over $50,000 in damages suffered by Nagy.

- In April 2019, the University of Arizona paid $999,000 to settle a 2015 lawsuit by a former female student-athlete who claimed the university failed to protect her from a former track-and-field coach who had threatened her with violence despite knowledge of their years-long sexual relationship she had claimed was not consensual.

Pending Litigation

- Nine former University of Louisiana softball players collectively filed Title IX complaints against the university following the termination of their head coach in November 2017. The complaints alleged the university denied the student-athletes access to medical treatment and an athletic trainer, neglected the maintenance of their field, and failed to pay softball assistant coaches for months. More than half of the former athletes alleged that they experienced inappropriate physical contact by the university President and Director of Athletics. Other allegations include reported use of the "n" word and other racial slurs against athletes without any corrective action being taken; failure to provide an athlete with necessary treatment for depression, anxiety, and ADHD; discrimination by coaches based on athletes' sexual orientation, and aggressive, unwanted physical contact by coaches. Both the President and Athletic Director have denied any accusations against them personally, and the university followed step, stating that it believed the accusations to be false and the result of "vindictive manipulations of a disgruntled former employee."

- The former athletic director of Occidental College, Jaime Hoffman, filed a lawsuit against the university in September 2018 alleging that she was discriminated based on her gender and sexual orientation. The university terminated its football coach due to an NCAA investigation into alleged recruiting violations, the decision to terminate being made jointly among Hoffman, the university President, and its Board of Trustees, but the decision was portrayed as being the sole action of Hoffman, and she was subject to scapegoating and abuse by the football community, according to her complaint. Homophobic slurs were uttered against her on the school website, and the troubling responses against her by the football team lead to her fearing her safety that ultimately resulted in her moving her family more than thirty miles from the university. After Hoffman went on leave in the fall of 2017, she was notified by university human resources that her employment was being terminated. The suit alleges that following her termination, several female coaches at the university quit without future employment lined up due to their desire to not remain in the "sexist and hostile" environment that is the Occidental Athletic Department.

- The University of Missouri was sued in June 2018 by a former assistant track and field coach, Carjay Lyles, who alleged that he was the subject of racial discrimination during his employment with the university. Lyles, the only black member of the track and field coaching staff at the time, claims that the head coach and his supervisor continuously exercised discriminatory and demeaning behavior toward him and other black athletes and staff members, including references made to the Ku Klux Klan. Members of the track and field team allegedly reported this behavior to the athletic director, and Lyles himself reported his concerns to the university's human resources office, the school chancellor, and with a senior athletic department official. Lyles' performance reviews began to suffer, and he was the only coach that did not receive a title promotion, pay raise, or contract extension during the time of this behavior against him. Lyles alleges that he was "constructive discharged" from his position in July 2017, and he is now an assistant track and field coach at the University of Akron.

- Nine University of Minnesota football players filed a lawsuit against the school in June 2018 alleging that they were victims of racial and gender discrimination by the school. The complaint stems from the university's investigation in 2016 of an alleged gang rape of a female student. The players, all of whom are black, allege that during this investigation, the school "willfully and maliciously" scapegoated them, citing a biased investigation and violations of their due process rights. Although none of the players were charged criminally in the 2016 case, they believe their public reputation has been marred as a result of the university's actions.

- A Title IX lawsuit was filed by seven female football players in three Salt Lake County school districts, alleging that the districts were engaging in gender-based discrimination in violation of the law. Brent Gordon, an advocate for developing girls tackle football programs in the area, joined the girls in court in attempt to certify the lawsuit as a class action. The students were able to show that there are 700 more opportunities for male athletes than female athletes in each of the three school districts that they collectively represent. They also presented the fact that more than 200 girls participate in the recreational football program that was created by Gordon, in attempt to argue that this is not an issue of lack of female interest in the sport, but denial of the opportunity to participate by the Utah High School Activities Association and the various school districts implicated by the suit.

- A male swimmer at Texas A&M filed a Title IX lawsuit against the university following a one-semester suspension that he served after it was found that he had sexually assaulted another student at the university. Austin Van Overdam alleges that the university was partial to his accuser and seeks punitive and compensatory damages based on future career earnings, loss of scholarship funds, and the humiliation and embarrassment that he suffered as a result of this incident. Van Overdam asserts that he and his accuser engaged in consensual sex and at no time did she protest or raise concerns about his actions. Van Overdam asserts that this lawsuit is attempting to ensure that Title IX law protects both men and women and is not a mechanism for universities to ensure that they remain "politically correct."

- Destiny Clark, a former volleyball coach at Newman University, filed suit against the university and its athletic director, alleging gender and pay discrimination among other claims. Clark alleged that her team was consistently placed at a lower priority in the athletics department than male teams and that the university failed to assist her in removing a men's basketball player from her practices who had previously sexually harassed members of her team and refused to leave the practices after he interrupted them. She also claims that she was not given a position as a strength coach – a position that she claims she had an oral promise by the university that she would be employed with in addition to the coaching job, and that would pay her an additional $20,000 per year. Two Newman employees who were tasked with investigating Clark's Title IX complaint, filed in October 2017, were terminated from their employment with the university during their investigation of Clark's claims. Clark resigned from her position at Newman in July 2018.

- The United States women's soccer team filed a lawsuit in the United States District Court in Los Angeles in March 2019 alleging gender discrimination by the U.S. Soccer Federation. The class includes twenty-eight current players on the national team. The suit alleges that the women's team has been subjected to "institutionalized gender discrimination" by the U.S. Soccer Federation and seeks equal pay with the national men's team. The lawsuit was filed three months before the 2019 Women's World Cup in France is set to begin.

- A lawsuit was filed in March 2019 by a former Baylor University student-athlete, alleging defects with the university's Title IX investigation of her report of sexual assault by members of the university's football team. The investigation stems from a November 2017 incident in which the woman and a friend were allegedly assaulted by two members of the Baylor football team, while a third member filmed the incident. The lawsuit alleges that despite having notice of the assault five days after it occurred, the university did not inform the plaintiff of the punitive action it took for almost one full year. Baylor, on the other hand, stated that it suspended the players involved from football team activities within thirty-six hours of learning of the incident, and cited their investigation as a "complex case" requiring a significant amount of time to complete. The lawsuit allegedly caused the plaintiff mental distress and forced her to withdraw from Baylor.

<u>Other</u>

- In August 2018, Ohio State University suspended head football coach Urban Meyer for the Buckeyes' first three games based on an independent report finding that he failed to take appropriate action regarding domestic assault accusations made against one of his former assistant coaches, Zach Smith. The university also suspended its athletic director, Gene Smith, without pay for a period of two weeks. The action came after Zach Smith's ex-wife stated in an interview that she believed members of the Ohio State football program knew that her ex-husband was abusing her and did not do anything to stop it. The university cited the failure to act against this misconduct to be in conflict with the university's values and standards that are expected of its coaching staff.

- Southern Illinois University (SIU) amended its code of conduct policy to add language that prevents student-athletes, cheerleaders, and members of the spirit squad from engaging in activism while representing the university athletics department. The change came following a school year in which three cheerleaders at the university took a knee during the national anthem at athletic events. SIU attempted to hide the cheerleading squad once these activist moves began by moving them from the sideline to a concourse for the national anthem, and not having them enter the court or field until after the national anthem. The university explained this policy by stating that it does not want representatives of its athletics department to be involved in political issues, regardless of what side the members are on. Two of the three cheerleaders who protested in 2018 are no longer members of the squad.

- A bill was introduced in the South Dakota Legislature that would change the state high school activities association rule on participation of transgender students. The law currently allows transgender students to participate in athletic teams at their high school

that reflect the students' gender identities, rather than their biological sex that is listed on their birth certificate. Proponents of the new legislation hope to follow in the policy employed in the state of Texas that requires students to participate on teams that match their biological sex, arguing that doing otherwise would hinder fair competition in interscholastic athletics. The American Civil Liberties Union of South Dakota, on the other hand, opposes this bill, believing that it instead is a method of "codifying discrimination" against transgender students and preventing them from enjoying the benefits of interscholastic athletics.

- Rowan University was accused of treating its female athletes different than its male athletes with regard to its long-standing verbal policy that requires all athletes to wear shirts during practice. A female student at the university criticized the policy in an article on the college blog the *Odyssey* online, stating that professional female runners wear cropped tops when they race, and that the university's policy prohibiting its female athletes from wearing them objectifies the females in the athletics department. The university responded, ensuring that it will continue to follow NCAA uniform guidelines and will not restrict female athletes in wearing sports bras without shirts during practices.

Intellectual Property & Broadcasting

Trademark

- The Naismith Memorial Basketball Hall of Fame filed a trademark infringement suit arguing that a local bar, Naismith's Pub and Pretzel Inc., is improperly using the name of the basketball's founding father Dr. James Naismith. According to the complaint, the bar has pictures of Naismith and other basketball greats hanging on its walls and shows live basketball games, creating a sense of a false endorsement by the Hall of Fame. *Naismith Memorial Basketball Hall of Fame, Inc. v. Naismith's Pub & Pretzel, Inc.*
  Case Number 3:19-cv-30039

- The Trademark Trial and Appeal Board ("TTAB") of the USPTO issued an order denying Washington Soap Company's registration of a trademark for "12th Man Hands" for use with its handmade loofah soap bars. Judge Larkin, an Administrative Trademark Judge, sustained the opposition to the registration by Texas A&M, on the grounds that the university has already registered and trademarked the use of the "12th Man" and that Washington Soap Company's use of the phrase would cause likelihood of confusion.

- Horse racing announcer Dave Johnson sued Amazon.com for trademark infringement because the website is selling t-shirts that use the phrase "and down the stretch they come." Johnson claims he has been using the phrase on television for decades and that he registered the trademark for the phrase in 2012.

- The NHL filed suit against Roger S. Dewey and his companies (The Hockey Cup LLC, ABC Stein LLC, and A&R Collectibles, Inc.) for selling beer steins in the shape of the Stanley Cup, the NHL's championship trophy. Dewey sells the cup both on Amazon.com and on his own company's page for $30. The product description for "The Cup" does not

directly reference the NHL or any of its member teams, but reads: "Now this is a hockey fan's way to drink beer . . . We've all dreamed about drinking from 'The Cup' . . . So lace 'em up, light the lamp and hoist 'The Cup.'" Additionally, "The Cup" comes in packaging that allegedly resembles the black trunk that the Stanley Cup famously travels in during the NHL championship final. The NHL claims that Dewey and his companies are "free-rid[ing] on the fame, goodwill, and commercial value" of the league and its member teams. While the NHL routinely licenses its trademarks to third parties, the NHL asserts that Dewey's beer glasses are poorly made (e.g. difficult to clean) and reflect negatively on the league.

Copyright

- Peloton, a high-end cycling service, announced that it will pull more than 1,000 songs by Ariana Grande, Rihanna and others from its service after being hit with a copyright lawsuit that claims it failed to pay for their use. *Downtown Music Publishing LLC et al v. Peloton Interactive, Inc.* Case Number 1:19-cv-02426

- The U.S. Supreme Court denied certiorari in a case filed by photographer Jacobus Rentmeester, who alleged Nike infringed his copyrighted image of Michael Jordan from a 1984 issue of LIFE magazine to create its "Jumpman" logo. While the High Court did not discuss its reasoning for denying certioriari, the Ninth Circuit rejected Rentmeester's case, reasoning that Jordan's pose itself was not protected by copyright law and Nike didn't copy enough of Rentmeester's "selection and arrangement" of elements — which are protected — to be liable for infringement. *Jacobus Rentmeester, Petitioner v. Nike, Inc.;* Case Number 18-728

- Peloton brought an antitrust claim against the National Music Publishers' Association (NMPA), accusing the NMPA of fixing prices for the songs of various artists. Previously, Peloton had been sued by various publishers who claimed that Peloton had failed to obtain licenses for more than 1,000 songs by artists including Rihanna, and Ariana Grande.

Patents

- The Patent Trial and Appeal Board upheld two Club Car patents covering a system for tracking golf carts, despite Yamaha's petitions in inter partes review that the claims in the patent were anticipated or obvious. *Yamaha Golf-Car Company v. Club Car, LLC,* Case Number IPR2017-02142

Right of Privacy

- A ticket sales account executives for the Rams filed suit against New England Patriots safety Patrick Chung and a former friend, saying the two men published a private "trash talk" text exchange during Super Bowl LIII that cost him his job and reputation. The

Plaintiff alleges he texted his long-time friend, Matthew J. Weymouth, taking a jab at Chung who broke his arm in the Super Bowl. Weymouth, who runs Chung's social media accounts, posted screenshots of the exchange on Chung's Instagram and Facebook, framed as if the Plaintiff had been texting Chung directly. The Plaintiff asserts his right of privacy was violated, as he was then harassed by Patriots fans, causing him to have to shut down his social media accounts and causing him to be fired by the Rams. *Matthew Hogan v. Matthew J. Weymouth et al*.; Case Number 2:19-cv-02306

Right of Publicity

- A group of retired NFL players settled a lawsuit that accused EA Inc. of using their likenesses on the "historic teams" feature in Madden games sold from 2001 to 2009 without authorization. While EA paid the NFLPA to use the names and likenesses of current players, it did not seek or receive similar authorization for former players. The game did not include the former players' names, but used identifying factors such as physical attributes, position, and skills. *See Davis v. Electronic Arts, Inc*.; Case Number 3:10-cv-03328

- The Indiana Supreme Court struck down a right of publicity claim brought by college athletes, holding that the use of college athletes' names, likenesses, and statistics in daily fantasy sports games is "newsworthy." The court rejected the athletes' arguments that the "newsworthy" exception does not apply to fantasy games.

- Former Mississippi State University super fan, Steven Ray, filed a lawsuit against Barstool Sports and WorldStarHipHop for negligence, invasion of privacy and wantonness. The complaint alleges Barstool took a photo of Ray and added the words "how can someone look like a child and a child molester at the same time" without Ray's consent and "in a willful, wanton, and malicious manner." According to the suit, Ray gained "a modest online presence" by posting YouTube videos with opinions and rants about the Mississippi State football team and their opponents. Ray also gained notoriety by calling into "The Paul Finebaum Show" and eventually appeared on the Comedy Central program Tosh.0. Currently, however, Ray no longer claims to be a Mississippi State fan due to mistreatment by other members of the Mississippi State fanbase. The suit claims Barstool only published the photo with gain in mind and Ray's reputation was damaged due to its publication. Ray claims he is "entitled to recover against the defendants for injuries, damages and losses proximately caused by their publication as set forth in the complaint" as well as punitive damages that are not fully defined.

False Advertising and Unfair Trade Practices

- Skechers filed a federal lawsuit against Adidas for damages caused by Adidas's alleged involvement in the illegal recruitment and bribery of high school and college basketball players and their families. Skechers alleges that the illicit payments made by Adidas and its employees essentially prevented Skechers from competing with the company for

college and NBA-level athlete endorsements and unfairly enhanced consumer perceptions of Adidas based on their image as opposed to brand quality.

Skechers claims that Adidas created false advertising and unfair competition by channeling hundreds of thousands of dollars to these players and their families to wear and endorse their products. Sketchers is seeking recovery of Adidas' "ill-gotten" profits, damages for lost sales and diminished brand value, increased advertising and marketing costs, and an injunction to prevent Adidas from making similar payments in the future.

Broadcasting

- Fox Sports, has secured television and streaming rights to the finals of multiple FIFA 19 esports events, including the FIFA eNations Cup and the FIFA eWorld Cup. The value of the deal was not disclosed.

- Amazon secured a three-year exclusive deal to broadcast 20 British Premier League matches this upcoming season, outbidding traditional television platforms. Access to view the matches will be included in Amazon Prime subscribers' packages in the UK. The value of the deal was not disclosed.

Personal Injury, Health, and Safety

Concussion-Related Litigation

- The Ninth Circuit U.S. Court of Appeals ruled in November 2018 that USA Water Polo was negligent in its failure to implement proper concussion-related protocol for its youth program. A minor was injured during a tournament organized and managed by USA Water Polo when she was hit in the face and suffered a concussion. Her coach returned her to the game, despite failing to be evaluated by a medical professional and her "dazed" appearance, and she was subsequently hit in the head several times throughout the game. She suffered from headaches, dizziness, sensitivity to light, and nausea, among other symptoms for months, which resulted in her inability to return to school. She filed suit based on the lack of USA Water Polo's concussion-management policy or return-to-play protocol for its youth water polo teams. The court found the lack of such instruction to be a violation of the duty of care USA Water Polo owed to its participants to create a healthy and safe environment for its competitions. The court also found that USA Water Polo's awareness of the severity of risk that repeat concussions pose to athletes who are not removed from play and its failure to implement proper policies to combat such risk amounted to gross negligence under the applicable California law.

- Three days after a trial began between the NCAA and Debra Hardin-Ploetz, the widow of former NCAA student-athlete and NFL player Greg Ploetz, the parties reached a settlement agreement. Hardin-Ploetz filed suit against the NCAA in January 2017, alleging that it was guilty of negligence and the wrongful death of her husband. Ploetz died at the age of 66 from brain injuries suffered as a member of the Texas Longhorns.

The lawsuit alleged that the NCAA's failure to protect Ploetz from the long-term effects of concussions that he suffered while playing NCAA football contributed to his death.

- A former basketball player at the First Baptist School of Charleston succeeded in a lawsuit he filed against the school following two sports-related concussions he suffered. The student-athlete suffered his first concussion and was treated at a nearby hospital where he was diagnosed with a sports-related concussion, and he was subsequently put through the South Carolina Independent School Association's return to play protocol. Five weeks later, he suffered a second concussion that resulted in a "permanent traumatic brain injury" following what was determined to be a rushed return to play process. The student received a $5.87 million award following a jury verdict in his favor, resolving the case more than five years after his injury.

- The family members of four deceased former college football players filed suit against the NCAA with claims of negligence, breach of express contract, and breach of implied contract, resulting from the NCAA's alleged failure to protect the football players from life-altering head injuries. The autopsies of three of the four former athletes' showed that the athletes had been suffering from chronic traumatic encephalopathy (CTE), with the results of the fourth's examination still pending, to support each of the suits' claims that the individual athlete suffered premature death as a result of this brain disease that arose from concussions they suffered while playing college football. The claims span numerous decades, representing college careers beginning in the 1960s and ending in the late 2000s.

- A former football player for Slippery Rock University filed suit against the NCAA, alleging that he currently suffers from Parkinson's disease as a result of playing football in college. The lawsuit critiques the failure of the NCAA to educate him about risks and consequences that were known to the NCAA, of head injuries that result from participating in football. The attorney representing the former athlete represents around 500 former athletes who have settled similar concussion-based suits with the NFL, but he indicates that he is not looking for a similar settlement with the NCAA, but instead is "looking for justice against the NCAA."

- The estate of a former Notre Dame football player who died in 2015 and was diagnosed with chronic traumatic encephalopathy (CTE) three years prior to his death received a positive ruling from the Ohio Supreme Court in October 2018 that could have potentially far-reaching effects for similarly-injured plaintiffs in the future. The Ohio Supreme Court became the first appeals court to consider whether CTE is a latent disease, and therefore could extend the time limit for a former player to sue a sports league. Although the court didn't expressly say that CTE qualifies as a latent disease, it did not rule that the disease does not qualify. This ruling could help athletes in the future who suffer from the disease and do not realize that they feel the disease's impact from their previous participation in professional sports leagues.

- Ali Roberts, a former cheerleader at Southeastern University, filed a lawsuit against the university, its cheerleading coach, and one of its assistant athletic trainers, stemming from the concussions she suffered as a member of the university's cheerleading team. She alleges that the university did not properly train the coach and trainer on concussion

protocol as well as disregarded the safety of its student-athletes. After Roberts fell on her head during a practice, she alleges she was sent home without seeing a doctor or trainer, and after eventually being cleared to return to the team by the trainer, she fell again and suffered another concussion. The university's concussion policy requires a referral to a doctor after a student suffers a third concussion in a lifetime, and Roberts' injury was her fourth concussion in her lifetime.

- A District of Connecticut judge dismissed a complaint against World Wrestling Entertainment Inc. (WWE) that alleged the organization knew and misrepresented the dangers of head injuries that occurred in its competitions. The judge determined that the attorney representing now-retired wrestlers who competed in WWE wrestling could not produce actual evidence that the organization had knowledge that concussions suffered during WWE matches caused CTE. This ruling may have broader implications, as the judge is overseeing seventy consolidated concussion cases against WWE, and she stated that she was "unwilling to find that the diagnosis of one wrestler with CTE is sufficient to imbue WWE with actual awareness of a probable link between wrestling and CTE." She went further to describe that information about previous wrestlers diagnosed with CTE is widely available in public news sources, giving the wrestlers as much information about the risks of concussions as WWE has. The athletes who lost in this case have indicated their intent to appeal the decision to the Second Circuit.

- A proposed class-action lawsuit was filed in the U.S. District Court in Indiana against the NCAA accusing the organization of failure to give proper medical care and training against concussions to its ex-Washington State University football players who are now deceased on legally incapacitated. The lawsuit stems from the 2016 suicide of a former Washington State football player who had experienced a decline in his cognitive abilities and behavioral functions. The suit alleges that the NCAA, being in a superior position to student-athletes, had a duty to mitigate the known risks of head injuries to its student-athletes and that it failed to exercise that duty.

- Iowa became the seventh state to provide concussion insurance to all high school athletes within the state. The Iowa High School Athletic Association began its new HeadStrong Insurance Program in the 2018-19 academic year, and it covers all student-athletes that participate in athletic activity sponsored by the association. The program includes no-deductible and co-pay coverage in concussion assessments and follow ups. States with previously-enacted similar policies include Arizona, Minnesota, Montana, Wisconsin, and Wyoming.

<u>Maryland Football Player's Heatstroke-Related Death</u>

- DJ Durkin, the head coach of the University of Maryland football team, was suspended from his position in August 2018 following the June 2018 death of a member of the football team, Jordan McNair, resulting from heat stroke he suffered after collapsing at a team workout. Following McNair's death, an investigation into the football program lead to the conclusion that the culture was flawed, but not toxic, and built on fear and intimidation without adequate oversight of the program. The investigation also found that the athletic trainers did not follow proper protocol when addressing McNair's injuries,

and failed to properly recognize and treat his symptoms of heat stroke. McNair died two weeks later. The preliminary findings of the investigation, which showed that the university's medical personnel failed to properly immediately treat McNair led to the university taking legal and moral responsibility for McNair's death.

- McNair's parents filed a notice of claim in September 2018, giving them one year to file a formal lawsuit and alerts the state of their intent to sue. This filing specifically names as defendants Durkin, the university's head athletic trainer, Wes Robinson, and former strength and conditioning coach, Rick Court. The filing claims excess of $10 million for each of McNair's parents and alleges that the university officials and employees caused McNair's heatstroke in their failure to recognize and treat his symptoms on the day of the team workout. The filing contained primary claims of gross negligence, wrongful death, along with other claims as required by Maryland's Tort Claims Act. The state tort claims law, however, restricts the state's liability to no more than $400,000 to a single claimant for injuries that arise out of a single incident. As such, McNair's family and estate may receive only a small fraction of their claimed damages once their lawsuit against the university is adjudicated.

- Durkin, who had been placed on paid leave in August, was returned to his position in October 2018. His reinstatement was the result of the University System of Maryland's Board of Regents urging, following a meeting it conducted with Durkin and its conclusion that Durkin had been "unfairly blamed for the dysfunction in the athletic department." Several members of the football team walked out of the first meeting Durkin led upon his return to his position as head coach, in disgust over his return to the program. It was reported that the university president, Wallace Loh, was threatened to lose his job if he did not order the reinstatement of Durkin.

- Just one day after the announcement of his reinstatement as head coach of the University of Maryland football team, DJ Durkin was fired from his position. The decision to reinstate Durkin was met with criticism from members of the football team, from the university's Student Government Association who organized a protest march against the announcement, as well as from McNair's family. The university will buy out the remaining three years of Durkin's contract with the university, valued at $2.5 million per year.

- Two days following the initial announcement to reinstate Durkin, James Brady, the chairman of the University System of Maryland Board of Regents, resigned from his role.

- Two athletic trainers, Wes Robinson and Steve Nordwall, were suspended and put on administrative leave in August as a result of their involvement in McNair's death. In November 2018, their employment with the university was terminated. The investigation into the events that preceded McNair's death revealed that the trainers did not follow proper protocol and treatment for heatstroke, and that more than an hour had passed between McNair's initial symptoms of heatstroke showing and when 911 was actually called.

- A second investigation into the death of McNair was conducted in the fall of 2018 by the University System of Maryland, costing the organization more than $1.57 million. The investigation was conducted by eight commissioners, several of which were experts in the fields of collegiate athletics and medicine and two who are retired federal judges. These eight individuals interviewed 165 current and former players, parents, coaches, and university officials. This second investigation demonstrates the system's dedication to uncovering the truth about what happened leading to McNair's death in attempt to enhance the health and safety of its student-athletes immediately and in the long term.

Injuries to Players and Sports Participants

- The Commonwealth Court of Pennsylvania affirmed a lower court decision that dismissed a negligence lawsuit filed against California University of Pennsylvania and its athletic director on sovereign immunity grounds. The suit was filed by a student who was beaten by a group of six university football players. The student alleged that the university engaged in "high-risk football recruiting practices," failed to monitor the players' off-field conduct, and neglected to appropriately discipline the players. The trial court dismissed the suit after the university and athletic director alleged that sovereign immunity applied to the situation, and the appellate court affirmed this dismissal. The court rejected the student's argument that sovereign immunity does not apply to the university's actions of maintaining its athletic programs, stating that the football team is "necessarily an appendage of the University itself" and therefore actions by the university and its athletic director in relation to the team are protected by sovereign immunity. *Campbell v. California University of Pennsylvania and Dr. Karen Hjerpe,* 2018 WL 2451815 (Pa. Commw. Ct. June 1, 2018).

- A lawsuit against a skydiving company was allowed to proceed following a Massachusetts appeals court panel decision. Following a skydiving injury in 2012 that broke both of her legs, Tricia Cahalane sued the company alleging that the liability waiver she signed was invalid and that the company was grossly negligent. Cahalane signed the liability waiver forty-six times before her jump. During the jump, she had been told to extend her legs in a seated position for landing, but just before she landed, a pull from the parachute forced her legs downwards, leading to fractures in both legs upon impact. The instructor who accompanied Cahalane on her jump allegedly warned the owner of the company that it was too windy to operate on the day of the accident, and that the owner ignored his warning. The manager of the airport that the company flies out of also had concerns about the safety operations of the company.

- Dustin Fowler, a member of the New York Yankees baseball club, injured his knee while playing against the Chicago White Sox at Guaranteed Rate Field in Chicago, Illinois. While running through the outfield in attempt to catch a foul ball, Fowler's knee collided into a metal electrical box that was positioned behind and between an outfield wall without any padding or covering, and the injury resulted in the end of Fowler's season and required a surgical operation. As a result, Fowler sued the White Sox organization for negligence claims under Illinois state law, but the White Sox asserted that the claim was one of federal law, and as such was completely preempted under the Labor Management Relations Act (LMRA) because resolving it requires

interpretation of a contract that created a Joint Safety and Health Advisory Committee within the White Sox organization. The White Sox argued that the creation of this Committee "lessens the scope" of the White Sox's duty to protect against injuries such as Fowler's. The court disagreed with the White Sox, citing the nature of the Committee's recommendations as solely advisory with final authority left to the Club, the hidden nature of the electrical box, and the inconsistent role the Committee played in assessing the safety of the stadium, determining that the club did not delegate its control or responsibility to ensure safety within its stadium to the Committee. *Fowler v. Illinois Sports Facilities Authority*, No. 18 C 964, 2018 WL 3208509 (N.D. Ill. June 29, 2018).

- The Ninth Circuit United States Court of Appeals ruled that a lawsuit brought by former NFL players was not preempted by the Labor Management Relations Act (LMRA). Richard Dent and nine other retired NFL players filed a class action lawsuit in 2014 against the NFL alleging that the NFL distributed controlled substances and prescription drugs to players in violation of state and federal laws, and that the administration of such drugs left the players with permanent injuries and chronic medical conditions. The plaintiffs described being given large amounts of pain-masking medications, frequently without written prescriptions or any labeling on the drugs, and without warning of potential risks and side effects – an environment they claimed created by a "culture of drug misuse" courtesy of the NFL. The district court dismissed the complaint, finding the players' claims preempted by the LMRA and/or time barred. The appellate court reversed, however, finding that the claims raised by the players did not arise from the league's collective bargaining agreement, so they were not preempted by the LMRA.

- Two lawsuits have been filed against the University of Oregon, its former head football coach, and its former strength coach. Both suits stem from a January 2017 incident in which three members of the football team were hospitalized with rhabdomyolysis, a condition that results from death of muscle fibers that leak into the bloodstream, following workouts that were allegedly designed to be punishing to the participants. The suits allege that the coaches were negligent in imposing these workouts on the members of the football team, and that the university was negligent in failing to supervise and regulate the workouts. One suit even names the NCAA as a defendant for its failure to also regulate the workouts. The lawsuits are partially being offered in attempt to force the NCAA to ban these types of workouts and to continue its focus on protecting its athletes' health and safety. The lawsuits seek $11.5 million and $5 million in damages, respectively.

- A North Carolina district court allowed a former student of Chowan University to file a third amended complaint in his lawsuit against the university. The student was a member of the university's men's soccer team and experienced hyperthermia and heat stroke during a 2016 conditioning session. He alleged that the university and director of sports medicine breached their duties by permitting him to practice in extreme weather, permitting an unlicensed trainer to supervise team workouts, and failing to properly provide training and treatment to his symptoms. The court found that the student's third amended complaint was not futile, that he did not unduly delay seeking

to amend his complaint, and that the amendment would not unduly prejudice the defendants in the case. The court, therefore, allowed the student to file a third amended complaint in his medical malpractice action against the university and its director.

- Following the drowning death of a five-year-old boy, his parents filed a lawsuit against the Timberhill Athletic Club in Corvallis, Oregon, some of its staff members, as well as state and county officials. The family alleges that the club's pool was in violation of state and local rules, including operating a slide that hadn't received necessary permits and failing to have a certified lifeguard at the pool the day in question, and the local government liable for failure to enforce those rules. The club's surveillance videos show the death of the child, after his fight for his life of over four minutes. The family asks for over $55 million dollars in their lawsuit.

- Parents of high school football players in Hawaii are suing the Castle High School principal, athletic director, and head football coach because of a drill that their sons participated in during a football practice. The drill requires the players to run at full speed for ten yards and hit another member of the team. One of the students injured his shoulder in the drill and the lawsuit alleges that the football coach paid the medical bill for the student.

- The St. Louis Rams were ordered to pay former NFL running back Reggie Bush $12.45 million in June 2018 to compensate him for the injury he suffered in a 2015 game. Bush was injured when he was pushed out of bounds and slid on a piece of exposed concrete behind the team bench. This fall resulted in a tear of the ACL in his left knee and ultimately to the end of his career. Bush sat out the remainder of the 2015 season, then played one more season before he retired. The jury awarded Bush $4.95 million in compensatory damages and $7.5 million in punitive damages, finding the St. Louis Rams 100 percent liable for Bush's injuries.

- A University of Toledo football player was participating in post-practice activities directed by upperclassmen, one of which the athletes were instructed to dunk a football above the crossbar of the goal posts. After a few of his teammates unsuccessfully attempted to do so, plaintiff attempted the task by jumping off a teammate's back and dunking the football. He fell backwards, landed on his head and neck, and subsequently suffered brain damage, was no longer able to play football, and eventually lost his scholarship. Following a suit filed by the athlete alleging hazing and negligence on the part of the university, the court found the university's policy against hazing was being actively enforced at the time of his injury. The court also found that the lower court erred in finding primary assumption of the risk in plaintiff's actions, as it determined that jumping off the back of another player to dunk football over the goal posts is not inherent to the game of football to the point that it cannot be eliminated. The court also determined that the upperclassmen in charge of the Freshman Olympics had a similar common-law duty to the plaintiff that a coach would have in supervising practice. *Cameron v. University of Toledo*, 98 N.E.3d 305 (Ct. App. Ohio 2018)

- Two men's basketball players at Missouri State University suffered season-ending injuries to their feet following full-body cryotherapy. These athletes developed blisters on

their feet after only one minute inside the cryotherapy machine. The university's investigation into the injuries is part of the legal work being done by its general counsel office, and as such, is protected from the state's open records law. As such, the findings of the investigation will not be made public.

- The Seventh Circuit U.S. Court of Appeals affirmed a Wisconsin district court's grant of summary judgment for two horseback riding trail and stable operators following injuries of two horseback riders. The court determined that the claims for injuries fell within the equine-immunity statute in Wisconsin as both injuries resulted from risks that were inherent to the sport. The trail operators were found to have been reasonable in their assessment of the skill level of the riders, and they did not willfully or wantonly disregard the safety of the riders. The court found that an exception in the statute that applies when the defendant operator provides a horse to the rider could not apply to the cases because the riders each supplied their own horses to the lessons. Dilley v. Holiday Acres Properties, 905 F.3d 508 (7th Cir. 2018).

Stadiums & Venues

Spectator Injuries

- A jury ruled in favor of the Boston Red Sox in a $9.5 million lawsuit for negligence against the team and owner, John Henry. The lawsuit, brought by Stephanie Taubin was the result of injuries she sustained after being struck in the face by a foul ball hit by David Ortiz in 2014. She suffered facial fractures and neurological damage as a result of being hit by the foul ball. Taubin was sitting in a box that was normally protected by glass, but the glass was removed for renovations. Jurors decided that the Red Sox did not act negligently after Taubin testified that she had seen the signs around Fenway Park warning people of foul balls.

- A Miami Dolphins fan sued the team and South Florida Stadium, LLC for injuries he sustained when a marble slab fell off the bar at one of the limited-access bars in the Dolphins' Hard Rock Stadium, and nearly severed the fan's toe. The Plaintiff alleges while he was forced to wait for close to an hour for proper medical assistance to be administered, representatives from the Dolphins attempted to have him sign a statement releasing the team from liability, which the Plaintiff refused to sign.

- A Houston Astros fan filed a lawsuit against the club arising out of an injury she suffered while attending a game. When the Astros' mascot used a t-shirt cannon to launch t-shirts into the crowd, Jennifer Harughty was hit in the index finger, the hit fracturing the finger. Harughty had two operations on her finger following the incident. The lawsuit alleges that the Astros organization was negligent in failing to warn fans of the risks involved in using the t-shirt cannon, in failing to use reasonable care in the operation of the cannon, and in failing to adequately train its employees in the use of the cannon. The lawsuit seeks over $1 million.

- A jury found that Promats Athletics, a backstop netting installer, was not liable to a fan who suffered a serious injury when she was hit by a foul ball during a 2015 Pittsburgh Pirates game. The fan was struck by the ball in the head as she walked behind home plate to her seat. The jury apportioned 95% of the blame to the Pirates and the Sports and Exhibition Authority and 5% to the fan. The fan had argued during the trial that Promats had not sufficiently tightened the net when installing it, while Promats countered that no amount of tightening would have prevented the "give" in the net that allowed the fan to be hit by the ball.

- The Daytona International Speedway has appealed to the Florida Supreme Court a decision that allowed an injured spectator to pursue a gross negligence claim despite the fact that she signed a "release of liability waiver." The Fifth District Court of Appeals had held that Florida law permits racetracks to protect themselves from negligence claims—not but not gross negligence claims—via release of liability waivers. The Florida State law at issue is Section 549.09 of the Florida Statutes.

- A New York appellate court awarded a ten-year-old spectator who was injured at a hockey practice over $1.2 million for the damage she suffered. Rachel Smero was struck by a hockey puck that left the ice while she was walking along the side of the rink. At the time of the incident, the rink was divided in half to accommodate two practices operating concurrently, and as such, the goals were placed along the perimeter of the rink, perpendicular to their traditional end-line placement. A hockey player's shot at one of the goals sailed over the goal and struck Smero in the head, an incident that caused her to suffer permanent brain damage. A jury awarded Smero $1.6 million for the injury that resulted, but the award was reduced almost twenty-five percent, with the court determining that Smero assumed part of the risk of her injury by attending the hockey practice as a spectator. Smero v. City of Saratoga Springs, 2018 N.Y. Slip Op. 75633 (N.Y. App. Div. 2018).

- Following an injury at a San Diego State University (SDSU) football game's halftime celebration, Gordon Summer filed a lawsuit against the city of San Diego and the California State University system. Summer was escorting the SDSU homecoming king and queen around the field when he was hit in the head with a football. The hit resulted in a brain bleed, facial fractures, a subacute hematoma, and a subarachnoid hemorrhage, and Summer had to have brain surgery and titanium plates and screws placed in his head to combat the injuries he suffered as a result. His lawsuit alleges that the university's negligence in hiring its athletics personnel led to his injuries because they were improperly trained in recognizing and combating dangerous situations and were not properly supervised in their halftime activities. Summers states that his ability to work has been limited as a result of the injury, and he is suffering from "permanent cognitive injuries."

- Following the death of a college student in April 2017, his parents have filed suit against the NCAA. Ethan Roser was volunteering at a track and field event when he was struck by a hammer throw despite standing in a designated safety zone. The lawsuit alleges that the NCAA was negligent in failing to enact proper safety cages at the event, and in failing to require trained officials at the track and field events to warn volunteers like Roser of the safety risks involved.

Player Injury

- Jacob Mitich, one of the e-gamers who survived the shooting at the Jacksonville Madden 19 Tournament has filed suit against EA and the Jacksonville Landing mall and pizza parlor Chicago Pizza, where the tournament took place. Mitich alleges that the venue blocked fire exits, making it harder for players to escape when the shooter took fire.

- A jury awarded NFL running back Reggie Bush $12.45 million in damages from the Los Angeles Rams, finding the Rams one-hundred percent liable of premises liability and negligence for a knee injury Bush suffered during a game in 2015. The jury found the team had total control of the complex on game day and were responsible for the slippery concrete that caused the injury.*See Bush v. St. Louis Reg'l Convention & Sports Complex Auth*., 2018 U.S. Dist. LEXIS 72518

Accessibility Issues

- Washington Civil & Disabilities Advocate ("WACDA"), a nonprofit disability rights law firm, filed a discrimination lawsuit against the Seattle Mariners and Washington State Stadium Authority on behalf of four "long time" Mariners fans who depend on wheelchairs for mobility. The suit alleges that the conditions at SAFECO Stadium violate the ADA. Conrad Reynoldson, an attorney with the nonprofit firm, claims that fans using wheelchairs "feel like second-class fans" and they have "a completely different experience" at games as wheelchair seating in the stadium doesn't meet size standards, causing patrons in wheelchairs to block the aisles and to be bumped by passing fans. Additionally, many of the wheelchair accessible seats on both the upper level and field level have obstructed views and are further from the field than other seats. The 100 level of the stadium only has one wheelchair accessible seat at field level for which a ticket is priced at $500. One restaurant in SAFECO Stadium excludes disabled fans because it is only accessible by an elevator which requires a staff member's key to operate. Further limiting wheelchair users' experiences are food service counters that are too high, line areas that are too narrow, gaps in the floor causing hazards and other areas that are simply inaccessible.

- San Francisco 49ers fans reached a settlement in an Americans with Disability Act (ADA) suit against Live Nation, Ticketmaster, the National Football League, the city of Santa Clara, and Levi's Stadium. The terms of the settlement have not been disclosed. The suit alleged that San Francisco 49ers stadium fails to comply with ADA standards. The plaintiffs, Abdula and Pricilla Nevarez, alleged that they were not able to purchase

wheelchair accessible seating or parking passes close to Levi's Stadium and were thus unable to obtain tickets from Ticketmaster and Live Nation. The Nevarezes ultimately ended up asking their friends with season tickets to change them to wheelchair-accessible seating. However, this obstacle caused the plaintiffs to make extra trips to the stadium box office instead of participating in pre-game festivities. An ADA claim remains for the class and will be going to trial in the U.S. District Court for the Northern District of California. *Abdul Nevarez v. Forty Niners Football Co. LLC*, Case Number 5:16-cv-0701.

Relocation Issues

- The Los Angeles 'Rams reached a settlement with personal seat license ("PSL") holders in St. Louis over a breach of contract lawsuit. The Rams will have to pay up to $24 million to a class of fans who purchased PSLs before the team moved in 2016 and an additional $7.2 million to the lawyers who brought the lawsuit.

Miscellaneous

- A U.S. District Court Judge denied a motion filed by Green Bay Packers Russell Beckman for a temporary restraining order and preliminary injunction against the Chicago Bears, which would have allowed Beckman to wear Green Bay Packers attire on the sidelines during pregame warmups in Soldier Field. Judge Gottschall held that Beckman failed to convincingly demonstrate that Soldier Field is a public space to which the First Amendment could be applied to allow him to wear his Packers gear.

  Beckman, a Bears season-ticket holder since 2003, participated in the Bears' Pregame Warmup Field Credential Experience while wearing his Packers attire in 2014 and 2015. However, in December 2016, Beckman received an email warning him that he would not be allowed to wear opposing team gear while participating in the PWFCE at an upcoming Bears-Packers game. Despite this, Beckman wore his Packers gear to the game, and was subsequently denied entry onto the field.

  See Order at 20-21, Beckman v. Chicago Bear Football Club, Inc., No. 17-CV-04551 (N.D. Ill. Dec. 13, 2018).

Sports Betting & Daily Fantasy

Federal Agency Action

- On January 14, 2019, the Department of Justice reversed its decision regarding the Wire Act of 1961 to expand the ban of online gaming to include all forms of online gambling. The Coalition to Stop Internet Gambling, backed by billionaire Sheldon Adelson, owner of the Las Vegas Sands, the world's largest casino operator, lobbied for the Justice Department to revisit its 2011 decision that allowed for interstate gambling. Businesses

currently have ninety days to comply with the new ruling, which does not supersede the Supreme Court's ruling last year allowing sports gambling.

The Wire Act prohibits the transmission of wagers and related information across state lines. In 2011, the Justice Department interpreted this as only banning online sports gambling and allowed all other forms of online gambling, such as poker games and the sale of lottery tickets. However, the Justice Department now reverses that stance, stating that its 2011 judgment "conflicts with the plain language of the Wire Act." Despite the Justice Department's reversal on its 2011 judgment, there are already many state and federal laws, such as the 2006 Unlawful Internet Gambling Enforcement Act, that make most online gambling illegal. This ruling gives Justice Department prosecutors the ability to use the Wire Act in addition to those other laws to bring cases against online gambling operations. Many in the gambling industry view the new legal opinion with dismay and fear that the interpretation will impede growth of the online betting industry across states. However, Adelson supports the ruling, arguing that online gambling would hurt children, invite criminal activity, and provide little actual revenue for states.

Multiple states are attempting to overturn a US Department of Justice opinion that reinterpreted the Wire Act to include all forms of online gaming, not exclusively online sports gambling. While such interpretation might include state lotteries, the DOJ has since claimed that its opinion does not explicitly address state lotteries.

- The Federal Trade Commission has launched a task force to focus on conduct and mergers in the technology space. The move is expected to have big implications for sports tech companies, particularly daily fantasy sports, in the wake of the agency's blocking FanDuel and DraftKings proposed merger in 2017.

League Partnerships

- The NBA announced it entered a three-year deal worth $25 million with MGM Resorts International. MGM will serve as the official sports gambling partner for NBA and WNBA productions. The partnership is an effort by the NBA to profit from the practice while in return providing sportsbooks with official NBA and WNBA data to ensure accuracy and maintain league integrity.

International

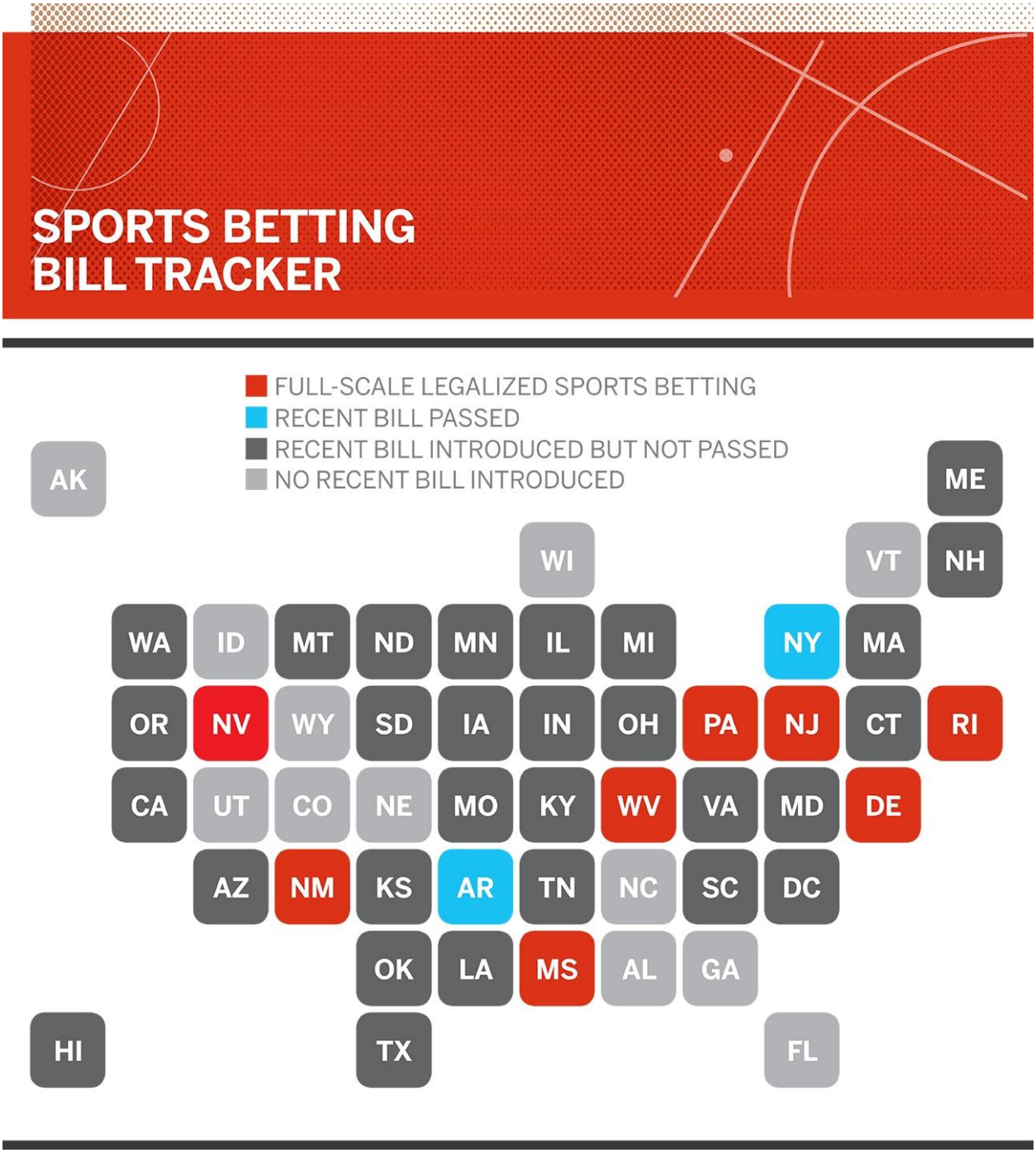
- Poland's Office of Competition and Consumer Protection launched an investigation into whether fees charged by sporting organizations to allow bookmakers to publish the results of matches violate the country's antitrust laws. Currently, the fees are fixed based on the number of matches in an association's season, and bookmakers pay the same fee even if they only publish the statistics of a limited number of events.

State Laws (see graph below)

- The North Carolina Senate passed a proposed bill that would allow the Eastern Band of Cherokee Indians to offer betting on professional and collegiate sports and horse racing at the tribe's Harrah's Cherokee Casino Resort and Harrah's Cherokee Valley River Casino & Hotel, both located in far western North Carolina. The Eastern Band of Cherokee Indians is currently the only tribe in North Carolina that is fully recognized by the federal government, allowing it to offer gaming under the Indian Gaming Regulatory Act. *See* General Assembly of North Carolina Senate Bill 154-Second Edition

Miscellaneous

- Craig Carton, Former WFAN sports talk radio host, was sentenced to 3.5 years in prison for defrauding investors. Carton had told investors their money was going to be used as part of a ticket resale venture, but a jury found that he used most of the investments to pay off his gambling debts.



Source: http://www.espn.com/chalk/story/_/id/19740480/gambling-sports-betting-bill-tracker-all-50-states; last updated Feb. 12,. 2019