

Sports Law Year in Review

May 15, 2017 – April 30, 2018

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This summary of illustrative and significant sports law developments has been compiled from publicly available sources, including media accounts, and drafted by Mary Becker (Tulane Law '18); Nick Jordan (Marquette Law '18); Ryan McNamara (Tulane Law '19); Mercedes Townsend (Tulane Law '19); and Ryan Niedermair (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

- Longtime NBA agent Dan Fegan, who was entangled in a legal dispute with his former employer Independent Sports Entertainment regarding the enforceability of a restrictive covenant in his employment contract under federal labor law and California law, which involved federal and state court litigation as well as an arbitration proceeding, died in an automobile accident on February 25, 2018. *See, e.g., Independent Sports & Entertainment LLC v. Fegan*, 2017 WL 2598550 (C.D. Cal. May 30, 2017) (state-based claims alleging breach of non-competition provisions asserted by sports agency against former agent were not preempted by Section 301 under the Labor Management Relations Act; the claims neither arose from nor were they substantially dependent on an analysis of the collective bargaining agreement)
- Joyce Li, a former employee at Independent Sports & Entertainment (ISE), filed sued against ISE in Superior Court in California, alleging that the agency discriminated and retaliated against her in terminating her employment. Lee alleged that she performed similar work as her male counterparts, but, unlike her male counterparts, she was denied an opportunity to receive fee splits or bonuses associated with NBA contracts negotiated by the agency. The parties agreed to resolve the dispute through arbitration.

Joyce Li v. Independent Sports & Entertainment LLC, Case No. BC660219.

- Jamaal Tinsley, former NBA point guard, filed a lawsuit against his former agent and attorney and financial managers for charging unnecessary expenses and for exceeding the 4% commission cap.
- Juan Carlos Nunez, a former employee of the ACES sports agency whose employment was terminated after he took responsibility for attempting to help client Melky Cabrera avoid discipline for a positive PED test by creating a fake website and product claimed to have caused his positive result, has sued ACES in New York Supreme Court. Nunez's lawsuit asserts CES urged him to engage in the misconduct leading to his termination.

Leagues - Labor Matters

Salary Cap

- The NFL team salary cap for the 2017 season was \$167M. On March 5, 2018, the League announced that the team salary cap for the 2018 season will increase to \$177.2M.
- The NBA team salary cap in 2017-18 was \$99.093M (a 5.3% increase over the previous season), with the luxury tax trigger at \$119.266M. For the 2016-17 season it was \$94.1M with the luxury tax trigger at \$113.3M.
- The NHL salary cap for the 2017-18 season was \$75M, which was a \$2M increase from the 2016-17 cap of \$73M. The payroll floor for 2017-18 was \$55.4M, which was a \$1.4M increase from the previous season. Last December, the NHL commissioner said that he expects the cap for the 2018-19 season to be between \$78M and \$82M.

- The MLS salary budget for the 2018 season is \$4.035M. The senior minimum salary is \$67,500, while the maximum salary budget charge for a player is \$504,375.
- The Canadian Football League salary cap for the 2017 season was \$5.150M. The salary cap for the 2018 season is expected to be \$5.20M. The CFL CBA is set to expire after the 2018 season on May 15, 2019. On January 16, 2018, the CFL prohibited its teams from paying off-season bonuses to players until the two sides reach a new agreement.

NFL

- After a long appeals process challenging a six-game suspension for allegations of domestic violence, the NFLPA withdrew its lawsuit against the NFL on behalf of Dallas Cowboys running back Ezekiel Elliott. Elliott served the entirety of his six-game suspension.
- On September 29, 2017, former New York Jets linebacker Erin Henderson sued the Jets in New Jersey Superior Court for wrongful termination and disability discrimination. Henderson signed a one-year deal with the Jets in 2016 with a team option for 2017. Halfway through the 2016 season, however, the Jets placed Henderson on the non-football injury list and ultimately declined to pick up his 2017 option. In his complaint, Henderson alleged that the Jets took these actions because he suffered from bipolar disorder. The Jets removed the case to federal court in October, where Henderson filed an additional Americans with Disabilities Act complaint against the team. United States Magistrate Judge Cathy Waldor recently ordered discovery to remain open through February 28, 2019.
- Former Tampa Bay Buccaneers Lazarius Pep Levingston sued the Buccaneers on September 27, 2017 for negligence and fraud, claiming that the team concealed from Levingston the extent of his injuries in order to induce the player to settle. The Buccaneers released Levingston in August 2017 after he suffered a neck injury, and the two sides reached a \$30,000 settlement. After a physical with the Detroit Lions in 2016, however, Levingston discovered that he had cervical disc herniations dating back to his time in Tampa Bay. The Buccaneers filed a motion to dismiss on February 10, 2018 arguing that Section 301 of the Labor Management Relations Act prohibits all state law claims arising out of a CBA. Furthermore, the Buccaneers claimed that Article 39 of the CBA states that it is the duty of the team physician, and not the team, to disclose a player's physical condition.
- The Fourth Circuit on June 23, 2017 affirmed a decision from the District Court of Maryland which found that the NFL Player Retirement Plan improperly denied a higher level of disability benefits to ex-NFL linebacker Jesse Solomon. A retired player receives a higher amount of benefits under the plan if a total and permanent disability manifests within 15 years of their retirement from football. The Fourth Circuit held that the Retirement Plan abused its discretion by ignoring "substantial evidence" that Solomon had been rendered totally and permanently disabled as a result of his brain injuries well before the 15-year cut-off date. Accordingly, the Fourth Circuit affirmed the District Court's award to Solomon of the higher benefit plan.

- District Judge William Alsup granted summary judgment for the Chargers, Broncos, and Packers on claims by Reggie Walker and Alphonso Carreker, two former NFL players, that the teams intentionally misrepresented that they cared about the players' health when the teams' physicians encouraged the players to take large amounts of painkillers. The lawsuit began in the District of Maryland where 13 former players sued all 32 NFL teams alleging that the teams improperly provided the players with painkillers while playing in the NFL. The case was then transferred to the Northern District of California, where Judge Alsup dismissed 29 teams and 11 players from the lawsuit. Judge Alsup on July 21, 2017 granted summary judgment for the remaining three teams on the ground that Walker's and Carreker's misrepresentation claims were barred by state workers compensation law.
- Former Saints cheerleader Bailey Davis reportedly filed a complaint with the Equal Employment Opportunity Commission on March 23, 2018 alleging that the team's different set of rules for players and cheerleaders discriminated against women in violation of the NFL's Personal Conduct Policy. Davis said she was fired by the Saints after posting a picture to her private Instagram account that violated a team rule prohibiting cheerleaders from appearing nude, semi-nude, or in lingerie in their social media photographs. The Saints also have rules that forbid cheerleaders from having any contact with Saints players either in person or on social media. Players, however, face no such restrictions if they want to interact with the team's cheerleaders. The NFL's Personal Conduct Policy prohibits unlawful employment discrimination based on gender. While courts have previously held that cheerleaders are employees of individual teams and not the NFL, Davis asserts that cheerleaders are NFL personnel. If Davis is correct, then rules governing cheerleaders would be subject to the League's Personal Conduct Policy, and the Saints' rules might violate the PCP.
- Though the NFL's CBA doesn't expire until 2021, NFLPA Executive Director DeMarcus Smith is already preparing for a lockout, telling Sports Illustrated's Albert Breer that "the likelihood of either a strike or a lockout in 2021 is almost a virtual certainty." In the wake of the Elliott case, Smith says that the NFLPA will focus on limiting the powers of the Commissioner, particularly regarding player discipline, for the new CBA.

NBA

- On November 15, 2017, former NBA player Zaid Abdul-Aziz filed a proposed class action lawsuit on behalf of all retired NBA players in the Southern District of New York alleging the NBA Players' Pension Plan's "Actuarial Equivalent" plan violated ERISA by failing to correctly account for future cost of living increases. When Abdul-Aziz retired, the Players' Pension Plan offered both a "Normal Retirement Pension Plan", which paid lifelong monthly benefits to former players once they turned 50, and an "Actuarial Equivalent plan" that lasted for only 10 years, but paid players a higher monthly benefit. The Actuarial Equivalent plan was supposed to pay the equivalent value of the benefits distributed under the Normal Retirement Pension Plan. While Abdul-Aziz was receiving his payments, however, the NBA and NBPA agreed to a new CBA that incorporated a cost of living adjustment into the plan's benefit calculations, while keeping the Actuarial Equivalent plan's 10-year limit. Abdul-Aziz alleged that this meant

that the benefits distributed under the two plans were no longer of equivalent value. The NBA filed a motion to dismiss on March 5, 2018 claiming that the pension plan's cost of living adjustments applied prospectively only and that, in any event, Abdul-Aziz's payments ceased in 2001 and the statute of limitations on his claim had already run.

- The National Labor Relations Board held that the workers who produce Jumbotron content during NBA and WNBA games at the Target Arena in Minneapolis are employees and can unionize under the National Labor Relations Act. The International Alliance of Theatrical Stage Employees filed a representation petition on behalf of the workers with the NLRB. Region 18 Director Marlin Osthus dismissed the petition, however, finding that the workers were independent contractors under the Fed Ex doctrine. A split NLRB reversed, finding that, due to the amount of control exercised over the workers by the Timberwolves, the Fed Ex doctrine weighed in favor of categorizing the Jumbotron crew members as employees.
- The NBA and NBPA announced that they are creating an independent mental wellness program that will provide mental health services to players who want to receive mental health treatment from a source other than their team doctors. The program is still in development, and certain aspects of the program, such as the degree of anonymity given to participating players and the power of the program director to hold participating players out of a game due to mental health concerns, remain unclear.

MLB

- The MLBPA filed a grievance against the Miami Marlins, Oakland Athletics, Pittsburgh Pirates, and Tampa Bay Rays on February 27, 2018 alleging that the four teams were not spending their revenue sharing funds to improve on-field performance as is required by the MLB CBA. The grievance comes on the heels of a slow-moving offseason that resulted in only a few big-money deals and saw all four named teams in the grievance trade some of their best players, including Giancarlo Stanton, Gerrit Cole, Evan Longoria, and Andrew McCutchen. Some team owners have attempted to justify the reduction in spending by noting that the Chicago Cubs and Houston Astros employed the same strategy en route to their World Series titles. The MLB Commissioner's Office is currently reviewing the complaint.

NHL

- The National Labor Relations Board conducted two investigations into the NHL's Arizona Coyotes for interfering with the union rights of the team's administrative staff. According to NLRB records, the team spied on employees, failed to pay proper wages, tried to discourage ticket salespeople from unionizing, and retaliated against an employee for raising issues of her pay by firing her. The team has denied all of the allegations.

National Anthem Protests

- On October 15, 2017, Kaepernick filed a grievance under the NFL CBA via an independent attorney alleging that the NFL owners colluded to keep Kaepernick out of

the league “in retaliation” for Kaepernick’s role in beginning the NFL national anthem protests. Kaepernick began his protest during the 2016 season when he took a knee during the national anthem at a preseason game. He has been a free agent since March 3, 2017 after he opted out of his contract with the 49ers. This past offseason, Kaepernick continued to train and awaited a tryout from a team looking for a quarterback, but no such offers materialized. As other free agent quarterbacks were signed, including Kaepernick’s backup in San Francisco, as well as several players who have never taken an NFL snap, suspicion of league-wide collusion began to mount. Under the CBA, teams are barred from entering into express or implied agreements to deny employment opportunities to players. In his complaint, Kaepernick alleges that multiple general managers expressed interest, only to go silent without a contract offer made to him. As part of discovery, Kaepernick sought to depose commissioner Goodell and a number of owners. Additionally, Kaepernick sought texts and emails from a number of NFL officials. The grievance is still in the deposition phase, and no date for an arbitration hearing has been set.

- During the height of the NFL anthem protests, Jerry Jones was the highest profile owner to speak out against the protests, stating that players who do not stand for the anthem will not play. In response to Jones’s comments, Local 100 of the United Labor Unions filed a complaint with the National Labor Relations Board alleging that Jones violated the NLRA by “attempting to threaten, coerce, and intimidate all Dallas Cowboys players...to prevent them from exercising concerted activity protected under the act by saying that he will fire any players involved in” the protests. The union filed the complaint on October 10, 2017, but withdrew its complaint two weeks later.
- The NFLPA has continued to support the NFL players’ right to protest, and on March 6, 2018, the NFLPA released a statement that both Roger Goodell and John Mara assured the union that the NFL would continue to protect the players’ right to demonstrate.
- On September 29, 2017, the NBA sent a memo to all of its teams reminding them that the Official Rules of the NBA require “players, coaches, and trainers...to stand and line up in a dignified posture...during the playing of the national anthem.” Not one NBA player has challenged this rule by taking a knee.
- Bruce Maxwell on September 23, 2017 became the first and only MLB player to take a knee during the National Anthem. The League later released a statement saying that MLB respects the “background, perspectives, and opinions” of its players. Maxwell said that he will resume standing for the anthem during the 2018 season.
- The NHL does not have a rule governing player conduct during the national anthem, but Commissioner Bettman has said on multiple occasions that players should not bring their politics into the rink. J.T. Brown became the first NHL player to protest the national anthem by raising his fist during the anthem on October 7, 2017. He has since stopped his protest and shifted his focus to community outreach.
- The MLS and MLS Players Union released separate statements supporting players’ rights to protest the national anthem. So far, no MLS player has protested.

- Though WNBA players began protesting racial injustice by wearing black t-shirts with social messages before Kaepernick began his national anthem protest, the first WNBA anthem protest occurred during a playoff game between the Indiana Fever and Phoenix Mercury in September 2016. The most recent WNBA anthem protest occurred during the 2017 WNBA finals between the Minnesota Lynx and Los Angeles Sparks, where the entire Sparks team remained in the locker room during the anthem before games 1-4 of the finals. Additionally, the entire Lynx team kneeled during the anthem before game 1. WNBA commissioner Lisa Borders has publicly supported WNBA players' right to protest.

Leagues - Non-labor Matters

NFL

- In a consolidated class action suit against various NFL defendants, DirecTV entities, CBS Corporations, Fox Broadcasting Company, NBCUniversal Media, and ESPN, a group of fans claimed that the agreement between the NFL and DirecTV that created DirecTV's "Sunday Ticket" program is anticompetitive and that it violates the Sherman Act. The NFL and DirecTV have an exclusive distribution agreement that allows for DirecTV to broadcast football games on DirecTV's Sunday Ticket channels which are produced by CBS and Fox. This allows for Sunday Ticket subscribers to watch games that are out of their local market. The plaintiffs claim that defendants have violated Section 1 of the Sherman Act by agreeing to constrict competition in the distribution of live broadcasting of NFL games, resulting in increased prices paid by advertisers and consumers. Plaintiffs further alleged that the defendants violated Section 2 of the Sherman Act by monopolizing the live broadcasts of NFL games by making DirecTV the only source for most of the NFL regular season games. The United States District Court for the Central District of California found that since the NFL and NFL teams own the rights to the broadcasts, the NFL's conduct in working collectively with NFL franchises to enter into an exclusive distribution agreement with DirecTV did not constitute an unreasonable restraint on trade. Further, the court held that the plaintiffs failed to establish any antitrust injury and granted the defendants' motion to dismiss with prejudice. *See In re Nat'l Football Leagues Sunday Ticket Antitrust Litig.*, No. ML1502668BROJEMX, 2017 WL 3084276, (C.D. Cal. June 30, 2017)
- The United States Court of Appeals for the Fourth Circuit vacated a district court decision upholding the United States Trademark and Patent Office's cancellation of the Washington Redskins trademark registrations. The registrations were cancelled in 2014 on the grounds that they violated the Lanham Act's prohibition on disparaging trademarks. However, in June 2017, the United States Supreme Court held in another case that the Act's prohibition is unconstitutional because it violates the free speech cause of the First Amendment. In that highly publicized case, *Matal v. Tam*, an Asian-American band called "The Slants" challenged the USPTO's refusal to grant a trademark for their name because it disparaged those of Asian descent. While both the Redskins case and *Tam* were based on the same constitutional issues, the Redskins were procedurally barred from joining *Tam* at the Supreme Court level. Still, the *Tam* decision

worked in the Redskins' favor as the Fourth Circuit relied on the new precedent to vacate and remand the district court's ruling. *See Pro-Football, Inc. v. Blackhorse*, 709 Fed. Appx. 182 (4th Cir. 2018). *See also Matal v. Tam*, 137 S. Ct. 1744 (2017).

- WWE Chair Vince McMahon announced in January 2018 that the XFL will be relaunched in 2020. McMahon introduced the new version of the league as a “fan-centric” and apolitical alternative to the NFL. The original XFL, which lasted just one season in 2001, presented itself as a more violent game than that of the NFL. However, McMahon plans to “listen to medical professionals” this go around and promised that the sport will be safe for players. While no decisions have been made as to which eight cities will have teams, the league is set to have a ten game season and a four team playoff. Additionally, each team will consist of forty players who will be paid more when their team wins.

MLB

- Minor league baseball players brought a class action claim against the Commissioner of baseball, the former Commissioner of Baseball, and the 30 Major League Baseball franchises alleging that defendants violated federal antitrust law by artificially depressing minor league players' salaries. The players further argued that the MLB and its franchises conspired to fix the salaries paid to minor league players. Defendant owners of the MLB franchises filed a motion to dismiss, citing baseball's antitrust exemption. The Ninth Circuit Court of Appeals ultimately held that the employment of minor league players and the reserve clauses of their contracts falls precisely within baseball's exemption from federal antitrust laws, and dismissed the suit. *See Miranda v. Selig*, 860 F.3d 1237 (9th Cir.), cert. denied, 138 S. Ct. 507 (2017)
- 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)
- MLB Commissioner Rob Manfred announced in January 2018 that the Cleveland Indians will no longer use its “Chief Wahoo” logo on team uniforms starting in 2019. The logo, which is the head of a red-skinned man wearing a feather, has been criticized for being a racist caricature of Native Americans. Both the MLB and the Indians organization have been parties in legal actions targeting the team's name and logo in challenges brought before the Trademark Trial and Appeal Board, as well as Ontario courts. The appropriateness of the “Chief Wahoo” logo, which dates back to the 1940s, was also at

the center of national discussion after the Indians appeared in the World Series in 2016. It was at that time that Manfred announced his plan to speak with Indians owner and CEO Paul Dolan about the possibility of changing the team's logo. Ultimately, Dolan agreed to stop using the logo on team uniforms, however the logo will still be used on merchandise sold in Ohio and at the team's spring training site in Arizona. Similarly, the Baseball Hall of Fame announced in March 2018 that it would use Cleveland's "block C" logo on recent inductee Jim Thome's plaque, which is to be unveiled this summer. Thome, who played with the Indians in the 1990s, expressed his preference for the "block C" logo, stating that it is "the right thing to do."

- The Miami Marlins were sold for \$1.2 billion in October 2017. Jeffrey Loria, the former owner of the team, sold his franchise to an investment group led by Bruce Sherman and includes New York Yankee legend Derek Jeter. While Sherman will be the principal owner of the team, Jeter is expected to run the day-to-day of the organization as CEO. The sale was not without controversy. The city of Miami and the larger county of Miami-Dade brought suit against the team in February 2018 for their alleged five percent cut of the sale. According to the city and county, a 2009 agreement for the public funding of the Marlins' \$600 million stadium states that the two governments are due 5% of any profits resulting from the team's sale. The complaint states that the Marlins were originally bought by Loria for \$158 million and that the current sale price represents a 757 percent increase in the team's market price. The Marlins are pushing to arbitrate the dispute per an arbitration clause in the agreement. *See* Miami-Dade et al. v. Miami Marlins LP et al., case number 1:18-cv-20908 (S.D. Fla.)

Soccer

- The North American Soccer League brought an antitrust action against the United States Soccer Federation claiming that the federation is misapplying its standards for divisional level designation in order to conspire against the NASL. The USSF, as the governing body of American soccer, applies the Professional League Standards which is a set of qualifications for professional soccer leagues in the United States that are seeking Division I, II, or III designations. These designations are similar to those of the divisions in the NCAA and demonstrate a level of quality of competition. NASL claims that the USSF amended and executed the Professional League Standards in a conspiratorial way to ensure that Major League Soccer as the only Division I league and United Soccer League Pro as 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 league, respectively. In denying the NASL's motion for a preliminary injunction, the United States District Court for the Eastern District of New York found that the plaintiff showed proof of irreparable harm and that an injunction would not harm public interest but held that the plaintiff did not show that it was entitled to relief. The court came to this conclusion since the plaintiff failed to show an unreasonable restraint of trade under the "rule of reason" analysis. Ultimately, plaintiff failed to show a "clear showing" of entitlement to relief because of the reasonableness of the restraint. On March 16, 2018, the NASL filed an amended complaint adding Major League Soccer as a defendant in the suit. *See* N. Am. Soccer

League, LLC v. United States Soccer Fed'n, Inc., No. 17-CV-05495 (MKB), 2017 WL 5125771, (E.D.N.Y. Nov. 4, 2017)

- On February 10, 2018, the U.S. Soccer Federation elected Carlos Cordeiro as its 32nd president. Cordeiro, the Federation's former vice president, was elected on the third ballot in the organization's first contested election since 1998. Kathy Carter, Kyle Martino, Eric Wynalda and Hope Solo were among the final candidates for the position.

NBA

- A lawsuit brought by fans against the Golden State Warriors and software designer Signal360 is headed to arbitration. The suit, which dates back to 2016, alleges that the team secretly recorded conversations through a smartphone app. The plaintiffs claim that the Warriors app, which gives fans updates on team news, scores, and schedule, uses the user phone's microphone to track the user's location. However, the app contains no warning of this process or that it is capable of picking up nearby conversations. If true, such a practice is a violation of the Electronic Communications Privacy Act which prohibits the recording of oral communications through the unauthorized access of a device's microphone. The parties submitted a joint filing in January 2018 in which they requested the California federal court's permission to privately mediate the claims. The court approved and the parties have agreed to hold mediations between October 12 and November 9, 2018. *See* Satchell v. Sonic Notify, Inc. et al. case number 4:16-cv-04961 (N.D. Cal.)

Contracts

NFL

- St. Louis Circuit Court Judge Christopher McGraugh denied most pretrial motions filed by the Los Angeles Rams and the National Football League in a lawsuit in which they are accused by the city of St. Louis, St. Louis County, and the Regional Convention and Sports Complex Authority for breach of contract and fraud. The complaint alleges that the Rams and the NFL breached a contract when deciding to move the team to Los Angeles before applying for relocation, thereby misleading the plaintiffs and causing significant financial losses. In April of 2017, 15 months after the Rams relocated to Los Angeles, the city of St. Louis joined St. Louis County and the Regional Convention and Sports Complex Authority in a lawsuit against the NFL, all thirty-two of its clubs, and their respective owners. The plaintiffs are seeking an unspecified amount of damages for the estimated loss of millions in tax revenue caused by the Rams and Rams' owner, Stan Kroenke, alleged violation of NFL relocation guidelines. *See* McAllister v. St. Louis Rams, LLC, 2018 U.S. Dist. LEXIS 24034
- Super Bowl XLV fans dismissed all of their claims against the NFL on May 22, 2017. The fans, who filed suit in 2013, alleged that they were displaced from their seats or obstructed from viewing the game held in AT&T stadium in 2011. The hundreds of ticket holders in the suit faced an uphill battle after the Fifth Circuit denied class action for similar claims involving the seats at Super Bowl XLV in September 2016. While a series

of bellwether trials were ordered to begin in August, the parties entered into settlement negotiations on April 18th. The NFL and ticket holders filed an agreed motion for dismissal with prejudice and stipulated that each party would bear its own costs and fees. *See Greco v. National Football League*, 3:13-cv-01005 (N.D. Tex. 2017)

- The United States Court of Appeals for the Third Circuit Court reversed a district court decision to dismiss a putative class action suit claiming that the NFL violated New Jersey's Consumer Fraud Act by failing to make enough Super Bowl XLVII tickets for sale. The suit, brought by Josh Finkelman, alleges that the NFL's lottery ticket policy made only a fraction of Super Bowl tickets available to the public despite the CFA's requirement that at least 95 percent of tickets be distributed to the public. The case was previously dismissed by the Third Circuit in January 2016 for lack of standing because Finkelman failed to show that the higher ticket price that he paid could be linked to the NFL's policy. However, in his second amended complaint filed in April 2016, Finkelman argued that, had the NFL not withheld more than 5 percent of tickets from being sold to the public, than he would not have paid a higher ticket price on the secondary market. The Third Circuit held that Finkelman "is not required to prove his economic theory in his complaint" which is based on the opinion of sports economist Dr. Daniel Rascher. The court's decision deferred action to the New Jersey Supreme Court to certify the meaning of the CFA and determine whether the NFL's alleged violation falls within the statute. *See Finkelman v. National Football League*, 877 F.3d 504 (3d Cir. 2017)

MLB

- The Miami Marlins are using a judgment against season ticket holder Kenneth Sack, which is still under appeal, to petition for the seizure of Sack's commercial property worth \$725,000. The Marlins sued Sack for failing to follow through on his four-year season ticket agreement; they have filed nine such suits against season ticket holders. Fans who have backed out on the Marlins tickets cite unkept promises made by the organization, including free parking spaces and private entrance to games. Sack has appealed the January 2017 judgment against him in the amount of \$97,200, because his attorney was forced to miss important court dates and filing deadlines due to a heart attack. The appeal is still pending, but the Marlins are moving forward and attempting to collect. If the court grants the team's petition, ownership of Sack's commercial property would be transferred to the Marlins.
- The Tampa Bay Rays filed suit against its long-time concessions vendor, Centerplate Inc., in U.S. District Court for the Middle District of Florida. The December 2017 complaint includes allegations of breach of contract, breach of implied-in-fact contract, breach of implied-in-law contract, breach of the implied covenant of good faith and fair dealing, bailment, and negligence. Among the many allegations detailed in the complaint are accusations that Centerplate underreported gross receipts and concealed performance issues over the course of the parties' twenty-year contract agreement. The team also alleges that it suffered injury in the form of negative publicity and lost concessions after a highly publicized incident in which Centerplate's former CEO was caught on video kicking a dog. In a motion to dismiss, Centerplate accused the Rays of bringing the suit as a way to escape repaying debt it owes to the vendor and that some of the team's claims

are barred by a five-year statute of limitations. Judge James S. Moody, Jr. denied the motion, however, stating that the allegations are sufficiently pleaded and that the possible statute of limitations issue is an affirmative defense that on which the court cannot yet rule. As of March 2018, the case was still in the initial pleadings stage. *See Tampa Bay Rays Baseball Ltd. v. Volume Services, Inc.* case number 8:17-cv-02948 (M.D. Fla.)

Boxing

- U.S. District Judge R. Gary Klausner dismissed a class-action lawsuit filed by boxing fans and pay-per-view subscribers alleging that they did not receive what they bargained for when they purchased pay-per-view rights to the Manny Pacquiao- Floyd Mayweather Jr. fight. The class argued that the fight did not live up to its marketing campaign, and cited the questionable status of Pacquiao's shoulder as causing the fight to be less competitive than anticipated (though the fight lasted twelve rounds). Judge Klausner held that fans, despite the injury to Pacquiao's shoulder, still received what they paid for, which was a boxing match between Pacquiao and Mayweather. *See In re Pacquiao-Mayweather Boxing Match Pay-Per-View Litig.*, 122 F. Supp. 3d 1372, 2017 U.S. Dist. LEXIS 107022

Torts

Wrongful Death

NFL

- Avielle Hernandez, the daughter of Aaron Hernandez, through her mother, brought a \$20 million lawsuit wrongful death suit against the NFL and the New England Patriots seek redress for the loss of parental consortium. Plaintiff argues the negligent conduct of the league and Patriots deprived her of the companionship and society of her father, Aaron Hernandez. Hernandez's career came to an abrupt end when he was arrested and convicted for the murder of Odin Lloyd in January 2013. Four years into serving his sentence, Hernandez was found dead from an apparent suicide. Following his death, experts from the CTE Center at Boston University discovered advanced Stage 3 CTE in his brain, the most severe case ever seen in a person aged 27. In her complaint, Avielle Hernandez alleges that the NFL and Patriots were fully aware of the dangers of these repeated head injuries and should have recognized signs of cognitive impairment through yearly preseason exams of Aaron Hernandez. Furthermore, the claim contends that the NFL and Patriots breached the duty of reasonable care owed to Hernandez. In February 2018, the suit was added to the ongoing multidistrict concussion litigation in Pennsylvania. *See Hernandez v. National Football League et al* No. 1:17-cv-12244 (Ma. 2017)

Athlete Injuries

MLB

- Former New York Yankees outfielder Dustin Fowler filed a lawsuit against the Chicago White Sox and the Illinois Sports Facilities Authority in Cook County, Illinois for negligence. Fowler's lawsuit stems from a season-ending collision he had with an electrical box in right field foul territory. During the bottom of the first inning, Fowler's right knee collided with an unprotected electrical box in right field foul territory while attempting to catch a fly ball. As a result of the collision, Fowler suffered an open rupture of the patellar tendon, ending his season before his first major league at bat. Fowler is alleging that both the White Sox and ISFA (the state agency that manages the stadium) acted negligently by not taking precautions to secure the electrical box or prevent players from colliding with it. Fowler claims this was done with an "utter indifference to or conscious disregard" for his safety. He is seeking an unspecified amount of money for "severe and permanent" injuries including mental pain and anguish. *See Verified Complaint and Demand for a Jury Trial, Fowler v. The Illinois Sports Facilities Authority et al No. 2017L012796 (Cir. Ct. of Cook Cty. Il. Dec. 15, 2017)*

NBA

- Juan Vasquez, a devoted fan of the NBA's San Antonio Spurs, and What's on Second, Inc., a local sports memorabilia shop in San Antonio, sued the Golden State Warriors, and center Zaza Pachulia for a controversial defensive play made by Pachulia against Spurs star Kawhi Leonard in Game 1 of the Western Conference Finals. When Leonard jumped to shoot and while mid-shot and still high in the air, Pachulia slid his foot underneath Leonard. Leonard subsequently landed on Pachulia's outstretched foot, causing injury to his ankle that would cause him to miss the remainder of Game One and eventually the remaining games of the series and Spurs' season. The plaintiffs are seeking damages not to exceed \$73,000 and a temporary restraining order against the Warriors and Pachulia that would enjoin the defendants from engaging in the alleged dangerous behavior of the claim. For a Copy of Plaintiff's Petition and Application for Temporary Restraining Order *see* http://a.espncdn.com/pdf/2017/0517/SpursFanLawsuit_r.pdf

NHL

- Former Nashville Predators forward, Eric Nystrom, filed a lawsuit for medical expenses and lifetime benefits against the Nashville Predators in the Davidson County Circuit Court of Tennessee seeking an unspecified amount in damages. The lawsuit cites three specific injuries Nystrom suffered while playing hockey for the Predators—a hip and leg injury, a back injury, and a concussion—which left him with a permanent partial-disability as a result. Nystrom played for the Predators from 2013 to 2016, and was forced into retirement, in part, because of these injuries.

Boxing

- Magomed Abdusalamov, a former professional boxer, reached a settlement with the state of New York arising out of the New York State Athletic Commission's alleged recklessness, gross negligence, and medical malpractice, for its mishandling of an injury Abdusalamov sustained during a 2013 bout in Madison Square Garden. Abdusalamov was ultimately hospitalized for more than ten months and remains paralyzed on his right side after suffering multiple strokes. Additionally, Abdusalamov is unable to walk and doctors claim he will likely never speak again, except for limited mumblings. New York will pay \$22,000,000 to Abdusalamov as part of the settlement terms. *See Abdusalamov v. State of New York*, 34 NY. J.V.R.A. 10:4 (Sept. 11, 2017)

WWE

- Former entertainers who wrestled under contracts with World Wrestling Entertainment, Inc. filed an amended complaint against WWE, alleging that their highly-scripted and rehearsed moves caused their plaintiffs to suffer various head injuries, including CTE, Alzheimer's, and dementia. The ex-wrestlers in the consolidated proceeding said WWE routinely failed to care for the repetitive head injuries they sustained during their careers in any medically competent way, and did not establish proper protocols to prevent further head trauma. The company's motion to dismiss was not officially given, as the district judge reserved to give a judgment in an abundance of deference to the wrestlers' attorneys. *See McCullough v. World Wrestling Entm't, Inc.*, No. 3:15-CV-1074 (VLB), 2017 U.S. Dist. LEXIS 160661 (D. Conn. Sep. 29, 2017)

Spectator Injuries

MLB

- Major League Baseball announced on February 1, 2018 that all thirty of its clubs will have expanded safety netting behind home plate at their ballparks this coming season. At minimum, the netting at each stadium will reach to the end of both dugouts. The announcement comes following reports and lawsuits of several fans being hit by balls and bats during the 2017 season. Ongoing litigation in Illinois state court filed by a man claiming an errant baseball at a Chicago Cubs game left him blind in one eye is one such example. *See John "Jay" Loos v. Major League Baseball and Chicago Cubs Baseball Club*, 2017 WL 4551050 (Ill.Cir.Ct.)

Other Torts

Tennis

- Fourteen-time Grand Slam winner Rafael Nadal won a defamation lawsuit he filed in 2016 against Roselyne Bachelot, a former French minister of health and sports, over statements she made on French television that said Nadal covered up failed drug tests. While serving as the French minister of health between 2007 and 2010, Bachelot claimed that Nadal took a seven month break from tennis in 2012 and 2013 in order to cover up

his failed drug tests and that she knew so “without a doubt”. Nadal insisted that he missed multiple tournaments, including the US Open and the 2012 Olympics, due to a knee injury and affirmed that he never failed a drug test in his entire career. At trial, the French tribunal declared Nadal victorious and ordered Bachelot to pay Nadal \$11,800 in damages (\$10,000 Euros), which he said he would donate to a French charity.

Sports Media

- Callais Capital Management sued former NFL quarterback Brett Favre and the executives of Sqor Sports for negligence and fraudulent misrepresentation. CCM alleges that Favre and others induced CCM to invest in Sqor, a failed sports social media network. The purpose behind Sqor was to connect fans with their favorite professional athletes by compiling an athlete’s posts across other social media platforms to their Sqor profile. With a high interest in the platform, CCM claims it invested \$16 million into Sqor with promises of “extremely high profits.” Ultimately, CCM alleges Sqor executives “negligently and/or fraudulently misrepresented” a multitude of factors which induced CCM to invest. These alleged misrepresentations include the growth chart of their projected income (\$44 million in 2018), the size and growth of their userbase (claiming Sqor had over 325 million fans and that their user growth rate exceeded other platforms including Twitter and LinkedIn), their ability to attract investors and their ability to partner with professional athletes or clubs as users. Furthermore, CCM alleges Favre allowed Sqor Sports executives to misuse and overstate the influence of Sqor on Favre’s social media platforms.

Other Civil Suits

NBA

- Moses Malone Jr. filed a civil lawsuit seeking damages from Houston Rockets guard James Harden for allegedly orchestrating a beating and robbery. Malone Jr. alleges that Harden hired men to beat and rob Malone Jr. in retaliation to Malone Jr.’s Facebook post criticizing Harden’s basketball camp. Malone Jr. is seeking more than \$1 million in damages for past and future physical pain and mental anguish as well as medical expenses, physical impairment and the value of lost personal property. *See Complaint, Malone v. Vlive@ Vintage Steakhouse, LLC., et al.* 2017 WL 7160702 (Tex. Dist. Dec. 12, 2017)

Individual Sports

Motorsports

- A jury on October 13, 2017 found former professional race car driver Scott Tucker and his attorney Timothy Muir guilty of running a \$2 billion criminal payday lending scheme that victimized over 4.5 million people by charging them interest rates that ranged between 400-700%. Tucker and Muir argued that business contracts with several Native American tribes rendered their operation legal due to “tribal sovereignty,” but the jury ultimately rejected this contention. U.S. District Judge P. Kevin Castel sentenced Tucker

to 200 months in prison on January 5, 2018. Tucker was also indicted on charges of tax fraud in the District of Kansas on December 21, 2017.

- Defunct NASCAR team Michael Waltrip Racing (MWR) on November 1, 2017 settled a wrongful termination suit brought by a former MWR pit crew member in January 2015. Brandon Hopkins was injured by MWR's #15 car after he was hit during a race. Though Hopkins was scheduled to have surgery after the 2014 NASCAR season ended in November, he continued to work as a pit crew member during the season until pain from the injury became unbearable. MWR subsequently moved the date of Hopkins's surgery to August 7, 2014, but MWR fired Hopkins one day prior to his surgery. Hopkins sued MWR asserting that he was terminated because of his injury. MWR counterclaimed, alleging that Hopkins breached his employment agreement with MWR by misappropriating confidential documents and various pit crew tools. Most of the claims were disposed with on May 31, 2017 when Judge Louis A. Bledsoe III granted summary judgment both for Hopkins on all of MWR's counterclaims and for MWR on all but three of Hopkins's claims.

Horse Racing

- A divided 6th Circuit panel on September 11, 2017 held that the Michigan Gaming Control Board was not entitled to qualified immunity on a procedural due process claim and a Fifth Amendment claim brought by four harness racers. On May 20, 2010 the Control Board held an investigatory hearing with the four racers to determine whether the racers participated in a race-fixing scheme. During the hearing, the racers invoked their Fifth Amendment right against self-incrimination and refused to answer any questions. The Control Board then suspended their racing licenses and banned the racers from all Michigan racetracks. The racers sued the Control Board in 2012 alleging that the Board violated the racers' procedural due process rights by failing to hold a post-exclusion hearing after the racers were banned from Michigan racetracks and that the Board violated the racers' Fifth Amendment rights by disciplining the racers for refusing to answer questions at the hearing. While a post-exclusion hearing was eventually held on April 25, 2013, the 6th Circuit stated that the Board was not entitled to qualified immunity with respect to the due process claim because the post-exclusion hearing was not held in a timely fashion. Regarding the Fifth Amendment claim, the racers had every right to invoke the Fifth Amendment at the investigatory hearing because the Board never offered immunity to the racers during the hearing. The Control Board filed a petition for a writ of certiorari on February 2, 2018.

Golf

- Effective as of November 2017, the PGA Tour has strengthened its doping policy by adding blood testing and three categories of substances to its banned list that the World Anti-Doping Agency prohibits: asthma medications, allergy and anti-inflammatory medications, and pseudoephedrine over a certain threshold. It also will begin publicly reporting player suspensions for drugs of abuse as well as performance-enhancing drugs. These revisions will enhance the credibility of golf's commitment to drug free sport

within the Olympic Movement. The IOC Executive Board has approved the inclusion of golf at least through the 2024 Olympics Games.

- Vijay Singh's nearly 5-year-old lawsuit against the PGA Tour will continue to drag on after New York Supreme Court Judge Eileen Bransten rejected Singh's request to sanction the Tour and its attorneys for needlessly prolonging the case. The PGA Tour suspended Singh from all Tour activities for 90 days in February 2013 after Singh used deer antler spray to help ease his knee and back problems. Though Singh tested negative for any banned substances, a laboratory analysis of deer antler spray revealed that the spray tested positive for IGF-1, which the Tour's Anti-Doping manual lists as a banned substance. Singh appealed his suspension, but the Tour dropped the disciplinary action after WADA announced that it does not consider deer antler spray to be a banned substance. Singh brought a number of claims against the PGA Tour, but Judge Bransten on May 15, 2017 dismissed all of them except Singh's allegation that the Tour failed to act in good faith by not asking WADA about its position on deer antler spray before the Tour disciplined Singh. The golfer sought sanctions against the Tour after Judge Bransten in August 2017 denied the Tour's request for reargument on the good faith claim. In its continued attempts to avoid trial on the issue of whether it acted in good faith, the Tour has filed an interlocutory appeal of Judge Bransten's decision to keep alive Singh's allegation of bad faith.
- Drink and dietary supplement company Organo Gold International reportedly sued former pro golfer Greg Norman and his company, Aussie Rules Marine Services (ARMS), on January 24, 2018 for allegedly breaching a series of licensing agreements between the parties. Organo terminated the contract on November 7, 2017 and is seeking \$4.3 million in damages for breach of contract and a declaration that Organo properly terminated the contract.

Martial Arts

- Current and former UFC fighters (Cung Le, Jon Fitch, Nate Quarry, Luis Javier Vazquez, Brandon Vera and Kyle Kingsbury) in February 2018 reportedly asked a Nevada federal judge to grant class certification to the fighters in their antitrust suit against UFC, UFC's parent company Zuffa LLC, its CEO Lorenzo Fertitta, and its president Dana White. The fighters originally sued in federal district court in San Jose, California in December 2014, but the case was transferred to Nevada in June 2015. Discovery in the case has concluded, and the decision on class certification is currently pending.
- Connecticut federal judge Vanessa L. Bryant on March 28, 2018 granted summary judgement against former WWE wrestlers Vito LoGrasso (who fought under the names Big Vito and Skull von Krush [and sometimes wrestled in a dress]) and Evan Singleton (who fought under the name Adam Mercer) in their lawsuit alleging that the WWE fraudulently failed to inform the wrestlers of a link between concussions and degenerative neurological disorders. Since 2015, six concussion lawsuits have been filed by former wrestlers against the WWE, but all claims other than LoGrasso and Singleton's fraud claim were dismissed. Judge Bryant's decision thus effectively marks the end of the recent wave of WWE concussion lawsuits.

Marathon Running

- Ethiopian marathon runner Demssew Tsega Abebe was arrested and tortured by the Ethiopian government in December 2015 after he participated in a peaceful protest against the government's seizure of his people's land. Soon after he was released, Abebe came to the United States to participate in the 2016 Houston marathon, but was unable to run as a result of the torture. He instead applied for asylum and sought humanitarian parole for his wife and two young children, all of whom were being persecuted by the Ethiopian government. Though Abebe's application for asylum is still pending, his family's humanitarian parole application, which was handled by Three Crowns LLC, was granted on February 2, 2018. Abebe's family arrived in Washington DC on February 14, 2018. His family's arrival marked the first time Abebe met his one-year-old daughter.

College, High School, and Youth Sports

College Sports

Antitrust Litigation

- On December 6, 2017, Judge Claudia Wilken, who presided over the *O'Bannon* federal court trial, gave final approval to a \$208.7 million settlement by which the NCAA will compensate 43,000 student-athletes who received athletic scholarships limited to the value of tuition, fees, books, and room and board at their respective universities prior to the "full cost of attendance" scholarships now permitted under NCAA rules.
- In March 2018, Judge Wilken scheduled a ten-day bench trial beginning on December 3, 2018 to hear the consolidated antitrust claims of current and former men's Division I Football Bowl Subdivision (FBS) football and men's and women's Division I basketball student-athletes against the NCAA and eleven athletic conferences whose member universities' teams participated in these sports. Plaintiffs allege that the defendants violated federal antitrust law by conspiring to impose an artificial ceiling on the economic value of the scholarships and benefits that they may receive from their respective universities as payment for their athletic services. Specifically, they seek injunctive relief against enforcement of NCAA's rules prohibiting universities from competing to recruit student-athletes with offers of cash or various benefits tethered to educational expenses (e.g., prohibiting tutoring to assist in initial eligibility, transfer eligibility, or waiver requests; restricting reimbursement for computers, science equipment, musical instruments and other items related to the pursuit of various academic studies, but not currently included in the cost of attendance calculation; permitting guaranteed post-eligibility scholarships for undergraduate or graduate study and tutoring costs only at their own institution, not at other) or incidental to athletic participation (e.g., permissible reimbursement for family travel expenses), including rules that have changed after *O'Bannon*. Regarding the parties' respective summary judgment motions, Judge Wilken ruled as follows: 1) res judicata and collateral estoppel do not bar plaintiffs' claims because the challenged NCAA rules are not the same as those at issue in *O'Bannon*; 2) as in *O'Bannon*, the relevant market is a college education combined with athletics, or alternatively, the market for the student-athletes' athletic services; 3) "greater

compensation and benefits would be offered in the recruitment of student-athletes absent the challenged rules”; 4) whether the challenged NCAA rules further the procompetitive justifications recognized by *O’Bannon* (i.e., “integrating academics with athletics” and “preserving the popularity of the NCAA’s product by promoting its current understanding of amateurism”) is a factual issue for trial; and 6) plaintiffs’ proposed less restrictive alternatives (e.g., conference autonomy) to achieve the NCAA’s procompetitive objectives for the challenged rules are not foreclosed by *O’Bannon* and raise a fact question for resolution at trial. *In re NCAA Athletic Grant-In-Aid Cap Antitrust Litigation*, 2018 WL 1524005 (N.D. Cal. March 28, 2018).

- In July 2017, Chris Spielman, a former All-American football player at Ohio State University, filed a class action antitrust suit seeking treble damages on behalf of himself and other former Ohio State players (including two-time Heisman Trophy winner Archie Griffin) against Ohio State and IMG College, a sports marketing company that represents the university and many others, in U.S. District Court in Columbus. It is patterned after Ed O’Bannon’s successful antitrust suit against the NCAA and alleges the defendants and co-conspirators Honda and Nike violated federal antitrust law by conspiring to prevent current and former Ohio State football players from receiving any compensation for the unauthorized use of their name, image, and likeness (NIL) rights in various advertising materials and products, including 64 honorary banners hung in Ohio Stadium featuring former Buckeye football players’ names and likenesses (including Spielman’s) along with Honda’s corporate logo as well as Nike’s “Legends of the Scarlet and Gray” vintage jerseys and other Buckeyes apparel. In response, Ohio State filed a motion to dismiss because it is public university with sovereign immunity from federal antitrust liability, which is pending.
- In November 2017, Spielman filed a motion to add 89 other NCAA universities represented by IMG (including Alabama, Clemson, Notre Dame, and Texas) and Nike as defendants as well as thousands of former football players at those institutions as plaintiffs. His amended complaint alleges IMG and Nike have restricted the plaintiffs’ ability to “capitalize on the proverbial blood, sweat, and tears” shed by them during their college football playing days, and it characterizes their actions as “patently anti-competitive and illegal,” which along with the universities’ conduct, have resulted in the players “losing their freedom to compete in the open market” for the licensing of their NIL rights.

FBI Investigation, Federal Corruption Charges, and Fallout

- On September 29, 2017, the U.S. Attorney's Office for the Southern District of New York detailed findings from an FBI investigation uncovering corruption, bribery, and wire fraud involving some of the nation’s most prominent college basketball programs, which resulted in criminal charges against assistant coaches Chuck Person of Auburn, Tony Bland of USC, Emanuel “Book” Richardson of Arizona, and Lamont Evans of Oklahoma State. FBI Assistant Director William F. Sweeney Jr. said: “Today’s charges detail a corrupt practice in which highly rated high school and college basketball players were steered toward lucrative business deals with agents, advisors, and an international athletics apparel company. As alleged, NCAA Division I and AAU coaches created a

pay-to-play culture, agreeing to provide access to their most valuable players while also effectively exerting their influence over them. Today's arrests should also serve as a warning to those who conduct business this way in the world of college athletics."

- The court denied defendants' motion to dismiss the indictment charging them with conspiring to use interstate or foreign wires in furtherance of a scheme to defraud universities by paying bribes to ensure high school basketball players would attend and play for the universities. *United States v. Gatto*, 2018 WL 1136109 (S.D.N.Y. Feb. 28, 2018).
- In new charges filed in April 2018, the FBI alleges James "Jim" Gatto, former Adidas global sports marketing director for basketball, surreptitiously made two \$40,000 payments to the father of a prospective North Carolina State University basketball player to ensure he would attend the university and sign a sponsorship deal with Adidas when he became an NBA player. The new charges also assert that in November 2016 Gatto paid \$90,000 to a recruit's mother in an effort to get the player to attend the University of Kansas and to become an Adidas sponsor as an NBA player. No charges have been brought against Kansas, North Carolina State, or either schools' head basketball coaches, but the investigation is ongoing. The new charges also identify coaches and players associated with the University of Louisville and University of Miami in connection with the previous allegations of corruption involving the recruiting of college basketball players.
- As a result of the FBI's multi-year probe into corrupt college basketball recruiting practices, former Louisville coach Rick Pitino is accused of knowing about a \$100,000 payment made by Adidas representatives to the family of five-star recruit Brian Bowen to secure his commitment to Louisville, which he denied knowing about. On October 16, 2017, Louisville fired Pitino for cause, which resulted in his filing of a breach of contract suit against the university to recover the \$36 million balance of his employment contract. In a counterclaim, Louisville has alleged Pitino is liable for breach of contract, negligence, and unlawful interference with business relationships between the university and the NCAA, Atlantic Coast Conference, media companies, TV networks and sponsors. It is seeking unspecified monetary damages and demands that Pitino indemnify the university for any financial penalties it must pay to the NCAA for rules violations connected to his wrongdoing or breach of employment contract obligations.

Independent Commission on College Basketball Proposed Reforms

- On April 25, 2018, the Commission, which was formed by the NCAA in the wake of the foregoing federal government action and chaired by Condoleezza Rice, former U.S. secretary of state and Stanford University provost, released its recommendations. It proposes elimination of the "one-and-done rule" pursuant to which college basketball players are eligible for the NBA draft after playing one year (which would require agreement by the NBA and NBA Players Association) as well as several other reforms requiring adoption by the NCAA, including: allowing student-athletes to retain their college basketball eligibility until signing a professional contract; a new process for certifying agents and permitting them to advise student-athletes regarding their potential as professional players; creating independent entities that would adjudicate complex and

"high-stakes" NCAA rules violation cases; increased penalties for serious NCAA rules violations, including five-year postseason bans for university athletic teams and lifetime bans for coaches; NCAA-run summer basketball events for prospective college basketball players; adding five public members to the NCAA's Board of Governors (currently consisting of exclusively college and university presidents and chancellors); and requiring coaches, athletics directors, and university presidents to certify annually their compliance with all NCAA rules. The Commission did not recommend that college basketball players receive cash payments for their playing services or be compensated for use of the NILs. It also did not suggest any changes to the college basketball season schedule or the men's NCAA Division I tournament to reduce missed classes or to provide players with more time to focus on academic endeavors. The NCAA's Board of Governors is considering the Commission's proposals, which likely will be adopted because it previously pledged an initial \$10 million to implement them along with \$2.5 million annually thereafter.

Pac 12 NCAA Basketball Reform Task Force

- A Pac 12 task force was created after last fall's college basketball federal indictments. The group produced a 50-page report that was unanimously approved by the Pac-12 presidents and chancellors. Like the Commission, the group favors the elimination of the "one and done" rule and tougher rules enforcement independent from the NCAA; and it also advocates sweeping changes to recruiting rules. Pac-12 Commissioner Larry Scott said that the proposed reforms will "help preserve the integrity of collegiate basketball and provide the choice, education and protection that our student-athletes deserve."

Proposed College Athletic Protection (CAP) Agreement?

- The National College Players Association's proposed CAP Agreement provides recruited student-athletes with a means of negotiating and obtaining written, legally enforceable benefits and rights permitted by NCAA rules that are not uniformly provided by its member universities, including post-eligibility medical insurance and the ability to be automatically released from a scholarship if a player decides to transfer. Other negotiable benefits include a guaranteed athletic scholarship for a given period of time; stipend and reimbursement money within NCAA limits; medical treatment or expenses reimbursement; and disability insurance. Student-athletes would submit a CAP Agreement to the universities interested in their playing services, with each university agreeing in writing to the particular rights and benefits it will provide, which would provide an alternative to the generally non-negotiable terms of the National Letter of Intent. The CAP Agreements with different universities would enable student-athletes to compare their respective offers and decide which one to accept.

NCAA Rules Enforcement and Governance

Application of Amateurism Rules

- Before accepting a football scholarship from the University of Central Florida (UCF), Donald De La Haye began posting humorous YouTube videos with social commentary.

Thereafter, De La Haye's videos have included depictions of his day-to-day life as a UCF athlete and have shown his daily practice regimen as the team's kicker. His videos eventually became very popular and generated advertising revenues, and he started receiving modest compensation from the YouTube website, which conflicted with NCAA bylaw 12.4.4 permitting a college athlete to "establish his or her own business, provided the student-athlete's name, photograph, appearance or athletics reputation are not used to promote the business." In July 2014, the NCAA granted a waiver permitting De La Haye to earn money from his YouTube account for non-athletic postings if he stopped posting athletically-related videos. He subsequently posted a video "Quit College Sports or Quit Youtube?," which was viewed by thousands. After De La Haye agreed only to stop posting videos referencing his status as a football player or showing off his athletic prowess and continued posting videos about his daily life with his name, image and athletic reputation prominently featured, UCF rescinded his football scholarship because this limited action would not fully comply with the NCAA's waiver requirements. He has filed a lawsuit alleging that UCF violated his First Amendment right to engage in free speech on social media platforms and that revoking his football scholarship removal was "arbitrary and unreasonable" because it wasn't related to his academic standing or his athletic performance. *Donald De La Haye v. University of Central Florida*, Case 6:18-cv-135-ORL-22GJK, Orlando Dist. Ct (2018).

- In September 2017, Texas A&M University freshman cross country runner Ryan Trahan claimed he was declared ineligible by the university for violating NCAA bylaw 12.4.4 by posting YouTube videos offering training tips for runners and advertising Neptune water, an ecologically friendly bottle company that started with a friend in 2016. To be granted a waiver that would allow Trahan to retain his college athletics eligibility and promote his company, the NCAA requested that he omit all references to Neptune or his status as a Texas A&M student-athlete on his YouTube channel, which has 14,000 subscribers.
- The NCAA recently granted a waiver to Arike Ogunbowale, a University of Notre Dame women's basketball player who made the game-winning basket for the Irish in the 2018 national championship game, to enable her to participate in *Dancing With The Stars* (DWTS) and retain her college basketball eligibility. Her appearance on DWTS would violate the NCAA rule prohibiting student-athletes from allowing their NILs to be used for commercial purposes, including appearances on television shows such as *DWTS*. The NCAA granted this waiver because it deemed Ogunbowale's appearance on *DWTS* to be "unrelated to her basketball abilities."

NCAA Rules Enforcement Decisions

- On March 12, 2012, the NCAA Committee on Infractions (COI) determined that the University of North Carolina, Chapel Hill (UNC) was responsible for multiple NCAA rules violations, including academic fraud committed by a former assistant coach and a former tutor who had done work for football student-athletes and refused to cooperate with the NCAA's investigation. Penalties imposed on the university included a one-year football postseason ban, reduction of 15 football scholarships, vacation of records, and three years' probation. On June 30, 2014, the NCAA

reopened its investigation after learning that additional people with information and others who were previously uncooperative were willing to speak with its enforcement staff. On October 13, 2017, the COI found that over an 18-year period UNC's Department of African and Afro-American Studies had offered admittedly academically deficient "paper courses" in which numerous student-athletes received too much assistance enabling them to successfully complete these courses and to retain their intercollegiate athletics eligibility. However, the COI determined that UNC did not provide impermissible "extra benefits" to student-athletes because "similar assistance was generally available to all students" and "the record does not establish that the courses were created, offered and maintained as an orchestrated effort to solely benefit student-athletes." UNC previously characterized the assistance provided in these "paper courses" as "academic fraud" in a report to its accreditor, and it acknowledged in the COI hearing that the courses "failed to meet its standards and expectations." Because "the NCAA defers to academics on matters of academic fraud," the COI concluded it "cannot second guess UNC's altered position" that it did not. It explained: "As institutions of higher education, the NCAA membership trusts fellow members to hold themselves accountable in matters of academic integrity." *University of North Carolina, Chapel Hill Public Infractions Decision* (10/13/2017).

- This COI case centered on recruiting violations committed by University of Mississippi boosters as well as rules violations committed by members of its football staff, failure to monitor by the head football coach, and a lack of institutional control over football staff and boosters. An assistant athletics director had arranged for cash payouts between \$13,000 and \$15,600 facilitated by boosters to recruited student-athletes and lied about doing so in an interview with NCAA investigators. Two football program staffers forged ACT scores for the recruits and enabled a booster to provide five recruits with impermissible housing and transportation. The COI found that the university lacked institutional control over its football program and because this was its third violation of NCAA recruiting rules since 1986, it banned its football team from participation in a 2018 bowl game and imposed other sanctions (e.g., scholarship reductions, vacation of all games in which ineligible players participated, and show-cause orders for several former and current football coaches). Former head football coach Hugh Freeze, who resigned in July 2017 after it was revealed he had called an escort service from his university phone, will be suspended for two games for failing to exercise oversight over his staff if he subsequently is hired about another university—a relatively light penalty because Freeze he had promoted an "atmosphere of compliance" and cooperated with the NCAA's investigation. See *University of Mississippi, Oxford Public Infractions Decision* (12/1/2017).
- For failing to monitor its football program from 2011-2015 and not ensuring its drug-testing program complied with NCAA rules and university policy, the COI placed Rutgers University on probation for two years and publicly reprimanded it. It also found that former football coach Kyle Flood failed to monitor his operations staff and violated university policy by contacting an instructor to make a special academic arrangement for a student-athlete. Rutgers' cooperating with the NCAA's investigation, firing Flood and athletic director Julie Hermann, implementing a new drug testing, and hiring a new chief medical officer were mitigating factors considered by the COI in determining its

sanction. *Rutgers, the State University of New Jersey, New Brunswick Public Infractions Decision* (9/22/2017).

- The COI imposed an eight-year “show cause” order on Ron Verlin, former University of the Pacific head men’s basketball coach for providing a recruit with a 1,400-word paper to pass off as his own work as well as answers to math course questions to other student-athletes and arranged for them to take unproctored exams. He also attempted to persuade multiple people to lie during the NCAA’s investigation. *University of the Pacific Public Infractions Decision*, (9/20/2017).

Larry Nassar Criminal Sexual Assault Guilty Pleas and Aftermath

- In January 2018, Larry Nassar, the former Michigan State University (MSU) women’s gymnastics team and USA Gymnastics team doctor who sexually molested numerous female gymnasts (more than 250 women accused him of doing so) over 25 years while claiming he was performing legitimate medical treatment on them, was sentenced to up to 175 years in prison after pleading guilty to ten counts of first-degree criminal sexual conduct in Michigan state court proceedings. During his sentencing hearing, more than 150 courageous victims testified about the horror of being sexually assaulted by him. In December 2017, Nassar received a 60-year federal prison sentence after pleading guilty to child pornography charges.
- On February 28, 2017, the USOC) announced the resignation of its chief executive Scott Blackmun and reforms to protect athletes from sex abuse
- In a March 2018 response to an NCAA inquiry submitted by its attorney Mike Glazier, MSU has denied it violated any NCAA rules: “I trust that you will see that the University is in no way attempting to sidestep the issues facing it, and that if the University had any reason to believe the criminal conduct of Nassar also implicated NCAA rules violations, the University would accept responsibility in that area as well. However, after a thorough and analytic examination of NCAA legislation, and an application of the known facts associated with the Nassar matter to NCAA legislation, the University finds no NCAA rules violations.”
- In April 2018, Congress enacted the *Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act*, which requires amateur athletics governing bodies as well as all adults who interact with minors and amateur athletes to report sex-abuse allegations to local or federal law enforcement authorities within 24 hours. The failure to report a sexual abuse allegation is punishable by up to one year in prison. This law requires the governing bodies for amateur athletes to establish “reasonable procedures” to limit one-on-one interactions between minors and adults, except in emergencies. It also authorizes the United States Center for SafeSport to ensure that aspiring U.S. Olympic athletes can report allegations of abuse to an independent entity for investigation and resolution and to ensure national governing bodies for all Olympic sports follow the strictest standards for child abuse prevention and detection. In addition, this law extends the tort statute of limitations within which sex-abuse victims can sue their offenders to age 28 or up to 10 years after the reasonable discovery of the violation, whichever is later.

- Nassar’s lengthy history of sexual assaults has led to several pending lawsuits against the USOC, USA Gymnastics, Bela and Martha Karolyi who operated a Houston, Texas area ranch used as a training ground for the U.S. women’s gymnastics team, and Michigan State University for alleged tortious failures to prevent his egregious conduct or cover-ups of it.
- While hundreds of complaints have been filed with the US Department of Education Office for Civil Rights alleging institutional failure to adequately respond to sexual assault incidents on campus, in September 2017, the new Secretary of Education, Betsy DeVos rescinded the 2011 and 2014 sexual assault guidance in favor of a 7-page Q&A. See *Q&A on Campus Sexual Assault Misconduct*
<https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>

Penn State Scandal/Jerry Sandusky Sexual Child Abuse Aftermath

- After being found guilty of child endangerment, in June 2017, former Penn State president Graham Spanier was sentenced to 4-12 months in prison, with the first two months in jail and the remainder under house arrest. Former vice president Gary Schultz was sentenced to 6-12 months, with two months in prison. He also was ordered to pay a \$7,500 fine and to perform 200 hours of community service. Former athletic director Tim Curley was sentenced to 7-23 months, with three months in jail. In imposing these sentences, Judge John Boccabella stated “They ignored the opportunity to put an end to [Jerry Sandusky’s] crimes when they had a chance to do so. [I’m] appalled that the common sense to make a phone call [to law enforcement officials] did not occur, [which] sort of robs my faith of who we are as adults.”
- It was reported that Penn State has paid approximately \$250M in settlements, fines, and other costs associated with this scandal (as of June 2017).

California Prohibition on State-Funded and State-Sponsored Travel to States with Discriminatory Laws

- California Assembly Bill No. 1887 prohibits state-funded travel to states (as of June 2017, Alabama, Kansas, Kentucky, Mississippi, North Carolina, South Dakota, Tennessee and Texas) that have enacted legislation that discriminates against gay, bisexual or transgender people. This law exempts contractual obligations entered into before 2017, but it presents future potential funding problems for California public university intercollegiate athletic teams with scheduled to participate in regular season or NCAA championship games or athletic events in those states.

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

- South Carolina women’s basketball coach Dawn Staley has filed a defamation suit against Missouri athletic director Jim Sterk for accusing her of promoting a hostile game day atmosphere and claiming that Missouri players were spit upon and taunted with racial epithets by South Carolina fans during a game. After Sterk’s accusations, South Carolina conducted an investigation and found “no confirmation of the alleged behavior.” The

SEC reprimanded Sterk and fined him \$25,000 for his comments, and it ordered a review of South Carolina's game management procedures. The court has ruled that the suit is subject to Alternative Dispute Resolution (ADR), which requires the parties involved to meet with a neutral mediator within 210 days (i.e. before 9/22/2018). If Staley and Sterk cannot reach an out-of-court settlement in that time, the case will go to trial. *Dawn M. Staley v. Jim Sterk*, S. Carolina Ct. of Common Pleas 5th Cir. (Feb. 22, 2018).

- In April 2018, Zaire Webb, a freshman defensive back who was dismissed from the Washington State University football team after he and another player were accused of shoplifting, has sued the university and Mike Leach, its head coach. Webb lost his scholarship and was not permitted to rejoin the team after the charges against him were dropped when store surveillance footage showed he did not commit any theft. He contends the university failed to provide due process before revoking his athletic scholarship and that Leach has selectively enforced his policy of dismissing players who have committed theft, pointing out that another WSU football was permitted to remain on the team after pleading guilty to third-degree assault for mugging and stealing a case of beer from a man.
- On August 24, 2017, Amani Bledsoe, a University of Oklahoma football player, sued the NCAA in Oklahoma state court for alleged violation of his due process rights under the Oklahoma constitution arising out of his October 2015 one-year suspension from participation in intercollegiate athletics for testing positive for the banned substance clomiphene. Bledsoe's lawsuit claims he took one serving of a protein shake provided by an unnamed teammate and that he was unaware it contained a banned substance, but that the NCAA wrongfully denied his internal appeal. In defense, the NCAA maintains that it is not a state actor and participation in athletics is not a fundamental right protected by the Oklahoma Constitution.
- In January 2018, the University of Arizona (UA) fired head football coach Rich Rodriguez after Melissa Wilhelmsen, his former administrative assistant, filed a \$7.5 million notice of claim against him with the Arizona Attorney General's Office alleging he ran a hostile workplace and sexually harassed her. UA stated it will honor the separation terms of his contract by paying him a \$6 million buyout because its internal investigation did not find sufficient evidence to fire him for cause." Wilhelmsen also is seeking \$8.5 million from UA for its alleged negligence and vicarious liability in connection with Rodriguez' misconduct.
- The Pac-12 was sued by a sports marketing company seeking compensation for its role in helping the conference secure a deal in 2013 with AT&T worth "tens of millions of dollars to the member universities." Alleging that the Pac-12's refusal to compensate California-based EMG, which had connections to top AT&T executives, "crippled" the company's business. EMG is seeking an unspecified amount in damages. EMG estimates that the conference's partnership with AT&T, which includes carriage on U-verse for Pac-12 Networks, is worth \$90 million over five years.
- The University of Central Florida (UCF) filed a Florida state court suit against architects and contractors involved in the construction of its Spectrum Stadium, which claims the

45,000-seat stadium shifts and sways when the fans move in unison due to defects in the metal framework supporting the seating area.

High School & Youth Sports

- President Donald Trump replaced the Obama-era President's Council on Fitness, Sports and Nutrition with a President's Council on Sports, Fitness and Nutrition. New England Patriots coach Bill Belichick, professional golfer Natalie Gulbis, Gold Medal-winning volleyball player Misty May-Treanor, former New York Yankee Mariano Rivera and former NFL player Herschel Walker reportedly will be appointed to the council Trump's executive order directs the Secretary of Health and Human Services to develop a national strategy to expand children's participation in youth sports, to encourage regular physical activity (including active play), and to promote good nutrition for all Americans.
- Legislative proposals to prohibit participation in tackle football before a certain age (e.g., 12 years) or high school have been introduced in some states, including California Illinois, Maryland, and New York, but it has not been enacted in any state yet.
- Alabama has enacted the "Coach Safety Act," which will require youth sports coaches to undergo injury prevention and response training annually. It is applicable to organized sports for athletes 14 and younger "in which there is a significant possibility for a youth athlete to sustain a serious physical injury, including, but not limited to, the sports of football, basketball, baseball, volleyball, soccer, ice or field hockey, cheerleading and lacrosse." This law requires coaches to receive information on "emergency preparedness, planning, and rehearsal for traumatic injuries; concussions and head trauma; heat and extreme weather-related injury familiarization; physical conditioning and training equipment usage;" and "heart defects and abnormalities leading to sudden cardiac death."
- Under a proposed Ohio law, foreign athletes could be recruited to play high school sports for a handful of private boarding schools. Ohio Senate Republicans inserted a provision in the state budget bill that would allow F-1 visa holders to compete in interscholastic sports and would bar any school district, league, conference or association from having rules to the contrary. Foreign students study in and visit the U.S. primarily on two types of visas issued by the U.S. Department of State: J-1 and F-1. A J-1 visa is valid for one year and cannot be renewed. An F-1 is valid for as long as it takes to finish a course of study. Current OHSA rules allow exchange students on J-1 visas to participate in high school athletics, as long as certain conditions are met. The amendment inserted in the budget bill specifies that it would only apply to F-1 visa holders who attend an Ohio school that "began operating a dormitory on the school's campus prior to 2014."
- Aaron Holzmüller, a high school runner with cerebral palsy from Illinois, sued the Illinois High School Association ("IHSA"), which operates the state's high school track and field championships, under the Americans with Disabilities Act and the Rehabilitation Act. During the regular season, Holzmüller competed as a part of the Evanston Township High School track team, but time qualification thresholds prevented his participation in the state championship competition and he requested an accommodation that would lower the qualification time threshold for para-ambulatory

runners. The district court granted summary judgment for the IHSA, finding that, as a matter of law, the requested accommodation is not reasonable because resolution of this question “turns on whether Holzmueller would have a realistic shot at qualifying *if he were not disabled*.” The court found no evidence in the record that he could qualify if he were not disabled and determined that because 90% of the state’s able-bodied runners similarly could not qualify, the qualification thresholds have no “particular exclusionary effect on the handicapped,” including Holzmueller. The court concluded that his “request is inconsistent with the Supreme Court’s teaching in *Martin* and [he] has identified no authority that requires IHSA to provide disabled athletes an equivalent opportunity for athletic success by lower qualifying standards for participation . . . in championship events.” *Holzmueller v. Illinois High Sch. Assoc.*, 2017 WL 2907840 (N.D. Ill. July 7, 2017).

- The Ninth Circuit ruled that a public high school coach has no First Amendment right to pray on the field during or immediately after games. The Bremerton School District suspended coach Joseph Kennedy, a practicing Christian, after he refused to stop praying in the middle of the field following games. Because communicating with students and spectators was part of his normal job responsibilities, the court concluded the coach was speaking as a public employee during the prayers and “was sending a message” about “what students should believe,” which justified the school district’s disciplinary action. A concurring opinion noted that the school district’s actions were also justified to avoid violating the Establishment Clause. *Kennedy v. Bremerton School District*, 880 F.3d 1097 (9th Cir. 2018).
- In a negligence suit by a 12-year girl who was sexually abused by her youth soccer coach, a California appellate ruled that the U.S. Soccer Association, its California affiliate, and a local soccer league have “a duty to require and conduct criminal background checks of defendants’ employees and volunteers who had contact with children in their programs.” Because “parents entrusted their children to defendants with the expectation that they would be kept physically safe and protected from sexual predators while they participated in soccer activities,” the court concluded a “special relationship” exists between defendants and children, which establishes a duty of reasonable care to protect them from foreseeable harm. It found that U.S. Youth Soccer’s “aware[ness] of incidents of physical and sexual abuse of [its] members by its coaches at a steady yearly rate of between 2 and 5 per year” established the requisite general foreseeability of its occurrence. However, the court rejected plaintiff’s claim that defendants had a legal duty to warn her about the possibility of being sexually assaulted while playing youth soccer because creating and implementing a sexual abuse education program to protect children would be “extraordinarily burdensome.” *Doe v. United States Youth Soccer Association*, 8 Cal.App.5th 1118 (Cal. App. 2017), review denied (June 14, 2017).
- Former Hamady High School (Flint, Michigan) football player Destin Julian is suing the school and his former coach Gary Lee, alleging he was forced to continue playing football with a head injury. Now nineteen and physically unable to play football, Julian says Lee not only forced him to play while injured, but also created a climate of fear and

intimidation in the locker room by calling players “sissies” and “hoe” and using racial slurs when players reported injuries, telling them to “play through the pain.”

- A Knox County Circuit Court (Tennessee) judge refused to dismiss a \$6 million defamation suit against the mother of a Hardin Valley high school baseball player arising out of her accusations that the team’s head coach and assistant coach abused their players by hitting them with baseballs during a batting drill. The court ruled that the mother’s letter to school administrators describing this “incredibly dangerous” practice drill as both emotionally and physically abusive is not a privileged communication immune from defamation liability. The Tennessee Department of Children's Services and the Knox County Sheriff's Office investigations of her allegations were eventually closed without any charges being filed. The coaches allege that the mother knowingly made this false allegation in retaliation for earlier disagreements about her son's involvement with the team.
- In August 2017, a student-athlete Robbie Lopez, and his parents, filed suit against Los Altos High School and its varsity head baseball coach in California state court seeking \$150,000 in damages for a “pattern of harassment and bullying.” In particular, he alleges his excessive time on the bench is an abuse of the coach’s discretion, which was in retaliation for his complaint made following a disagreement about a fundraising game (California law prohibits students from being required to participate in fundraising activities).

International & Olympic Sports

International Sports

- The European Court of Justice (ECJ) has ruled that bridge is not a sport. Determining that a sport must involve “a not negligible physical element,” it concluded that bridge, which involves mental exercises, does not satisfy this requirement. Its ruling rejected the English Bridge Union’s request for an exemption from value-added tax (VAT) on entry fees to its competitions based on its contention that bridge is a sport.
- In December 2017, the European Commission ruled that an International Skating Union (ISU) rule imposing severe penalties (including a threatened lifetime ban from participating in the Winter Olympic Games) on athletes participating in unauthorized speed skating competitions violates European Union competition laws. European Commissioner Margrethe Vestager, who is responsible for ruling on competition policy, stated: “International sports federations play an important role in athletes' careers - they protect their health and safety and the integrity of competitions. However, the severe penalties the ISU imposes on skaters also serve to protect its own commercial interests and prevent others from setting up their own events. The ISU now has to comply with our decision, modify its rules, and open up new opportunities for athletes and competing organisers, to the benefit of all ice skating fans.”
- On January 18, 2018, the European Court of Human Rights (ECHR) rejected the claims of four-time Olympic cycling medalist Jeannie Longo and a group of French national

sport unions representing football, basketball, handball and rugby players that WADA's "whereabouts system" for out-of-competition drug testing violated a provision in Article 8 of the European Convention of Human Rights concerning "respect for private and family life." A summary of the ECHR verdict posted on its website stated: "Taking account of the impact of the whereabouts requirement on the applicants' private life, the Court nevertheless took the view that the public interest grounds, which made it necessary, were of particular importance and justified the restrictions imposed on their Article 8 rights. It found that the reduction or removal of the relevant obligations would lead to an increase in the dangers of doping for the health of sports professionals and of all those who practise sports, and would be at odds with the European and international consensus on the need for unannounced testing as part of doping control."

- Sierra Leone became the 186th nation to sign the UNESCO International Convention against Doping in Sport treaty. WADA's President, Sir Craig Reedie, claimed that 99% of the world has now "pledged its support to clean sport," with only five countries (Guinea-Bissau, Mauritania, Sao Tome and Principe, South Sudan and Tanzania) that are members of the Olympic Movement yet to sign this treaty.
- In May, 2006, Spanish police raided Dr. Eufemiano Fuente's laboratory and seized 211 frozen bags of blood and plasma, which he used to facilitate blood doping by several of the world's leading cyclists. In July 2016, the Provincial Court of Madrid ordered that these bags of blood and plasma be transferred to WADA and the International Cycling Union (UCI) for their use in anti-doping proceedings. In June 2017, the court ruled that the blood bags could be used to identify only those cyclists with pending doping cases. With no cases reportedly open, its decision effectively means that this evidence cannot be used to prosecute any cyclists in any future anti-doping proceedings.
- A controversial July 2017 Australian Taxation Office (ATO) ruling allows Australian professional athletes to direct 10% of their playing income to a "private trust or company," which will pay a tax rate of 27.5% rather than the top marginal income tax rate of 45% plus a 2% Medicare tax that top-earning athletes currently pay. The ATO "ruled the [reduced tax] is justified to compensate elite athletes" for "exploitation" of their "fame and image" to promote their sport.
- In November 2017, after extensive publicity regarding sexual abuse of young players (particularly in football), British Sports Minister Tracey Crouch announced that Britain's 2003 Sexual Offences Act will be amended to ban sex between coaches and players under the age of eighteen. Under this law, the age of consent currently is sixteen, but it is eighteen if a person of trust (e.g. teacher, hospital worker) is involved in the relationship (coaches previously were not covered by this provision).
- In July 2017, Canadian cyclist Kristen Worley settled her Human Rights Tribunal of Ontario proceeding against Cycling Canada, the Ontario Cycling Association, and Union Cycliste Internationale. After transitioning from an XY male to an XY female, Worley requested a therapeutic use exemption (TUE) to use synthetic testosterone to restore the natural level of endogenous testosterone that her gonadectomy (removal of testicles) had reduced, but the amount approved was too low for her to maintain good health. Worley

sought changes to these governing bodies' policies, guidelines, rules and processes regarding XY female athletes, gender verification, and permissible therapeutic use of medically required hormones. As a result of the settlement, Cycling Canada and the Ontario Cycling Association have agreed to review and revise internal policies to embrace human rights; launch awareness and education related to diversity of participants; advocate for the establishment of standards and guidelines related to XY female athletes based on objective scientific research; advocate for individualized TUEs conducted by medical personnel with subject-matter expertise; and to solicit the Canadian Centre for Ethics in Sport, Canadian Olympic Committee, Sport Canada, Commonwealth Games Federation and the Canadian Minister of Sport to advocate that these inclusive policies be adopted by international bodies such as WADA and the IOC.

- In October 2017, the Australian Football League (AFL) rejected the request of Hannah Mouncey, a transgender woman who is 6-foot-2 and weighs 218 pounds, to be eligible for the AFL Women's draft. The AFL's decision was based on the Victorian Equal Opportunity Act, which allows discrimination based on sex or gender "if strength, stamina or physique is relevant." The league left the door open for Mouncey to be eligible for the 2019 AFL Women's draft, but she would have to go through a similar application process and hope for a different result.
- In April 2018, it was reported that the IOC is expected to issue new guidelines reducing the permissible level of testosterone that transgender women may have in their body by one-half (from ten to five nanomoles per liter of blood) to compete in women's Olympic sports competitions.
- A 2015 Court of Arbitration for Sport (CAS) case brought by Dutee Chand, an Indian sprinter with naturally high levels of testosterone, resulted in suspension of the IAAF's Hyperandrogenism Regulations, which excluded female athletes with endogenous testosterone levels in serum of over 10nmol/L from female track and field competitions. In its decision, the CAS questioned whether the degree of competitive advantage enjoyed by a female athlete with this level of endogenous testosterone is equivalent to the advantage that a male athlete has over a female athlete, which it generally determined to be between 10% and 12%. A July 2017 study conducted by the IAAF found that female athletes with elevated testosterone levels had a competitive advantage of between 1.78% and 4.53% over those with lower testosterone levels in the 400 and 800 meter races as well as the hammer throw and pole vault. Based on this study, the IAAF submitted revised female competition regulations to the CAS in September 2017. In January, 2018, the CAS ruled that its Hyperandrogenism Regulations remained suspended, but stated: "If the IAAF withdraws the Hyperandrogenism Regulations and/or replaces them with the proposed draft regulations it has submitted, then these proceedings will be terminate."
- On April 26, 2018, the IAAF approved controversial new regulations requiring women participating in all women's international track events of distances from between 400 meters to one mile to have endogenous testosterone levels below a certain threshold. Athletics South Africa (ASA) has indicated it will challenge the IAAF's regulations on behalf of Castor Semenya, world and Olympic 800-meter runner who will be

precluded from participating in women's Olympic and other international competitions. Gideon Sam, President of the South African Sports Confederation and Olympic Committee, has welcomed ASA's decision and its intention to take the case to the Court of Arbitration for Sport (CAS) if necessary.

- To strengthen the global anti-doping system, the IOC Executive Board has established the International Testing Agency, an independent not-for-profit Swiss foundation, which will provide anti-doping services to International Federations (IFs) and Major Event Organizers (MEOs) choosing to delegate their anti-doping programs to a body that will operate independently from sports organizations and national interests. The establishment of the ITA does not change an IF's or MEO's ultimate responsibility under the World Anti-Doping Code (WADC) to ensure its compliance with the WADC, which will be monitored by WADA. The CAS is authorized to impose a range of "graded, predictable and proportionate sanctions" including fines, a six-month probation period, or a suspension for an IF's or MEO's noncompliance in an arbitration proceeding brought by WADA. The members of the ITA's board of directors, which was ratified by the WADA Executive Committee in October 2017, are Independent Chair Dr Valérie Fourneyron, France; IOC and National Olympic Committee representative: Professor Uğur Erdener, Turkey; IF representative Mr Francesco Ricci Bitti Italy; IOC Athletes' Commission representative Ms. Kirsty Coventry, Zimbabwe; and Independent member Professor Dr Peijie Chen, China. Benjamin Cohen (Switzerland) has been appointed as the ITA's Director General.

Russian Doping Scandal

- In September 2017, three Russian cyclists (Kirill Sveshnikov, Dmitry Strakhov and Dmitry Sokolov) sued Professor Richard McLaren and WADA in the Ontario Superior Court of Justice seeking damages for allegedly being wrongfully associated with other Russian athletes who committed doping violations. They were not individually named in the McLaren report (an independent study commissioned by WADA) that found evidence of Russian state-sponsored doping, and the CAS denied an appeal of their ban from participation in the Rio Olympic Games for committing anti-doping violations. Nevertheless, the cyclists allegedly were "unfairly implicated" by this report and "suffered great reputational harm," for which they seek public vindication and damages in this judicial proceeding.
- In December 2017, the IOC banned the Russian Olympic team from participating in the 2018 PyeongChang Winter Olympic Games for a state-run doping scheme involving Russian Olympians during the 2014 Sochi Winter Olympic Games. The IOC permitted 169 Russian athletes who satisfied criteria indicating they have not committed any doping violations, including those in team sports such as hockey, bobsled, and curling, to compete under a neutral flag identified as "Olympic athletes from Russia." No Russian officials were credentialed for the PyeongChang Games, and no Russian flags and symbols were permitted to be part of the Opening Ceremony.
- In November and December 2017, a three person disciplinary commission chaired by Prof. Denis Oswald and also including Mr. Juan Antonio Samaranch and Mr. Patrick

Baumann (Oswald Commission), which was established in December 2016 by the IOC to examine the Sochi doping scheme, retroactively invalidated the competition results of 43 Russian athletes whose positive drug tests were found to have been destroyed or tampered with before or during the Sochi Olympic Games, stripped them of their medals, and banned them for life from participating in any future Olympic competition. It concluded that three Russian athletes (Olympic figure skating champion Adelina Sotnikova, ice hockey player Anna Shokhina and speed skater Denis Yuskov) were not involved in doping violations.

- In January 2018, the International Paralympic Committee (IPC), continued the Russian Paralympic Committee's suspension initially imposed in August, 2016 for "systematic doping," which prevented it from competing at the 2018 PyeongChang Winter Paralympics. The IPC permitted more than 30 individual Paralympic athletes who satisfied prescribed anti-doping criteria to compete in five sports as neutral athletes in a uniform with "no identification" relating to Russia. No official from the Russian Sports Ministry was accredited for the Pyeongchang Paralympics, and the Russian flag was not permitted "in the vicinity of any venue associated with the Games."
- On February 1, 2018, the CAS issued Operative Awards in 39 of the 42 appeals by Russian athletes of the Oswald Commission's decisions. After individually considering each appeal, the CAS upheld 28 appeals because there was insufficient evidence supporting the Oswald Commission's determination that 28 Russian athletes committed doping violations in connection with the Sochi Olympic Games and overturned its decision banning them from the PyeongChang Olympic Games. It also partially upheld another 11 appeals. To date, two CAS reasoned awards have been issued: CAS 2017/A/5379 *Alexander Legkov v. International Olympic Committee*; CAS 2017/A/5422 *Aleksandr Zubkov v. International Olympic Committee*. However, the IOC did not permit any of these Russian athletes to participate in the PyeongChang Olympic Games. It has been reported that the IOC will appeal the *Legkov* ruling to the Swiss Federal Tribunal (Switzerland's highest court), which has jurisdiction to review and confirm or vacate CAS awards.
- In early February 2018, Swiss civil courts rejected appeals by six Russian athletes (each of whom previously had committed doping violations) against the IOC's decision not to include them on the "Olympic Athletes of Russia" invitation list for the PyeongChang Olympic Games.
- After the PyeongChang Olympic Games ended, the IOC lifted the Russian Olympic Committee's suspension on February 28, 2018.

CAS ad hoc Division and Anti-doping Division Awards from the XXIII Olympic Winter Games in Pyeongchang

- The six CAS ad hoc Division awards and three Anti-doping Division awards are available on the CAS website at <http://www.tas-cas.org/en/jurisprudence/recent-decisions.html>.

U.S. Arbitrations, Litigation, and Legislation

- *USADA v Gil Roberts*, AAA 01-17-0003-4443 (June 20, 2017) the AAA arbitrator determined that an athlete's positive out of competition test for probenecid resulted from him kissing his girlfriend, who had taken capsules of Moxylong containing this substance purchased in India for a sinus infection, and that he had No Fault or Negligence for this doping violation because he had no way of knowing he was exposing himself to a doping violation by doing so. The CAS dismissed WADA's appeal and upheld the AAA arbitration award. *WADA v Gil Roberts*, CAS/A/5296 (January 25, 2018).
- *Lopez v. USA Taekwondo*, AAA 01 17 0001 1733 (August 8, 2017) The AAA arbitrator rejected Jean Lopez's Section 9 complaint and upheld his five-year suspension from coaching by the USA Taekwondo Ethics and Judicial Committee Hearing Panel for sexual misconduct with an athlete during one of USA Taekwondo's competitions and subsequent reinstatement conditions, including proof of successful completion of a treatment program and convincing evidence that inappropriate sexual conduct with athletes will not be repeated. Based on this disciplinary action, World Taekwondo suspended him from participation in any of its events.
- On May 8, 2018, based on allegations in a Colorado federal court lawsuit filed by four former female athletes against the USOC and USA Taekwondo, the U.S. Center for Safe Sport suspended two-time Olympic gold medal taekwondo champion Steven Lopez based on its investigation of alleged sexual misconduct. Their complaint accuses defendants of negligence, defamation, obstruction, and benefiting from a sex trafficking venture because they "exposed hundreds of young female athletes to two adult predators" by allowing Steven Lopez and his brother Jean to travel to and compete at major taekwondo events at which their sexual abuse occurred.
- In March 2018, two separate California lawsuits alleging that the USOC and/or U.S. National Governing Bodies failed to respond adequately to sexual abuse of Olympic sport athletes were filed: 1) sports psychologist Dr. Steven Ungerleider alleges that the USOC and Angela Ruggiero, a USOC board member and former IOC Executive Board member, attempted "to derail efforts to enlist the IOC and other organizations into investigating sexual abuse within U.S. Olympic sports" and "to minimize the extent of the sexual abuse crisis with American Olympic sports," while also taking retaliatory action against him; and 2) Aly Raisman, captain of the gold-medal winning 2012 and 2016 U.S. women's Olympic gymnastics teams, asserts she was abused by Nassar beginning in 2010 and that the USOC and USA Gymnastics knew or should have known "about Nassar's history of sex abuse and negligently failed to ensure appropriate protocols were followed in to monitor his purported medical treatment of gymnasts.
- The 10th Circuit affirmed the district court's ruling that the Amateur Sports Act preempts state law claims by athletes arising out of eligibility disputes regarding protected competitions except for a breach of contract action to require the USOC or an NGB to follow its own internal dispute resolution procedures. *Pliuskaitis v. USA Swimming, Inc.*, 2017 WL 963202 (D. Utah), *aff'd*, 2018 WL 258773 (10th Cir.).

- A Colorado federal district court denied a pro se plaintiff's request for a temporary restraining order against the enforcement of the Switzerland-based private international governing body for wrestling's eligibility rule prohibiting athletes 60 years of age and older from participating in the upcoming Veterans World Championships. Even assuming personal jurisdiction over the defendant, it ruled that plaintiff failed to establish a likelihood of success on its federal antitrust and denial of equal protection claims or its state breach of fiduciary duty claim. The court also held that "ineligibility for participation in athletic competitions alone does not constitute irreparable harm." *Wirs v. United World Wrestling*, 2017 WL 8943750 (D. Colo., August 24, 2017).
- A new Colorado law (House Bill 1104) exempts most Team USA athletes from Colorado state income taxes on the value of medals and bonuses won at the Olympic and Paralympic Games as well as athlete monetary awards for winning medals provided by the USOC, a National Governing Body, or Paralympic sport organization. This state tax exemption does not apply to athletes who make an adjusted annual gross income exceeding \$1 million or \$500,000 if married and filing individually. The Colorado legislation is consistent with the United States Appreciation for Olympians and Paralympians Act, a federal law exempting all Olympic and Paralympic Games medal-related income in 2018 and beyond from federal income taxes for all Games (which is inapplicable to athletes earning at least \$1 million in annual income from any sources, including endorsements).
- Lance Armstrong has agreed to pay \$5 million to settle a federal lawsuit against him by the U.S. Postal Service alleging he committed fraud during his cycling career when he admitted in 2013 that he committed doping violations.
- On May 23, 2018, the House Energy and Commerce Committee's Oversight and Investigations Subcommittee will hold a hearing during which chief executives of the USOC, USA Gymnastics, USA Swimming, USA Taekwondo, USA Volleyball and the US Center for SafeSport will testify in response to Congressional concerns about the "potentially pervasive and systemic problem of sexual abuse across the U.S. Olympic community."

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

U.S. Department of Education, Governing Body, and University Policies

- In September 2017, the U.S. Education Department issued new interim guidelines regarding compliance with Title IX requirements for resolving and adjudicating allegations of sexual misconduct occurring on campus, while also rescinding 2011 and 2014 guidelines issued by the Obama administration. In addition to providing protections for accused students, the new guidelines provide a school with the ability to establish its own evidentiary standard for determining misconduct, informal resolution procedures such as mediation, and an appeals process to review disciplinary sanctions.

- The NCAA Board of Governors has adopted a Sexual Violence Policy requiring all member schools “to provide sexual-violence-awareness education for all college athletes, coaches and athletics administrators.” Campus leaders such as school presidents and athletic directors will be “required to attest that athletes, coaches and administrators have been educated on sexual violence each year.” School policies on sexual violence and the name and contact information of the Title IX coordinator “must be distributed throughout the athletic department and to all athletes.”
- Oregon State University (OSU) is requiring all new and continuing students to self-report any past felony convictions or registration as a sex offender prior to the fall 2018 academic term. The policy change may have been prompted by the revelation just before the 2017 College World Series that OSU’s star pitcher, Luke Heimlich, had pled guilty to sex abuse in 2012. As a result, Heimlich did not participate in it. OSU will conduct a “confidential case-by-case review of each of the self-disclosing situations” and will allow a student to participate in all programs and activities in which doing so does not pose a safety risk to others.

Resolved or Settled Litigation and Disciplinary Proceedings

- In March 2018, former University of Minnesota Duluth women's hockey coach Shannon Miller won a \$3.74 million jury verdict based on claims that the university’s nonrenewal of her contract following the 2014-15 season was the result of sex discrimination and in retaliation for her complaints about unequal treatment based on sex in violation of Title VII and Title IX.
- Former Iowa athletic administrator Jane Meyer and her partner, Tracey Griesbaum, former women’s field hockey coach, have settled their gender discrimination suits against the University of Iowa for a total of \$6.5 million. The university will pay \$2.33 million to Meyer and \$1.40 million to Griesbaum as damages for loss of wages and emotional distress, along with \$2.68 million for their attorneys fees. In return, Meyer and Griesbaum will dismiss their lawsuits and drop their requests for reinstatement to their former positions.
- As a result of a September 2017 Denver federal lawsuit by a woman accusing University of Colorado officials of covering up a former assistant football coach’s domestic violence against her, chancellor Phil DiStefano will serve a ten-day suspension and athletic director Rich George and football coach Mike MacIntyre each will contribute \$100,000 to a domestic violence awareness organization.

Pending Litigation

- Members of St. Cloud State University (“SCSU”)’s varsity women's tennis and Nordic skiing teams alleged that the university’s proposed elimination of several sports, including women's tennis and women's Nordic skiing, violates Title IX and the Equal Protection Clause pursuant to §1983. The court dismissed plaintiffs’ denial of equal protection claim because the State of Minnesota has not clearly and unequivocally waived its sovereign immunity under the Eleventh Amendment, which bars a §1983

claim against a Minnesota public university. It certified the following class for their Title IX claim: “All present, prospective, and future female students at St. Cloud State University who are harmed by and want to end St. Cloud State University's sex discrimination in: (1) the allocation of athletic participation opportunities; (2) the allocation of athletic financial assistance; and (3) the allocation of benefits provided to varsity athletes.” *Portz v. St. Cloud State University*, 2018 WL 1050405 (D. Minn. Feb. 26, 2018).

- On October 13, 2017, ShaMarica Scott and Linda Wilson, two former women’s basketball players, filed a Washington federal court lawsuit against Evergreen State College (ESG) and its former women's basketball coach Jennifer Schooler, alleging racial and sexual orientation discrimination and each seeking \$500,000. Scott alleges that during the 2014-15 season she "endured racially based discrimination, epithets, intimidation and public humiliation" from Schooler, and that Schooler also harassed her about the woman she was dating and made offensive remarks about her Gay Pride shirt. Wilson alleges that during the 2015-16 school year Schooler pressured her to tell players who were dating teammates that their actions negatively affected the entire team, threatening the loss of her scholarship if she did not do so.
- In September 2017, Camille LeNoir filed a discrimination suit against New Mexico State University that alleges her offer to become an assistant coach offer was rescinded when head women's basketball coach Mark Trakh found out she no longer identified as lesbian and seeks \$6 million in damages.
- In March 2018, a class-action lawsuit was filed in federal court in Chicago alleging that youth volleyball coach Rick Butler “used his position of power to sexually abuse no fewer than six underage teenage girls,” and that his wife Cheryl used coercion and threats to keep victims from reporting this abuse.
- A woman who was assaulted by former University of Arizona (UA) running back Orlando Bradford has sued the university, alleging it was negligent and violated her Title IX rights by failing to take appropriate action to protect her from him despite knowledge of his history of abusive conduct towards women. Bradford had been charged with ten felony and five misdemeanour crimes based on allegations by two women that he had hit and choked them. Bradford pleaded guilty to two charges of aggravated assault (the other eight charges were dismissed) and is serving a 2-7 years prison term.
- In the seventh Title IX lawsuit against Baylor University related to a sexual assault scandal, “Jane Doe” alleges that as many as eight members of the Baylor football team drugged and raped her as part of a 2012 “hazing” ritual in which freshmen recruits brought female freshmen students to parties for the purpose of gang rape. Her complaint asserts: “At these parties, the girls would be drugged and gang raped, or in the words of the football players, ‘trains’ would be run on the girls.” It also alleges that these crimes were considered to be a “bonding” exercise for the football team, with photos and videos of semiconscious female victims shared amongst members of the team.

- In March 2018, Shalom Ifeanyi, a former University of Cincinnati (UC) women's volleyball player, sued the university, the team's head coach, and an athletics department administrator, alleging race discrimination and harassment after she was dismissed from the volleyball team for posting images to social media that her coach deemed "too sexy." She asserts that the coach objected to her fully clothed Instagram profile picture and asked "When the football players see this, what do you think they see? They see your breasts. It's seductive." Ifeanyi claims other teammates "who were of slighter build and lighter complexion" posted images "picturing them in outfits, including but not limited to, two-piece swimsuits," which were not scrutinized in the same manner and that they were never asked to remove these pictures.
- Filing anonymously in the U.S. District Court for the Southern District of Ohio as John Doe, a former University of Dayton (UD) football player has sued the school and a woman who accused him of sexual misconduct, which resulted in his two-year suspension from the university for the 2016-18 academic years. His complaint alleges he was falsely found guilty for having consensual sex with his accuser because of a gender-biased process against him. Doe's attorney said his client was not able to ask questions of his accuser and that the led to a false determination.
- In August 2017, a Virginia federal district court permitted the Title IX and defamation claims of Cameron Jackson, a former Liberty University football player, against the university to proceed. Jackson asserts that the university denied him due process and wrongfully dismissed him from the football team in connection with him being accused of an August 2015 sexual assault, which he claims never occurred and following investigations he was never charged. He also contends the university issued a defamatory September 2016 prior to the conclusion of its investigation of this allegation. Jackson's lawsuit seeks \$100 million in compensation for damages to his reputation as well as harm to his academic and athletic careers.

Other

- At the high school level, state laws and state high school athletics associations dictate whether transgender athletes must participate based on sex at birth or current gender identity. In February 2018, Mack Beggs, an 18-year-old senior at Trinity High School and a transgender boy, won his second Texas 6A girls state wrestling championship. Beggs, who has been medically transitioning from a girl to a boy for the past couple years, was required to compete as a girl because the rules of the University Interscholastic League (UIL), which regulates Texas public high school athletics, classify athletes according to the sex indicated on a person's birth certificate. Because the testosterone Beggs takes as part of his transitioning process is prescribed by a physician, the UIL does not regard it as a banned substance.

Intellectual Property & Broadcasting

Trademark

- The Washington Redskins trademark saga can finally reach a resolution after the Supreme Court's ruling in *Matal v. Tam*, which held that the USPTO's regulations on registering disparaging or offensive marks violated the First Amendment. The prohibition against registering disparaging marks comes from a provision of the Lanham Act, which governs federal trademark law. The case reached the Supreme Court on a petition for certiorari from the USPTO, who asked the Court to examine the constitutionality of that specific provision of the Act. Ultimately, Justice Alito's opinion explained that trademarks are private speech, not government speech, and therefore restricting them under the Lanham Act violates the First Amendment guarantee of free speech. For the Redskins, who have not held a registered trademark in their name since they were forced to cancel it in 2015, this means that their potentially offensive mark can no longer be denied registration under the Lanham Act.
- Marshawn Lynch, owner of the "Beast Mode" trademark, will continue to enjoy exclusive rights to the mark, after the TTAB denied an appeal from someone trying to register "Beast Mode Soccer" for their sports apparel company. The applicant company, in conjunction with a soccer-training program, wanted to use the name, which the Board ultimately decided was too close to Lynch's mark, which he has been using consistently since 2009 for his own apparel brand. The likelihood of confusion among consumers was too high to grant the new mark.
- The U.S. Army's Parachute Team, which has been known for over 50 years as the Golden Knights, has filed a notice of opposition against the Golden Knights, new NHL team in Las Vegas, for trademark infringement. The parachute team, who considers themselves to be a sports and entertainment brand similar to a hockey team, argue that they will suffer from dilution and consumer confusion if the NHL team is allowed to go ahead with their trademark registration. The new NHL team says they disagree with the possibility of confusion, but still may be unable to register their mark, pending the USPTO's decision of the appeal.
- Muhammad Ali Enterprises, LLC is challenging a video aired prior to Super Bowl LI, which featured images of famous NFL athletes, referring to them as "the greatest," alongside images of the late Ali. Ali Enterprises claims that the video, which came from Fox Broadcasting, violates the boxer's right of publicity via federal trademark law, and that the film gave audiences the wrong idea that the athlete endorsed the production. Ali Enterprises closely monitors use of the Ali mark, and regularly licenses it for use in similar promotional materials; they take issue with Fox's use because this particular use of the mark was not authorized. To be successful at trial, Ali Enterprises will be required to prove that Fox's use of Ali's name was "commercial."

- NFL Trademark Disputes:

- Early in 2017, the Tampa Bay Buccaneers took action against Florida SouthWestern State College, who used the name “Buccaneers” for their newly rebooted football program. The Florida school applied to register the mark to use both for their sports teams as well as educational services, and Tampa Bay responded by asking the board to block the mark. Their argument? The school is in close proximity to Tampa Bay, and use of the mark to describe live sporting events could cause confusion among consumers. Ultimately, the two organizations were able to agree that the college could use the mark, as long as they included a disclaimer, denying any affiliation to the NFL franchise.
- In July 2017, seven NFL teams all filed lawsuits against Josh Morell, a resident of Philadelphia. Morell was allegedly taking advantage of NFL teams’ goodwill with fans to register marks purporting to be for each team’s “use only.” For example, the Houston Texans took issue with Morell’s trademark application to protect “For Texans Use Only.” The other teams affected were the Eagles, the Giants, the Jets, the Cardinals, the Rams and the Patriots. All cases are currently pending.
- A Malaysian beverage company found themselves in opposition to the Detroit Lions, when the company attempted to register a mark for their “Big Power” drink, which featured a lunging lion, not unlike the one on the Lions’ logo. The case is currently pending.
- The Oakland Raiders, on the cusp of a move to Las Vegas, has faced a lot of trouble defending against fans seeking to profit from the relocation. First, the team took issue when a North Carolina man attempted to exploit this move with an apparel design. Scott Keene applied to register the plain-text mark “Raiders Baby, Raiders,” with an eye at merchandising in anticipation of the team’s arrival. The phrase is a play on the famous movie line “Vegas baby, Vegas.” The Raiders came out on top of this one, as the application has been abandoned. The Raiders also took action against a Las Vegas resident who attempted to register the mark “Silver & Black Nation,” which is clearly in reference to the Raider’s team colors. This one is not yet resolved.
- The Atlanta Falcons opposed registration of a trademark for the phrase “You Falcon Right,” which was being printed on shirts and advertised across social media. Since the Falcons opposed the mark however, the application has been abandoned.
- The Seattle Seahawks, who already have a history of trademark-related litigation (see their 2006 lawsuit against Texas A&M regarding the use of the phrase “12th Man” to refer to their fans), went after local man for attempting to register the mark “Tw Elves.” The Seahawks claim ownership over the mark “The 12s,” and continue to pursue litigation to protect it. They are also currently in litigation against a Seattle apparel company, who applied to register the mark “City of the 12s.” The Seahawks cited direct references to the team on the company’s website.

- A California man applied to register a mark of a spoof California Flag, including the phrase “California Ramily,” to celebrate the return of the Rams to Los Angeles. On the flag, the man took out the bear and replaced it with a ram. The team claims the mark, which has been traditionally used in reference to the Rams’ franchise.
- Skolkovo Institute of Science and Technology, a Russian university, recently found themselves at odds with the Minnesota Vikings over their registration of the mark “Skoltech.” The mark, which is a nickname for the university, is similar to the Minnesota fight song “Skol, Vikings.” The Vikings franchise was unable to register their own trademark in “Skol,” because the Russian school’s mark was already registered – a mark which had apparently fallen out of use. The litigation is still pending.

Copyright

- Professional athletes’ tattoos may be the next frontier of copyright protection, based on a recent lawsuit by a tattoo artist against 2K Games, the creators of the NBA 2K video games. The tattoo artist, who famously tattooed LeBron James, claims that the video games copy his now-famous tattoos to a tee in their animation of the players, thus violating his copyright in the designs. A similar suit is already pending in New York, based on the tattoos of other NBA stars used in the NBA 2K games, and the arguments in both suits are similar. The game makers argue that the use is de minimis, as the tattoos can only be seen very briefly, and that the reproduction of the designs falls under fair use.

Patent

- PTAB concluded that a football helmet patent held by Riddell Inc. is invalid because several elements of the design fails the test of obviousness. They point all the way back to an image a football helmet printed in a 1970’s department store catalogue, which shows a helmet with similar features to those listed in Riddell’s patent design. Based on this, PTAB said that any person with ordinary skill would have been able to design a similar helmet based on the information available to them through prior art. Several other elements of the patent were valid, and Riddell is still working to resolve patent infringement suits with several parties regarding their helmet patents.

Broadcasting

- Wave Broadband, a Washington-based cable company and Comcast competitor, has brought a complaint to the FCC against Comcast, alleging that in order to meet minimum viewership requirements required by a distribution agreement, the cable giant is forcing Wave’s most basic-tier subscribers to pay for several regional sports networks. The networks in question are owned by NBC, which in turn is owned by Comcast. In order to retain access to these regional sports networks at all, Wave was forced to pay \$3.5 million to continue carrying the channels, thus continuing to force their subscribers into paying for the unwanted programming. Wave wants Comcast to bear the full antitrust brunt of this anticompetitive behavior, and argues that Comcast leveraged its market

position to force Wave into the unfavorable distribution agreement in the first place. They also cite that this is not the first time Comcast has used their market power in NBC's favor.

- A YouTube/MLB partnership that began in 2017 and has already garnered a billion views, will continue through the 2019 World Series, thanks to a deal inked in early March between the two companies. The agreement, which allows MLB games to be broadcast cable-free on the internet-streaming giant, is a huge win for YouTube. They will add an MLB Network channel to their fledgling YouTube TV service, but MLB will also name YouTube as a leading sponsor of the 2018 and 2019 World Series. While watching the MLB games on YouTube will cost extra for YouTube subscribers, it will mean that they will not have to have cable subscriptions to watch live games.
- It's no luck for pay-per-view subscribers who claimed not to get their money's worth out of the highly anticipated 2015 fight between Manny Pacquiao and Floyd Mayweather Jr. After the matchup, a class action suit was filed on behalf of pay-per-view subscribers, claiming that Pacquiao had not been fully healthy for the fight, and therefore they did not get what they paid for when subscribing to the fight. Pacquiao had sustained a shoulder injury, which he did not reveal to fans until hours before the fight, when it was too late, and many fans had already purchased the broadcast. The fight between the two fan favorites nonetheless garnered record viewing numbers, with the event bringing in over \$400 million. That suit was dismissed in August by a federal judge in California, who noted that fans suffered no damages because they got exactly what they paid for - a chance to see Pacquiao and Mayweather fight. Their subscription did not guarantee that the fight would be close, and the uncertain nature of competitive sports is what makes it exciting. Notably, this ruling came down the day before another big fight, which took place between Mayweather and MMA's Conor McGregor.
- ESPN Inc.'s sharing of an individual's Roku Inc. device serial number and a list of the ESPN videos watched does not violate the federal Video Privacy Protection Act (VPPA). The court held that an individual's streaming device ID number and videos watched isn't personally identifiable information (PII) protected by the VPPA. Under the statute, PII includes information that can be used to identify an individual, but only information that would "readily permit an ordinary person to identify a specific individual's video-watching behavior." This decision continues to distinguish the First Circuit's case, *Yershov v. Gannett*, which held that an app user's mobile device identifiers could constitute PII under the VPPA, particularly when collected in conjunction with geolocation data. See *Eichenberger v. ESPN, Inc.*, 876 F.3d 979 (2017).
- Celebrity fitness guru Jillian Michaels won a \$5.7 million arbitration ruling against Lionsgate in a dispute over content posted for free on YouTube. In addition to the multi-million-dollar award for lost past and future profits from DVD and digital distribution revenue, the award ordered Michaels' videos removed from YouTube. The legal issues focused on whether free YouTube videos devalue a creator's paid content. This decision represents a firm pronouncement that placing work on YouTube for free devalues it, and damages artists who create it.

- Martial arts fighters sufficiently alleged that exclusivity agreements required by fight promoter were an anticompetitive scheme under Sherman Act. *See Le v. Zuffa, LLC*, US Dist. Ct., D. Nevada. (2016).
- Ohio State, Oklahoma State and Oregon State have congruent usage agreements regarding trademark rights to “OSU.” Yet each school has a federal trademark that awards it “OSU” rights on a state-by-state or county-by-county basis. Ohio State’s current trademark covers nineteen states in the Midwest and on the East Coast, while Oklahoma State’s covers seventeen western and southern states. In February, 2017, Ohio State University filed for *apparel rights* to “OSU.” Oklahoma State plans to file a notice of opposition. The dispute did not make it to court before the two sides reached an amicable agreement. Not only have they dropped the dispute, they’ve dropped the geographic divisions – thanks to the internet, changes in conference boundaries and increased non-conference games. “Prior agreements as to the concurrent use of the respective (OSU trademarks) within specific geographic boundaries has been rendered impractical,” the agreement says. The new agreement on “OSU” covers the entire United States and uses encompassing education, entertainment, apparel and merchandise. The two sides agreed to not use “OSU” in connotation with the other school’s colors and mascots. They also agreed not to disparage each other as the fake OSU.

Personal Injury, Health, and Safety

Concussion-Related Litigation

- The Fourth Circuit ruled that the NFL’s disability plan administrator abused its discretion in denying “Football Degenerative” benefits to a retired player for total and permanent disability as a result of playing NFL football, which occurred within 15 years after his NFL retirement. The court noted that he sustained more than 69,000 full-speed contact hits while playing football causing him to experience symptoms associated with CTE and requiring him to stop working as a high school teacher and football coach and that an independent neurologist opined that his brain injury was NFL football-related. and worsened “over a period of 5-10 years.” It determined that “expert opinions concerning [his] CTE-injuries established at least a presumption that [he] was entitled to Football Degenerative benefits, and the [plan administrator] did not rely on substantial evidence to contradict them.” *Solomon v. NFL Player Retirement Plan*, 860 F.3d 259 (4th Cir. 2017).
- The first two claims have been paid as part of the NFL’s billion-dollar concussion settlement; \$5 million for a qualifying diagnosis of ALS (May 26, 2017), and \$4 million for a qualifying diagnosis of CTE (June 5, 2017). The names of the former players in question have not been disclosed, but the amounts indicate that both parties would have played a minimum of five seasons for the NFL and were diagnosed before the age of 45.
- Around 180 former NFL players applying for assistance under the league’s \$1 billion concussion settlement have seen those requests “denied.” Ronnie Lippett’s attorney said the NFL and “court-approved administrator processing the claims are unfairly denying benefits to brain-injured players or are trying to reduce or reverse monetary awards

through appeals, audits, and other tactics." Through March 13, 2018, 1,703 former players had submitted claims for monetary awards since the process began nearly a year ago, but only 156 players (less than 10%) have received payments of a combined \$150 million. The league has funded an additional \$56 million for forty-five other players, but the payments "had yet to be made for various reasons." Meanwhile, only six of 1,108 players who had filed monetary claims for diagnoses of dementia had been paid through March 13. Another forty-nine claims had "received initial approval for payment, but most are pending appeals or other delays."

- Class suits for concussion-related economic losses are proceeding against NCAA apart from \$75 million settlement. The Class Action, with the class consisting of former college players, alleges the NCAA, the Big Ten, and other football conferences fraudulently concealed the dangers of repetitive head impacts from college players. The biggest legal issues facing the athletes will be proving causation: what hit caused what concussion and when; and also over what duty of care the conferences and colleges owed to the athletes who played for them. Four test cases were agreed upon to decide these legal issues for nearly 100 pending suits. The test cases "maximize representation" of all cases in the MDL and are "the result of an extensive process and considerable cooperation between the parties." Lost economic opportunities caused by cognitive impairments are the biggest category of damages sought in these suits. At the same time, they point to annual football revenue of the NCAA, athletic conferences and universities.
- A District of Columbia federal district court ruled that an intercollegiate athlete who suffered a concussion during a field hockey game and was permitted to continue playing despite continuing to experience concussion symptoms alleged facts sufficient to support a negligence claim against American University: "as one of its student athletes, the Court agrees that it was reasonably foreseeable that '[o]nce [the p]laintiff reported her concerns and symptoms to [the University] and its agents, servants, and employees, [it] owed a special duty to [her to] act reasonably to take precautions and to minimize the risk of injury.'" The court dismissed the plaintiff's medical malpractice claim against the NCAA because "the NCAA, through the Sports Medicine Handbook and its policies, only provides guidance for the consideration of its member institutions and does not establish a standard of care, instead deferring to the member institutions the responsibility of developing sports medicine policies for [t]he care and treatment of their student-athletes." On the other hand, it ruled that plaintiff's allegations that the "NCAA undertook and assumed a duty to protect the physical and mental well-being of all student-athletes participating in intercollegiate sports, including [her,] ... [and] a duty to protect student-athletes from brain injuries stated a negligence claim." Its ruling suggests the NCAA has a legal duty to exercise appropriate oversight over its member institutions' Concussion Management Plans. The court dismissed the plaintiff's negligence claim against the Patriot League alleging it "assumed the same duties and responsibilities as the NCAA . . . because [its] Policies and Procedures provides that 'Patriot League institutions are expected to abide by all rules and procedures set forth in both the NCAA and Patriot League Materials'" because "public policy considerations provide support for shielding athletic conferences from litigation involving an injury to an athlete based on an athlete's participation in a sporting event sanctioned by the athletic conference, without a showing

that the athletic conference took affirmative steps to establish a requisite duty of care.” *Bradley v. NCAA*, 2017 WL 1364853 (D. D.C.).

- In 2009, the Washington state legislature enacted legislation requiring schools to develop head injury and concussion protocols (“the Lystedt Law”), which creates a private right of action according to the Washington Supreme Court. A high school athlete died as a result of complications following a hard hit to the head by another player during a football game. The boy’s parents alleged that the coach’s grossly negligent or reckless actions subsequent to the hit contributed to their son’s death. In regard to the parents’ common law negligence claim, the court ruled that an implied right of action arose from the Lystedt Law, which encompasses three duties: 1) school districts are required to create and distribute to coaches, youth athletes and parents, a head injury and concussion sheet that must be signed by athletes and their parents; 2) a youth athlete suspected of having suffered a concussion must be immediately removed from play; and, 3) a youth athlete who sustains a concussion may not return to play without written clearance by a medical provider. The court also ruled that the Lystedt Law requires coaches to monitor athletes for signs of concussions and remove athletes from play when those signs are present. Finally, the court found that while a volunteer coach was entitled to limited immunity for negligent conduct, such immunity did not extend to the coach’s alleged gross or reckless conduct. *Swank v. Valley Christian School*, 398 P.3d 1108, 1113 (Wash. 2017)
- The Third Circuit ruled that a Pennsylvania public high school football head coach is immune from §1983 civil rights liability for a player’s aggravated brain injury because there was no clearly established constitutional right “to be free from deliberate exposure to a traumatic brain injury after exhibiting signs of a concussion in the context of a violent contact sport” in November 2011 when he was permitted by the coach to return to play despite showing signs of a concussion. However, this right apparently now exists because the court found evidence that a jury could find the injury was foreseeable, that the coach showed “deliberate indifference” to the risk of aggravated injury when he returned the player to practice before medical evaluation, and that the coach “took an affirmative act” that him more vulnerable to a dangerous health risk. *Mann v. Palmerton Area School Dist.*, 872 F.3d 165 (3d Cir. 2017).
- In October 2017, a three-judge panel of the Commonwealth Court of Pennsylvania affirmed the trial court’s refusal to dismiss a negligence suit by three high school athletes against the Pennsylvania Interscholastic Athletic Association (PIAA) seeking damages for concussion-related injuries suffered during participation in PIAA-regulated sports. In an unreported opinion, the court ruled that athletes’ assumption of the inherent risks of playing contact sports does not preclude their recovery for “harm as a result of the PIAA’s alleged pre- and post-concussion negligent conduct.” It concluded that the plaintiffs’ allegations stated a claim for negligence: “the PIAA failed to: adequately implement and interpret accurate pre-season and regular season baseline testing for detecting and managing concussions; track and report concussions (and require such reporting from member schools); require qualified medical personnel at all PIAA sporting practices and events with specific expertise in concussion diagnosis, treatment, and management; mandate the removal of athletes who have appeared to suffer

concussions in practice as well as in games; take measures for educating teachers and other school personnel on how to implement medical recommendations of concussed athletes and make appropriate accommodations; and provide resources to student athletes in seeking professional medical attention at the time of an injury, during the course of treatment for such injury, and for necessary medical monitoring post-injury.” *Hites v. Pennsylvania Interscholastic Athletic Association*, No. 8 C.D. 2017 (Comm. Ct. of Pa., October 10, 2017).

Other Pending Litigation

- In April 2018, professional tennis player Madison Brengle sued the Women's Tennis Association (WTA) and the International Tennis Federation (ITF) in Florida state court, seeking damages for injuries allegedly caused by repeated needle injections during anti-doping tests to monitor her blood drug tests despite having a rare medical condition triggered by injections. Her complaint asserts “[she] has been so severely harmed by the defendants' abusive conduct and medically inappropriate testing that she no longer is able to serve a tennis ball with her right arm at or near the same velocity that she has served throughout her ten-year professional career . . . and her overall game has suffered enormously from the physical and emotional consequences endured.”
- In February 2018 former Texas Christian University football player Kolby Listenbee sued the university, its head football coach, former athletic director, and various university officials, and the Big 12 Conference for being forced to play with an injured and unstable pelvis allegedly rendering him unable to play NFL football because of pelvic instability for which he seeks \$1 million in compensatory damages. His complaint accuses TCU and its football program of “systemic abuse,” including coaches’ verbal abuse and pressuring athletes to play with injuries along with “keep[ing] the diagnosing and treating of their players ‘in house’ with the TCU team physicians.” It asserts: “The systematic scheme allows injured players to receive subpar treatment for their serious injuries, gives the coaches premature return-to-play decision when serious injury or harm could be caused, and creates an inherent conflict of interest.” He alleges the Big 12 is liable because of its “lack of policies, procedures and protocols” to safeguard against coaches pressuring college athletes to play with injuries. Five other former TCU football players subsequently joined Listenbee’s suit as plaintiffs.
- In May 2018, former University of Arkansas running back Rawleigh Williams III, who stopped playing football after suffering a neck injury during the football team’s April 2017 Red-White spring practice, filed a breach of contract suit against Lloyd’s of London for failing to honor a \$1 million disability insurance policy.
- In a September 2017 lawsuit filed in Indiana state court, former Notre Dame football player Douglas Randolph is seeking damages for potentially permanent nerve damage in his neck allegedly caused by Notre Dame’s concealment of his medical condition. Randolph claims that an MRI result, which showed spinal stenosis and should have resulted in his medical disqualification, was not disclosed so that he would play football

during the 2015 season. *Randolph v. Notre Dame*, Cause No. 71C01-1709-CT-000404, St. Joseph Cir. Ct (2017).

- Five Wheaton College students were accused of abducting Charles Nagy, putting a pillowcase over his head, tying him with duct tape, repeatedly punching and kicking him, and then leaving him partially nude on a baseball field near Hawthorne Elementary School in Wheaton. He filed suit in DuPage County court against the school and head coach Mike Swider. Nagy had to undergo two shoulder surgeries that prematurely ended his football career. The suit alleges that hazing was a common practice in the football program that coaches and other officials ignored. Nagy is seeking damages in excess of \$50,000.
- A hazing incident in which a 14-year-old Davidson High School (Ala.) football player sustained a broken arm in a vicious beating by 20 teammates in the school's locker room has precipitated the future filing of a \$12 million lawsuit, in which the boy's family will request that Davidson forfeit all of its 2018 season football games, all of the school's football coaches be fired, all 20 football players involved in the beating be criminally charged, and for hazing to be banned in all high schools throughout the country.

Settlements

- Former University of Illinois football player Simon Cvijanovic received \$250,000 from the university to settle his lawsuit alleging former head football coach Tim Beckman forced him to continue playing with shoulder and knee injuries during the 2013 and 2014 seasons. After his allegations, other players also alleged mistreatment by Beckman, who was dismissed prior to the 2015 football season after the university's investigation found extensive evidence supporting these allegations. Cvijanovic tweeted "This agreement marks the first time in history a college athlete has been rightfully compensated for his sports-related injuries."
- Cooper Doucette received \$1.3 million to settle his lawsuit against the Nashua School District in New Hampshire for paralysis suffered while tackling another player with his head down during a practice drill when he was a 15-year old junior varsity high school player. He alleged the two coaches supervising the drill negligently failed to warn about the risk of serious injury if tackling were done without keeping your head up.

Korey Stringer Institute Study

- A 2017 study conducted by the Korey Stringer Institute, a sports safety research and advocacy organization at the University of Connecticut, found that several states are not fully implementing safety guidelines to protect more than 7.8 million high school student-athletes from potentially life-threatening conditions such as cardiac arrest, traumatic head injuries, exertional heat stroke and exertional sickling. Individual state scores were determined based on whether a state satisfies best practice guidelines regarding these four major causes of sudden death for high school athletes. Having the most comprehensive health and safety policies, North Carolina has the highest score (79%), followed by Kentucky (71%); Colorado (23%) and California (26%) have the lowest scores.

Stadiums & Venues

Baseball

- The age-old rule exempting baseball clubs from liability over fluke accidents prevailed again when a 2017 lawsuit against the Cubs was dismissed, under the Illinois Baseball Facility Liability Act. John Loos, who was blinded in one eye after being hit in the face during a Cubs game, filed suit against both the club and the league, but a judge ruled in mid-March that Loos' suit against the Cubs should be dismissed. The accident was not the result of wanton conduct on the part of the club, nor was it negligent for the facility to not provide adequate netting around the seats. Loos assumed the risk of being hit by a ball when choosing to sit in an un-netted area of the park. Interestingly, Loos hadn't purchased a ticket for the game, but instead gained access to the venue through a friend who worked there. Nevertheless, MLB anticipatorily announced in February that all teams will have to expand their safety netting for the 2018 season.
- The Chicago Cubs are faced with a lawsuit when a fan found out that the club planned to replace a section of Wrigley Field wheelchair seating with a new bar area and ticketing window. The Cubs responded by asking for dismissal, arguing that other stadium renovations have already made wheelchair seating more accessible, and that the plaintiff will ultimately experience no injury. The club also relies on ADA guidelines, which do not require that wheelchair-accessible seats have a full view of the entire field. The fan, however, argues that the club is still breaking several other ADA provisions by eliminating this seating. He asks that a judge require additional wheelchair seating be added to the Wrigley Field construction plan.
- During his first inning of Major League play, Yankees outfielder Dustin Fowler's career came to a halt when he collided with an exposed electrical box in right field while trying to make a catch. The accident, which occurred at the White Sox's Guaranteed Rate Field, left him with ruptured patellar tendon, which he claims is likely to end his career. Fowler sued the White Sox and the Illinois Sports Facilities Authority in Cook County for negligence in padding the box, or protecting players in any way from colliding with it, as the hazard was allegedly difficult to see. Fowler seeks damages from the White Sox.

Football

- Leading up to Super Bowl LII, Nomadic Entertainment Group, LLC was contracted to build a large venue on the Mystic Lake Casino property, owned by Dakota February Events, LLC. The venue was intended to be temporary, and its purpose was to be a home to performances leading up to the Super Bowl. However, prior to completion of the construction, Dakota terminated the contract, leading Nomadic to bring suit. The company alleged that they spent a lot of money on the venue, and were relying on ticket sales and other venue-related profits to recover construction costs. The suit was ultimately dismissed, however, because Dakota February Events is a tribe-owned company, and therefore Nomadic would have had to prove why their claims against Dakota should not be barred by sovereign immunity.

E-Sports

- Arlington, Texas will soon become home to the country's largest stadium used especially for esports. Esports Ventures, LLC recently announced its \$10 million renovation plan to transform the Arlington Convention Center into a stadium designed specifically to suit the needs of the growing esports industry. Set to open in fall 2018, the updated venue will seat 1,000, making it the largest venue in the country specifically for esports events.

Multi-Sport

- An ongoing class-action ADA suit against Kroenke Sports and Entertainment, the corporate owner of Denver's Pepsi Center, has been settled and will require nearly all sporting events at the arena—including Colorado Avalanche and Denver Nuggets games—to provide captioning on the video boards inside the facility. The captioning will help ensure that deaf and hard of hearing fans will be able to enjoy games at the Pepsi Center more fully. Per the settlement's terms, open captioning at the arena will need to be instituted by September 2018.
- A parking lot leased from the City of Los Angeles by famous California venue The Forum is now the subject of what the Forum is calling a trick deal. After negotiations over the lease, the city allegedly convinced MSG Forum, LLC, the owner of the Forum, to turn over the land so that a new technology park could go up, when in reality, the city planned all along to use the property to support their new arena for the LA Clippers. According to MSG Forum, this goes against good faith and fair dealing, as the city had promised the venue that it would not construct anything that would compete with the famous Forum's success. MSG Forum brought suit for several causes of action, including breach of contract and fraud, and seek damages.
- A turn-key technology firm has filed suit against the University of Cincinnati, alleging the University failed to abide by its own bidding procedures as well as Ohio's public bidding statutes in selecting a new scoreboard vendor for Nippert Stadium. Colosseo USA alleges, despite having a more cost-effective bid, complete with a better warranty and better LED pixel pitch, the University gave preferential treatment and, subsequently, the job, to a firm that it has a longstanding relationship with.
- A pending bill in the Mississippi State Legislature may prevent Ole Miss and Mississippi State from hosting NCAA games. House Bill 1083, if passed, will allow gun owners with "enhance firearms licenses" to sue for the ability to bring guns into publicly owned facilities, including university campuses, stadiums, and arenas. SEC Commissioner Greg Sankey announced that, should the bill pass, athletic opponents will decline to play games and game officials will decline assignments at Ole Miss and Mississippi State.

Sports Betting & Daily Fantasy

Federal Agencies

- The two most popular paid daily fantasy sports websites, FanDuel and DraftKings, called off a proposed merger after federal regulators sued to prevent the merger. The Federal Trade Commission filed suit in D.C. Federal court to stop the merger, claiming that it would have create a company that controlled more than 90% of the paid daily fantasy sports market. Originally announced in November 2016, the planned merger was met with antitrust scrutiny and concerns about the legality of daily fantasy sports contests.

Study

- A majority of Americans support the legalization of sports betting according to a study released by the American Gaming Association in May 2017. The survey, which was conducted by Greenberg Quinlan Rosner Research, shows that 55 percent of those polled supported making sports betting legal while 35 percent opposed the idea. 10 percent were undecided. However, very few of the participants actually understood the current state of the law, with only 38 percent of them realizing that sports betting is not legal in most of the country.

NBA

- The NBA's Assistant General Counsel Dan Spillane called for the legalization of sports betting during his testimony in front of a New York State Senate committee in January 2018. Spillane explained that the NBA's position on sports betting has "evolved" since the 1992 passing of the Professional and Amateur Sports Protection Act, a federal law that prohibits states from legalizing sports betting. According to Spillane, the league has studied the issue of sports betting over the years and now believes that a regulated sports gambling system would provide fans a safe and legal alternative to the sports betting black market. Spillane also laid out what he said are five components that the NBA wishes to see included in possible sports betting legislation – detection and prevention of improper conduct; a one percent fee on total bets to go to the leagues; give leagues the right to restrict the types of wagers allowed on their sports; provide consumer protections; and authorize betting on mobile platforms.

Lawsuits

- The United States Court of Appeals for the Seventh Circuit asked the Indiana Supreme Court in March 2018 to help it make a decision in a class action publicity suit brought against daily fantasy sports companies FanDuel and DraftKings. Two former Northern Illinois University football players and a former Indiana University football player filed the suit in Indiana state court in 2016 on behalf of nearly 3,000 former college football and basketball players. The plaintiffs claim that FanDuel and DraftKings act as illegal gambling sites that wrongfully profit off of the plaintiffs' names, likeness, and statistics. The case was dismissed by the United States District Court for the Southern District of Indiana with the judge finding that the players' performance and statistics are exempt

from Indiana’s right-to-publicity statute because the material is “newsworthy” and of “general or public interest.” However, the Seventh Circuit found that the exceptions to the right-to-publicity statute are for material that has “newsworthy value” or is used in connection with “the reporting of an event” of general or public interest. The court could not find any Indiana case law interpreting these phrases of the statute, so it certified a question to the Indiana Supreme Court as to “whether online fantasy-sports operators . . . need the consent of players whose name, pictures and statistics are used in the contests.” According to the panel, the broadness of the question is intentional so that the Indiana Supreme Court can consider all relevant matters and arguments. *See Daniels v. FanDuel, Inc.*, 884 F.3d 672 (7th Cir. 2018).

- FanDuel and DraftKings both agreed to split a \$2.6 million fine to settle an investigation by the Massachusetts Attorney General’s Office for “unfair and deceptive practices.” The investigation, which began in 2015, focused on the two companies’ business models and operations which the AG’s Office found did not adequately protect consumers. Shortly after the probe was initiated, Massachusetts enacted a set of regulations designed to protect daily fantasy sports consumers. Those restrictions include a 21-year-old age requirement for players, a monthly deposit limit, a prohibition on extending credit lines, and the creation of beginner contests from which experienced players are barred. Massachusetts Attorney General Maura Healy praised both companies for conforming to these regulations and for their cooperation in the investigation.

Sports Betting Laws State by State

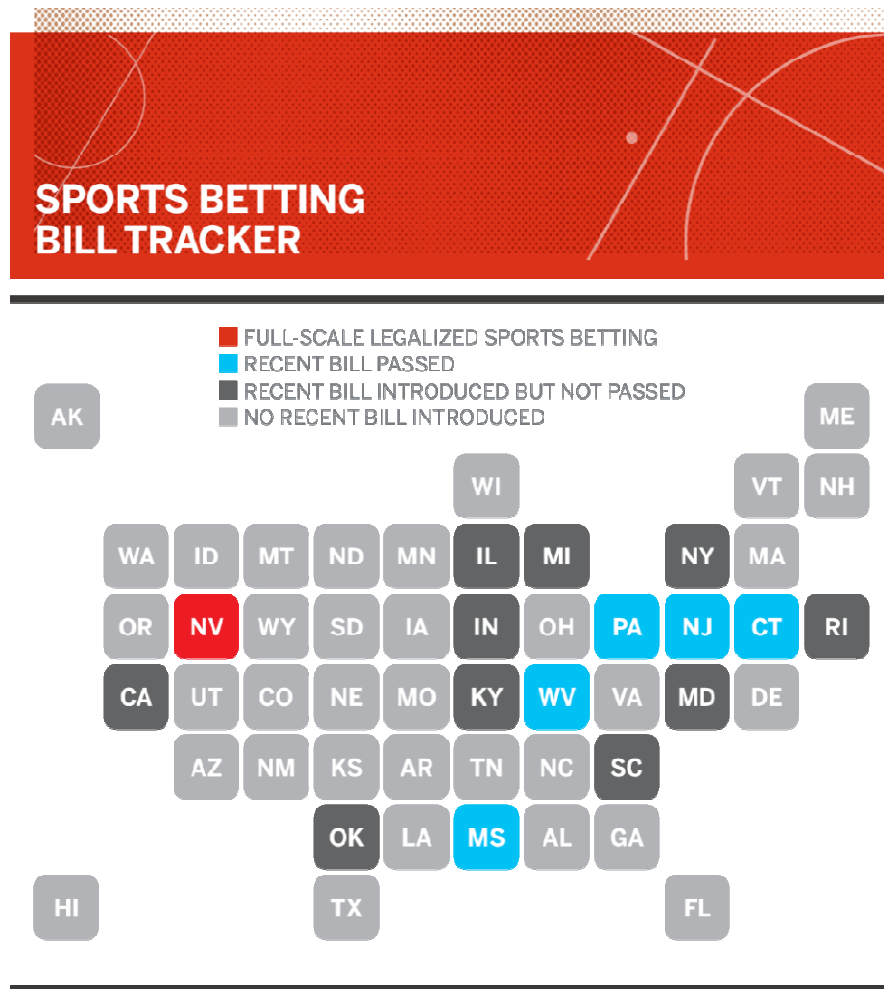


Image from: http://www.espn.com/chalk/story/_/id/19740480/gambling-sports-betting-bill-tracker-all-50-states

Miscellaneous

Alternative Leagues

Football

- **American Flag Football League.** The league has commitments from former NFL players Michael Vick and Justin Forsett. League financier Jeff Lewis believes his new football initiative can "spark nationwide interest, not only among many other NFL-caliber athletes but among weekend warrior flag football players." Lewis believes he can "take advantage of the increased popularity of flag football by offering a product that will be a much faster-paced game than the NFL." The plan for the league's debut is to play a 60-minute game in less than two hours in a 7-7 format on a 100-yard field. There are no

kicks; teams punt and kick off by throwing the ball to the other team on fourth down or after touchdowns and extra-point attempts.

- **Pacific Pro Football (PPF).** The semiprofessional league, led by NFL agent Don Yee, will offer college athletes a choice they've never had before: either go to school or "join this new league, earn a salary and benefits, and learn how they really live and play ball at the NFL level." PPF plans to offer intern, educational, and vocational programs to its players, but stressed the importance of each player's control over his path from amateurism to professionalism. PPF will "consist of four teams to start play next summer, all based in Southern California and all owned by the league." They will play an eight game season, and a championship game, starting in July and ending in August in mid-sized municipal stadiums. The league hopes to eventually expand to other football hotbeds in Texas, Florida, the Midwest. Yee wanted the league to focus on helping "better prepare athletes with pro-style coaching and a daily schedule that more closely mimics the NFL lifestyle."

NCAA

- **The Historical Basketball League (HBL): Equity for College Athletes.** The first national basketball league for college students that will substantially compensate college athletes based on their athletic ability beyond just a college education. The HBL is founded on a simple idea: college sports are popular because they are sports played by college students, and that NCAA-style amateurism is a means of excluding athletes from the financial benefits of the league, rather than as a benefit to fans or athletes. The HBL will be also be a financial boon to the Historically Black Colleges and Universities (HBCUs) that participate in the league and share (with athletes and investors) in the league's profits. The HBL gives schools and athletes an option outside of the traditional NCAA model, providing a choice of whether to go "pro" while in college or to be amateur about it. The first season will be in 2019-2020 with the opening game planned to be held on June 19th.

Other

- John Higgins has filed a federal court lawsuit in Nebraska alleging that the Kentucky Sports Radio caused personal and business harm by providing his personal and business information online and in radio broadcasts after he refereed Kentucky's loss to North Carolina in a 2017 NCAA men's basketball regional final game. He alleges that doing so incited death threats and defamatory messages posted on social media, which caused intentional infliction of emotional distress and invasion of privacy as well as tortious interference with his roofing business.