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Warriors’ Monta Ellis Sued for Sexual Harassment

On December 21, 2011 former Golden State Warriors employee Erika Smith sued the team and guard Monta Ellis in the Alameda County Superior Court in Oakland for sexual harassment, retaliation, wrongful termination, and intentional infliction of emotional distress. Smith alleges that Ellis sent her dozens of sexually inappropriate text messages and that team executives attempted to cover up Ellis’ inappropriate behavior.

Smith served as the team’s director of community relations from September 2007 until her termination in August 2011. Beginning in November 2010 and continuing several months thereafter, Smith allegedly received sexually inappropriate text messages from Ellis containing phrases such as “I want to be with you” or “Hey Sexy.” Smith alleges to have received these messages several times in a single day, usually late at night or in the early morning hours from a phone maintained by a team equipment manager. Smith further alleges that on December 17, 2010, Ellis sent a message containing a picture of his genitalia. Smith claims that at no time did she consent to or request the text messages from Ellis, but that she had no choice but to acquiesce to the conduct of the team’s “franchise player” for fear of retaliation by Ellis and the team. Then, in January 2011, Smith claims that team executives learned of the messages and discussed covering up Ellis’ harassment, asking her to resign in exchange for compensation. After she refused, Smith claims the organization diminished her role with the team and eventually told her she was no longer needed, terminating her employment. Smith thus alleges that Ellis sexually harassed, stalked, and intimidated her and that the Warriors organization aided and condoned Ellis’ behavior, resulting in her wrongful termination. Smith seeks compensatory damages for earnings and other employment benefits as well as special damages in amounts to be awarded at trial.

“She feared Monta,” said Burton Boltuch, an attorney representing Smith. “She knew if she said anything, the Warriors would choose to protect Monta, which is what they’ve done.” Boltuch is of The Law Offices of Burton F. Boltuch in Oakland. “When we were made aware of a consensual relationship between Mr. Ellis and the Plaintiff, we did what an organization should do,” said Warriors president Rick Welts. “We told both to stop – promptly, directly, and fairly. The Warriors have never taken any action against the Plaintiff for an inappropriate reason, and we deny the allegations she is making.”

-- Gordon McGuire
Two Sports Executives Sue Ex-76ers Owner Over $2 Million Finder’s Fee

On December 27, 2011, Robert Whitsitt and Thomas Shine sued former Philadelphia 76ers owner Comcast-Spectacor in the United States District Court for the Eastern District of Pennsylvania in Philadelphia for breach of contract. Whitsitt and Shine, both sports executives, allege they introduced Comcast-Spectacor chairman Edward Snider to an investor that eventually became a member of a group that bought the 76ers and as such are due the $2 million they were promised if they found a purchaser of the team.

Whitsitt, the former president of the Seattle Seahawks and Portland Trailblazers, and Shine, an executive at Reebok International Ltd., allege they introduced Snider to Jason Levien at a lunch meeting in late 2010. Levien is one of numerous members of a group of owners and investors that bought the team in October 2011. Whitsitt and Shine allege that they were promised $2 million if they found a purchaser of the 76ers and met certain conditions. Comcast-Spectacor has rejected the plaintiffs’ demand for the finder’s fee on the basis that Levien is not a controlling owner and that it has already paid the fee to someone else. The suit alleges that Comcast-Spectacor’s claim to have paid someone else is “frivolous” and that Levien is a controlling owner. As such, the plaintiffs allege that Comcast-Spectacor have breached the contract. The plaintiffs seek $2 million plus interest in compensatory damages and attorneys’ fees.

The allegations are “without merit,” said Comcast-Spectacor spokesperson Ike Richman. The plaintiffs are represented by Stephanie Schmelz of Troutman Sanders LLP. A hearing is set before U.S. District Judge Petrese B. Tucker.

-- Colin Burgess
NFL Players Sue League for Concussion Injuries

On December 22, 2011, a group of over twenty former National Football League players sued the league in the U.S. District Court for the Southern District of Florida in Miami for misconduct regarding its concussion policies. The players, including former Miami Dolphins Patrick Surtain and Oronde Gadsden, allege that the NFL misrepresented and concealed evidence linking concussions to neurological problems, allowing players to return to games after sustaining concussions which resulted in long-term brain damage. The suit follows a similar suit filed in Atlanta by Jamal Lewis and three other former players.

In 1994, the NFL created the Mild Traumatic Brain Injury Committee, a committee of doctors and researchers, to respond to numerous medical studies which had been released on concussions. In the complaint, however, the former players allege that the NFL appointed unqualified physicians, and as a result the committee produced data that often contradicted accepted neurological science. Specifically, the players note that there were never any neurologists or neuropathologists on the committee. Further, the players argue that in 2010 the NFL replaced the leaders of the committee, and the newly appointed researchers described the data which had been used by the NFL to address the long term effects of concussions in the past as “infected” and scientifically lacking. Thus, the players allege that the NFL’s misconduct allowed players, who were never warned about the dangers, to quickly return to play after suffering concussions. The former players seek a jury trial and unspecified damages.

"Any allegation that the NFL intentionally sought to mislead players has no merit," the league said in a statement to The Associated Press. "It stands in contrast to the league's actions to better protect players and advance the science and medical understanding of the management and treatment of concussions." The players are represented by Ricardo M. Martínez-Cid of Podhurst Orseck, P.A. in Miami. The case has been assigned to District Judge Jose E. Martinez.

-- Benjamin Clark
Kyle Orton Sues Law Firm for Providing Bad Financial Advice

Kyle Orton, along with approximately twenty other National Football League players, sued Chicago-based law firm Chuhak & Tecson in the Cook County Circuit Court in Chicago for providing poor financial advice.

Orton and Atlanta-based lawyer Edward Rappaport are the only named plaintiffs in the fourteen-page lawsuit, which claims the law firm was negligent in providing bad financial advice concerning investments in energy concerns. The suit claims that Chuhak & Tecson assured Orton and other NFL players in 2005 that they would qualify for tax breaks if they set up partnerships to invest in producers and sellers of gas generated at landfills.

The plaintiffs claim they did not learn that they did not qualify for the promised tax breaks until 2010. The suit does not provide an exact damages figure, but the plaintiffs’ attorney believes when combined, it will be more than $10 million.

“I think this says a lot about the vulnerabilities of NFL players—they rely on the expertise of others,” plaintiffs’ attorney Daniel Konicek said. “They relied on people who were supposed to have their best interests in mind.” Konicek is of Konicek & Dillon, P.C. in Geneva, Illinois.

-- Eric Ferrante
National Collegiate Athletic Association

West Virginia’s Motion to Dismiss Denied, Big East Requests Injunction

On December 27, 2011, Rhode Island Superior Court Judge Michael Silverstein denied West Virginia University’s motion to dismiss a lawsuit filed against the school by the Big East Conference. Judge Silverstein held that jurisdiction and service of process were proper and declined to dismiss based on the doctrine of comity or forum non conveniens. See Big East Conference v. West Virginia University, ___ A. 2d ___ 2011 WL 6933720 (R.I. Super. Ct. 2011). The decision came two weeks after the Big East filed a motion for an injunction to require WVU’s participation in all Big East athletic events scheduled to occur while the case is pending.

In October 2011, WVU received and accepted an invitation to join the Big 12 Conference. WVU subsequently announced its decision to leave the Big East and join the Big 12 beginning in 2012. However, the Big East’s bylaws require a twenty-seven month waiting period before a member school may leave the conference. As such, WVU filed a lawsuit in West Virginia suing the Big East for breach of contract, frustration of purpose, and breach of its fiduciary duty to member schools. The Big East responded by filing suit against WVU in Rhode Island for breach of contract. WVU then filed a motion to dismiss the Big East’s suit for improper jurisdiction, insufficient service of process, comity, and forum non conveniens. The Big East’s motion for an injunction seeks to compel WVU’s athletic teams to compete within the conference until the case is decided. The Big East claims it would suffer irreparable harm absent an injunction and that an injunction would aid both parties by eliminating confusion related to the scheduling of athletic events.

In a twenty seven-page opinion, Judge Silverstein disagreed with WVU that the court lacked personal jurisdiction or sufficient service under the Rhode Island Long Arm Statute because WVU acts as a corporation and has sufficient contacts with the state through its membership in the Big East, headquartered in Rhode Island. He also concluded that WVU could not appeal to the doctrine of comity, writing that “[n]othing requires this state to honor principles of comity when doing so would violate Rhode Island public policy . . . [i]f the Court dismissed this matter by applying West Virginia's sovereign immunity law on the basis of comity, it would likely deprive a Rhode Island citizen, the Big East conference, of its ability to fully pursue a claim.” Further, Judge Silverstein disagreed with WVU that the West Virginia suit would provide an adequate remedy, thereby rejecting the argument that the Rhode Island court was an inconvenient forum. Thus, he denied WVU’s motion to dismiss.

“The immediate departure of WVU would have a directly adverse effect on the outlook of [Big East] fans and alumni and in turn would reduce the financial support those fans provide the conference and its member schools through donations, ticket sales and attendance, and the purchase of merchandise,” said Big East Commissioner John Marinatto regarding the Big East’s request for an injunction. The Big East is represented by Joseph V. Cavanagh, Jr., Stephen J. Reid, and Joseph V. Cavanagh, III of Blish & Cavanagh LLP in Providence. WVU is represented by Thomas F. Holt, Jr. of K&L Gates LLP in Boston in the Rhode Island suit.

-- Ian Gunn
Aggie Donors Sue Texas A&M for Breach of Contract

On November 21, 2011 Tom G. and Delma C. Tullos sued The 12th Man Foundation ("12th Man") for breach of contract in the 334th State Civil District Court for Harris County in Houston. The plaintiffs allege that they relied on representations made by 12th Man that they would receive choice privileges at Texas A&M University’s Kyle Field and entered a contract, only to have their parking spot moved far from the football stadium in recent years.

12th Man is an athletic fundraising organization for Texas A&M. In December 1994, the plaintiffs entered into a contract with 12th Man which stipulated that in exchange for donating $20,000 for scholarships, they were to receive endowed benefits for thirty years. Among the benefits included in the agreement was the right to purchase season tickets for home and away football games in the endowed seating area, and a valuable parking space located near the football stadium in the endowed parking area. Originally, the plaintiffs made their donation and received excellent parking spaces south of Kyle Field as promised.

However, due to university construction, the plaintiffs’ parking space has been moved away from its original location and the stadium. The plaintiffs have since learned of the Aggie Access Point Program, a point system that gives prime parking spots to endowed donors who place new donations to 12th Man. Thus, the plaintiffs argue that 12th Man is trying to require donors to contribute additional money in order to maintain the benefits which the foundation had already promised. The plaintiffs seek unspecified compensatory damages and attorney’s fees.

The Tulloses are represented by Randall O. Sorrels of Abraham, Watkins, Nichols, Sorrels, Agosto & Friend in Houston. 12th Man is represented by Otway B. Denny, Jr. of Fulbright & Jaworski L.L.P. in Houston.

-- Omar Gutierrez
Knock Out Investments Files Breach of Contract Suit Against Alistair Overeem

On December 29, 2011, Knock Out Investments ("KOI"), also known as Golden Glory, sued Dutch mixed martial artist Alistair Overeem and his representative Collin Lam for breach of contract in the Eighth Judicial District Court for Clark County in Las Vegas. KOI alleges that Overeem did not pay the thirty percent commission to KOI after winning a fight against Fabricio Werdum as agreed upon in their management contract.

Prior to the lawsuit, Overeem had maintained an eleven-year relationship with KOI. During this period, the two parties had established an arrangement whereby the promoter would pay KOI and then KOI would deduct a commission and subsequently pay Overeem. In June 2011, Zuffa LLC promoted Overeem’s fight against Werdum. It was Zuffa’s standard practice to pay the fighter directly and accordingly, Zuffa directly paid Overeem $170,000 following his win. KOI alleges, however, that Overeem did not pay the thirty percent commission required under their management contract. In September, KOI negotiated with Zuffa for Overeem to fight with the UFC, characterizing the fight as one of the largest in the history of the sport. Nonetheless, Overeem filed suit against KOI in November in Los Angeles seeking $151,000 in unpaid earnings and a court order to break the parties five-year contract extension, arguing that KOI had taken advantage of him and breached his trust. The current suit was then filed one day before Overeem was scheduled to fight Brock Lesnar. The Nevada state court issued an order calling for over ninety percent of Overeem’s purse to be held in escrow, but Overeem was still paid in full. KOI sought a writ of attachment on December 30, 2011.

“The suit was filed for a very simple reason…” said Roderick J. Lindblom, an attorney representing KOI. “[Overeem] has walked away from his contract.” Lindblom is of the Law Office of Roderick J. Lindblom A.P.C. in Los Angeles. Lindblom added that the suit “was merely the first step in a long-term litigation strategy that KOI and Golden Glory will prosecute in Nevada.”

-- Ryan Leske
Fantasy Sports

Missouri Attorney General Sues Fantasy Sports Company Over Unpaid Prizes

On December 8, 2011, Missouri Attorney General Chris Koster sued Dustin Ashby and his company, Gridiron Fantasy Sports (“Gridiron”), for consumer fraud in St. Louis County Court in Clayton, Missouri. Koster alleges that Gridiron defrauded Missouri customers by failing to pay out cash and prizes to winning fantasy league owners.

Ashby runs the nationwide World Championship of Fantasy Football and the World Championship of Fantasy Baseball, out of offices in Chesterfield, Missouri. Attorney General Koster alleges that Gridiron promised to pay cash prizes to the 331 participants in the World Championship of Fantasy Football prior to the 2010 football season. Participants would pay entrance fees to have a chance at winning the pre-set cash prizes and the prizes would be paid according to the performance of the participants’ individual teams within one of up to 100 leagues, with cash prizes totaling a minimum of $389,500. The individual who amassed the most fantasy points in each league during the 2010 season was guaranteed a cash prize of $5,000, to be paid by February 15, 2011. Koster discovered, however, that Gridiron failed to pay out at least $151,261 of the prize money. The suit alleges that defendants used fantasy baseball entrance fees to pay fantasy football winners. Thus, the defendants were unable to guarantee prize-winning amounts, because the prizes were dependent on the number of participants for the other fantasy championship. Further, Koster alleges that defendants used entrance fee money for non-contest purposes, including loan repayments. Koster seeks both preliminary and permanent injunctions to prevent any further violations, and to require defendants to provide full restitution to victims, pay all investigative and court costs, and pay the state a civil penalty.

Neither Ashby nor the company has responded to requests seeking comment on the case. The case has been assigned to Judge Sandra Farragut-Hemphill of the 21st Judicial Circuit of Missouri.

-- Tarryn Walsh
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