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Cases

New Jersey Court: Coaches Should 'Exercise Reasonable Care' When Deciding Where and When to Stage a Practice

By Gary Chester, Senior Writer

Participants in recreational sports generally must clear the high bar of reckless conduct by a defendant to recover for injuries. However, a New Jersey Supreme Court case, Dennehy v. East Windsor Regional Board of Education, 2022 N.J. LEXIS 978 (October 26, 2022), reminds us that the lesser standard of simple negligence can apply in some circumstances.

Background

On September 9, 2015, the Hightstown High School athletic director arranged after-school sports practices so that the girls' field hockey team would practice on the school's turf field when the boys' soccer team's use of the field ended at 3:45 p.m. At 3:00, Dezarae

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Fillmyer, the field hockey coach, instructed her players to warm up in an area adjacent to the turf field. During the informal warm-up, one of Fillmyer's players, Morgan Dennehy, was struck at the base of her skull by an errant soccer ball, allegedly causing substantial injuries.

Dennehy filed a negligence action in the Superior Court of New Jersey against Fillmyer, the board of education, the school, its athletic director, and others. She alleged failures to supervise, to prevent potential foreseeable and dangerous conditions, to provide appropriate safeguards, and to post suitable warnings of potentially dangerous conditions.

The defendants moved for summary judgment, arguing that the plaintiff could not meet the requisite standard of reckless or intentional conduct as established in case law. The plaintiff argued that the defendants owed her a duty of reasonable supervisory care.

The trial judge dismissed the action and the plaintiff appealed, challenging the judge's determination that she must prove her coach acted recklessly. The Appellate Division reversed, finding that the recklessness standard was inapplicable because Fillmyer "was not a co-participant." The defendants appealed to the state's highest court, which granted certification.

The N.J. Supreme Court Clarifies the Standard of Care

The defendants argued that the reckless conduct standard applied pursuant to Crawn v. Campo, 136 N.J. 494 (1994), where a catcher sued a baserunner in a recreational softball game for injuries sustained in a collision at home plate. There, the state Supreme Court held that the heightened standard of recklessness applies to causes of action for personal injuries by participants in recreational sports, rejecting a lower court's reasoning that simple negligence applies. Subsequent decisions established that the recklessness standard applies regardless of whether an activity is commonly perceived as a "contact" or "non-contact" sport. The Court recognized a societal policy of encouraging participation in athletics and avoiding a flood of litigation.

But the Court found an important distinction in this case: Dennehy was alleging tortious conduct by her coach and not by a co-participant in her field hockey warm-up. The Court recognized Fillmyer as a supervisor whose alleged negligence was "her choice of the location of the impromptu workout prior to the scheduled practice and her failure to supervise her players as they waited their turn on the turf field."

The defendants relied on a case in which a karate instructor injured a student during a match, asserting that Fillmyer was a participant in the team's warm up session. The Court distinguished the precedent, recognizing that even if Fillmyer was actively participating in the practice when Dennehy was injured, the injury was not related to field hockey, but from an adjacent activity. Any liability would arise from the coach's supervisory duties and not from participating in the warm-up.

The Court reasoned that applying a simple negligence standard to the case does not undermine the policy of promoting youth participation in recreational sports. The Court added that "parents have the right to expect that teachers and coaches will exercise reasonable care when in charge of their children and that courts will not immunize a teacher's negligence by imposing a higher standard of care."

The Takeaway

A fundamental principle of risk management is to anticipate and prevent potentially dangerous situations. Sports managers must implement policies prohibiting coaches from conducting activities in an area that is dangerously close to another activity or take other precautions such as using a safety net or a partition to minimize risk. Coaches and administrators must recognize potential safety risks in practice as well as in formal competition.

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Court Grants Summary Judgment Ruling in Favor of High School for Athlete Injured During Cross-Country Race

By Bailey M. Lis, M.S. & Michael S. Carroll, PhD

In September 2016, Christopher Strickland was preparing to represent Northwest Rankin High School in a cross-country meet in Mississippi. Prior to the race, Christopher was stung on the top of his head by a wasp, resulting in a swelling sensation. After telling one of his coaches of the incident, two coaches and a registered nurse examined his head and determined that there was no swelling or any other sign of an adverse reaction to the sting. Christopher did not have any known allergy to insect stings on file with the school. Affidavits submitted by the Rankin County School District (RCSD) also showed that Christopher assured his coaches that he was fine and wanted to run the race anyway. However, Christopher recalled only one coach examining his head and claims that this coach encouraged him to run the race. More than one hour passed, and he ended up running the race.

One of Christopher's coaches checked on him a mile into the race, at which point Christopher assured her that he was doing fine. However, after he passed the one-mile marker, Christopher said that he began to feel dizzy. He then fell and hit his head. The same nurse that examined his head before the race went to help him along with her husband, a neurologist. They both determined that Christopher was able to recover, so he went back to his teammates. Christopher followed up with a doctor, who found that he had injuries to his brain and spine. Christopher's father, Christopher Strickland, Sr. (Strickland), sued RCSD on his son's behalf. In this lawsuit, Strickland alleged that RCSD employees breached their duties in how they acted both after the wasp sting and the subsequent failure to follow the school's concussion protocol after Christopher's fall.

Discretionary-Function Immunity

The defendant, RCSD, is a governmental entity. RCSD filed for summary judgment on the grounds that it qualified for discretionary-function immunity, meaning that the cross-country coaches' actions, or lack of action, showed that they were exercising a discretionary function, which is required for immunity. Summary judgment motions are filed when the movant argues that no genuine issue of material fact exists in a case, so the movant is thus entitled to judgment as a matter of law and no trial is necessary. The trial court denied this first motion. RCSD amended its motion for summary judgment by declaring that the coaches' actions in the moment involved policy, and therefore constituted immune discretionary functions.

There is a two-part public-policy function test to determine whether an allegedly tortious activity involves a discretionary function. The two elements that must be present include (a) the action or activity contains an element of choice or judgment; and (b) that choice or judgment must have considerations based on social, economic, or political policy. Before the test is engaged, the court must first identify the allegedly tortious activity. In this case, the coaches' decision to let Christopher run in the race is the alleged tortious act. Although both parties agree that this decision was a judgment call, Strickland claims that this decision did not involve any policy, and therefore RCSD should not have immunity. This claim was not supported, however, because RCSD was able to argue that the decision did involve a policy consideration. Since the school allowed the coaches to set and conduct activities that are based on policy, the coaches have the ability to set guidelines and make decisions for their teams. RCSD also has a policy for the coaches to be certified in first-aid and to administer first-aid. This requires the coaches to make decisions regarding whether a student can and should continue to participate in their sport after injury. These decisions are anchored in social policy, meaning that discretionary immunity may be granted.

Summary Judgment

When seeking summary judgment, the movant (RCSD) must demonstrate that there is no genuine issue of material fact. At the summary judgment hearing, Strickland's counsel rescinded their claims based on the RCSD employees' actions after Christopher's fall. They did not have enough medical evidence to show that RCSD's alleged failure to follow proper concussion protocols caused his injuries after the fall. Instead, they shifted their focus towards the coaches' decision to allow Christopher to run the race after being stung by a wasp on the top of his head. They insisted that it was ordinary negligence because they did not exercise the proper level of caution that was necessary.

In this case, RCSD was able to address both of Strickland's negligence claims regarding the coaches allowing Christopher to run in the race and their allegedly improper deviation from concussion protocol after his fall. RCSD argued that the school district was immune due to the coaches' actions involving policy and that there was no evidence of actionable negligence against it. The trial court granted RCSD's motion for summary judgment based on the sense that the coaches did indeed act within their discretion. In doing so, the court determined that summary judgment was appropriate because the coaches' actions regarding the wasp sting, medical care, and decision to allow Christopher to run in the race exceeded the ordinary care standard.

Negligence Claim

There are four elements required in order to prove negligence: (a) the defending party must owe the plaintiff a duty of care; (b) there must be a breach in that duty; (c) the plaintiff suffered an injury; and (d) causation must be established to show a causal connection between the breach and the injury. While RCSD did owe Christopher a duty of care and he did in fact suffer an injury, Strickland admitted that he could not prove he had suffered additional injury as a result of how the school's coaches handled Christopher's fall. The court determined that Strickland did not truly express any breach of duty by RCSD employees at any point in his complaint or in his responses to RCSD's motions for summary judgment and as such, Strickland was unable to prove negligence by RCSD.

Harmless Error Doctrine

Strickland was only notified that he had to present evidence to prove actionable negligence in one of his two counts, but he was not given the opportunity to prove it. He admitted that he could not prove that that he suffered additional injury as a result of how the school handled his fall. It is necessary that the non-moving party in a case of summary judgment (Strickland) be notified and given ample opportunity to respond to the claim. This is essential to protect the plaintiff's constitutional right to a trial by jury. If the trial court grants summary judgment on grounds other than what was requested by the moving party (RCSD), then the non-moving party (Strickland) must be notified ahead of time in order to have the opportunity to respond to it. In this case, the court granted summary judgment based on the lack of a negligence claim, not based solely on discretionary-function immunity, as RCSD had asserted. Since the entry of summary judgment took Strickland by surprise, the harmless error doctrine applies. Generally, this means that although the trial court erred in what grounds they determined summary judgment

on, the court did so without prejudice, and there was still a fair, although imperfect, trial.

Conclusion

In conclusion, the court ruled that RCSD exceeded the ordinary care standard and therefore was not negligent in their decision to allow Christopher to participate in the cross-country race. RCSD's actions also qualified for discretionary-function immunity. Upon appeal, after examining the evidence in the light most favorable to Strickland, the court found that the trial court did not err in granting summary judgment to RCSD, and the decision was affirmed.

**Case Update

Right before the publication of this article, Strickland petitioned the Supreme Court of Mississippi for a writ of certiorari, which was granted. The Supreme Court found that, while the Appellate Court focused on the debate regarding applicability of the two-part public policy function test as it applied to discretionary-function immunity, it was somewhat a moot point, as a first step in such a case required Strickland to allege a valid tort claim and provide evidence in support of that claim. The court found that Strickland failed to successfully articulate any breach of duty by RCSD employees with respect to the wasp sting and his continuance in the race that proximately caused Christopher's injuries. Moreover, the Supreme Court found that whatever happened to him during the race was not the result of any tortious activity on the part of RCSD employees. Lacking this crucial element, there is nothing on which to apply the two-part public policy function test with respect to RCSD's immunity from such liability. As such, the Supreme Court affirmed the grant of summary judgment in RCSD's favor.

References

Strickland ex rel. Strickland v. Rankin County School District, No. 2019-CT-01669-SCT (Miss. 2021). Retrieved from https://law.justia.com/cases/mississippi/supreme-court/2022/2019-ct-01669-sct.html

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Sports Reporter's Litigation Against Altitude Sports Continues

By: Jeff Birren, Senior Writer

Todd Romero is a Denver-based sports television announcer. For years, he hosted various local sports events, including the Denver Nuggets pre-game and post-game shows. After he went through drug-dependency treatment he was demoted by his employer, Altitude Sports ("Altitude"). Romero then sued Altitude, and recently the U.S. District Court in Denver granted one of Romero's two motions to amend his complaint.

Background

Romero was born and raised in Denver and also attended college there. He began covering Denver's sports teams decades ago. He was jointly hired by Altitude and Kroenke Sports & Entertainment LLC ("Kroenke Sports") in 2012 to host the pregame and post-game shows for the Nuggets. He also does play-by-play for local high school football games and the men's and women's basketball games at the University of Denver.

Some years later, Romero sought treatment for prescription-drug dependency. According to Romero, he used vacation time to receive inpatient treatment for his prescription medication addiction related to a severe neck injury. That is when the problems allegedly began. Romero alleged, Altitude "intentionally discriminated against" him by "removing him from a successful sports host and reporter…to a literal afterthought who provides short features on gambling, taped from his home computer, during the same games that he used to host." Romero also claimed that Altitude "paid Romero less than his non-Hispanic, non-brown-skin-colored peers despite his consistently stellar performance" (*Todd Romero v. Altitude Sports & Entertainment LLC*, et al, U.S. Dist. Ct. CO, Case No. 21-CV-885 ("Complaint") at 1, (3-26-21)).

The Litigation Begins

Romero sued Altitude and Kroenke Sports, filing a 34-page Complaint. He had nine causes of action, including claims for discrimination and retaliation in violation of the Americans with Disabilities Act; discrimination because of race and national origin, and retaliation in violation of Title VII; discrimination based on race, color, national origin, and retaliation in violation of 42 U.S. Section 1981; discrimination and retaliation in violation of age; and breach of contract. Romero asserted that Altitude "intentionally and unlawfully discriminated against him by not renewing his contract, falsely claiming that all on-air talent was being moved to at-will employment and taking away his on-air host duties…in favor of other hosts" who are not people of color ("Inside Todd Romero's Lawsuit Against Altitude TV", Michael Roberts, Westworld (4-12-21)). Romero sought compensatory damages, backpay, punitive damages and attorneys' fees. The case was assigned to District Court Judge Christine M. Arguello.

Altitude and Kroenke Sports filed a motion for an extension of time to Answer or Respond (Doc. #9) and answered on April 29, 2021 (Doc. #11). The parties consented to assignment to a magistrate judge, and discovery began. Before 2021 ended the parties were in a dispute over who could see compensation information produced in discovery. They took this dispute to Magistrate Judge S. Kato Crews. Judge Crews ruled that such information could be designated as "Confidential" but not "Attorneys' Eyes Only" (Doc. #33). Consequently, Romero could see the confidential salary information. Altitude appealed that order to Judge Arguello (Doc. #36) and Romero filed an opposition (Doc. #37).

Judge Arguello affirmed the magistrate's ruling, finding that the defendants "had not met their burden of showing good cause" for "Attorneys' Eyes Only" protection. Furthermore, there was "no clear error or abuse of discretion in Judge Crews's conclusion that 'a confidential' designation is sufficient to protect Defendants' interests and the interests of these non-parties' with respect to the compensation information in this case" and overruled all objections (Romero, Order (4-5-22)).

The Fun Continues

The deadline to amend the pleadings was July 13, 2021. Undeterred, Romero filed a motion to supplement his Complaint on February 22, 2022 (Doc. #43). The defendants filed an opposition (Doc. #46), and Romero replied (Doc. #47). Before that motion was heard, Romero filed a Second Motion to Supplement on August 4, 2022 (Doc. #55). The defendants again opposed the motion. At this point the Court stepped in and exercised "its discretion" under the local rules of court "to rule on the Second Motion to Supplement without awaiting the benefit of a Reply" (Opinion, at 2 (8-30-22)).

The Court stated that because "the deadline to amend pleadings has long passed" there was a two-step analysis. The pleadings could only be amended "for good cause and with the judge's consent." The moving party had to show "the scheduling deadlines cannot be met" despite that party's "diligent efforts." FRCP 16 states "good cause requirement" may be satisfied "if a plaintiff learns new information through discovery or if the underlying law has changed." Rule 16 "focuses on the diligence of the party seeking to modify the scheduling order" (Id.).

The second step, under FRCP 15(d), gives the Court "broad discretion" and leave to amend "shall be freely given when justice so requires." The motion may be denied due to "undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of amendment." The opposing party has the burden to prove "that the amendment should be refused on one of these bases" (Id.).

The First Motion to Supplement

Romero alleged that the "Defendants have continued their discriminatory and retaliatory actions against [him], which have escalated and caused [him] further severe emotional distress and lasting damage to his reputation among the public and those in the industry." Romero sought to add events that occurred after he initially sued "in support of his request for injunctive relief." This included allegations "that he has been entirely excluded from hosting duties for Nuggets and Avalanche games for the 2021-2022 seasons" and that the defendants "have assigned" him "to host a

low-profile sports betting show with much lower television ratings as pretext for discriminatory/retaliatory reasons." Romero "seeks to add prayers for injunctive relief restoring him to his previous position, or awarding him front pay in lieu of reinstatement, and prohibiting Defendants from violating Title VII, the ADA, the ADEA, and any of Plaintiff's other constitutional rights" (Id., at 2/3).

Romero asserted that good cause existed to allow these changes because it did not involve different issues "but describes the continuation of events that have occurred since the filing of his Complaint" (Id., at 3). Finally, Romero stated that there was no prejudice to the defendants because when he filed the motion "discovery had barely begun, no documents had been exchanged, and no depositions had been taken" (Id.).

The defendants naturally opposed the motion. They asserted that the motion was "untimely and that Plaintiff unduly delayed in seeking to supplement." The Court acknowledged that the motion was filed "approximately six months after the deadline to file an amended pleading." However, Romero "demonstrated good cause for the delay in that the new alleged events happened—and continued to happen—during the time period between the amendment deadline" and his First Motion to Supplement. Moreover, Romero could not have known when he filed the case that "he would be permanently removed from hosting duties." He also identified several "instances … when on-air hosts were sick or on vacation and unable to host Nuggets or Avalanche games, but Defendants refused to allow Plaintiff to fill in as a host. Under these circumstances, the Court finds that Plaintiff has adequately explained his delay in filing the First Motion to Supplement and that such delay was not 'undue'" (Id.).

Prejudice

The Court then turned to the question of whether the defendants were prejudiced by the delay. Undue prejudice occurs "when an amendment unfairly affects the opposing party 'in terms of preparing their defense to the amendment.'" This happens "when the amendment claims arise out of subject matter different from what was set forth in the complaint and raises significant new factual issues." The defendants argued that the proposed allegations "will require new evidence and likely new witnesses" though they conceded that Romero could nevertheless assert the proposed allegations "as further support for his claims as pled in his original Complaint." The Court agreed with Romero that "there is no prejudice" because as of the date of the motion, discovery "had barely begun." Furthermore, "the new allegations supporting injunctive relief are substantially similar to those already in the Complaint" and thus the defendants "would not be prejudiced by the Supplemental Complaint" (Id.). Consequently, Romero "adequately demonstrated good cause for modifying the scheduling order" and it "will not unduly prejudice Defendants. The Court therefore grants Plaintiff's First Motion to Supplement" (Id., at 4).

Romero's Second Motion to Supplement

This motion sought to add facts learned during a June 2022 deposition. Those allegations were: (1) defendants refused to offer Romero an employment contract because of the pending lawsuit, based on the advice of counsel; (2) counsel instructed defendants to offer employment contracts to all other similarly situated on-air talent; (3) Romero had been denied salary raises since 2019 due to his discrimination charges, though other on-air talent received raises; (4) and for the past six years, Romero was paid "between two and two-and-a-half times less per year than other on-air talent." Romero did not attempt to add any new claims or prayers for relief. These allegations were intended to "bolster the claims alleged and the relief requested" (Id.).

The Court was not impressed. These new allegations were filed more than thirteen months after the deadline to amend the pleadings had passed. This was sufficient reason to deny the motion. Furthermore, Romero did not seek to add additional claims, but the proposed amendments were only to "bolster" his allegations. The Court agreed "with Defendants that the purpose of Rule 15 and Rule 16 would be undermined were a plaintiff granted leave to update his complaint each time the plaintiff learned facts supporting his allegations." In addition, Romero "knew information to assert these allegations" prior to the deposition because he knew "that he had not been offered a new contract or received a pay increase since he filed his charges in 2020 and his lawsuit in March 2021" (Id.).

Furthermore, Romero's Complaint "alleged that the decision not to renew his contract was communicated

to Plaintiff in 2018, well before" he filed his charges of discrimination (Id. at 5). The new material was "duplicative because Plaintiff already alleged in his original Complaint" that he had been paid less than his non-Hispanic peers. These additional allegations were thus "untimely" and "are either duplicative of or in tension with the allegations in the existing Complaint." The Court cited cases that state there "is no absolute right to repeatedly amend a complaint." The Court found that the "Second Motion to Supplement is untimely, and that Plaintiff has not established good cause for amending the scheduling order to permit further supplementation" (Id.).

Further Developments

Romero filed his Amended Complaint on September 7, 2022. The Court then granted a joint motion for a telephonic hearing to resolve pending discovery issues. It was assigned to the Magistrate and was heard on September 16, 2022. Judge Crews ruled that the defendants "shall provide all amended discovery responses within the next fourteen days." Discovery is set to be completed by December 9, 2022. Dispositive motions are to be filed by January 9, 2023, and the final pretrial conference is scheduled for March 15, 2023 (Doc. #69, (9-16-22)). Altitude and Kroenke Sports answered the Amended Complaint on September 20, 2022 (Doc. #71).

One of Romero's lawyers then filed a motion to withdraw from the case. That was granted on October 6, 2022 (Doc. #76). One day later new counsel filed a "Notice of Entry of Appearance." What makes this case somewhat peculiar is that this is not the first counsel to withdraw from the case. The first motion to withdraw was filed on July 22, 2021 (Doc. #22). Another motion to withdraw was filed on January 12, 2022 (Doc. 38). A third such motion was filed on April 27, 2022, (Doc. #49). In a case less than 20 months old, this recent motion was the fourth motion to withdraw as counsel.

Conclusion

The case is now in the discovery home stretch. Such cases typically settle before trial, but given the internal upheaval within Romero's camp that may not be possible. The private goings on in this case to date are likely even more interesting than what is available in the public record. Romero had a long on-air career prior to his demotion, so at least for much if it he must have been doing a good job. Consequently, at this distance one can only wonder what impact the prescription pain medication rehabilitation had on Romero's job performance, or how he was perceived by his supervisors. An impending trial could get ugly.

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Court Backs Arbitration Ruling in eSports Dispute

By Jared Good

FaZe Clan Inc. (hereafter "FaZe Clan"), is one of the most recognizable eSports companies in the world with an estimated valuation of $400 million, according to Forbes. In the lead-up to FaZe Clan's efforts to go public, they took the necessary steps to seek Series A funding through investors. During these efforts, the president of FaZe Clan, Greg Selkoe, established communications with the principal of Adult Use, Adam Salman. During these discussions, Selkoe and Salman entered into a Referral Agreement, that stated:

"[t]he Client [FaZe Clan] shall pay to the Referrer [Adult Use] a referral commission … equal to five percent (5%) of the dollar amount of securities purchased by the referred party in connection with the Funding as a direct result of introductions made by the Referrer."

After the terms of this agreement were enshrined, Salman introduced Selkoe to Igor Gimelshtein of Zola Ventures, a former employee of a Canadian financial services company called Canaccord Genuity (hereafter "Canaccord").

During the introduction, Selkoe was alleged to have orally agreed that if Salman and Gimelshtein obtained funding for the company through Canaccord, then both parties, Adult Use and Zola, would each receive a 5% commission of the amount of the capital that was raised. Canaccord's Managing Director, who specialized in eSports, Michael Kogan, stated his intentions to invest in the Series A funding round, and further leading the anticipated financing round, Series B. Adult Use and Zola received their 5% commission for the investment made during the Series A round. However, during the Series B financing round, Adult Use and Zola were not actively involved in the funding. Canaccord negotiated the necessary terms and conditions with a third-party, Bridging Finance Group. FaZe Clan paid

the 5% commission to Canaccord, but neither Adult Use or Zola received anything.

Given the dispute over the referral fees and the apparent lack thereof, Adult Use and Zola entered into an arbitration agreement with FaZe Clan to settle the dispute. Adult Use and Zola maintained that they were entitled to the 5% commission from the $30,000,000 CAD loan from Bridging Financing Group. FaZe Clan countered that under the terms of the original Referring Agreement between the parties, Adult Use and Zola should receive nothing as they had no active involvement in the procurement of the funding received in Series B. Ultimately, the arbitrator agreed with FaZe Clan and dismissed Adult Use and Zola's claims, issuing a partial final award.

After their attempt to have the Arbitrator vacate the award, Adult Use and Zola filed suit in New York State court under New York law and the Federal Arbitration Act. FaZe Clan removed the case to the federal court of the Southern District of New York. The Court rejected each of Adult Use and Zola's claims in succession.

The court found that they did not have the authority to review the award. The Second Circuit has a longstanding precedent that awards under the FAA may only be confirmed or vacated by the District Courts. There is no power for the court to evaluate the merits and facts that the tribunal determined. For the award to be considered "final" and "definite," the arbitration award "must resolve all the issues submitted to arbitration, and…must resolve them definitively enough so that the rights and obligations of the two parties, with respect to the issues submitted, do not stand in need of further adjudication." The court held that the claims that had been brought by Adult Use and Zola had been properly adjudicated.

Likewise, the court found that the arbitrator had not exceeded their authority to enter the award. Second Circuit precedent holds that the required inquiry is "whether the arbitrators had the power, based on the parties' submissions or the arbitration agreement, to reach a certain issue, not whether the arbitrators correctly decided the issue." Adult Use and Zola argued that in the adjudication the arbitrator exceeded the scope of the terms that were agreed upon in their Rule 33 motion. Specifically, the parties complained that the motion was intended to cover only the regulatory issues related to the broker dealers, not the contractual issues.

Although the court agreed that the arguments put forth contained some merit, based on Second Circuit precedent this acknowledgement was irrelevant. Relevant case law "emphasiz[ed] that an arbitrator's authority to decide an issue is determined by either the parties' submissions or the arbitration agreement." The arbitration agreement entered into by the parties provided that arbitration was for "any and all disputes arising out of or related to the Referral Agreement." Given that the referral did not apply to the inclusion of Bridging Financing, FaZe Clan was correct to raise the defense, thus the arbitrator was within his authority to dispose of the claims.

Adult Use and Zola then argued that they were deprived of a fair opportunity to present evidence. Under § 10(a)(3) of the FAA, vacatur is permitted where the arbitrator is guilty of misconduct in refusing to hear evidence pertinent to the material. The court flatly rejected these arguments made by Adult Use and Zola, stating that the petitioners had failed to timely raise their claims, given that they failed to make their arguments for weeks prior.

Lastly, the court rejected any argument made by the petitioners that the court was authorized to modify the award under § 11(b). Under that section of the Act, a court has the authority to modify or correct an arbitral award "[w]here the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted." The court held that Adult Use and Zola failed to provide any reasons for why the award should have been vacated.

Ultimately, the court confirmed the award to FaZe Clan, finding that Zola and Adult Use had failed to show any evidence as to why they should have prevailed. The Referral Agreement that had brought them their commission from Series A financing, ended up dooming their claim for any future financing since the literal reading of the agreement would not have permitted any commission. By going to arbitration, Adult Use and Zola failed to convince the arbitrator that they were, within the terms of the agreement, authorized to receive their share, and thus received nothing.

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Ninth Circuit Reverses and Remands Lower Court's Decision to Grant Summary Judgment in Favor of Defendant in Title IX Retaliation Case

By Lauren Rosh

After Bennett MacIntyre, the head coach for both the men's and women's golf teams at Carroll College spoke to school officials about what he perceived to be gender inequity within the college's athletic department, the college allegedly refused to renew his contract. The United States District Court for the District of Montana granted summary judgment in 2021 for Carroll College, the named defendant in this case, after determining that MacIntyre did not allege a prima facie case of retaliation. However, in September 2022, the Ninth Circuit Court of Appeals reversed and remanded this decision.

For a plaintiff to allege a prima facie case of a retaliation claim related to Title IX, they must do so by satisfying three elements: "(1) plaintiff was "engaged in [a] protected activity"; (2) plaintiff "suffered an adverse action"; and (3) a "causal link" between the first two elements."

Carroll College employed MacIntyre from 2006 to 2018. He first served as a community living director, then later he became an associate athletics director while serving as the head coach for the men's and women's golf teams until 2016 when he stepped into the role of head coach full time.

MacIntyre guided Carroll to several successes, including recently leading the women and the men to a fourth-place finish and a fifth-place finish, respectively, in the 2019 Conference Championship.

According to the factual background from the appellate case, MacIntyre filed his employee self-evaluation that he stated aimed to "assist Carroll Athletics in becoming Title IX compliant."

A few months later in January of the following year, the head coach spoke to the Title IX coordinator about the topic and alleged workplace harassment, hostile work environment, and discrimination. MacIntyre made those allegations saying they involved the Interim Director of Athletics, Kyle Baker, and the President of the college, Tom Evans.

When Baker submitted his performance review of MacIntyre, he gave him the lowest possible scores prompting the head coach to file a formal grievance with some of those allegations.

Again, according to the appellate background information, as an informal way of resolving the complaints the parties signed a settlement where the school agreed to "(1) remove Baker's negative review from MacIntyre's file, (2) pay MacIntyre $15,000 in back pay, (3) and hire MacIntyre as a full-time golf coach under a two-year employment contract."

MacIntyre signed the contract, which was effective from July 1, 2016 to June 30, 2018. After the stated term was up, Carroll College did not renew the contract. According to the case, the school said that the lack of renewal was due to budget cuts. The case further elaborates that Lori Peterson, Vice President of Finance, Administration and Facilities, emailed the athletic director at the time, Charlie Gross, asking whether they needed a head coach for golf or if it was a stipend position.

The school switched the golf head coach to a stipend role and MacIntyre's pay subsequently decreased.

In June 2018, MacIntyre then filed another grievance regarding Title IX violations that launched the current judicial process between these two parties.

According to the Carroll College athletics website, MacIntyre still serves as the head coach of the program, not on a contract, however, as it is still considered a stipend position. In August 2022, the athletic department published a press release in which MacIntyre announced the six new signees for both the men's and women's teams.

United States District Judge Sam Haddon granted the summary judgment in 2021 because he believed "no reasonable person would conclude from the record before the Court that non-renewal of the written, fixed-term contract, which, by its terms, expired after having been performed in compliance with its terms, constituted actionable adverse action."

However, the appellate court found that the district court incorrectly concluded that the lack of renewal did not provide enough evidence to formulate a prima facie case for Title IX. The appellate court ruled that although Carroll College was not legally obligated to

offer the contract renewal to MacIntyre, its decision not to, according to the appellate opinion, "may be an adverse action because it is 'reasonably likely to deter employees from engaging in protected activity.'" Ray v. Henderson, 217 F.3d 1234, 1237 (9th Cir. 2000).

Because of this, the appellate court remanded the case to the district court. Now, the lower court will be positioned to evaluate the evidence and determine if there is a genuine issue of fact for the case to move forward.

Note: The attorneys working on both sides of this case did not respond to comment when Hackney Publications reached out due to the ongoing nature of this case.

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Articles

Another Day, Another Case of Sexual Misconduct Involving a Professional Athlete in Texas

By Dr. Robert J. Romano, JD, LLM, St. John's University, Senior Writer

Apparently (some) professional athletes in the state of Texas are unaware, never heard of, or simply just don't care about sexual assault, women's rights, or the MeToo Movement in general.

First, from the fall of 2019 through March 2021, former Houston Texans Quarterback Deshaun Watson, during twenty-two different massage sessions, allegedly engaged in sexual misconduct ranging from exposing himself to pressuring therapists into performing oral sex.[1] Watson's alleged acts led to two criminal investigations, twenty-four civil lawsuits, and millions of dollars being paid to settle those matters.

Not to be outdone, former San Antonio Spurs first round draft pick, Josh Primo, purportedly exposed himself to the team's psychologist, Dr. Hillary Cauthen, on nine separate occasions, resulting in both the player and organization being sued in Texas State Court.[2]

On November 3, 2022, Dr. Cauthen filed a civil lawsuit with the District Court of Bexar County, Texas, wherein she alleges negligence, gross negligence, and intentional infliction of emotional distress against both of the defendants. Dr. Cauthen, a licensed clinical psychologist, who began working for the San Antonio franchise in September 2021, claims that she first reported to the Spurs' front office that Josh Primo exposed himself to her in January 2022, but the organization ignored both her complaints and request for a meeting, hoping, as she asserts, that the matter 'would just go away'.[3] After finally securing an appointment to discuss any and all concerns surrounding the young player's alleged sexual misconduct with Spurs General Manager Brian Wright on March 21, 2022, an agreement was supposedly reached to 'develop a plan' that would address the player's behavior. However, according to Dr. Cauthen's complaint, after this and several other meetings with various members of the Spurs organization, including the deputy general counsel and the head of human resources, no corrective measures were taken.[4] Instead, Dr. Cauthen was asked to continue treating Primo up until July 2022, when, at such time, the legal department informed Dr. Cauthen that the front office thought 'she was unable to do her job in a professional manner due to what was now a lack of trust between her and the team.'[5] Subsequently, when Dr. Cauthen's contract ended in August 2022, the team did not renew it for the upcoming season.

Although the Spurs organization apparently turned a blind eye to Dr. Cauthen's complaints, what did cause the team to finally react and release its 2021 draft pick only came after additional allegations of the player exposing himself surfaced when the team traveled to Minnesota to play the Timberwolves. Interestingly, and what may not be the smartest of business moves since the front office was well aware of Primo's proclivities,

1 https://www.nytimes.com/article/deshaun-watson-sexual-assault-lawsuit.html

2 https://www.theguardian.com/sport/2022/nov/03/joshua-primo-lawsuit-indecent-exposure-allegations-san-antonio-spurs-nba-basketball

3 Hillary Cauthen vs Josuha Primo, Cause No. 2022 CI21718.

4 Hillary Cauthen vs Josuha Primo, Cause No. 2022 CI21718.

5 Id. at p. 6.

two weeks prior to releasing him, the Spurs picked up his third-year option, guaranteeing him $4.1 million for the 2022-23 season and $4.3 million for the 2023-24 season.[6]

The Spurs organization, in responding to the lawsuit stated 'We disagree with the accuracy of facts, details and timeline presented today. While we would like to share more information, we will allow the legal process to play out.'[7] However, Josh Primo's private attorney, William J. Briggs II, was more straightforward and direct when he stated that his client 'never intentionally exposed himself to Dr. Cauthen or any other person.'[8] He continued with his aggressive defense of his client by victim blaming, stating 'that his client was not aware his genitals were visible outside of his workout shorts, nor did Dr. Cauthen tell him they were.'[9] (Cannot wait to see how that defense holds up in front of a jury). However, the attorney's condemnation of the filed lawsuit did not end there, he doubled down by declaring that, 'Dr. Cauthen's allegations are either a complete fabrication, a gross embellishment or utter fantasy.'[10] That being said, a criminal complaint accusing Josh Primo of multiple counts of indecent exposure has been filed with Bexar County Sheriff's Office.

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Understanding MLB's Partnership with Charlotte's Web and Implications for CBD and Sports Going Forward

By Doug Sargent, of Greenspoon Marder

Last month, Major League Baseball ("MLB") announced a ground-breaking partnership with Charlotte's Web, one of the leading cannabidiol ("CBD") companies in the United States. Under the deal, Charlotte's Web will become the "Official CBD of Major League Baseball," which is a first for major U.S. professional sports leagues. The deal reportedly includes a rights fee and revenue share, as well as MLB receiving shares of Charlotte's Web Holdings, which is publicly traded on the Toronto Exchange. The agreement covers the 2022 MLB postseason, plus an additional three years.

In connection with the sponsorship agreement, Charlotte's Web launched the first product in its "Sport" line: SPORT – Daily Edge. This tincture has been "Certified for Sport" by NSF International, an organization that establishes standards for safety, quality, sustainability, and performance, and tests products against those standards. Charlotte's Web claims this new product "provides assurance to athletes that they're getting a safe, high-quality product that's suitable for professional, recreational and novice athletes alike to help support recovery from exercise-induced inflammation, help keep calm under pressure, and maintain healthy sleep cycles." The certification also ensures that SPORT – Daily Edge has been tested for 280 banned substances, the contents described on the label are accurate, there are no unsafe levels of contaminants, and the product is manufactured in a facility that is certified to be compliant with current Good Manufacturing Practices. Not surprisingly, the box and label for SPORT – Daily Edge identify it as the "Official CBD of Major League Baseball" and include the famous silhouetted logo for MLB.

While this CBD sponsorship is the first of its kind for the four major professional sports leagues in the United States, the deal did not come as a surprise to those in the industry. MLB laid the groundwork for this partnership in June 2022, when it began allowing its teams to sell sponsorships to companies that market CBD products, provided they meet certain criteria, including certification by NSF International and approval from MLB's commissioner's office. MLB had previously removed cannabis from the league's list of banned substance in 2019 and the following year announced that players would no longer be punished for using cannabis while they are not on the job.

Will other professional sports leagues follow suit?

It seems likely—if not inevitable—that the National Basketball Association ("NBA"), the National Football

6 https://www.cbssports.com/nba/news/pelicans-jose-alvarado-is-still-sneaking-up-on-the-nba-he-just-plays-fierce/

7 https://www.nytimes.com/2022/11/03/sports/basketball/josh-primo-spurs-allegations.html

8 Id.

9 Id.

10 Id.

League ("NFL"), and the National Hockey League ("NHL") will eventually enter into sponsorships with CBD companies.

Over the past decade or so, there has been a seismic shift in public perception and acceptance of cannabis, as well as the legal landscape surrounding it. Indeed, the medical use of marijuana is now legal in 39 states and recreational marijuana has been authorized in 19 states. While marijuana is still illegal federally, the federal government has shown essentially no appetite for enforcement against state-licensed businesses or individuals operating in compliance with state laws.

The same goes for hemp, which is the source of most CBD products. In 2018, the U.S. Congress passed, and President Donald Trump signed into law, the Agriculture Improvement Act of 2018, commonly known as the "2018 Farm Bill." Among other things, the 2018 Farm Bill removed hemp from the definition of marijuana under the Controlled Substances Act, making hemp federally legal. The federal government and most states distinguish hemp as containing 0.3% THC or less by dry weight and marijuana containing more than 0.3% THC by dry weight.

Cannabis reform and acceptance show no signs of slowing down. Last month, President Joe Biden announced that he is pardoning all people convicted of simple marijuana possession under federal law. He also asked the Secretary of Health and Human Services and the Attorney General to look at whether marijuana should remain a Schedule I substance under the Controlled Substances Act.

In addition to recent de-stigmatization, the cannabis industry has proven to be incredibly lucrative. According to **BofA Securities**, cannabis sales topped $25 billion in the United States in 2021, a 40% jump from 2020. Further, New Frontier Data **projects** annual sales to exceed $57 billion by 2030 in just states that have already legalized marijuana; if additional states legalize the drug, sales are projected to surpass $72 billion by 2030.

Given the confluence of increasing consumer acceptance and the sizable—and growing—market, sports leagues will likely consider sponsorships with CBD companies. Sports leagues are always looking for new ways to increase advertising and marketing revenue, as we have seen lately with the NBA and NHL selling ad space on jerseys (MLB has approved it for next year). Sports league partnerships with CBD companies also makes sense from a branding perspective. Many of the purported benefits of CBD align well with sports, including recovering after exercise, increasing focus, staying calm under pressure, and promoting better sleep. Of particular note for the NFL, a 2017 **article** by Lesley D. Schurman and Aron H. Lichtman found that "CBD as well as other phytocannabinoids which do not bind cannabinoid receptors, represent promising molecules to treat [traumatic brain injury]." That said, it may take some time for another deal to be reached and leagues may wait to see how the MLB-Charlotte's Web partnership fairs before jumping in.

What Factors Should Leagues Keep in Mind When Considering CBD Sponsorship Deals?

Despite the wave of de-stigmatization and reform around cannabis and its expanding market, sports leagues should approach potential CBD sponsorships with caution.

Leagues need to conduct extensive diligence on their prospective partners and their products. As several studies have shown, much of what is on the shelves at retailers across the country is inaccurately labeled and marketed. Some "CBD" products contain less CBD than advertised or no CBD at all; others might contain THC levels that exceed federal limits. Accordingly, leagues must ensure that their prospective partners' products are legitimate and trustworthy. MLB is attempting to achieve this through certification from NSF International, and other sports leagues will likely follow suit.

Leagues—and their CBD partners—should also be careful in touting potential medical benefits of CBD products. While some describe the CBD industry as the "wild, wild west," the U.S. Food and Drug Administration ("FDA") maintains regulatory oversight over hemp thanks to the 2018 Farm Bill. Consequently, hemp-derived products—such as foods, beverages, dietary supplements, human and veterinary drugs, and cosmetics—must meet applicable FDA requirements. In practice, these requirements are largely overlooked and the FDA has done little to regulate or enforce CBD products. But one issue that has caused the FDA to issue enforcement letters is unsubstantiated claims of health benefits. Further, high-profile organizations like professional sports leagues might draw enhanced

scrutiny from the FDA. MLB appears to be aware of this issue, yet is comfortable with the associated risks, as Charlotte's Web describes purported health benefits of SPORT – Daily Edge on its website, but includes a disclaimer that "[t]hese statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease."

The partnership between MLB and Charlotte's Web is intriguing and potentially very lucrative for both sides, but it does come with risk, particularly to MLB. It will be interesting to see how this plays out for MLB, Charlotte's Web, and any other leagues and companies that enter into similar sponsorship agreements.

Doug Sargent

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Traversing the IP Terrain of Mountaineering, Camping, and Rock Climbing: An IP Snapshot of the Industry

By Daniel G. Chung[11] and Dara Emami[12]

Mountaineering, camping, and rock climbing popularity is ascending to new heights, and with this rise brings new innovations. In large part due to the pandemic, participation in outdoor activities climbed from 148 million participants in 2017 to over 160 million in 2020—the sharpest increase on record.[13] Revenue is also up and is expected to grow to from 4.5 to 7.4 billion dollars by 2027.[14] Many in the industry shared a concern that people would lose interest in the outdoors when returning to pre-Covid life. This does not appear to be the case.[15] According to a 2022 report conducted by the Outdoor Foundation, outdoor participation retained its popularity and had a record participation of 166 million with hiking and camping being among the most popular activities.[16] Moreover, rock climbing's growing popularity was demonstrated by its incorporation into the Olympics.[17] This increased participation has added consumers to a relatively mature market, requiring industry players to compete more fiercely for the growing customer base.[18]

REI, or more formally known as Recreational Equipment Inc., is a major retailer in this industry, and they enjoyed a 36% increase in revenue — even larger than pre-pandemic levels.[19] Also enjoying higher revenues is V.F. Corporation ("VFC").[20] VFC carries several highly recognized outdoor brands (e.g., The North

11 Daniel is a partner at Finnegan LLP and co-leads the firm's Sports, Fitness, and Outdoor Recreation industry group. He represents both domestic and international clients, from startups to larger companies, in complex IP litigation and strategic IP counseling.

12 Dara is an avid climber and a law clerk at Finnegan LLP.

13 Outdoor Foundation, 2021 Outdoor Participation Trends Report, June 22, 2021, at 6, https://ip0o6y1ji424m0641msgjlfy-wpengine.netdna-ssl.com/wp-content/uploads/2015/03/2021-Outdoor-Participation-Trends-Report.pdf

14 Id.

15 Outdoor Foundation, 2022 Outdoor Participation Trends Report, September 19, 2022, at 2, https://outdoorindustry.org/wp-content/uploads/2015/03/2022-Outdoor-Participation-Trends-Report-1.pdf

16 Id. at 2, 5.

17 See Send Edition, What You Need To Know About Climbing In The 2021 Tokyo Olympics, https://sendedition.com/will-rock-climbing-be-in-the-2020-2021-olympics/#:~:text=Rock%20climbing%20will%20finally%20debut,sports%20climbing%20and%20speed%20climbing.

18 See Jonathan Burns, Industry Report: Hiking and Outdoor Equipment Stores, IBISWorld, https://www.ibisworld.com/united-states/market-research-reports/hiking-outdoor-equipment-stores-industry/

19 See REI Co-Op News Room, REI Co-op Reports Strong Growth in 2021, Setting Co-op Record in Membership, https://www.rei.com/newsroom/article/rei-co-op-reports-strong-growth-in-2021-setting-co-op-record-in-membership; REI Co-Op News Room, REI Co-op publishes 2019 full-year financial results, https://www.rei.com/newsroom/article/rei-co-op-publishes-2019-full-year-financial-results

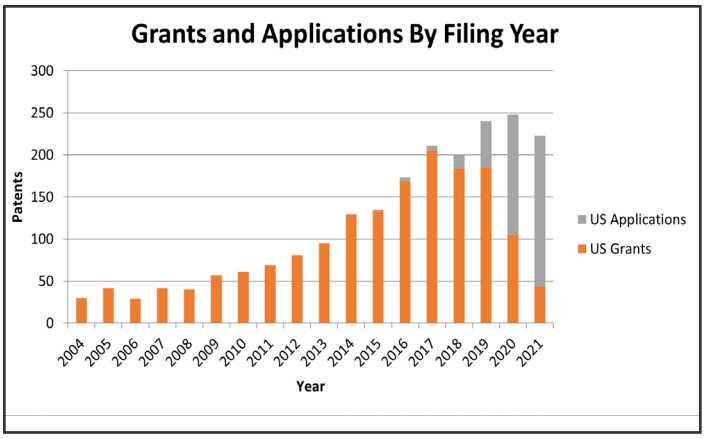
20 See Google Finance, VF Corp., https://www.google.com/finance/quote/VFC:NYSE?sa=X&ved=2ahUKEwiEtJ6r1Pf6AhUvj4kEHRsYCxwQ3ecFegQIHBAa

Face, Timberland, etc.).[21] As an industry leader, VFC recognize the important role that intellectual property (IP) plays.[22] In their 2022 shareholder letter, VFC expressed that patents provide substantial value in the development of products and are important to continued success.[23]

In an environment where retailers are competing to gain share in the expanding market, intellectual property plays a vital role. This article presents a snapshot of the technology and IP trends and provides a number of considerations as outdoor companies continue to innovate and keep pace with competition.

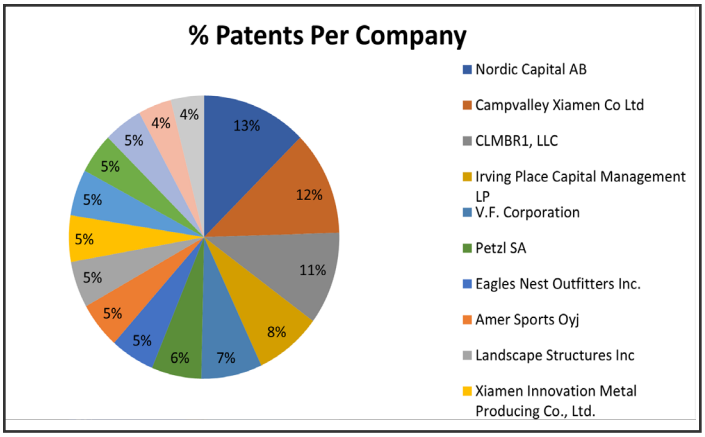
U.S. Patent Filing Trends

Since 2015, various entities have filed over 1,700 U.S. patent applications in an effort to protect outdoor recreation innovations.[24] And investments in these efforts have steadily grown over the years.[25] That growth is demonstrated below, which indicates, among other things, that the number of U.S. patents and U.S. patent application publications from the U.S. Patent and Trademark Office ("PTO") increased 196% from 2012 to 2019.[26]



For camping and mountaineering, important to participants are preparation and traveling lightly.[27] At times, however, these two objectives may be in tension with each other. The industry seeks to develop innovative solutions for its consumers, and a large majority of the technologies for which companies pursue patent protection address this concern. For example, the technical categories that many of these patent filings fall under include: (1) tents or canopies, (2) articles which may be converted into other articles for other use (e.g., backpack changing to sleeping mat, mat that can convert to shaded tent), and (3) devices for lowering people from a height (e.g., belay device, harness, fall prevention equipment).[28]

As shown below, while many different entities in the outdoor recreation space are active in seeking U.S. patent protection, one of the leading players is Petzl.[29]



21 V.F. Corporation, Form 10-K, at 2, https://www.vfc.com/investors/financial-information/sec-filings/content/0000103379-21-000006/0000103379-21-000006.pdf

22 Id. at 8.

23 Id.

24 U.S. patent statistics come from reports generated by Innography (Innography is a trademark of Clarivate and its affiliated companies). Innography: keyword search for "mountain," "hik," "belay," "backpack," "outdoor," "hammock," "tent," "rock climbing," and excluding "solar," "battery," "robot," "cooking," "conditioner" in the abstract of U.S. patents and patent applications published since January 1, 2015, and organizing results by Cooperative Patent Classifications (CPCs). Results included CPCs of Apparatus for physical training, gymnastics, swimming, climbing, or fencing; Ball games; Training equipment (A63B), Furniture; Domestic articles or appliances; Coffee mills; Spice mills; Suction Cleaners in general (A47), Buildings or like structures for particular purposes; Swimming or splash baths or pools; Masts; Fencing; Tents or canopies, in general (E04H), Devices, apparatus, or methods for life-saving (A62B), Travelling or camp equipment: Sacks or packs carried on the body (A45F), Walking sticks; Umbrellas; Ladie's or like fans (A45B), Apparatus for climbing poles, trees, or the like (A63B 27/00), Non-skid devices or attachments (A43C 15/00), Footwear for sporting purposes (A43B 5/00), Tents or canopies, in general (E04H 15/00), Characteristic features of footwear; Parts of footwear (A43B).

25 Id. (publish date filter changed from January 1, 2015 to January 1, 2004) (Information organized by number of grants and applications published per year)

26 Id.

27 Beckworth & Co., How To Pack Light For Your Camping Trip, https://beckworthandco.com/blogs/news/how-pack-light-camping-trip

28 Innography, supra note 12 (organized by filings per CPC code).

29 Id. (Organizing results by organization).

Petzl has a history of engaging in product innovation and advancing IP efforts, which is illustrated by their "GriGri", an assisted braking belay device patented in 1991.[30] This device became so popular that the term GriGri is now used to generally describe this category of belay devices - much like Velcro describing hook and loop.[31] To this day, Petzl continues to innovate and demonstrate the importance of IP. For example, over the past five years, 17 U.S. patents have issued to Petzl related to a wide range of climbing technologies.[32] More recently, in 2020, Petzl patented an improved full body harness for recreational climbing by children.[33]

In addition to traditional technologies in the outdoor recreation space, industry players are incorporating other technologies to meet evolving consumer fads and demands. One such example seeks to enhance the outdoor experience by adapting wearable sensors and drone technologies.[34] Specifically, Drone Control LLC was issued a U.S. patent directed to a method that utilizes drones to track a climber and display climbing information to the belayer on the ground.[35] Such technology purportedly addresses the traditional approach of when a climber is out of sight, which requires a belayer to anticipate a fall by feel of the rope or verbal communication with the climber. Other recent technologies include a jacket that can turn into a tent, an improved method for adding a waterproof membrane to clothing articles, and an auto-erecting tent.[36]

30 Maya Jaffe, Innovations in Climbing: The GRIGRI, https://momentumclimbing.com/innovations-in-climbing-the-grigri/

31 See Grigri (climbing), https://en.wikipedia.org/wiki/Grigri_(climbing).

32 See, e.g., U.S. Patent No. 11,097,160 (issued Aug. 2, 2022) (Carabiner with internal confinement element); U.S. Patent No. 10,512,821 (issued Dec. 24, 2019) (Belaying lanyard equipped with improved swivel connection); U.S. Patent No. 10,850,142 (issued Dec. 1, 2020) (Full body climbing harness).

33 U.S. Patent No. 10,850,142 (issued Dec. 1, 2020) (Full body climbing harness).

34 U.S. Patent No. 10,250,792 (issued Dec. 1, 2020) (Unmanned aerial vehicles, videography, and control methods).

35 Id.

36 U.S. Patent No. 10,661,543 (issued May. 26, 2020) (Membrane lamination of three-dimensional article); U.S. Patent No. 10,687,571 (issued Jun. 23, 2020) (Convertible jacket); U.S. Patent No. 8,919,364 (issued Dec. 30, 2014) (Auto-erecting tent).

Snapshot of IP Disputes

Much like other tightly competitive industries, the outdoor recreation industry has seen its share of IP disputes. One of the most litigated technologies within the industry is camping furniture.[37]

Filing data indicates that The Caravan Company International Inc. is one of the more active entities in enforcing its IP rights.[38] In 2019, Caravan filed six patent infringement suits against various companies.[39] Among them is a complaint against Walmart for alleged patent infringement relating to "collapsible tent frames."[40] According to the asserted patent, the disclosed collapsible tents include a plurality of scissor type ribs attached to telescoping poles that purportedly allow for easy setup and takedown while improving structural rigidity.[41] Following the complaint, Walmart and other distributors sought to challenge the validity of the asserted patent in Inter Partes Review proceedings at the PTO.[42] The Patent Trials and Appeals Board of the PTO issued a decision in 2022, invalidating all of the asserted patent claims, and Caravan has since appealed to the Federal Circuit.[43]

As another example, Eagle Nest Outfitters ("ENO") has shown that they will enforce their IP rights if needed, true to the warning on their website.[44] Since 2010,

37 Complaint, Caravan Canopy Int'l, Inc. v. Walmart Inc., Case No. 2:19-cv-06978 (C.D. Cal. 2019); Complaint, Eagle Nest Outfitters, Inc. v. Taomore, Inc., Case No. 1:22-cv-00198 (W.D.N.C. 2022); Complaint, IP Power Holdings Limited v. Ningbo Hitorhike Outdoor Co., Ltd., Case No. 1:21-cv-06640 (S.D.N.Y 2021).

38 Complaint, Caravan Canopy Int'l, Inc. v. Walmart Inc., Case No. 2:19-cv-06978 (C.D. Cal. 2019); Complaint, Caravan Canopy Int'l Inc v. The Home Depot USA, Inc. et al., Case No. 8:19-cv-01072 (C.D. Cal. 2019); Complaint, Caravan Canopy Int'l Inc. v. Shelter-Logic Corporation et al. Case No.: 5:19-cv-01224 (C.D. Cal. 2019); Complaint, Caravan Canopy Intl, Inc. v. Bravo Sports et al., Case No. 2:19-cv-06031 (C.D. Cal. 2019); Complaint, Caravan Canopy Intl, Inc. v. Z-Shade Co. Ltd. et al., Case No. 2:19-cv-06224 (C.D. Cal. 2019); Complaint, Caravan Canopy Int'l Inc v. Lowe's Home Centers, LLC et al., Case No. 2:19-cv-06952 (C.D. Cal. 2019); Complaint, Caravan Canopy Int'l, Inc. v. Northern Tool & Equipment Company, Inc., Case No. 2:20-cv-00140 (E.D. Tex. 2020).

39 Id.

40 Complaint, Caravan Canopy Int'l, Inc. v. Walmart Inc., Case No. 2:19-cv-06978 (C.D. Cal. 2019).

41 U.S. Patent No. 5,944,040 (issued Aug. 31, 1999).

42 Z-Shade Co., Ltd. v. Caravan Canopy Int'l, Inc., Case No. IPR2020-01026 (P.T.A.B. May 17, 2021)

43 Walmart Inc. v. Caravan Canopy Int'l, Inc., Case No. IPR2020-01026 (P.T.A.B. February 15, 2022).

44 ENO INTELLECTUAL PROPERTY, https://eaglesnestoutfit-

ENO has asserted its IP rights in five separate lawsuits.[45] More recently, in September 2022, ENO filed a complaint against Taomere Inc., alleging trademark and patent infringement, relating to hammocks.[46]

Moreover, like other industries, non-practicing entities (NPEs) have initiated a number of the IP disputes in the outdoor recreation space. Recently, for example, in August 2021, IP Power Holdings, which appears to be an NPE, filed a complaint against Hitorhike Outdoor Co., alleging patent infringement relating to a collapsible chair with a tensioned seat.[47] And since 2012, IP Holdings has settled or voluntarily dismissed seven patent infringement suits, and one suit resulted in a permanent injunction following a default judgment.[48]

Takeaways

While outdoor participation has increased in size and diversity in recent years, business analysts still consider the outdoor recreation industry a mature market. It is therefore critical that industry players continue to innovate and differentiate themselves to capture the new and growing consumer base and dislodge existing consumers from competitors. Leveraging IP rights is a key tool in gaining this competitive advantage. As the sharply rising U.S. patent filing trends demonstrate, the industry as a whole has utilized and acknowledged the value of IP to address the evolving consumer demand and competitive makeup of the outdoor recreation space.[49] Whether a company is continuing to improve upon their traditional, bread-and-butter technology, like climbing equipment, or incorporating non-traditional technologies, like drones or wearables, to advance existing outdoor recreation equipment or techniques, a key strategy is continuing to innovate and protecting those commercially valuable innovations.

Although companies may focus their efforts on the upsides of a robust product development and innovation program, the risks must also be assessed. Industry players (as well as external, non-practicing entities) have demonstrated their willingness to enforce IP rights, and some, like VFC, even warn that they "vigorously monitor and enforce [their] intellectual property."[50] Therefore, innovation and product development strategies should be complemented and weighed in view of the scope of any relevant IP of others, as well as the characteristics of the third party holding the IP, including its business, IP practices, and any existing or future relationships.

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United States National Institutes of Health (NIH) Concludes CTE Is Caused by Repetitive Traumatic Brain Injuries

The National Institute Neurological Disorders and Stroke (NINDS), part of the United States National Institutes of Health (NIH), has formally acknowledged publicly, for the first time, that the brain disease chronic traumatic encephalopathy (CTE) is caused by repetitive traumatic brain injuries.

The nation's top medical research agency agreed to update its official statement on causation.

The Concussion Legacy Foundation (CLF), the long-time organization that raises awareness about the risk of concussion, **sent a letter**, cosigned by 41 of the world's top experts on CTE and related areas of science,

tersinc.com/pages/intellectual-property, ("Eagles Nest Outfitters, Inc. will take appropriate action to enforce its intellectual property rights when necessary.)

45 Complaint, Eagle Nest Outfitters, Inc. v. Taomore, Inc., Case No. 1:22-cv-00198 (W.D.N.C. 2022); Complaint, Eagles Nest Outfitters, Inc. v. Hewlett d/b/a Bear Butt, Case No. 1:16-cv-00165 (W.D.N.C. 2016); Complaint, Eagles Nest Outfitters, Inc. v. Harden d/b/a Nature's Hangout, Case No. 1:16-cv-00261 (W.D.N.C. 2016); Complaint, Eagles Nest Outfitters, Inc. v. Hussein d/b/a MalloMe, Case No. 1:16-cv-00381 (W.D.N.C. 2016); Complaint, Eagles Nest Outfitters, Inc. v. Dick's Sporting Goods, Inc., Case No. 1:18-cv-00082) (W.D.N.C. 2018).

46 Complaint, Eagle Nest Outfitters, Inc. v. Taomore, Inc., Case No. 1:22-cv-00198 (W.D.N.C. 2022).

47 Complaint, IP Power Holdings Limited v. Ningbo Hitorhike Outdoor Co., Ltd., Case No. 1:21-cv-06640 (S.D.N.Y 2021).

48 Complaint, IP Power Holdings Limited v. West Marine Inc., Case No. 1:21-cv-01388 (D. Del. 2021); Complaint, IP Power Holdings Limited v. Ningbo Hitorhike Outdoor Co., Ltd., Case No. :21-CV-06640 (S.D.N.Y 2021); Complaint, IP Power Holdings Limited v. Westfield Outdoor, Inc., Case No. 2:19-cv-01878 (D.N.V. 2019); Complaint, IP Power Holdings Limited v. Kamp-Rite Tent Cot, Inc., Case No. 2:19-cv-00634 (E.D. Cal. 2019); Complaint, IP Power Holdings Limited v. Wal-Mart Stores Inc. et al., Case No. 1:16-cv-05168 (S.D.N.Y. 2016); Complaint, IP Power Holdings Limited v. Sears Holdings Corp. et al., Case No. 1:13-cv-06081 (S.D.N.Y. 2013).

49 See Innography, supra note 16.

50 V.F. Corporation, Form 10-K, at 8 https://www.vfc.com/investors/financial-information/sec-filings/content/0000103379-21-000006/0000103379-21-000006.pdf

urging the NINDS to review the current evidence outlined in the 2022 article **Applying the Bradford Hill Criteria for Causation to Repetitive Head Impacts and CTE**, published in Frontiers in Neurology.

On October 5, Dr. Nsini Umoh, Program Director for Traumatic Brain Injury, responded that the NINDS official statement on CTE causation **has been updated** to now say "CTE is a delayed neurodegenerative disorder that was initially identified in postmortem brains and, research-to-date suggests, is caused in part by repeated traumatic brain injuries."

"The National Institutes of Neurological Disorders and Stroke new statement on CTE causation is a landmark moment in the fight to end CTE," said Dr. Chris Nowinski, study lead author and CLF founding CEO. "We thank all the scientists who built the evidence and advocated for this change as well as the families of the brain donors who died with CTE for their important role. The impact of this change will save lives."

The announcement came just as the Concussion in Sport Group's (CISG) 6th International Consensus Conference on Concussion in Sport in Amsterdam, where a meeting of doctors, organized by FIFA, the International Olympic Committee, World Rugby, and others, debated their own position on CTE causation. Their most recent statement claimed, "a cause and effect relationship between CTE and concussions or exposure to contact sports has not been established."

The NINDS joins the US Centers for Disease Control and Prevention in recognizing CTE is caused by repeated traumatic brain injuries." The **CDC fact sheet** defines repeated traumatic brain injuries as "concussions, and repeated hits to the head, called subconcussive head impacts."

The NIH and CDC each independently concluded that CTE is caused by repeated traumatic brain injuries, like those suffered by contact sport athletes, military veterans, and victims of abuse, is expected to have significant public policy and medico-legal consequences.

Many international professional sports organizations that are part of the CISG are facing lawsuits from the families of former players diagnosed with CTE and former players exhibiting cognitive and behavioral symptoms that may be caused by CTE. Some sports organizations have defended those lawsuits by citing the CISG statement on CTE causation.

Dr. Robert Cantu, medical director of the Concussion Legacy Foundation, has served as a coauthor of CISG statement to promote improved concussion care but has been on record disagreeing with their CTE statements. Dr. Cantu served as senior author on the paper that helped inspire NIH to change their statement on CTE causation. After Dr. Paul McCrory resigned as chair of the CISG in March due to allegations, now proven, of serial plagiarism, Dr. Cantu was invited to co-chair the scientific committee of the Amsterdam meeting.

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Duane Morris Adds Corporate Sports Partner Alexander Chester in New York

Alexander Chester has joined Duane Morris LLP as a partner in the firm's Corporate Practice Group in its New York office. Chester's practice focuses on corporate transactions in the sports industry. Prior to joining Duane Morris, Chester was counsel at O'Melveny & Myers LLP.

"Our strong Corporate Practice Group is getting even stronger with a savvy partner whose national practice complements and adds a new facet to our sports and gaming law capabilities," said Duane Morris Chairman and CEO Matthew A. Taylor.

Brian P. Kerwin, chair of the firm's Corporate Practice Group, added that the firm was "excited to establish a strategic sports law capability within Duane Morris and bolster our busy and successful gaming and sports betting practice. There are lots of natural synergies with Alex's sports law experience and our roster of clients, with whom we partner to develop and forge new, innovative and beneficial relationships across all aspects of the gaming world."

Finally, Frank DiGiacomo, partner and co-team lead of the firm's Gaming Industry Group, noted that "Alex's deep experience in the sports industry and his wide network of relationships and clients in professional and collegiate sports, investors and institutions will enable us to work in new ways with our clients, including professional sports teams, media outlets, sports betting and other gaming operators and sports leagues. Our strong market position and our comprehensive service to our

broad base of clients, both traditional and nontraditional gaming entities, will be enhanced by Alex's background and practice."

Chester focuses his practice on the sports industry, where he represents and counsels clients including professional and collegiate sports teams and leagues, owners and acquirers of professional sports teams, universities, and state and local governments in connection with stadium development projects, construction agreements, lease agreements, the acquisition of professional sports franchises and strategic counsel. His representative work in the sports industry includes representing developers, governments, major NCAA Division I universities, and NFL, MLB, NBA, NHL and MLS teams in the development and construction of stadiums and media rights transactions, and purchasers and sellers of majority and minority interests in sports and esports franchises.

Chester is a graduate of Harvard University (J.D., 2010), where he was supervising editor, executive board member and symposium director of the Harvard Journal on Legislation. He is also a graduate of the University of Pennsylvania (B.A., summa cum laude, 2005).

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Risk Management Is Top of Mind for VP of Guest Experiences Shane Beardsley

Whether working in the sports industry, or teaching sports management as a college professor, Shane Beardsley has lived and breathed sports for most of his 25-year career.

So, it was no surprise that when he took over as Vice President of Guest Experiences of Jacob K. Javits Convention Center less than a year ago, Beardsley brought along his approach to risk management that served him exceedingly well in sports.

We wanted to learn more about that approach, so we sought out Beardsley, a member of the Advisory Board for Sports Facilities and the Law, who holds a Bachelor of Science Degree in Sports Management from the State University of New York College at Cortland and a Master of Science Degree from Manhattanville College in Purchase, NY, where he currently serves as an Associate Professor.

Question: How did you get into the facilities business?

Answer: It's kind of a funny story. I got my first internship from a connection through my mom. She worked with a group of paralegals in upstate New York, and one of the other paralegal's sons was the strength and conditioning coach for the Red Sox. And that's how I got my internship with the Red Sox. I also remember being the backstage manager for school plays, which I really enjoyed.

Q: You have been at the Jacob K. Javits Convention Center for nine months. Tell us about your role there as Vice President, Guest Experiences?

A: Ultimately, it's about the guest experience of anybody who comes into the Javits Center and that includes exhibitors, patrons, event production teams, etc. I manage all of the third-party and outward-facing employees and staffs and crews that are here. It's exhibitor solutions, whether it's 10 or if it's 10,000 exhibitors that come in for a show.

Q: How does your job intersect with risk management or legal?

A: Almost continuously. Regarding risk management, we have a very good and entrenched security team here. That responsibility cannot be underestimated, given that the facility is six blocks long and more than 3 million square feet. Those responsibilities include making sure we are ADA compliant as well as holding higher-end security conversations while working with outside security companies. So, the risk management or security conversation is always there, for all of us. As for the legal side, it's about reviewing and maintaining contracts that the vendors that we have, be it Starbucks, FedEx, and everyone else. We are also constantly going through the actual contracts with our catering companies, ensuring that the submissions that are made and the billing cycles and everything else are all brought to fruition when the event closes. There's also the legal component for RFPs. Because we're a state entity, all of our contracts have to go through state comptroller's office for approval. So, there's a lot of RFPs and FOIA requests and all that fun stuff.

Q: Is there interaction with outside law firms?

A: Yes, but it is very specific to areas of the law. There might be one law firm for liquor-related issuers and another for tripping and falling hazards.

Q: Is there a philosophy you have adhered to that you can share with us?

A: Actually, there is, and I picked it up from Dr. Gil Fried's book. I'm going paraphrase him. It's about the ability to walk around the space and to be mindful of the journey of all of your patrons. It's looking at it from driveway to driveway. As someone enters your venue, there are different access points, where you might have overall concerns about slipping and tripping. It's very important what Dr. Fried said that a great facility manager will walk around the space and take a different path each and every day to try to find out the different problems. I do that every morning here.

Q: What are you most proud of in the nine months you've been there, which you've been able to get accomplished?

A: My proudest achievement has been the ability to get people to work together, to work closely with our sales and catering teams to reach the levels of event activity that this venue experienced prior to the pandemic. That's a win-win for the Javits Center and a win-win for New Yorkers. I want everyone to realize that ultimately when somebody comes into our space, they're coming to the Javits Center for a one-of-a-kind experience they won't soon forget.

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Did the Drake Group Just Step into the Collegiate Athletics Ring with the Knight Commission?

The Drake Group has established a new non-profit organization under the fiscal 501(c)(3) sponsorship of the Players Philanthropy Fund – THE DRAKE GROUP EDUCATION FUND.

On the surface, this "better positioned" the Drake Group to shape the discourse on collegiate athletics, similar to the Knight Commission.

Andrew Zimbalist, Drake President explained, "Doing so will enable two important things to happen. First, The Drake Group will be better positioned to focus on its priority mission of influencing Congress and other policymakers, encouraging them to address the serious academic, health, and economic crises in intercollegiate athletics – our primary function as a 501(c)(4) advocacy non-profit organization. Second, given the 2022 success of The Allen Sack National Symposium and our webinar series on critical issues in college athletics, we are moving all of our educational and research assets to the The Drake Group Education Fund (TDGEF) so it becomes our "public education arm" working to influence the public discourse on the need for reform.

We are grateful to the Players Philanthropy Fund (PPF), our 501(c)(3) fiscal sponsor, which will host our new organization until the IRS acts on TDGEF's application for 501(c)(3) status. This PPF fiscal sponsorship immediately allows all donations and gifts to the TDGEF to be tax deductible and makes the organization eligible for grants from private and corporate foundations."

The chair of the organization is Michael Driscoll, who said:

> *"I'm honored to serve as the first Chairman of the Board of Directors of The Drake Group Education Fund (TDGEF). I've been a long-time admirer of the work of The Drake Group's co-founder Allen Sack and the meticulous work of the organization in assembling fact-based research to support its positions. The Education Fund will work to amplify a public voice that insists on realizing the promise of intercollegiate athletics — the excitement sport brings to the campus and alumni community and the value of a college education. We know we can achieve this end without subjecting athletes to exploitation, discrimination and physical or mental abuse."*

Driscoll's bio reads as follows:

> *Driscoll's career spans 35 years in manufacturing and management; Mike served for more than 10 years as an executive officer in several capacities for Connecticut-based Winchester Electronics, a global leader in the design, development and deployment of high-speed interconnect technology. He was the company President from 2000 through 2006, and President and Chief Executive Officer (CEO) from 2006 through 2010 and company Chairman until its sale in 2014.*

Post Winchester Electronics, Driscoll worked with Connecticut Innovations, the State of Connecticut's Venture Fund as an Executive in Residence for five and a half years. In his role at CI Driscoll worked with Connecticut based start-ups helping them develop and

implement business strategies, manage their finances and raise capital for continued growth.

Currently, Mike is an Adjunct Professor for the Pompea College of Business at the University of New Haven and its past Director of Internship helping to bring real-world expertise to the classes he teaches.

Mike has a bachelor's degree in Mechanical Engineering Technology from Roger Williams University and an Executive MBA from the University of New Haven.

He has also completed Executive Management and Leadership Training at Harvard Business School, a Financial Management Certification from The Wharton School of the University of Pennsylvania, and Total Quality Management training at the Deming Institute."

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Waiving a Cautionary Yellow Flag on the Expansion of Sport

By Gil Fried, Professor/Chair, University of West Florida, Editor-In Chief of Sports Facilities and the Law

I hate to be the harbinger of doom, but I have seen this script before. An industry sees lots of potential and tries to monetize the opportunity while it is hot, and in the process hurts the entire industry. I lived this back in the 1980s with the Women's Professional Basketball League, which was launched before the WNBA and crashed and burned shortly thereafter. Things have not improved much since them. There appears to be a lot of stupid money out there trying to hunt for the next big hit without regard to the possible carnage that might be left behind.

Sport is a very sensitive ecosystem. While we often focus on our silos, we are all part of the same system. And if we look bad, the impact and implications can hurt us for years to come.

Currently, there is a mad rush to invest in sports. Everyone is hyping so much money and so many opportunities. Does that sound like the Dot Com bubble? Recent stories have highlighted how big-name sport stars are buying into professional pickleball teams. A recent headline spoke to how League One Volleyball is launching a professional indoor women's league after the 2024 Paris Olympics and recently raised $16.75 million in Series A funding. It seems like a gold rush. But similar to past gold rushes, some people made it and others lost their shirts.

Sport executives are stewards to a legacy and tradition as well as a hopeful supporter of the future. However, when we put revenue and growth ahead of basic business principles, we risk destroying what might make something exciting. Recent sports such as pickleball and disc golf had taken off during the pandemic. Will they become fads and come back down to earth from their phenomenal growth? Are we searching for the next major revenue source at the expense associated with existing sports, which might see declines? Is that part of a natural cycle or can this lead to major shifts in our sport consumption habits? For example, with declining youth football participation numbers what will that impact future football consumption patterns?

Technology has often impacted how we move forward as an industry. Ticketless entry, scanning technology, RFID sensors in jerseys, performance tracking, etc. … all could be great techniques to harness data or make life easier for those in our space. The other side is that we can push away participants and future fans. Wearable technology was the next big thing and how many people bought motion tracking technology that sits gathering dust in a drawer. A major tennis racket company invested significantly on tracking associated with rackets to find out that they could not sell the racket well because players did not want numbers. Instead, they wanted coaching to tell them what to do better. It is the personal touch a coach could provide. Technology has its benefits, but it cannot solve all problems, nor will it always generate a great return.

I constantly hear about monetizing sport, but this does not take into account that we are talking about people. I do not want to be monetized. I am not alone. I don't want my data dissected into millions of ways. I want to make a buy decision based on what I hear from my fellow sports people. I will not buy sport equipment based on a Facebook advertisement. No social media post or search history tracking algorithm will change my behavior. I do not follow any influencers. I follow friends who play sports similar to me and they listen to me as I listen to them. If they say a pickleball paddle is great I might try it. I am not influenced by the pickleball magazine that seems to be 80% advertising and 20%

content. I have actually stopped reading the pickleball magazine as I want to improve my game, not buy any new equipment. If a customer feels like they are being treated as a commodity they can walk with they feet and that is my concern.

If we can partner with people and treat them as equals, then they will stick around when the times are tough. If customers start feeling they are being taken to the cleaners - well they will fight back. There is such an emphasis to squeeze every last dollar out of people whether it is through licensed goods, tickets, concession sales, subscriptions, NFTs, SPAC deals, streaming deals, sport wagering, etc. When times get tough, such as now, we can face a major backlash.

Most of the world has socialized sport-based systems where the government has primarily funded youth and community sport. Remember the good 'ole days where we had physical education for one hour a day, five days a week. Now we are lucky if we get 50 minutes a week. While Title IX has helped grow interest in women's sports, social media and societal pressures have decreased the number of young women who participate in organized sports, especially during the high school years. We have allowed the capitalist system to thrive and in the past it did very well. However, with all the NIL deals, push for professionalism, increase in team valuations, Crypto hyping by athletes, SPAC deals backed by athletes, as a start- maybe we have gone too far. Our industry is not recession proof. We have had a gravy train for over 14 years (since the 2008 decline) with a little blip from Covid. If this turns into a long inflationary and recessionary period many in the sport space might head towards the direction of dinosaurs.

Another self-inflicted wound can be traced to the increase in cheating and unethical conduct for the sake of a victory. College athletics is replete with examples. A World Series will forever be challenged based on stealing signals. High school and youth sports are now the scenes of all too frequent fights and even shootings. Then there are cheating scandals that have been raised just in the last couple months in poker, fishing, chess, and cornhole, just as examples.

I have students who believe that baseball cards can only go up in value. They do not see the downside or think that prices can ever go down. Some of these same students think they can win at sport gambling or they can always make money investing in stocks - until they cannot. These students are often the demographic targeted by sport organizations.

All this is raised to wave the cautionary yellow flag. There are thousands of tech employees who have or will be laid off in the next couple weeks. Many people thought that tech companies would be recession proof and constantly continue to grow. There is a limited amount of revenue out there and we can only divide it so much. Now is the time for innovative ideas based on solid business practices with a dose of caution.

I hope I am wrong. But I have predicted the last several major economic downturns and feel we might be facing a major correction in the sport space. Like I said, I hope I am wrong.

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News Briefs

Phoenix Sports Lawyer Passes Away

Michael L. Gallagher, the co-founding shareholder of Gallagher & Kennedy and a sports lawyer, passed away earlier this month. "We are deeply saddened by the loss of our dear friend, mentor, colleague, and leader in Arizona's legal and athletic community," read a statement on the firm's site. "Mike's big heart and tenacity helped build our firm into a truly unique, nurturing environment in which we are proud to work. All who knew him will forever remember the twinkle in his Irish eyes, the smile on his lips, and the kind words he had for

everyone with whom he came in contact. It is not too trite to say that there will never be another quite like Mike." Gallagher was a former professional baseball player, who co-founded his law firm in Phoenix along with Mike Kennedy in 1978. The firm site says Gallagher led a legal team that "serves as outside general counsel to the Arizona Cardinals NFL team and the Arizona Diamondbacks MLB team. During the course of such representation, the firm's attorneys routinely handle player contracts and salary arbitrations, television and radio contracts, sponsorship agreements and all other legal aspects of professional sports franchises.

Proskauer Sports Lawyer Christine Lazatin Promoted to Partner

Proskauer has announced the promotion of 33 lawyers – 25 to partner and 8 to senior counsel. Notable in that group is the promotion of Christine Lazatin to partner. As a member of the Sports Group, Lazatin regularly represents professional sports teams, leagues and owners, corporate borrowers and financial institutions in a variety of transactional matters, with a particular emphasis on acquisition and stadium financings, working capital facilities, league-wide and league-level credit facilities, workouts and restructurings. She represents several major sports leagues (including the National Basketball Association, the National Hockey League and Major League Soccer), as well as a number of NBA, NHL, National Football League and Major League Baseball teams, in significant financing transactions. In addition, Lazatin represents various financial institutions in structuring and negotiating financings for sports leagues, teams and team affiliates.

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