

THE SPORTS LAWYER

In This Issue



NASCAR Grand Jury Decides Not to Indict Tony Stewart



Judge Recused in NFL Collusion Case



Ex-Clemson Soccer Alleges Hazing in Suit



Former Senior VP of Mets Sues for Discrimination

Also

Family Sues NFL and Equipment Partners for Wrongful Death After Player’s Suicide

Former USC Football Player Sues School and Former Coach Lane Kiffin

Judge Sides With USTA, Dismisses US Open Umpires’ Wages Lawsuit

October 2014

Faculty Editors

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

Student Editors

Joseph Nguyen – *Senior Managing Editor*
Jeff D. Karas – *Senior Articles Editor*
Wyatt Lyles – *Junior Managing Editor*
Victoria Acuff – *Junior Articles Editor*

Staff

Spencer Low
Tate Martin
Caroline Carmer
Alex Heath
Breard Snellings
Fritz Metzinger
Ruben Garcia
Deniz Koray



Table of Contents

National Association for Stock Car Auto Racing – 2, National Football League – 3, National Collegiate Athletic Association – 5, Major League Baseball – 7, National Hockey League – 8 Other News – 9

Association for Stock Car Auto Racing

NASCAR Grand Jury Decides Not to Indict Tony Stewart

On September 24, 2014, New York District Attorney Michael Tantillo announced that National Association for Stock Car Auto Racing (NASCAR) driver Tony Stewart would not face charges of second-degree manslaughter or criminally negligent homicide after the death of Kevin Ward in a sprint car race in Canandaigua, New York, on August 9. A grand jury determined that Stewart would not face charges after he hit Ward with the rear wheel of his car during a race.



During a caution following a collision involving the two drivers, Ward climbed out of his vehicle and was walking down the track, apparently attempting to confront Stewart, when Stewart's rear right tire hit Ward, throwing him across the track. The blunt force trauma that resulted from the accident led to the 20-year-old's death before paramedics could get him to a hospital. A 23-member grand jury spent two days reviewing pictures and videos of the incident, as well as hearing testimony from over two dozen witnesses. After an hour of deliberation, the grand jury decided that Stewart had not

demonstrated any "aberrational driving," while it was also revealed that Ward had been under the influence of marijuana. While the decision means Stewart will not face criminal charges, Ward's family has left open the possibility of a civil suit against the three-time NASCAR top series champion.

"The fact that Kevin Ward was observed running basically two-thirds down the track, into a hot track ... played a big role in (the grand jury's) decision," said Tantillo. "While the process was long and emotionally difficult," Stewart said in a press release, "it allowed for all the facts of the accident to be identified and known." Stewart is represented by New York attorney John Speranza, as well as the Indianapolis firm Voyles Zahn and Paul. "The focus should be on actions of Mr. Stewart and not Kevin," Ward's family said via a written statement. "This matter is not at rest and we will pursue all remedies in fairness to Kevin."

-- *Spencer Low*

National Football League

Judge Recused in NFL Collusion Case



On September 26, 2014, United States District Judge David Doty of Minneapolis announced his recusal from the National Football League Players Association's (NFLPA) lawsuit against the National Football League (NFL) and the NFL's 32 teams in the United States Court of Appeals for the Eighth Circuit for collusion. The NFLPA alleges that their 2011 claim against the NFL for collusion, by establishing a secret salary cap on player salaries, should be reopened.

In 1993, the NFL and the NFLPA, led by Hall of Fame player Reggie White, settled a notable antitrust case with the signing of the Stipulation and Settlement Agreement (SSA), which was vital in governing labor relations for nearly two decades. In 2011, the NFLPA sued the NFL because they believed that the NFL and its owners had implemented a secret salary cap for the 2010 season. Ultimately, the NFL and NFLPA settled this dispute by signing the Stipulation of Dismissal. Now, the NFLPA wants to remove the Stipulation of Dismissal and re-open its claim that the NFL breached the SSA. The NFLPA believes that the Stipulation of Dismissal should be invalidated because the court never approved the Dismissal, which is required according to Federal Rule of Civil Procedure 23(e). Moreover, the NFLPA argues that the Dismissal should be invalidated because the NFL utilized fraud, misrepresentation, or misconduct to reach the Stipulation of Dismissal agreement. These actions would be a violation of Federal Rule of Civil Procedure 60(b). The NFLPA seeks for the Dismissal to be set aside so they can continue with their previous breach of the SSA claim.

"Our union will always pursue and protect the rights of its players," the NFLPA said. "We are pleased that the Eighth Circuit ruled that players have the opportunity to proceed with their claims. Through discovery and a hearing, we can understand how collusion took place. We have notified the NFL of its obligations to preserve all relevant documents and communications." The NFLPA is represented by Jeffrey Kessler of Winston & Strawn in New York. "The Court specifically highlighted the heavy burden that the NFLPA faces in establishing this claim, and we remain highly confident that the claim will be dismissed yet again," said the NFL. The Eighth Circuit of the United States Court of Appeals reversed the district court's Rule 60 ruling on "fraud, misrepresentation, or misconduct", and remanded the case for further proceedings. Thus, the court held that "The Association bears a heavy burden in attempting to convince the district court that the dismissal was fraudulently procured," but "that the Association should be given the opportunity to meet this burden."

As a result of the district court's ruling being overturned and remanded, U.S. District Court Judge David Doty has decided to recuse himself from future proceedings. "The parties deserve a new examination of the issues by a judge that has not already expressed an opinion as to the outcome of the dispute," said Doty in the order explaining his recusal. Doty had sided with the NFL and the owners when deciding the case in 2012. Judge Doty has been involved with numerous NFL cases since the 1993 Reggie White suit. The case has been reassigned to Chief U.S. District Judge Michael Davis.

-- Alex Heath

Family Sues NFL and Equipment Partners for Wrongful Death After Player's Suicide

On September 22, 2014, Chelsea Oliver, individually as parent and natural guardian of Simeon Oliver, a minor; as parent and natural guardian of Silas Oliver, a minor; and as personal representative of the estate of Paul Oliver, filed a complaint against the National Football League (NFL), New Orleans Saints, San Diego Chargers, and several corporations that manufacture the helmets used by NFL teams in the California Superior Court for the County of Los Angeles-Central District for fraud,



negligence, wrongful death negligent misrepresentation, and negligent infliction of emotional distress. Oliver alleges that her son Paul's death was the direct result of injuries and emotional suffering caused by head trauma suffered because of the negligence, fraud, and defective equipment provided by the NFL.

Paul Oliver played in the NFL as a safety, spending five years with the Chargers and a single training camp with the Saints. On September 24, 2013, two years after his retirement, Oliver committed suicide by shooting himself in the head. After his death, Oliver was diagnosed with chronic traumatic encephalopathy (CTE), a progressive degenerative brain disease found in athletes with a history of repetitive brain trauma. The NFL, in a report filed for a separate concussion related lawsuit, estimates that nearly three in ten former players will develop debilitating brain conditions and are at least twice as likely to be stricken as the general population. In the complaint, the plaintiff alleges that Paul Oliver killed himself as a direct result of injuries, depression, and emotional suffering caused by repetitive head trauma and concussions that he suffered due to the negligent and wrongful conduct of the defendants as a result of playing professional football while using flawed and defective products. The complaint further contends that the NFL and others involved were aware, and had been for decades, of the risks associated with repetitive brain trauma but concealed the information, thus leaving Oliver ignorant to the risks. Oliver seeking compensatory and exemplary damages, as well as attorneys' fees and such other relief as the court may deem just and proper.

Oliver represented by Fabrice N. Vincent, Jeremy M. Glapion, and Wendy R. Fleishman of Lief Cabraser Heimann & Bernstein, LLP. They are additionally represented by Brad R. Sohn of The Brad Sohn Law Firm, PLLC in Miami. When asked for a comment on the story, the Saints declined, and the other parties could not be reached, but the NFL has proposed a \$765 million settlement of a different concussion-injury lawsuit.

-- *Breard Snellings*

National Collegiate Athletic Association

Ex-Clemson Soccer Alleges Hazing in Suit



On August 14, 2014, former Clemson women's soccer player Haley Hunt sued Clemson head coach Eddie Radwanski, two assistant coaches, 14 former players, and 13 school administrators including former Athletic Director Terry Don Phillips in the South Carolina State Court of Pickens County for tort claims stemming from alleged hazing. The complaint alleges that Hunt suffered permanent brain damage and emotional trauma as a result of an August 2011 incident, that coaches endorsed and encouraged the hazing, and that administrators inadequately investigated the matter upon learning of it. On September 12, attorneys for the coaches, head coach Radwanski and assistants Siri Mullinix and Jeff Robbins, requested a removal of the case to the U.S. District Court for the District of South Carolina because the case raises allegations arising under the U.S. Constitution.

Hunt earned a scholarship to play soccer at Clemson and matriculated there in August 2011. By that point, according to the complaint, upperclassmen on the women's soccer team had been hazing freshmen for decades, enabled and encouraged by coaches. The suit states that on the evening of August 18, 2011, the upperclassmen players blindfolded Hunt and other freshmen before confining them to automobile trunks. After arriving at Clemson's soccer stadium, the upperclassmen allegedly spun the freshmen around in circles before forcing them to sprint on the field. A disoriented Hunt trailed off the field and ran face-first into a brick wall. According to the complaint, Hunt sustained a concussion, severe brain trauma, and several lacerations. Hunt claims that she struggled with the injury's after-effects until November 2013, when a doctor detected substantial cognitive impairment and ordered Hunt to stop playing soccer. Following the incident, the suit alleges, Radwanski and his assistants forbade the players from divulging any information about Hunt's injury or the team's hazing tradition. The complaint also accuses Radwanski in particular of routinely belittling Hunt before and after the incident. Even though the school's Office of Community & Ethical Standards (OCES) found evidence of hazing and put the team on probation, Hunt asserts that neither the Athletic Department nor OCES informed her and her family of the investigation's outcome. Hunt is seeking compensatory damages to cover pain and suffering, medical costs and loss of enjoyment of life, as well as punitive damages and attorneys' fees.

"This is a story that has to be told," Hunt's attorney, Robert E. Sumner, said. "Clemson has to address what's going on and Clemson has to be held accountable for what the administrators and the coaches allowed to happen." Attorney Robert E. Sumner, Brandon Gaskins, and Lesley A. Firestone of the firm Moore and Van Allen PLLC in Charleston, North Carolina are representing Hunt. "The plaintiff's complaint is not evidence, they are allegations only. Those allegations are denied," said Charles F. Turner, an attorney for the coach-defendants. "We look forward to filing our answer and presenting our evidence and our position in the case to a judge and jury, which we think will be very favorable to us." Radwanski, Mullinix and Robbins are represented by Charles F. Turner, Wilson S. Sheldon, and J. Adam Russell of the firm Wilson Jones Carter and Baxley. The three coaches are the only defendants that have responded to the complaint.

-- Fritz Metzinger

Former USC Football Player Sues School and Former Coach Lane Kiffin

On September 22, 2014, former University of Southern California (USC) football player Brian Baucham sued USC and former coach Lane Kiffin in the Superior Court of California for the County of Los Angeles for personal injury. Baucham alleges that USC and Kiffin were negligent when they required him to play in a game despite his medical history and condition.

Bauchum played cornerback for USC from 2008 to 2012. On September 20, 2012, two days before USC was to play a football game against California, Bauchum became ill, suffering from flu-like symptoms. The next morning, he went to the USC health clinic, where he recorded a fever of 103 degrees and was diagnosed with dehydration, viral pharyngitis, and a flu-like illness. After receiving treatment, Bauchum was advised by medical staff that he was in no condition to play, but Kiffin played him in the first half of the game, sending him into the locker room before halftime to receive intravenous fluids.



In the fourth quarter, Bauchum, who had received a concussion two months earlier, collapsed on the field and was carted to the locker room to receive more intravenous fluids. Bauchum started coughing up blood and fluids, as well as experiencing headaches and blurred vision. He was rushed to a hospital where he spent several days on a ventilator. Bauchum did not play another game from USC. Bauchum alleges that he suffered bleeding in the brain, cardiopulmonary damage, and brain injury with neurocognitive deficits as a result of his playing in that game. The complaint also alleges that USC tried to revoke his scholarship. Bauchum seeks economic damages for both present and future medical expenses and for potential loss of earnings as a professional football player that resulted from the incident.

“USC and head coach Kiffin were clearly negligent and acted with conscious disregard for Brian's welfare and safety by forcing him to play ... despite his verified medical history and seriously ill condition,” said Bruce M. Brusavich, an attorney representing Bauchum along with attorney Tobin D. Ellis of the firm Agnew Brusavich in Torrance, California. “It wouldn't be appropriate for us to comment on this lawsuit, and due to privacy laws we cannot comment on the specifics of this case,” USC athletic director Pat Haden said. “I will say that I am confident that we provide excellent medical treatment to our student athletes and that their health is always our primary concern ahead of any athletic competition.” A date has yet to be set for hearing.

-- Ruben Garcia

Major League Baseball

Former Senior VP of Mets Sues for Discrimination



On September 10, 2014, Leigh Castergine sued the Sterling Mets Front Office, L.L.C. (the Mets) and New York Mets chief operating officer Jeffrey Wilpon in the United States District Court in the Eastern District of New York for discrimination on the basis of sex, pregnancy, marital status and retaliation. Castergine alleges that when she made it known to the front office that she was pregnant, the front office, especially Mr. Wilpon, knowing she wasn't married, began to treat her drastically different, and publicly embarrassed her on several occasions. She also claims that she was fired as a direct result of her complaining about this harassment to the human resources department.

Castergine was the first woman to hold the position of Senior Vice President in the team's 52-year history and was considered to be on the fast track up the corporate ladder until she announced that she was pregnant. Upon this announcement, Wilpon purportedly began to do things on a regular basis that would humiliate Castergine, from stating he was morally opposed to her having the baby without being married to pretending to see if she had a ring on her finger and declaring she would make more money once she had one. When Castergine complained to her direct supervisor and the human resources department, both declined to help her. Holly Lindvall, the Executive Director of Human Resources allegedly even urged her to quit. She continued to work until she left for maternity leave on March 7, 2014, and returned on June 1, 2014. On August 20, 2014, Wilpon fired Castergine citing her failure to meet sales goals when Castergine had been on maternity leave for the majority of the 2014 baseball season, and it is suggested that Lou DiPaoli, Castergine's boss, was in fact responsible for the low sales. Castergine was offered a severance package on the condition that she agreed to not pursue any legal action against the Mets or Wilpon for claims including discrimination or harassment and not make any negative remarks about the organization. Castergine retained legal counsel, who emailed the Human Resources Department alleging the discrimination and retaliation claims discrimination on the basis of sex, pregnancy, marital status and retaliation, in violation of the New York State Human Rights Law, Executive Law; and the Administrative Code of the City of New York; as well as violations of the Family and Medical Leave Act. Castergine was fired soon after the Mets received this email.



When asked about receipt of the complaint and the merits of the accusations made by Castergine, the Mets said in a public statement: "We have received and reviewed the complaint. The claims are without merit. Our organization maintains strong policies against any and all forms of discrimination." Castergine is represented by Anne C. Vladeck and Valdi Licul of Vladeck, Waldman, Elias & Engelhard, P.C. in New York. The Mets will be represented by their general counsel when the case goes to district court.

-- Tate Martin

National Hockey League

NHL and Blackhawks Arena Sued over Fan Injury



On September 25, 2014 Gerald and Michele Green sued the National Hockey League (NHL) and the Blackhawks home arena, United Center Joint Venture (United Center), in the Circuit Court of Cook County Illinois for negligence and loss of consortium. The Greens allege that the NHL and the United Center neglected to reasonably protect spectators from injury posed by hockey pucks shot into the stands.

In 2002, the NHL began requiring protective netting in all its affiliated hockey rinks after a 13-year-old girl died after being struck by a puck that traveled into the stands. The official rule mandated netting be hung at the ends of the arena in a “height, type and manner” approved by the NHL. Subsequently, the United Center erected protective netting, but despite the netting, Gerald Green was struck in the head by a puck and suffered brain injury and hearing loss. He was seated in a corner of the arena above the safety glass where the netting ends. In their complaint, the Greens assert the defendants knew of the risk for serious injury or death from pucks shot into the stands but failed to warn fans of potential harm. The Greens also allege, despite fan injuries with netting in place (three at the United Center since 2013 alone), the parties neglected to reevaluate whether or not the netting was adequate protection. The Greens seek \$200,000 in compensatory damages and request the defendants extend safety netting to prevent injuries in the future.



“Folks who are sitting in those areas are in grave danger,” Gerald Green said. The Greens are represented by Colin H. Dunn and Kristofer S. Riddle of Clifford Law Offices, P.C. in Chicago. In response to the complaint, the United Center contends it complies with all safety regulations required by the NHL. The NHL has not commented on the lawsuit. The complaint is awaiting answer, and there is no information about a hearing thus far.

-- *Caroline Carmer*

Other News

Judge Sides With USTA, Dismisses US Open Umpires' Wages Lawsuit

On September 11, 2014, U.S. District Judge Andrew Carter dismissed a class action lawsuit brought by more than 100 umpires against the United States Tennis Association (“USTA”). In *Meyer et al v. United States Tennis Association*, Judge Carter held that the umpires worked as independent contractors and were thus not required to receive overtime pay, even when they worked more than 40 hours per week during the U.S. Open.



The U.S. Open, a Grand Slam event featuring the world’s top tennis players, is run annually in New York by the USTA, and matches are directed by a chair umpire and up to nine line umpires. On September 8, 2011, the umpires sued the USTA in United States District Court for the Southern District of New York. The umpires alleged that the USTA violated the Fair Labor Standards Act (“FLSA”), as well as New York Labor Law (“NYLL”) for failing to grant overtime pay when they worked more than 40 hours per week at U.S. Open events held between 2005 and 2011. In response, the USTA filed a motion for a summary judgment on two counts. First, they stated that umpires were not entitled to overtime pay because they were independent contractors rather than full-time employees. Second, they claimed they were exempt from FLSA and NYLL provisions due to their status as a recreational establishment that draws a significant portion of revenue in a six-month period.

In a 15-page opinion, Judge Carter agreed with the USTA that the umpires were independent contractors and were therefore not covered under federal or state employment laws. He stated the level of supervision between the USTA and the umpires was not powerful enough to be identified as an employer-employee relationship since the plaintiffs had full discretion and authority to call games as they saw fit. “Moreover, Plaintiffs decided whether to officiate at the U.S. Open in a given year in the first instance,” Judge Carter wrote. Umpires were also free to work for other tennis organizations in the same capacity, and they generally reported income and expenses from these events as independent contractor income and expenses in their tax filings. “Plaintiffs were also free to engage in other employment as is evidenced by the fact that...many of them held jobs unrelated to tennis,” he wrote. Therefore, Judge Carter granted the defendant’s motion for a summary judgment.

USTA spokesperson Chris Widmaier said the organization was satisfied with the decision. The USTA was represented by Kelly Lynn Brown, Nathan Joshua Oleson, and Richard J. Rabin of Akin Gump Strauss Hauer & Feld LLP. Judith Spanier of the firm Abbey Spanier, LLP, one of the attorneys for the umpires, declined to comment on the decision.

-- Deniz Koray

The Sports Lawyers Association



Officers

President: **Glenn M. Wong**

Secretary: **Vered Yakovee**

Treasurer: **Ash Narayan**

Director of Publications: **Gabe Feldman**

President Elect: **Matthew J. Mitten**

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](#)