

# THE SPORTS LAWYER

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## March 2013

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# National Collegiate Athletic Association

## NCAA Sues Pennsylvania for Commandeering Endowment Funds Stemming from Jerry Sandusky Scandal



Pennsylvania Governor Thomas Corbett Jr., as well as other state government officials, have been sued by the NCAA for constitutional violations in the wake of the Sandusky scandal. The NCAA claims Pennsylvania is not entitled to the \$60 million fine that was imposed on Penn State by the NCAA.

On February 20, 2013, the National Collegiate Athletic Association (NCAA) sued Thomas W. Corbett, Jr., Governor of the Pennsylvania, Rob McCord, Treasurer of Pennsylvania, Mark R. Zimmer, Chairman of the Pennsylvania Commission on Crime and Delinquency, and Eugene DePasquale, Auditor General of Pennsylvania, for violations of the Fifth Amendment, the Contract Clause, and the Commerce Clause of the Constitution in the United States District Court for the Middle District of Pennsylvania in Harrisburg. The NCAA alleges that the Pennsylvania officials passed an unconstitutional act, which commandeered funds from an endowment for nationwide prevention and awareness for child sexual abuse victims.

As punishment for the cover-up of the scandal involving former assistant football coach Jerry Sandusky's child abuse, the NCAA required Pennsylvania State University (Penn State) to pay a penalty of \$60 million. The penalty was to be paid over a period of five years into an endowment dedicated to programs nationwide designed to help prevent and provide aid to child sexual abuse victims. In response to this sanction, Pennsylvania's state legislature passed the Institution of Higher Education Consent Decree Endowment Act, which directs funds paid as penalties by higher education institutions supported by the state of Pennsylvania to be used only within the state. In its complaint, the NCAA alleges that the law violates the Takings Clause of the Fifth Amendment of the United States Constitution because the state is not entitled to the money in the endowment. The NCAA further alleges that the Act violates the Contract Clause of the Constitution because Penn State contracted with the NCAA to pay the \$60 million into an endowment for nationwide use, and the law frustrates the purpose of the contract by restricting funds to benefit only programs in the state of Pennsylvania. Finally, the NCAA alleges that the law violates the Commerce Clause because the endowment is intended for nationwide use, and the law restricts the use of the funds to the state of Pennsylvania. The NCAA seeks declaratory relief that the Act is unconstitutional and injunctive relief to prevent enforcement of the Act.

"The state has attempted to grant itself the ability to do whatever it wants to whomever it wants," stated NCAA General Counsel Donald Remy. "The United States Constitution does not permit this kind of legislative overreach." The NCAA is represented by Thomas W. Scott of Killian & Gephart, LLP in Harrisburg, PA. The defendants are represented by Everett C. Johnson, Jr. and J. Scott Ballenger of Latham & Watkins LLP in Washington, D.C.

– Aaron T. Brown

## NCAA Sued over Rule Barring Felons from Coaching AAU Teams

On February 13, 2013, The Lawyers' Committee for Civil Rights Under Law, on behalf of girls basketball coach Dominic Hardie, sued the National Collegiate Athletic Association (NCAA) in the United States District Court for the Southern District of California in San Diego for racial discrimination in violation of Title II of the federal Civil Rights Act of 1964. Hardie alleges that the NCAA's new policy barring any convicted felon from coaching in NCAA-sanctioned tournaments disproportionately affects minority coaches.

In 2001, Dominic Hardie pleaded guilty to possession with intent to distribute less than one gram of cocaine and received a sentence of five years of probation. Since his conviction, Hardie received his college degree and became a social worker in the child foster care system. In 2009, he co-founded "Triple D Hoops," an Amateur Athletic Union (AAU) travel team organization, where he coaches two basketball teams for girls age seventeen and under. The same year, he became NCAA-certified in order to coach his teams in NCAA-sanctioned tournaments held throughout the country. When he became certified in 2009, the NCAA policy regarding convicted felons allowed them to coach in an NCAA-sanctioned tournament if their conviction was non-violent and had occurred more than seven years prior. In 2012, in an effort to clean up grassroots basketball, the NCAA changed the rule, banning all convicted felons from coaching sanctioned grassroots basketball teams. As a result, Hardie was unable to renew his certification and can no longer coach his teams in NCAA-sanctioned tournaments. Hardie alleges that the new rule is racially discriminatory because it has a disparate impact on minority coaches and their players, who are over-represented in the judicial system. Hardie seeks a preliminary and permanent injunction allowing him to coach in an upcoming high-profile tournament in San Diego and all other NCAA-sanctioned tournaments, as well as declaratory relief that the felony exclusion policy is unlawful and in violation of Title II of the Civil Rights Act.

"I was young and I made a mistake . . . but I paid the price for it and learned my lesson," said Hardie. "[The new policy] rejects any notion of rehabilitation," said Jane Dolkart, an attorney representing Hardie. Dolkart is senior counsel with the Lawyers' Committee for Civil Rights Under Law. Hardie is also represented by Dan E. Chambers, Thomas H. Prouty, and Padrig W.E. Browne of Troutman Sanders LLP in Irvine, California. "[The] policy has been unsuccessfully challenged in court previously. We continue to believe convicted felons should not have access to youth at events where NCAA coaches are participating, and we will vigorously defend this lawsuit," said NCAA Vice President of Communications, Bob Williams, in a statement. The case has been assigned to U.S. District Court Judge Thomas J. Whelan, though a hearing is not currently set.



The NCAA recently changed its "felon" rule to prevent all convicted felons from coaching sanctioned grassroots basketball games. Prior to 2012, the NCAA only barred convicted felons that had violent convictions within the past seven years.

– Shauna DiGiovanni

## Johnny Manziel Sues over Nickname Infringement



Johnny Manziel claims that Eric Vaughan's T-shirts infringe on his trademark in the phrase "Johnny Football," which he filed for registration in February 2013.

On February 15, 2013, JMAN2 Enterprises and Texas A&M University quarterback Johnny Manziel sued Eric Vaughan in the U.S. District Court for the Eastern District of Texas for trademark infringement. Manziel claims that Vaughan infringed on his trademark rights by selling T-shirts that incorporated the use of his nickname, "Johnny Football."

According to the complaint, on November 12, 2012, Manziel became aware that Vaughan was selling T-shirts on his website that read "Keep Calm and JohnnyFootball." Texas A&M and JMAN2 Enterprises delivered cease and desist letters to Vaughan concerning the sales; however, Vaughn continued to sell the shirts. Although Manziel did not file papers for the "Johnny Football" trademark until February 2, 2013, a trademark does not have to be federally registered for an ownership claim to exist. Moreover, although National Collegiate Athletic Association (NCAA) rules prevent Manziel from benefitting financially from his name or likeness until

his NCAA eligibility expires, the NCAA recently ruled that a student-athlete may keep financial earnings derived from a legal action. Manziel and JMAN2 Enterprises seek injunctive relief barring the sale of products using Manziel's name or likeness as well as compensatory and exemplary damages.

The plaintiffs are represented by J. Bennett White and Virgil J. Jordan of J. Bennett White, PC in Tyler, Texas. The case is assigned to U.S. District Judge Michael H. Schneider.

– Austin Priddy

## Judge Denies Motion to Dismiss in ACC Exit Fee Lawsuit against Maryland

On February 18, 2013, Judge John O. Craig III of the Guilford County Superior Court in Greensboro, N.C. denied the University of Maryland's (UM) motion to dismiss the Atlantic Coast Conference's (ACC) suit against the university for leaving the conference. The ACC filed suit in January to recover the \$52 million exit fee for Maryland's future departure to the Big Ten Conference in 2014, and the University of Maryland sought to dismiss to the ACC's suit, claiming the fee was an illegitimate penalty.

In November, after UM expressed its intent to leave the ACC in 2014, the conference filed a lawsuit to recover the required fee for exiting the conference. In September 2012, the ACC increased the exit fee from \$20 million to \$52 million—an increase which all schools had agreed to, except UM and Florida State. Maryland Attorney General Doug Gansler filed a motion to dismiss the ACC's suit on behalf of the university, arguing that the exit fee violated antitrust law and that the suit was precluded by sovereign immunity because the university is an entity of the state. Judge



The ACC will continue pursuing the \$52 million exit fee from UM in light of Judge John O. Craig III's holding that the ACC's lawsuit may continue.

John O. Craig III denied the university's motion to dismiss and agreed with the ACC that the university is not protected by sovereign immunity in contractual claims.

"We continue to extend our best wishes to the University of Maryland," said ACC Commissioner John Swofford in November when the conference announced its lawsuit. "However, there is the expectation that Maryland will fulfill its exit fee obligation." The ACC is represented by Alan Duncan of Smith Moore Leatherwood LLP in Greensboro, North Carolina. "[T]he state is going to be considering its options in light of this ruling," said David Paulson, spokesman for Attorney General Gansler after Judge Craig's ruling. Maryland has thirty days to appeal the decision.

– Joseph Nguyen

## Cycling

### United States Joins Lawsuit against Lance Armstrong



The U.S. is seeking treble damages in the lawsuit against Lance Armstrong, claiming that the right to use the U.S. Postal Service logo in sponsorship agreements required Armstrong to follow PED regulations.

On February 22, 2013, the Department of Justice announced that the United States has joined the civil lawsuit against Lance Armstrong, Johan Bruyneel, Tailwind Sports LLC, and Tailwind Sports Corporation, filed originally by Floyd Landis, Armstrong's former teammate on June 10, 2010, in the U.S. District Court for the District of Columbia. The United States alleges that Lance Armstrong and other riders violated the False Claims Act by knowingly using performance enhancing substances prohibited by their United States Postal Service (USPS) sponsorship agreements.

Armstrong led the team from 1999 through 2004. The sponsorship agreements included the right to use the USPS logo on the team's uniform and required the team to follow the rules of cycling's governing bodies, including avoiding the use of certain performance enhancing substances that Armstrong admitted to using on the Oprah Winfrey show broadcasted in January 2013. The U.S. seeks treble damages, a civil penalty of several thousand dollars, in addition to litigation costs and expenses.

From 1996 through 2004, the USPS sponsored a professional cycling team. Lance

"The postal service's own studies show that the service benefited tremendously from its sponsorship—benefits totaling more than \$100 million," stated Armstrong's attorney Robert Luskin. Luskin is of Patton Boggs LLP in Washington, D.C. "The Postal Service has now seen its sponsorship unfairly associated with what has been described as 'the most sophisticated, professionalized, and successful doping program that sport has ever seen,'" said Ronald C. Machen Jr., U.S. Attorney for the District of Columbia. "This lawsuit is designed to help the Postal Service recoup the tens of millions of dollars it paid out to the Tailwind cycling team based on years of broken promises." The case is before U.S. District Judge Robert L. Wilkins.

– Jonathan Jordan

# National Basketball Association

## Judge Dismisses Environmental Suit Disputing New Sonics Arena

On February 22, 2013, King County Superior Court Judge Douglass North dismissed a suit filed by the International Longshore and Warehouse Union, Local 19 (ILWU) against the city of Seattle, King County, and an investment group led by hedge fund manager Chris Hansen. Judge North held that the agreement between the city of Seattle, King County, and the investment group did not violate Washington's State Environmental Policy Act (SEPA), which requires an environmental review before an agency commits to a particular course of action.

The National Basketball Association's (NBA) Supersonics played in Seattle from 1979 to 2008 before new ownership moved the franchise to Oklahoma City and changed the team's name to the Thunder. Hansen's investment group has negotiated a deal to buy the Sacramento Kings and plans to move the team to Seattle, but is still awaiting approval from the NBA. The city of Seattle, King County, and Hansen's investment group reached an agreement to build a \$490 million arena, to aid in the approval process from the NBA. On October 18, 2012, the ILWU sued the city of Seattle, King County, and Hansen's investment group alleging that they had agreed to the arena's location without first completing the required environmental review. The ILWU is concerned that a third arena in the area will create more traffic congestion and will hurt working class jobs.



The International Longshore & Warehouse Union had attempted to argue that the arena deal was made without a required environmental review.



The suit dismissal represents a significant victory for investor Chris Hansen in his plans to bring the Sacramento Kings to Seattle, although he still faces opposition from business competitors in Sacramento.

King County Superior Court Judge Douglass North disagreed with the ILWU's claim that the location of the proposed arena was already determined. Judge North stated that, "there isn't a binding decision here," and the agreement did not commit the city or King County to building an arena south of downtown Seattle. Judge North also noted that because the agreement does not commit the city and county to build an arena south of downtown, that the required environmental review would be done before any such commitment is made.

"We're going to hold the city and county council to their commitment to keep an open mind and look at the facts . . . that is our only choice at this point. We're going to work the process really hard," said ILWU attorney David Mann. ILWU is represented by Mann of Gendler & Mann, LLP and Peter Goldman of the Washington Forest Law Center, both in Seattle. "It was a win for our position here today but as I said we've had work to do," said Hansen's attorney John "Jack" C. McCullough. McCullough is of McCullough Hill Leary, PS in Seattle.

– Ryan E. Feder

## Olympics

### Oksana Baiul Sues NBC for Unauthorized Use of Name and Likeness



Oksana Baiul, 1994 Olympic champion, claims NBC used her name and likeness without her consent.

On February 1, 2013, Olympic gold medalist and figure skater Oksana Baiul sued NBCUniversal Media, LLC (NBC), NBC Sports Network, LP (NBC Sports), and Disson Skating, LLC (Disson) in the Supreme Court of the State of New York in the County of New York for fraud, negligent misrepresentation, violation of right of publicity, and destruction of evidence. Baiul alleges that NBC used her name and likeness to promote a television show without her consent.

Baiul claims that Disson offered her a contract that required her to perform in two shows to be aired on NBC, but she declined the offer. In her complaint, Baiul alleges that despite her having turned down the offer, NBC proceeded to advertise the show on radio websites using her name. NBC also mentioned Baiul in a press release promoting the show. Baiul further claims that her reputation has been injured as a result of the use because fans were expecting her to be on the show, and may have believed she was responsible for the “no-show.” Baiul asserts that this perception has damaged her ability to find work. Baiul seeks compensatory damages in the amount of \$5 million.

Baiul is represented by Raymond J. Markovich, Esq. in West Hollywood, California. Neither Baiul nor NBC have commented on the lawsuit.

– Marshall Rader

## Sports Business

### Mike Tyson Sues Financial Services Companies for Embezzlement

On February 20, 2013, Mike Tyson and his wife Lakiha Tyson sued SFX Financial Advisory Management Enterprises (SFX), former SFX employee Brian Ourand, and SFX’s parent corporation Live Nation Entertainment (Live Nation) in Los Angeles Superior Court for breach of fiduciary duty, fraud, unjust enrichment, and negligent hiring, retention, and supervision. The Tysons allege that one of SFX’s advisors embezzled more than \$300,000 while in charge of the couple’s finances.



In 2005, the Tysons hired SFX to manage their finances,

Mike Tyson and his wife Lakiha Tyson allege SFX’s actions cost them an estimated \$5 million in lost earnings.

which included handling bankruptcy proceedings. Brian Ourand, an SFX employee, was in charge of managing the Tysons' finances. In 2011, SFX replaced Ourand with another employee. The Tysons allege that when they questioned SFX about the change, they were told that Ourand had embezzled more than \$300,000 from them. The Tysons further allege that SFX returned a portion of the embezzled funds and then attempted to have the Tysons sign a settlement agreement which included a confidentiality clause. The complaint states that the situation has prevented the Tysons from concluding their bankruptcy proceedings and has cost them an estimated \$5 million in lost earnings. The Tysons seek an accounting of embezzled funds and restitution, in addition to punitive damages and attorneys' fees.

"Defendants did not secure, protect, safeguard, and appropriately apply the Tysons' finances for their intended purposes, but instead misappropriated said funds for the benefit and enrichment of SFX/Live Nation," stated the complaint. The Tysons are represented by Mark J. Geragos, Shelley Kaufman, and Ben Meiselas of Geragos & Geragos in Los Angeles.

– Erin Gardner

## Prep Sports

### Coffee County Parents Settle Title IX Lawsuit against Board of Education



In its settlement with a group of students' parents, Coffee County Central High School agreed to construct a lighted regulation soccer field by the beginning of the 2014 school year.

On January 14, 2013, parents of students at Coffee County Central High School (CHS) settled out of court with the Coffee County Board of Education regarding a lawsuit filed in the United States District Court for the Eastern District of Tennessee, Winchester Division, for the school system's violation of Title IX. The settlement promises changes to the school's athletic policies in an effort to end gender-based discrimination.

In February of 2010, a group of parents filed suit alleging that the school was violating Title IX by intentionally denying their daughters equal treatment and benefits in the athletic program. The suit mentioned discrimination in regards to athletics funding, equipment, games and practice schedules, travel provisions, *per diem* allowances, and range of facilities. The parents sought injunctive and monetary relief in addition to a declaratory judgment that the school system had violated the girls' rights. Nearly three years later, on January 14, 2013, the parties filed a notice of settlement with the court. In the settlement, the school system agreed to construct a lighted regulation soccer field by the beginning of the 2014 school year. Until that time, home soccer games may be played on the current CHS football field.

"I'm glad we came to a fair and equitable agreement. It was good to see that those in charge saw the right side of the law," said Craig Pentifallo, one of the parents involved in the suit. "[Title IX] was enacted in 1972 and it's unfortunate that it took this long for that to come about." The parents were represented by Brandon E. Bass and John A. Day of the Law Offices of John Day P.C. in Brentwood, Tennessee and Ray Yasser and Samuel J. Schiller of Schiller Law Firm in Cookeville, Tennessee. "The lines may look confusing for this year but if it's just for this year we can just stand on our head for a year if we have to," said Richard Skipper, CHS athletic director.

– Jeff D. Karas

## REGISTRATION IS NOW OPEN FOR THE 39<sup>th</sup> ANNUAL CONFERENCE



[Click Here](#) to Register

## LOCAL OUTREACH EVENTS

Phoenix, AZ

April 3, 2013



### SPORT LAWYERS ASSOCIATION OUTREACH EVENT AT CHASE FIELD

Join the Arizona Diamondbacks for a special panel discussion featuring local attorneys in the sports law industry. The panel will be moderated by Caleb Jay, Senior Director of Legal Affairs and Associate General Counsel for the Arizona Diamondbacks.

#### Scheduled panelists include:

- Nona Lee - Senior Vice President and General Counsel for the Arizona Diamondbacks
- David Koening - General Counsel for the Arizona Cardinals
- Jeffrey Pyburn - Shareholder of Gallagher & Kennedy, P.A.
- Jason Pritchett - Vice President and General Counsel for Phoenix FC

Check-in will start at 5:00PM on the First Base side of the Insight Diamond Level. **THE PANEL WILL BEGIN PROMPTLY AT 5:15PM AND LAST UNTIL 6:15PM.** Various legal issues faced by professional sports organizations in connection with sporting events will be discussed. The panel will conclude with a brief discussion about how to break into the industry and a question and answer session. Attendees are invited to watch the game from the All You Can Eat seats, while the Arizona Diamondbacks take on the St. Louis Cardinals.

**One (1) hour of Continued Learning Education (CLE) credit will be available for those who qualify.**

Dress code is casual so you can enjoy the game!

[Click here](#) for more information



**New York**  
**April 9, 2013**

*Please join us for a timely bi-coastal discussion on Sports Sponsorships in 2013 & Beyond. The East Coast event will also be followed by a game between the Brooklyn Nets and the Philadelphia 76ers at the new Barclays Center.*

**EAST COAST**

Tuesday, April 9, 2013

CLE Program  
6:00 p.m. - 7:00 p.m.

Philadelphia 76ers at Brooklyn Nets  
7:30 p.m. Tip Off

Barclays Center Brooklyn  
620 Atlantic Avenue  
Brooklyn, New York 11217

*\*Meet at the Dean Street entrance at 5:45 pm for check-in.\**

*The Brooklyn Nets have graciously agreed to set aside a limited number of discounted tickets in both the upper and lower bowls. Each ticket costs \$47 for the upper bowl and \$100 for the lower bowl, and is subject to availability. Tickets will be provided on a first come, first served basis. No guarantees. Guests must have a ticket for the game in order to attend this program.*

**PARTICIPANTS**

- Jeffrey B. Gewirtz, *Executive VP of Business Affairs, Chief Legal Officer*, Brooklyn Nets
- J. Carlos Kuri, *VP & General Counsel*, Red Bull New York, Inc.
- Andrew B. Latack, *Business & Legal Affairs*, CAA Sports
- Benjamin R. Mulcahy, *Partner & Chair of Sports Industry Team*, Sheppard Mullin
- Ryan S. Hilbert, *Special Counsel*, Sheppard Mullin (Moderator)

Please contact Adam Metzendorf at 718.942.9672 or via [e-mail](#) to purchase tickets.  
For questions, please contact Kari Cohen, Associate Counsel, Brooklyn Nets via [e-mail](#).

**[CLICK HERE TO REGISTER](#)**

**CALIFORNIA**  
**April 29, 2013**



**WEST COAST**

**Monday, April 29, 2013**

**Networking/Drinks & Appetizers**

6:00 p.m. - 7:00 p.m.

**CLE Program**

7:00 p.m. - 8:00 p.m.

**Sheppard Mullin**

379 Lytton Avenue  
Palo Alto, CA 94301

**PARTICIPANTS**

- Billy J. Kuenzinger, *President and General Counsel*, BDA Sports Management
- Eric Mastalir, *VP of Corporate Partnerships*, Sharks Sports & Entertainment.
- Daniel A. Rascher, Ph.D., AVA, *President*, Sports Economics, LLC & *Partner*, OSKR, LLC
- Chris McCleary, *Associate General Counsel, Global Brand & Client Management*, Visa, Inc.
- Ryan S. Hilbert, *Special Counsel*, Sheppard Mullin (Moderator)

**[CLICK HERE TO REGISTER](#)**

Atlanta, GA  
April 18, 2013



What: Atlanta Hawks vs. Raptors

Where: Philips Arena

When: Tuesday, April 16th at 7:30 pm

[Click here](#) for more information.

CALIFORNIA  
April 19, 2013

**APRIL 19, 2013**

STANFORD LAW SCHOOL PRESENTS

**SPORTS, INTELLECTUAL PROPERTY,  
AND TECHNOLOGY SYMPOSIUM**



New technologies and means of content distribution have spurred evolving views of intellectual property law and different types of business deals. Our speakers will discuss their specializations in intellectual property and sports as well as the legal impact of digital media, global rights, and broadcasting deals.

The symposium will consist of two panel discussions and a keynote address with university athletic directors, legal and business development professionals, and leaders of major intercollegiate and professional athletic programs across a variety of sports. The symposium is intended for attorneys, academics, and students who wish to learn more about the unique intersection between sports, IP law, and technology.

**SCHEDULE**

9:00-10:00 am Breakfast and Check-In  
10:00-11:30 am Legal Panel  
11:30-12:00 pm Q&A  
12:00-1:00 pm Networking Lunch  
1:00-1:30 pm Keynote  
1:30-3:00 pm Business Panel  
3:00-3:30 pm Q&A  
3:30-4:30 pm Cocktail Reception

**LOCATION**

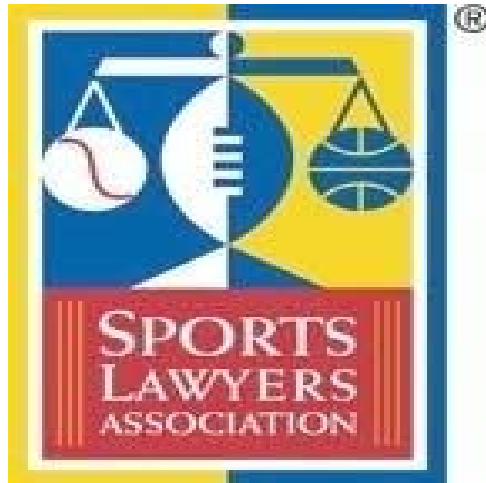
Stanford School of Law  
Room 290

**MCLE**

6 credits will be offered  
*(pending CA State Bar approval)*

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TO REGISTER**

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