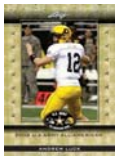


THE SPORTS LAWYER

In This Issue



Trading Card Company Seeks Declaratory Judgment on Using Luck's Image



Olympians File Lawsuit Against Facebook Application



Nick Diaz Files Suit Over Suspension



ASU Sued for Wrongful Termination

Also

NFL Players Association Sues NFL Coaches Association for \$650,000

Former Memphis Basketball Player Files Suit Against Spanish Basketball Federation

Additional Former NFL Players Join Concussion Lawsuits

Legally Blind Triathlete Files Suit Over "Blackout" Glasses

MAY 2012

Faculty Editors

Gary Roberts - *Indiana University Robert H. McKinney School of Law*
Gabe Feldman - *Tulane University Law School*

Student Editors

Kemper C. Powell - *Senior Managing Editor*
Michelle M. Chatelain - *Senior Articles Editor*
Ian Gunn - *Junior Managing Editor*
Rvan Leske - *Senior Articles Editor*

Staff

Colin Burgess
Benjamin Clark
Eric Ferrante
Evan Gordon
Ian Gunn
Omar Gutierrez
Ryan Leske
Gordon McGuire
Tarryn Walsh



The Sports Lawyer is a joint publication between the Sports Lawyers Association and the Tulane Sports Law Press

Table of Contents

National Football League - 2, Olympics - 3, National Collegiate Athletic Association - 4, Basketball - 6, Triathlon - 6, MMA - 8, Youth Sports - 9

National Football League

NFLPA Files Suit Against NFL Coaches Association



On April 17, 2012, the National Football League Players Association (NFLPA) sued the National Football League Coaches Association (NFLCA) and NFLCA Executive Director David Cornwell in the Superior Court for the District of Columbia in Washington, D.C. for failure to acknowledge and pay a debt. The NFLPA alleges that the NFLCA owes over \$650,000 in advanced funds and licensing fees and also alleges that Cornwell was not elected to the position of Executive Director pursuant to the NFLCA Constitution.

For over a decade, the NFLCA has operated with the support of the NFLPA, sharing office space and staff and receiving administrative and financial support from the NFLPA. At its peak the NFLCA was not financially self-sustaining and relied on financial support from the NFLPA to operate, requiring advances of \$650,324.88 and licensing royalties paid to the NFLCA by NFL Players, the NFLPA's licensing subsidiary. In late 2011, David Cornwell became Executive Director. The NFLCA Constitution calls for the Executive Director to be elected at the annual meeting of the Board of Representatives; however, the NFLPA maintains there is no evidence that any such meeting or election took place, thereby making Cornwell's appointment improper. Upon notification of Cornwell's appointment, the NFLPA informed him they expected full repayment of the \$650,324.88 that had been advanced. In addition to compensatory damages, the NFLPA seeks injunctive relief and a declaratory judgment regarding Cornwell's status as Executive Director.

"The lawsuit and the alleged debt is a smoke screen to prevent the NFLCA from breaking away from the NFLPA," said Cornwell. "[T]he NFLCA disputes that they owe us money." NFLPA spokesman George Atallah wrote on Twitter. "Unfortunately, there's only one way to resolve such a dispute." The NFLPA is represented by Joseph A. Yablonski of The Law Offices of Joseph A. Yablonski in Washington, D.C.

– Tarryn Walsh

Additional Concussion Lawsuits Cite "Bounty" System in Complaint Against NFL

On April 16, 2012, former NFL players Myron Guyton, Lomas Brown, Jessie Small, and Willie Whitehead sued the NFL for fraudulent and negligent misrepresentations and negligence in Georgia state court in Atlanta. The lawsuit, which alleges that the NFL failed to properly protect its players from concussions, is the first to cite the New Orleans Saints' bounty system as evidence.

Since August 2011, over sixty class action lawsuits for head trauma involving over one thousand players have named the NFL as defendant. Recent NFL investigations of the Saints' bounty system found that

former Saints defensive coordinator Gregg Williams offered cash payouts for violent hits and encouraged players to participate in bounty pools as large as \$50,000. The lawsuit specifically points to Williams's comments before the Saints' January 2012 playoff game against the San Francisco 49ers in which he encouraged players to injure their opponents, stating, "kill the head and the body will die." In the suit, the players claim the bounty system evidences a culture that has left former players with debilitating conditions. Specifically, the former players suffer from memory loss, headaches, depression, and other symptoms characteristic of those with traumatic brain injuries. The former players seek compensatory and punitive damages and the establishment of a medical monitoring regime.

"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," said NFL spokesman Brian McCarthy in response to the allegations. The former players are represented by Von A. Dubose, Naveen Ramachandrapa, and Manoj S. Varghese of Bondurant, Mixson, & Elmore, LLP in Atlanta and E. Marcus Davis of Davis, Zipperman, Kirschenbaum, & Lotito, LLP in Atlanta. .



– Gordon McGuire

Olympics

Olympians Sue Samsung Over Facebook Application



On April 25, 2012, Mark Spitz and seventeen other former U.S. Olympians filed suit against Samsung Corporation for misappropriation of name in the Superior Court of the State of California in Los Angeles. The Olympians allege that Samsung inappropriately used their names and images in a Facebook application called the Samsung Olympic Genome Project.

Since March 2012, the application has linked the Olympians to consumers. The Olympians contend that Samsung attempted to profit from their likenesses by placing the Samsung trademark and advertisements in the application. They claim that the application

violates California publicity right law by using their likenesses for commercial purposes without their consent. *See* Cal. Civ. Code § 3344. The Olympians are seeking licensing fees, a percentage of interest in sales, and punitive damages.

“We have honored the requests of the athletes who have filed suit to remove their names, as we offered to do months ago, and of course we will remove any athletes that do not wish to be listed,” stated United States Olympic Committee spokesman Patrick Sandusky. Richard J. Foster, attorney for the Olympians, responded, “The project clearly sought to induce sales of Samsung products and sought to build the athletic community around its brand.” The Olympians are represented by Foster of the Law Office of Richard J. Foster in Seal Beach, CA.

– Evan Gordon

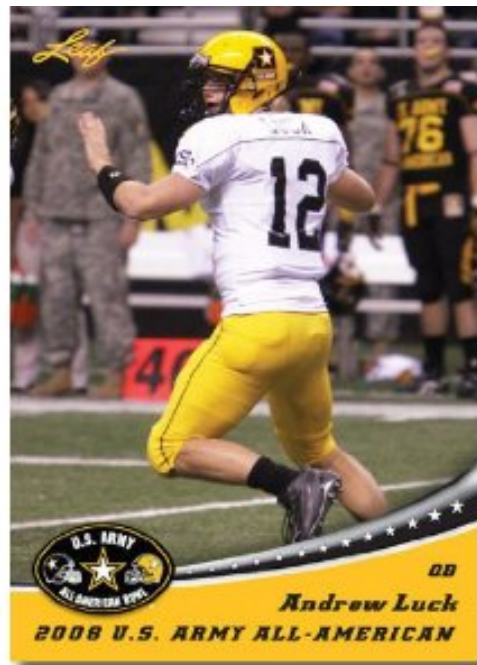
National Collegiate Athletic Association

Trading Card Company Sues Andrew Luck Asserting Right to Use Luck’s Image

On April 20, 2012, Leaf Trading Cards (Leaf) sued Andrew Luck, the first overall pick in the 2012 NFL Draft, seeking a declaratory judgment in Dallas County District Court in Texas that would allow it to produce trading cards with photos of Luck. Leaf claims that its rights are protected First Amendment speech, and permitted by an express license from the party that produces the U.S. Army All-American Bowl.

In 2008, Luck played in the U.S. Army All-American Bowl, a prominent high school football all-star game. Leaf has produced trading cards featuring participants in the all-star games since the 2009 Bowl. SportsLink, the producer of the game, granted Leaf an exclusive license to use the images of the participants and bowl alumni in the production of sports memorabilia.

In 2012, Leaf began to produce several different products featuring Luck’s image. On April 13, 2012, Luck’s attorneys sent a cease and desist letter to Leaf’s president claiming that Luck had not authorized the use of his image for these trading cards and demanding that Leaf stop making and selling any cards using photos of Luck. The letter also required that Leaf post a retraction on its website apologizing to Luck and that Leaf provide a report of all profits made in connection with the Luck cards. On April 20, Leaf filed a complaint claiming that the First Amendment and its express license from SportsLink



protect its right to produce the cards. Leaf seeks a declaratory judgment stating that it has the right to produce cards with Luck's image and that it has not violated Luck's publicity rights. "Leaf Trading Cards is disappointed that it was forced to submit this matter to the judicial system," said O. Luke Davis, III, the attorney representing Leaf. "We are confident, however, that the court will find that Leaf has the right to produce and sell the Andrew Luck trading cards." Leaf is represented by Davis of Glast, Phillips & Murray, P.C. in Dallas. Luck's cease and desist letter claims that "Mr. Luck has never authorized Leaf to use his name, image, likeness, or persona in this manner." Luck is represented by Douglas A. Rettew of Finnegan, Henderson, Farabow, Garret & Dunner, LLP in New York.

– Ryan Leske

Former Director of Baseball Operations Files Lawsuit Against Arizona State University



Michael Rooney, former director of baseball operations at Arizona State University (ASU), sued ASU and the NCAA for wrongful termination in the U.S. District Court for the District of Arizona in Phoenix. Rooney alleges that ASU fired him in an effort to cover up around 160 possible recruiting violations he discovered.

In April 2007, the NCAA began investigating ASU after the university reported that there had been possible recruiting violations. The NCAA directed the university to investigate baseball recruitment phone calls made between 2004 and 2009. During the investigation ASU fired baseball coach Pat Murphy, and the NCAA accused Rooney of violating its principles of ethical conduct for discussing recruiting violations with witnesses before the NCAA could interview them. Rooney contends that ASU attempted to wrongfully blame the violations on him and then fired him in November 2009. The investigation eventually determined that ASU's athletic department had a "lack of institutional control" and that coaches had called recruits more times than permissible. However, the NCAA cleared Rooney of the allegations of unethical conduct with regards to the investigation. Rooney alleges the university wrongfully terminated him while the NCAA investigation was still ongoing.

"[ASU] attempt[ed] to place all the blame for the wrongdoing on Rooney in order to take the heat off ASU." ASU's legal team has confirmed that the university put Rooney on paid administrative leave during the NCAA investigation but denies he was wrongfully terminated. The lawyers for Rooney, ASU, and the NCAA have declined to comment. The case was recently transferred from Maricopa County Superior Court to U.S. District Court in Phoenix.



– Colin Burgess

Basketball

Player Sues Spanish Basketball Federation for Defamation



On April 24, 2012, former University of Memphis basketball player Roburt Sallie sued the Spanish Basketball Federation and Club Basquet Tarragona for defamation in U.S. District Court for the District of Colorado in Denver after the team circulated a story alleging that it had released Sallie from the team for using the male enhancement supplement known as ExtenZe. Sallie seeks damages for slander, libel, intentional infliction of emotional distress, and negligence.

Amidst the 2011 NBA lockout, Sallie joined the Spanish Basketball Federation after his career at Memphis. During his first month in the league, his team, Club Basquet Tarragona, subjected him to a random drug test. He claims he admitted taking DayQuil and a “known pill” on a form administered prior to the test. After the test revealed the presence of DHEA, a banned substance in many professional leagues and an active ingredient in ExtenZe, the team asked Sallie if he had taken the supplement in question and he denied ever doing so. According to the complaint, Tarragona informed the media that his contract was terminated because he had consumed ExtenZe, and that the false story appeared on multiple websites, accessible throughout the United States and the rest of the world shortly thereafter. Sallie seeks compensatory damages and injunctive relief.

“These allegations were false,” said Daniel Feder, an attorney representing Sallie. “Roburt Sallie never took the banned substance or ExtenZe.” Sallie is represented by Feder and Oleg Albert of The Law Offices of Daniel Feder in San Francisco and Bradley Levin of Roberts Levin Rosenberg of Denver Colorado. The case is assigned to Magistrate Judge Kathleen M. Tafoya.

– Eric Ferrante

Triathlon

Legally Blind Triathlete Sues Over Blackout Glasses Rule

On April 25, 2012, seven-time world champion and eight-time national triathlon champion Aaron Scheidies sued USA Triathlon (USA), International Triathlon Union (ITU), and 3D Racing LLC (3D) in the U.S. District Court for the Eastern District of Michigan in Detroit for violating the Americans with Disabilities Act. Scheidies alleges that the triathlon organization rules discriminate against



visually impaired competitors by requiring partially blind competitors to wear blackout glasses.

Scheidies has been losing his vision since he was nine years old due to a hereditary eye condition. Now, at twenty-nine years old, Scheidies is a triathlon champion despite having only 20% vision of his vision and impaired central vision and blurry peripheral vision. He alleges that new triathlon rules have recently hindered Scheidies and other legally blind triathletes' ability to compete. USA Triathlon and 3D Racing conduct triathlons governed by the ITU's rules. In 2010, the ITU implemented rules requiring blind and visually impaired triathletes to wear blackout glasses during the running portion of triathlons. The blackout glasses are designed to promote an equal playing field in the triathlon category where partially blind athletes compete against completely blind athletes. Scheidies seeks an injunction restraining ITU and the other defendants from implementing the rule requiring partially blind triathletes to wear the blackout glasses during triathlon competition.

"When I tried running with the blackout glasses with a guide, I hit my head on a pole, fell into a ditch, and ran off the road several times, all in a two-minute time span," Scheidies said. Scheidies is represented by Richard H. Bernstein of The Sam Bernstein Law Firm in Farmington Hills, Michigan. "ITU is committed to having the new system ready by 2013, which will result in a full revision of the ITU competition rules."

– Omar Gutierrez

MMA

MMA Fighter Nick Diaz Files Suit against Nevada Athletic Commission



On April 24, 2012, UFC welterweight fighter Nick Diaz sued the Nevada State Athletic Commission (NSAC) in Clark County State Court in Las Vegas, Nevada to dismiss his temporary suspension. Diaz seeks a timely hearing on his suspension and a dismissal of all charges.

In February 2012, Diaz tested positive for marijuana after his fight against Carlos Condit, resulting in a temporary suspension from the NSAC. Since then, Diaz has waited for a full hearing to prove his case and receive a final judgment on his suspension. On April 24, Diaz filed suit against the NSAC claiming the delays in the hearing process have violated his rights to a timely hearing. Diaz also claims that the marijuana metabolites he tested positive for are not banned by the NSAC. The NSAC later alleged that Diaz had lied on a pre-fight questionnaire by denying he was on prescription drugs. However, Diaz contends that his legal medical marijuana card is not a prescription. He seeks full dismissal of all charges.

"Not only did Nick Diaz violate the law by testing positive for marijuana metabolites, but he also lied to the Commission on his Pre-Fight Questionnaire when he swore that he had not used any prescribed

medications in two weeks before the fight,” said Jennifer Lopez, the public information officer for the Nevada Attorney General. “[The] complaint does not allege any facts support[ing] that Diaz violated a rule,” said Diaz’s attorney, Ross C. Goodman. Goodman is of Goodman Law Group, P.C. in Las Vegas.

– Ian Gunn

Youth Sports

High School Football Hazing Incident Leads to Lawsuit

On April 11, 2012, the parents of Chance Smith, a football player for Seneca High School in Missouri, sued Seneca R-7 School District for negligent failure to supervise in Crawford County District Court in Kansas. The plaintiffs allege that Smith and a number of other students were victims of hazing at a football camp.

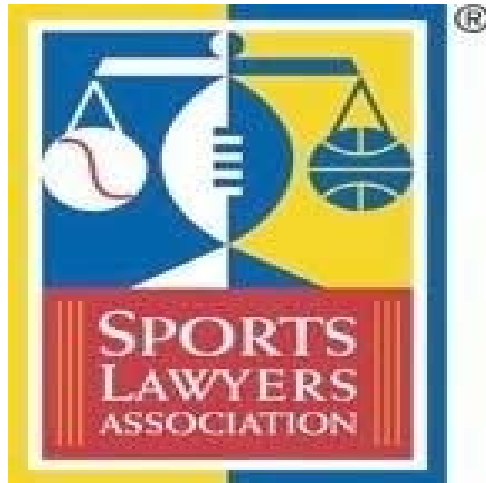
In June 2010, Smith attended a three-day football training camp at Pittsburgh State University in Kansas. According to the complaint, he and other freshman players were pulled into the hall and forced to run through a line of upperclassmen who struck them with fists and plastic window rods. Smith’s suit follows a 2010 criminal investigation that resulted in misdemeanor battery convictions for eight of the players involved. The police investigation identified seventeen victims of hazing after interviewing over fifty individuals. Smith alleges that the school district failed to properly supervise the camp, the coaching staff was not adequately trained to detect or prevent hazing, and the staff failed to prevent assault and battery. The complaint states that coaches stayed in a local hotel while students stayed in a dormitory on campus. Smith seeks compensatory damages in the amount of \$75,000 to cover medical expenses, as well as court costs and attorneys’ fees.



“[I]t will be dealt with by our insurance company, I’m sure, and I don’t have any comment about it,” said Steve Wilmoth, Superintendent of Seneca School District. Crawford County Attorney Michael Gayoso noted that the players could not be charged with hazing because Kansas law only criminalizes hazing that is a “condition of membership,” and the players were already on the team. Smith is represented by Fred Spigarelli of The Spigarelli Law Firm in Pittsburgh, Kansas.

– Benjamin Clark

The Sports Lawyers Association



Officers

President: **Anthony J. Agnone**

Secretary: **Peter Roisman**

Treasurer: **Ash Narayan**

Director of Publications: **Gabe Feldman**

Immediate Past President: **Robert Wallace, Jr.**

Staff

Executive Director: **Richard A. Guggolz**

Deputy Executive Director: **William M. Drohan, CAE**

Program Manager: **Melissa Pomerene**

Administrative Assistant: **Colleen MacCutcheon**

Board of Directors

For a full list and biographies of all board members, please visit:

<http://www.sportslaw.org>

You can follow the Sports Lawyers Association on:

[Facebook](#)

[Twitter](#)

[LinkedIn](#)