SPORTS LITIGATION ALERT

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Cases

Miniscule Language on Back of Ticket Sends Foul Ball Injury Case to Arbitration

By Jeff Birren, Senior Writer

A couple from Ohio attended a minor league baseball game. One was seriously injured. They sued the owner of the team, but due to the tiny print on the back of the ticket, coupled with over eight pages of legalese on the team's website, the U.S. District Court sent their case to arbitration (*Deborah Kay Roberts and Lowell Wayne Roberts v. Boyd Sports, LLC*, 2024 U.S. Dist. LEXIS 11805, 2024 WL 25193 (2024)).

Carry Me Out of the Ball Game

Deborah and Wayne Roberts live in Ohio. They decided to attend a Tennessee Smokies game on April 20, 2022. The team is a Double A affiliate of the Cubs. Smokies Stadium is in Kodak, a suburb of Nashville. It

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opened in 2000 and is owed by the County of Sevierville and the City of Sevierville. In 2022, the Smokies were playing one last season there. The lease is set to expire on March 15, 2025, and a new stadium is currently under construction in Knoxville. Even if the more expensive digs are not ready for the 2025 opener, there will be no return to Kodak.

Deborah Roberts ordered tickets by telephone and received the tickets at "Will Call" on game night. They sat in the front row near the third base dugout. "During the game Ms. Roberts was struck on the head by a foul ball, resulting in several facial injuries that required a three-day hospital stay before returning to Ohio for further treatment." She has paid more than $100,000 in medical expenses. The day after the injury, Mr. Roberts met with team representatives to discuss the injury. They kept one game ticket stub.

Litigation

On April 23, 2023, the Roberts sued the Smokies' owner, Boyd Sports, LLC. They filed an Amended Complaint in May that attached both the stadium use agreement and the stadium management agreement. The next short phase of the litigation involved getting the proper certificate of citizenship filed as the case was in Tennessee federal court based on diversity jurisdiction. Once that was done, Boyd Sports filed a motion to dismiss for "failure to state a claim" due to the asserted arbitration agreement.

The front of the ticket has details about the game, and the seat numbers. The "arbitration agreement" is located on the back of the ticket in "size 4 font." The following is the Court's description: "THIS TICKET IS A REVOCABLE LICENSE…. Just below that read: 'By using this ticket holder … agrees to the terms and conditions, including an **AGREEMENT TO ARBITATION/CLASS ACTION WAIVER**, at https://www/mib.com/tennessee/tickets/ticketback ... and the Agreement summary state below…' Starting at five lines from the bottom of the ticket is the following capitalized passage: 'ANY CLAIM RELATED TO THIS TICKET SHALLE BE SETTLED BY MANDATORY, CONFIDENTIAL, FINAL, BINDING ARBITRATION.' The full terms and conditions available at the website provided on the back of the ticket contain the following opt-out provision: 'YOU HAVE THE RIGHT TO REJECT THIS ARBITRATION AGREEMENT, BUT YOU MUST EXERCISE THIS RIGHT PROMPTLY ... within seven (7) days after the date of the Event.'"

Law

The Federal Arbitration Act allows contracting parties to resolve disputes via arbitration, 9 U.S.C. § 2. The Court noted the "Supreme Court recently emphasized" the goal "is to ensure that private arbitration agreements are enforced according to their terms, just as with any other contract" (Morgan v. Sundance, 596 U. S. 411 (2022)). "The Court 'views all facts and inferences drawn therefrom in the light most favorable' to the party opposing arbitration." If the alleged contract does not delegate the scope of enforceability to the arbitrator, the Court does so. It analyzes four factors. First, is there is an agreement to arbitrate? If so, it determines "the scope of the arbitration agreement. If federal claims are asserted, did Congress intend "those claims to be nonarbitrable"? Finally, if some, but not all of the claims are subject to arbitration, should the Court "dismiss or stay the remaining proceedings"?

Analysis

In this case, no federal claims were asserted. Furthermore, Plaintiffs agreed that if the arbitration agreement was valid, it "covers any related claim." Finally, there were no claims outside of the purported arbitration agreement, so there was nothing to dismiss or stay if claims were sent to arbitration. It came down to "whether the parties agreed to arbitrate." That answer depended on how this Court interpreted Tennessee law.

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Agreement To Arbitrate

An arbitration agreement is a contract. In Tennessee a contract requires "a meeting of the minds in mutual assent to the terms"; "must be based upon a sufficient consideration"; "free from fraud or undue influence"; "not against public policy"; and "sufficiently definite to be enforced." The party opposing arbitration "bears the burden of showing a genuine issue of material fact as to the validity" of the arbitration agreement. Plaintiffs thus had to disprove mutual assent. There was "some confusion" whether they argued that the "agreement" was against public policy due to unconscionability. The Court did not agree, "thus it matters not which position Plaintiffs wish to stand upon."

Mutual Assent

This is theoretically based on "an objective standard based upon the parties' 'manifestations.'" Boyd Sports asserted that the Plaintiffs assented when they entered the game. This is "comparable to analysis of internet 'browsewrap agreements.'" It does not require an acknowledgement of the specific terms of the purported agreement, but merely that there was "actual or constructive notice of the website's terms and conditions." Consequently, the tickets did not have to state the terms and conditions of the supposed agreement. Rather, the ticket stub directed the Roberts to the team's website. This was "reasonable notice" of the agreement to arbitrate, and the Roberts seemingly agreed to those terms by passing through the turnstiles.

The Court determined that the language on the ticket back referring fans to the team's website was sufficient "notice of the terms of entering the stadium" and they "retained one ticket at all times relevant through the commencement of this suit."

Plaintiffs cited cases based on "federal substantive maritime law," "overstating the applicability and importance of their precedential value." The ticket back, combined with the team's website, "contains" the "the full agreement" rather than anything given to fans. Therefore, a "reasonable onlooker would conclude that the parties mutually intended to assent to the terms on the tickets" when Plaintiffs Roberts entered the stadium. The Court added that the Roberts never inquired nor expressed confusion or lack of understanding, resulting in "a valid arbitration agreement."

Unconscionability

This Court was also not going to find the "agreement" unconscionable. Plaintiffs had received the tickets at Will Call. Such agreements "need not be signed to be enforceable." Moreover, "consumers generally do understand that tickets come with terms and conditions, manifesting in this case as an arbitration agreement." If Plaintiffs contended that there was no realistic

opportunity to read or understand the agreement and that the terms were hidden, well, replied the Court, the "AGREEMENT TO ARBITRATE" was near the top of the ticket back.

The next argument was that the opt out period was too short and an opt out telephone number was not provided. The Court thought this was irrelevant because Tennessee law focuses on "mutuality." As the ticket back bound both parties, "a lack of mutuality cannot be shown." The Plaintiffs "note that no Tennessee court has analyzed the unconscionability of an arbitration agreement on a ticket back." Such a short opt period was held to be unconscionable in Zuniga v. Major League Baseball, 2021 IL App (1st) 457 Ill. Dec. 888), 196 N.E. 3d 12 (Ill. App. Ct. 2021). Nevertheless, "the Court declines to follow the Illinois Court of Appeals," leaving no "controlling precedent."

Ms. Roberts was hospitalized for three days and subsequently had "potential difficulty reading fine print." However, Mr. Roberts did not make this assertion, though perhaps he had more pressing concerns than reading a ticket back. The Court attributed the fault to the Plaintiffs for the "lack of basic investigation." The Court also found that the lack of an opt out telephone number was similarly irrelevant because Plaintiffs claimed to be unaware of the existence of the arbitration clause. It "would have been trivial given Plaintiff Lowell Roberts' follow up stadium visit." (Nothing in the opinion suggests that the Smokies directed him to the language of the ticket back nor to the team website that day.) The Court also took at face value the defense affidavit that said it would have honored such a request. With that, the dispute was sent to binding arbitration and the case was dismissed with prejudice.

Editorial

This opinion might confuse students in a first-year Contracts Class. They might not understand how a valid contract could be formed if the actual agreement was not presented and may not even be available under the circumstances. In fact, these terms and conditions can even be unilaterally changed by the Smokies at any time prior to the game, but not by the purchaser. So much for "mutuality." Furthermore, not everyone can read size 4 font. Standard Word only goes down to size 5, and that is too small for many people to read. For context, *Sports Litigation Alert* is published in size 12 font. The Court also did not bother to state the size of the ticket back. It said there were thirty lines of terms and conditions, but not how many words were in each line. Those lines ultimately allowed the Smokies to escape a jury.

For teams, schools, and stadium operators, it is time to re-read the ticket backs and webpages. This text was eight and a half pages. If it included all of the stadium rules, no fan would have the opportunity to buy a ticket and see the game if they read the ticket prior to entering the facility. The ticket back language is not presented until the tickets are paid for. Few fans bring a magnifying glass to a baseball game, nor are they guaranteed internet access outside stadium gates. Fans who read all of the various webpages at their seats would be unable to go back to the ticket office to get a refund, nor reenter the game.

There may be a valid assumption of the risk defense, but that will be decided by an arbitrator in Tennessee, paid for by the Smokies, and likely looking for future work. If the Roberts ever attend another baseball game, they should come prepared with a catcher's helmet and gloves, chest protectors, a microscope, and misplace their ticket stubs.

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Illinois Supreme Court Sets the Record Straight as to What Constitutes a Place of Public Accommodation in Youth Hockey Case

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

In an opinion filed by the Supreme Court for the State of Illinois on March 8, 2024, the Court upheld the Appellate Court's finding that the defendants in the matter of M.U., *a minor child, by and through her parents Kelly U. and Nick U. v. Team Illinois Hockey Club, Inc., et al*., were subject to section 5-102(A) of the Illinois Human Rights Act, an Act which disallows discrimination against a person with a disability when it comes to the full use and equal enjoyment of a public place. As part of its ruling, the Court remanded the case back to the circuit court for further proceedings

consistent with its findings regarding said section 5-103(A).[1]

By way of background, the named defendant, Team Illinois Hockey Club, Inc., is a not-for-profit corporation that operates youth hockey teams affiliated with both AHAI and USA Hockey, Inc., and offers a variety of activities and public services including clinics, workouts, lunches and dinners, coaching, and opportunities for young athletes to compete in hockey games and tournaments. For all these activities and services, Team Illinois leases and operates the Seven Bridges Ice Arena in Woodridge, Illinois, a facility that includes ice rinks, locker rooms, training facilities, concessions, offices for Team Illinois, and other associated facilities. (Note: Seven Bridges Ice Arena is open to the public). For all times relevant to this matter, Larry Pedrie was the hockey director and primary executive for Team Illinois, as well as the coach for the Team Illinois Girls 14U team.

A second defendant, AHAI, the Illinois affiliate of USA Hockey, is also an Illinois not-for-profit corporation that regulates and controls youth hockey leagues, teams, and activities throughout the state of Illinois, including Team Illinois. For all times relevant to this matter, Mike Mullaly was on the board of directors for AHAI, while also being the central district director for USA Hockey.

In 2019, the plaintiff, M.U., registered to play hockey for the Team Illinois Girls 14U team. After registering, M.U. and her mother informed the team's coach, Larry Pedrie, that M.U. was currently being treated for anxiety, depression, and suicidal thoughts, but that M.U. "had the support of mental health professionals and expressed that hockey was an important and supportive aspect of her life." After this conversation, M.U. participated in a practice session with her team. The following day, Coach Pedrie spoke with Mike Mullaly about M.U.'s mental health and according to the plaintiff's complaint, Pedrie and Mullaly "agreed to banish M.U. from Team Illinois until she was able to participate 100% in Team Illinois activities."[2] As a result of this conversation, Pedrie informed M.U.'s parents that as of November 14, 2019 their daughter was banned from all Team Illinois activities and that she was not allowed to return until she was fully recovered. In addition, and astoundingly, Pedrie told M.U.'s parents that their child was "cut off" from team communications and prohibited from contacting any of her Team Illinois teammates. Pedrie then, and yes there is more, sent an e-mail to the other players' families instructing them not to have contact with M.U. in person or by phone, text, or social media.[3] In the e-mail it stated that M.U. had been removed "from any involvement and or communication with our team and her teammates" until she was back to "the positive, happy, smiling kid that we all know she is."[4]

As a result of Pedrie's and Mullaly's actions, M.U.'s parents filed a civil complaint in the state of Illinois Circuit Court for unlawful disability discrimination claiming that the defendants violated the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., by banning their daughter from participating in Team Illinois practices, workouts, and games that were being held at the Seven Bridges Ice Arena because of her disability.

As expected, the defendants moved to dismiss the complaint, contending that M.U. failed to state a claim because she was not denied access to a "place of public accommodation." Interestingly, the Circuit Court agreed and dismissed M.U.'s complaint with prejudice. The Appellate Court, however, reversed, and remanded. Subsequently, the Supreme Court granted the defendants' petition for leave to appeal to consider this case of first impression regarding the language of the Human Rights Act.

In analyzing the Illinois Human Rights Act, the Supreme Court began with the rules surrounding statutory construction, explaining that its primary goal is to "ascertain and effectuate the intent of the legislature."[5] Here, the Court determined that the legislature's objectives were explicit, wherein the goal of the Act was to secure "freedom from discrimination" for individuals with physical or mental disabilities and that this freedom included "the availability of public accommodations."[6] The Court went on to conclude that the plain language in section 5-102(A) was clear and unambiguous and

1 2024 IL 128935 M.U. a Minor, By and Through Her Parents Kelly U. and Nick U. Appellee, v. Team Illinois Hockey Club, Inc. et al., Appellants.

2 Id. at p. 3.

3 Id. at p. 3.

4 Id. at p. 3.

5 Id. at p. 8.

6 Id.

that Seven Bridges Ice Arena was a "place of public accommodation". The Court then found that since M.U.'s alleged that it was because of her disability that Team Illinois "segregated, isolated, and excluded" her from participating in programs, events, and activities at Seven Bridges Ice Arena and, such exclusion denied her the fullness and enjoyment of a place of public accommodation, that her complaint was sufficient to subject the defendants to section 5-102(A) of the Illinois Human Rights Act.

The Court noted that the defendants challenged its findings by arguing that M.U. was not barred from the entire facility, only those portions of Seven Bridges Ice Arena used by Team Illinois and that she could still enter the facility to watch games, take skating lessons, eat at the restaurant, or skate during free skate. The Court, however, was unpersuaded by this very weak and spineless argument, and correctly pointed out that the Illinois Human Rights Act does not differentiate between "portions" of a place of public accommodation that are subject to the Act and "portions" that are not.[7]

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High School Wrestler Tries to Break Free From Sports Association's Suspension

By Gary Chester, Senior Writer

The case of a Wisconsin high school wrestler who was sanctioned for unsportsmanlike conduct raised the familiar issue of whether statewide interscholastic athletic associations engage in state action when they enforce a rule. The general rule is that they do not, but an exception exists where there is pervasive entwinement of public institutions and public officials in its composition and workings.

In *Halter v. Wis. Interscholastic Ath. Association* ("WIAA"), 2024 Wisc. App. LEXIS 170 (WI App. February 28, 2024), the Court of Appeals of Wisconsin determined whether the governing high school sports body was an arm of the state that owed the wrestler due process.

The Facts

Hayden Halter was a talented wrestler who competed at the varsity level for Waterford Union High School where he had won a state title as a freshman in 2018. On February 2, 2019, Halter won his conference championship match at the varsity level, but he received two unsportsmanlike conduct calls. The match was conducted by the defendant,WIAA, the body that governs interscholastic sports in Wisconsin. The WIAA has more than 500 member schools.

Under WIAA rules, an athlete receiving two unsportsmanlike conduct calls in one meet is immediately ejected from that meet. The WIAA Rules of Eligibility also state that "[a] student, disqualified from a contest for flagrant or unsportsmanlike conduct, is suspended from interscholastic competition for no less than the next competitive event (but not less than one complete game or meet)." Thus, Halter was ejected from the meet and suspended from the next competitive event, which was a regional meet on February 9, 2019.

To avoid missing the regional competition, Halter sought to satisfy his suspension by registering for and then sitting out the Badger Invitational, a junior varsity/varsity reserve meet that was scheduled a few days prior to the regional meet. Characterizing Halter's registration as an attempt to "circumvent" its rules, the WIAA advised Halter's coach and Waterford's athletic director that its decision on Halter's ineligibility for the regionals was final and unappealable.

Two days before the regional meet, Halter and his father filed a lawsuit against the WIAA in state court, as well as a notice of appeal to the WIAA Board of Control. The organization immediately denied the appeal because Halter had failed to immediately appeal at the mat on February 2, which was supposedly a rule. The Halters obtained a temporary restraining order allowing Halter to participate in the regional competition, which he won. Halter ultimately won a second WIAA state title for his weight class.

However, the trial judge ruled for the WIAA following an evidentiary hearing in May 2021. The court found that the WIAA's interpretation of its rules were consistent with its longstanding policy, did not violate Halter's procedural or substantive due process rights, and were reasonably applied. Halter was stripped of

7 Id. at p. 16.

his 2019 state title and his matches, places, points, and scores from the regionals through the rest of the season.

The Halters appealed, arguing that the WIAA acted in an arbitrary and unreasonable manner in refusing to accept that Halter satisfied his suspension by sitting out the junior varsity/varsity reserve meet based on its rules as written at the time.

The Appeal

The threshold issue before the Wisconsin Court of Appeals was whether the WIAA is a state actor whose actions are subject to judicial review. Public schools are state actors, but voluntary sports associations are state actors only if they meet the criteria set forth by the U.S. Supreme Court in *Brentwood Academy v. Tennessee Secondary Schools Athletic Association*, 531 U.S. 288 (2001). Courts are to determine if the private character of a voluntary sports association has been "overborne by the pervasive entwinement of public institutions and public officials in its composition and workings, and there is no substantial reason to claim unfairness in applying constitutional standards to it."

The court found that the WIAA is a single-state association to which all Wisconsin public high schools belong, along with some private schools (about 20% of its membership), and that almost all of its officials and board members are public school officials acting in their official capacity. "For all practical purposes," the court stated, "Wisconsin public high schools have outsourced athletic programming and competitions to WIAA by making that association's rules and programs their own[.]"

The court next considered the propriety of judicial intervention when a voluntary sports association applies its own rules. Since this was a case of first impression in Wisconsin, the court relied on precedent cases from Indiana and Kentucky. While the general rule is that voluntary associations are entitled to deference, their interpretations of the rules must be reasonable.

The court acknowledged that the Halters were entitled to judicial review because they alleged that the WIAA unfairly and arbitrarily applied its rule against a student who had no voice in the association's rules or leadership. The court would then consider whether WIAA rules did not adequately provide notice to Halter as to how he could satisfy his suspension, and whether the Board of Control wrongly denied his appeal.

Ultimately, the court found that the WIAA arbitrarily and unreasonably ruled that the "next competitive event" had to be a wrestling meet at the same competitive level as the meet at which the violation occurred. The rules did not state this requirement, but the WIAA imposed it on Halter because it did not believe that missing the Badger Invitational was sufficient punishment for his offense. The court also held that the WIAA further deviated from its own rules by denying Halter a full hearing on appeal, which was arbitrary and unfair.

The WIAA was ordered to declare that Halter had properly served his suspension for unsportsmanlike conduct at the Badger Invitational, and to reinstate his title and points from the 2019 varsity level wrestling regionals and subsequent meets. The court issued a permanent injunction reinstating Halter's 2019 WIAA Division I state wrestling title.

The Dissent

Judge Lisa Neubauer wrote a detailed dissent emphasizing that the WIAA consistently interpreted its "next competitive event" rule as "the next event consistent with the student-athlete's competitive history and the event from which the suspension arose." For Halter, this meant the next varsity match, which was the regional meet. Stressing substance over form, Neubauer recognized the obvious: the WIAA declined to permit Halter to serve the suspension at a junior varsity event because that would have allowed him to avoid the consequence of his unsportsmanlike conduct.

Neubauer stated that the WIAA's decision was reasonable, and the court should have deferred to the judgment of the voluntary association. Examining the organization's history, she emphasized that the 1994-95 WIAA yearbook clearly stated that an unsportsmanlike disqualification in the final regular season contest of an individual sport would result in an athlete missing the following schedule meet, even if it were a tournament. In this case, Halter's next scheduled meet was the regional tournament and not the Badger Invitational.

Neubauer echoed the trial judge's finding that the only "consequence" that Halter served was doing homework at school while missing a match in which he otherwise would not have participated, concluding that was "no sanction whatsoever." Neubauer added: [The decision] gave Halter "a suspension of no consequence and permitted him to compete with others who

played by the rules. It is also unfair to athletes who have been ejected but who lacked a similar fortuitous opportunity to serve a suspension at an intervening lower-level competition."…

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Judge Dismisses Case Involving Ole Miss and Football Coach Lane Kiffin

By Michael S. Carroll, PhD

On January 31, 2024, US District Judge Michael Mills for the Northern District of Mississippi dismissed the lawsuit filed by former football player DeSanto Rollins against the University of Mississippi (Ole Miss) and head football coach Lane Kiffin. The suit, originally filed in September of 2023, made several allegations against both the University and Kiffin, including racial, sexual, and disability discrimination.

Background

As a brief primer, the plaintiff, DeSanto Rollins, was on the Ole Miss football team but had experienced a number of injuries and was struggling both physically and mentally as a result. He alleges that he was pressured to enter the transfer portal and believes coaches wanted him off of the team. Following a meeting with Kiffin, Rollins informed the coaching staff that he needed a mental health break, something supported by the University's sports psychologist. During this break, various members of the coaching staff asked Rollins to meet with Coach Kiffin, but Rollins declined, stating that he was not up to it. He finally did meet with Kiffin in his office in March of 2023. During this meeting, Rollins alleges that Kiffin berated him for not responding to his efforts to meet, screamed obscenities at him, and told him he was off of the team. In subsequent communication to Rollins, coaches informed him that he was still on scholarship and not off of the team. Rollins, through his attorney, sued the University and Kiffin in September of 2023, citing numerous allegations of discrimination.

Response

In response to the suit, the University filed a Rule 12(b)(1) Motion to Dismiss for lack of subject matter jurisdiction and under Rule 12(b)(6) for failure to state a claim upon which relief may be granted. The case was paused in November of 2023 by Magistrate Judge Roy Percy so that the motion to dismiss could be ruled upon, which brings us to the current decision.

Motion to Dismiss and Court Decision

In their response to the suit and motion to dismiss, the defendants' chief claim was that Rollins was not in fact kicked off of the team and that he retained his scholarship. In support, the University provided a link to the official team roster which lists Rollins. Plaintiff's response to this was that he was there in name only, stating that he had not been invited to participate in any team activities since the infamous March meeting with Kiffin.

Defendants also challenged the Court's subject-matter jurisdiction under an 11th Amendment sovereign immunity claim. With sovereign Immunity, federal courts lack jurisdiction over suits against a state agency or official in his or her official capacity. As such, defendants argue that the 11th Amendment bars Rollins' ADA and negligence claims against both the University and Ole Miss. The 5th Circuit has consistently held that state universities qualify as arms of the state and thus both the University and Kiffin have sovereign immunity. The Court concluded that Rollins failed to allege a sufficient Title II claim under the ADA and that defendants were entitled to immunity. As such, the ADA claims were dismissed. With respect to Rollins' negligence and gross negligence claims, the defendants argue that they are immune from those claims under the Mississippi Tort Claims Act (MTCA), which preserves sovereign immunity. The Court agreed and subsequently dismissed these claims as well. Likewise, Rollins' Equal Protection claims were also dismissed.

Rollins brought Title VI and Title IX claims against defendants for racial and gender discrimination, claiming that he was treated differently than other white and female athletes who also experienced mental health issues. The Court dismissed these claims as well, for the same reasons as the Equal Protection claim was dismissed. Additionally, this type of claims requires the showing of a discriminatory intent on the part of defendants, which Rollins failed to do. Rollins also claims he was entitled to damages for physical pain, emotional distress, embarrassment, and humiliation, which the Court also dismissed, citing unrecoverable damages.

Rollins had alleged that defendants discriminated against him due to his disability in violation of § 504 of the Rehabilitation Act. Similar to his claim under the ADA, Rollins needed to prove that he was otherwise qualified for the activity (i.e., participation in football) related to the alleged discrimination. The Court noted that the only thing keeping Rollins from rejoining the team was obtaining a release from his mental health provider, which he failed to do. Because he did not comply with the necessary requirement for returning to the team, his claim here was also dismissed by the Court.

In his last claim, Rollins brought an intentional infliction of emotional distress (IIED) claim against Kiffin in his individual capacity. Under Mississippi law, this claim requires five elements:

1. The defendant acted willfully or wantonly towards the plaintiff by committing certain described actions;
2. The defendant's acts are one which evoke outrage or revulsion in civilized society;
3. The acts were directed at, or intended to cause harm to, the plaintiff;
4. The plaintiff suffered severe emotional distress as a direct result of the acts of the defendant; and
5. Such resulting emotional distress was foreseeable from the intentional acts of the defendant.

In the motion to dismiss, defendants argue that none of the statements in the complaint rise to the level of actionable IIED under Mississippi law. Plaintiffs offered no real response to this claim, and while the Court noted that Kiffin's conduct in the meetings was certainly offensive and imprudent, it was not so egregious as to trigger action under the law. As such, the Court dismissed the final claim.

Rollins' attorney has vowed to continue the fight and stated they would appeal the decision.

References

DeSanto Rollins v. Lane Kiffin, et al., Case 3:23-cv-00356-MPM-RP, (N.D. Miss. 2024). Retrieved from: https://www.documentcloud.org/documents/24399418-rollins-v-kiffinole-miss-order

Michael S. Carroll is a Full Professor of Sport Management at Troy University specializing in research related to sport law and risk management in sport and recreation. He also serves as Online Program Coordinator for Troy University and works closely with students in the TROY doctoral program.

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A Sigh of Relief for Private Schools: 4th Circuit Rules Tax-Exempt Status Does Not Trigger Title IX Coverage

By Brian Guerinot and Kristin L. Smith, of Fisher & Phillips LLP

On March 27, 2024, a federal appeals court ruled that Title IX does not apply to a private school based purely on its nonprofit status, reversing a lower court's bombshell decision that put the entire private and independent school community on notice. This decision by the 4th U.S. Circuit Court of Appeals represents a big win for private schools in Maryland, Virginia, West Virginia, North Carolina, and South Carolina – and helps restore the status quo that had been in place for decades. Private schools nationwide can cautiously celebrate this decision, as it may influence other courts to follow suit on an issue that has courts split across the country. We'll explain what happened and guide nonprofit private schools on what they should do next.

How Did We Get Here?

In 2022, a federal district court in Baltimore ruled that a nonprofit school's tax-exempt status constituted receipt of federal financial assistance for purposes of Title IX. Under that ruling – which ran contrary to longstanding federal administrative policy and was the first of its kind in the country – private nonprofit schools in Maryland scrambled to determine whether they must comply with Title IX's web of regulations and administrative obligations. The school immediately appealed the decision.

Now What Happened?

The 4th Circuit unanimously ruled that a school's tax-exempt status *does not* constitute accepting "federal financial assistance." While that term is not defined in Title IX, the court concluded that under the law's plain

text, "receiving federal financial assistance" involves "taking or accepting" support. "Thus, the plain text of Title IX contemplates the transfer of funds from the federal government to an entity," the court said.

A tax exemption, however, is merely the "*withholding* of a tax burden, rather than the *affirmative* grant of funds." Therefore, the court concluded that nonprofit entities are not recipients of federal financial assistance by virtue of their tax-exempt status and are not subject to Title IX.

The court also determined that the favorable tax treatment of charitable contributions to nonprofit entities does not function as an indirect grant to the school. The court said the benefit that the school might receive from donors potentially donating more money than they otherwise would due to the favorable tax treatment is "far too attenuated to constitute 'receiving' federal financial assistance."

What Does This Mean For Private and Independent Schools?

Private and independent schools that operate as 501(c)(3) entities in the states covered by the ruling (Maryland, Virginia, West Virginia, North Carolina, and South Carolina) can now breathe a sigh of relief. These schools no longer have to worry about the complexities of Title IX compliance based on their nonprofit status.

This ruling is also another data point for courts across the country to consider in cases raising the same or similar arguments. While the court's ruling in this case would not be binding outside the states listed above, courts are constantly in dialogue with one another, and this type of unanimous opinion could be highly persuasive to other courts in other jurisdictions.

What's Next?

If you are a school in any of the states affected by this ruling, you can return to the pre-July 2022 status quo before the lower court's bombshell decision. If you are located outside of these states, we recommend filing this decision away, but keep it handy if similar litigation arises in your area.

All schools should continue to monitor this issue, as the 4th Circuit's decision may not be the last word. This issue of whether a school's tax-exempt status is akin to federal financial assistance has also been raised in California and Arizona (you can read more about those cases here and here), so it very well could resurface in other states.

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Articles

Breaking New Ground: How Florida Seeks to Redefine Amateurism with NIL Rights

By Joseph M. Ricco, IV

The standstill between the Florida High School Athletic Association and the evolving landscape of Name, Image, and Likeness (NIL) appears to be concluding. This comes as the result of a new proposal by the FHSAA, which would grant high school athletes the ability to monetize their likeness through NIL deals, barring certain restrictions. With 33 other American states and territories already on board in allowing high school NIL transactions, this evolution reflects a significant shift in recognizing the value and rights of young athletes to monetize their talents. Utilizing expert analysis, this article delves into the impact of NIL on high school sports, underscoring the challenges, opportunities, and lessons learned as more states move towards a unified approach to athlete compensation.

Historical Context of NIL

The narrative of Name, Image, and Likeness rights in American sports has seen a significant transformation, particularly within the collegiate arena before trickling down to high school sports. The journey began in September 2019 when California passed the groundbreaking "Fair Pay to Play Act," setting a precedent for other states to follow. This act, along with the NCAA's eventual decision in June 2021 to adopt an interim NIL policy, underscored a shifting belief that acknowledged

athletes' rights to profit from their brand. Notably, the NCAA's resistance against NIL crumbled in the face of legal challenges, such as the NCAA v. Alston antitrust lawsuit, which further eroded its stance on amateurism (ajc) (Eccker Sports Group).

The landmark shift towards acknowledging NIL rights in collegiate sports set a precedent that experts like Peter Goplerud, a tenured attorney and sports law professor, saw as a precursor for similar evolution at the high school level. Goplerud, reflecting on this progression, noted, "This was inevitable once college athletes received the green light," highlighting a natural extension of NIL rights to high school athletes as not just a legal inevitability but a matter of fairness. Goplerud's insights highlight an evolving consensus: the disparity between student-athletes and their non-athlete peers over NIL rights was unsustainable. The legal reforms in college sports served as a catalyst for extending NIL policies to high schools, signaling a cultural and regulatory shift towards fair compensation for young athletes' marketability. This transition embodies a significant change in how athlete contributions are valued, reflecting broader societal movements for equity in sports (ajc) (Eccker Sports Group).

The FHSAA's Proposal Explained

The Florida High School Athletic Association's proposal, introduced in February 2024, marks the most significant shift to date in allowing Florida's high school athletes to receive compensation from their name, image, and likeness. This move aligns Florida with other states that already permit such agreements, albeit with specific restrictions. Under the proposal, student-athletes cannot engage in NIL deals with entities associated with adult entertainment, alcohol, tobacco, vaping, cannabis, controlled substances, prescription pharmaceuticals, gambling, or weapons.

The FHSAA's NIL proposal introduces a progressive disciplinary system for infractions. Initially, an athlete who breaches the agreement receives a formal warning, must terminate the NIL deal, and is required to return any compensation. A second offense results in a year's ineligibility to participate in any member school's athletic activities, while a third infraction leads to a permanent ban from high school sports participation. These measures underscore the proposal's emphasis on compliance and integrity within high school athletics.

Additionally, the proposal prohibits school employees, boosters, or representatives from facilitating NIL agreements, aiming to prevent them from being used for recruitment purposes. Athletes transferring mid-season are also prohibited from signing new NIL deals unless granted an exemption for good cause by the FHSAA. The proposal aims to not only empower athletes but also integrate comprehensive measures to maintain the integrity and educational values of high school athletics (Coach and Athletic Director).

Legal and Ethical Considerations

The introduction of NIL rights for high school athletes not only creates new avenues for young talent to leverage their popularity but also introduces a swarm of legal and ethical challenges. Peter Goplerud stresses the importance of professional legal guidance for young athletes entering NIL contracts, stating, "Every NIL agreement for a minor should be carefully reviewed by an attorney with expertise in this area to ensure it's in the athlete's best interest and legally compliant." This advice considers the potential for minors to enter into agreements that may not fully consider their long-term welfare or career trajectory.

Ethically, the monetization of young athletes walks a fine line between offering deserved compensation and risking the integrity of amateur sports. Goplerud highlights the critical balance that must be maintained: "While NIL opportunities present a fair chance for athletes to benefit from their talents, it's paramount that these opportunities do not compromise the educational purpose of high school sports." The protection against exploitative deals is a concern echoed across the sports law community, emphasizing the need for regulatory oversight to prevent young athletes from being taken advantage of by predatory contracts or sponsors.

Schools also play a pivotal role in safeguarding their athletes' interests and will be increasingly tasked with navigating the murky waters of NIL opportunities while ensuring educational values remain at the forefront. Conflicts of interest between educational institutions and the commercialization of high school athletics pose a real challenge, necessitating clear guidelines and ethical standards to manage these partnerships responsibly.

Impact on Competitive Balance

NIL policies have the potential to significantly influence athlete recruitment strategies within Florida's high schools. However, Goplerud believes the impact on recruitment may be mitigated by the FHSAA's in-season transfer restrictions, stating, "The proposal's design to restrict NIL deals for transferring athletes during the season is a thoughtful approach to maintaining competitive balance." Goplerud's perspective suggests an optimism that NIL can be integrated without disrupting the fairness of high school sports competitions.

Yet, concerns linger that NIL could exacerbate disparities among schools with varying resources, potentially leading to an uneven playing field. As with all changes, the need for regulatory actions to ensure competitive balance and fairness becomes apparent, drawing lessons from college sports amid the NIL "pay-for-play" recruitment landscape. In avoidance of this scenario, Goplerud and other experts support the adoption of the FHSAA's measures that could prevent a 'rich get richer' scenario in Florida high school sports.

Looking to the Future of NIL

When projecting the future of NIL in high school sports, the cultural and experiential landscape for student-athletes is poised for transformation. Goplerud anticipates schools becoming more involved in NIL activities, potentially guiding athletes through the complexities of deal-making and branding. The call for national standards or guidelines to ensure fair and equitable NIL practices across states is growing louder, aiming to prevent disparities that could undermine the integrity of high school sports.

The evolution of athlete compensation, including the potential expansion of NIL rights, signifies a pivotal shift in the recognition of young athletes' contributions and marketability. Closing with a reflection on the balance between commercial opportunities and preserving the essence of high school sports, Goplerud remarks, "While embracing NIL's potential, we must not lose sight of sports as a medium for education, character building, and personal development."

This evolving dialogue around NIL rights in high school sports underscores a broader movement towards fairness and equity in athlete compensation, heralding a new era in sports law and athlete advocacy.

Joseph M. Ricco IV is a second-year Sport Management and Government double major at the University of Texas at Austin. Currently a Texas Longhorns Football Recruiting Operations & Events Intern, Joseph brings hands-on experience in football operations and event management. As the founder of the Model National Football League (MNFL), Joseph strives to blend sports management with legal insights to innovate within sports law.

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MLB and Players Union Pursue Exemptions from State Wage and Hour Laws

By Christopher Deubert, Senior Writer

Florida and California are seen as polar opposites when it comes to policy and lawmaking. However, there is at least one thing they seem to agree on – minor league baseball players should be exempt from their states' minimum wage, overtime, and recordkeeping laws. Florida passed such a law in June of last year and California followed in October. Now Major League Baseball (MLB) and the Major League Baseball Players Association (MLBPA) have turned their attention to other states, starting with Arizona.

Past wage and hour litigation

Minor league baseball players have previously asserted the protections of the laws from which they now seek exemption. In 2015, minor league players, led by Aaron Senne, filed a class/collective action against MLB and its clubs (which collectively and generally control minor league baseball), alleging they had violated the federal Fair Labor Standards Act (FLSA) and various state wage-hour laws by failing to pay the players the required minimum wage and overtime. In March 2023, a judge approved a $185 million settlement in that case.

The FLSA exemption

In the midst of the *Senne* litigation, MLB successfully lobbied Congress for a partial exemption from the FLSA. In March 2018, as part of an omnibus spending bill, Congress amended the FLSA to exempt baseball players from its protections provided they were paid

a minimum weekly salary of $290 (the $7.25 federal minimum wage x 40 hours). The exemption did not fully defeat the claims in the *Senne* action because it did not apply to conduct that occurred before March 2018 or to state law claims.

The players unionize and bargain

In August 2022, minor league baseball players voted in favor of unionization, with the MLBPA as its representative. Even before the votes were counted, MLB announced that it would voluntarily recognize the union, avoiding a potentially contentious process before the National Labor Relations Board. The MLBPA has represented major league players since the 1960s in collective bargaining with the league and numerous litigations and other disputes.

With somewhat surprising speed, in April 2023, MLB and the Players Association announced that they had agreed to the first-ever collective bargaining agreement for minor league baseball players. The agreement was generally focused on core economic rights and benefits for the players, such as pay, housing, health insurance, disability benefits, medical treatment, meals, and transportation. The minimum annual salaries now range from $19,800 in rookie ball (up from $4,800 previously) to $35,800 in Triple A (up from $17,500 previously). Those salaries equate to $675 to $1,200 on a weekly basis (there is a brief period around the holidays when players are off and not paid).

Ongoing wage and hour concerns

While the pay and benefits were substantially improved, they do not necessarily comply with state wage and hour laws. For example, many states have a $15 per hour minimum wage and also require time-and-a-half pay for hours worked more than 40 in a week. Under those requirements, a rookie ball player would be entitled to $825 in compensation for a week in which he worked 50 hours. That amount is more than his bargained for salary. The numbers become even more problematic when you factor in road trips. Minor leaguers are routinely on the road for ten or more days at a time. If they were considered to be working for much of this time, then the pay to which they would potentially be entitled under state law would likely exceed their actual salary.

Recordkeeping is another major problem. Most hourly workers track their time through clocks at their workplace. That type of process is foreign to professional athletes who have irregular work schedules, travel frequently, and may easily go back and forth between personal and professional time. Properly recording their time worked is difficult, if not impossible.

For these reasons, MLB and the Players Association agreed in the collective bargaining agreement to seek further exemptions from wage and hour laws. More specifically, the agreement included a jointly drafted letter to send to "lawmakers/regulators" expressing "joint support for legislation that would provide a narrowly tailored exemption from wage and hour laws (including minimum wage, overtime and recordkeeping requirements) that otherwise could apply to Players[.]" The parties further asserted that legislators should give "deference to the compensation and benefit provisions of the new collective bargaining agreement."

The parties' premise is that they have a long-standing relationship handling issues concerning the terms and conditions of professional baseball player employment; they are best situated to evaluate and address any concerns, either through negotiation or arbitration if necessary. On this last point, the collective bargaining agreement provides MLB the right to reopen the agreement if a court or arbitrator determines that the method of compensating players is illegal. If such a decision were rendered, then MLB would likely stop offering many of the benefits provided for in the agreement. Consequently, both sides have incentives to resolve any concerns about player pay between themselves.

The state exemptions

The parties moved quickly after the consummation of the CBA to lobby state legislators for an exemption from wage and hour laws. To have started with Florida makes sense given that the state has several MLB teams, many minor league teams, and also hosts spring training facilities for many MLB teams. Additionally, Florida legislators were likely more receptive to the legislation. Next, California was important because of its many major and minor league baseball teams as well as its punitive wage and hour laws.

Arizona, the current legislative target, also makes sense because it too is home to many spring training facilities as well as the Arizona Complex League, a

rookie-level minor league. The bill has nonetheless hit some opposition in Arizona among legislators who argue that it undermines a public vote in 2016 to gradually increase the minimum wage, which stands now at $14.35 per hour.

The immediate outcome of the proposed legislation is uncertain. What is not uncertain is that MLB and the MLBPA will continue their lobbying efforts for these exemptions – they concern a core part of the new collective bargaining agreement and reflect the parties' historic preference for handling disputes privately.

Christopher Deubert is Senior Counsel with Constangy, Brooks, Smith & Prophete LLP

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Sign Stealing Doesn't Just Happen in Football and Baseball

By Bennett McNamara & Joshua D. Winneker

Most sports fans are aware of the allegations made against the University of Michigan football team for stealing their opponents' signs during this past college football season. This story captivated the sports world for months mainly because sign stealing is typically associated with baseball and not football, especially not college football. Jim Harbaugh, Michigan's former coach, was suspended for three games by the Big Ten Conference, and the overall NCAA investigation is still on-going.

Attempts to gain a competitive advantage by decoding an opposing team's signals are not, however, exclusive to baseball or football. In fact, allegations of sign stealing recently surfaced during the Iowa State versus Kansas State men's basketball game on January 26, 2024. There, members of the Kansas State staff alleged that representatives of the Iowa State team had sat behind the Kansas State bench and were engaging in sign stealing by texting the information from the Kansas State timeouts to the Iowa State coaching staff. After Jerome Tang, the Kansas State coach, became aware of the alleged sign stealing, he relayed it to the officials who did not seem able to properly discipline the situation.

The officials' confusion was understandable because unlike in college football, the NCAA has not yet addressed sign stealing in college basketball. The NCAA has banned in-person scouting across all sports since 1994,[8] but without a clear rule or directive from the NCAA specifically on in-game sign stealing in college basketball, regulating sign stealing would then be left to the individual conferences. Some college basketball conferences do allow the use of scouting through technology like Synergy, which gives teams the ability to break down game and practice film for the purpose of opponent preparations.[9] This form of scouting occurs *prior* to their matchups not *during* the games.

Kansas State and Iowa State are in the Big 12 Conference. In the Big 12 for basketball, football, and baseball, sign stealing is not specifically regulated. The conference does allow the Faculty Athletics Representatives (FAR)—who are under the authority of the Board of Directors—to have full power to act on special cases not listed in the rulebook.[10] The two groups work in tandem to interpret cases, and then those cases are presented to the conference Commissioner, who has the responsibility to enforce violations. The Big 12's handbook emphasizes sportsmanship, and it lists six principles: trustworthiness, respect, responsibility, fairness, caring and good citizenship. The rulebook states: "[t[he Member Institutions place great importance on the principles of sportsmanship and the ideal of pursuing victory with honor in intercollegiate athletics. Participation in athletics, including as a fan, is a privilege and not a right."[11] The six listed qualities are associated with standards of conduct, and thus are connected to potential violations and penalties that will be distributed at

8 *Division I 2023-24 Manual, NCAA* (2024), https://web3.ncaa.org/lsdbi/reports/getReport/90008. Subsection 11.6.1 under Section 11.6 – Scouting of Opponents states: "Off-campus, in-person scouting of future opponents (in the same season) is prohibited, except as provided in Bylaws 11.6.1.1 and 11.6.1.2. (Adopted: 1/11/94 effective 8/1/94, Revised: 1/14/97 effective 8/1/97, 1/19/13 effective 8/1/13, 1/15/14)." The only exceptions to this rule are when an opposing team is participating in the same event at the same site and when an opponent is participating in a Conference or NCAA Championship. See id at Subsection 11.6.1.1 and 11.6.1.2.

9 *2023-24 Commissioner's Regulations*, SEC (2023), https://a.espncdn.com/sec/media/2023/2023-24%20Commissioner's%20Regulations.pdf.

10 https://big12sports.com/documents/2022/7/7/Handbook_v_7_06_2022_.pdf. Section 7.1 under Section 7 of the Official Big 12 2022-23 Conference Handbook.

11 *2022-23 Conference Handbook*. Subsection 11.1 – Principles of Sportsmanship and Standards for Conduct under Section II.

the discretion of the Commissioner. Therefore, sign stealing could possibly violate the terms of sportsmanship for the conference.

Additionally, the Big 12 schools are responsible for the seating arrangements of each game to minimize the harassment of visiting teams. The Commissioner also has the power to impose sanctions for violations of seating arrangements, which is another a possibility given the nature of the sign stealing allegation here. Indeed, the Iowa State team representatives were sitting directly behind the Kansas State bench and were listening in and relaying their signs.

A review of the other major college basketball conferences revealed much of the same. Most of the major conferences do not have specific rules addressing sign stealing in basketball, and each appears to have similar rules on sportsmanship and seating arrangements as the Big 12.

With the lack of specific sign stealing regulations by the conferences, how then will the NCAA prevent the potential for more sign stealing in college basketball? The first place to look would be in the NCAA's efforts to prevent sign stealing in college football. There, the NCAA prohibits the use of electronic equipment during games to record and relay the opposing team's signs.[12] If a team can decipher their opponent's signals without the use of in-game technology, then that is considered an acceptable part of the game.

Following this same route, the NCAA could apply these rules to college basketball to solve the issue. Sign stealing is a natural occurrence in the sports world, but placing restrictions on use of in-game equipment to steal signs in basketball will level the playing field – or court – and prevent teams from getting any unfair advantage.

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12 Football 2020 Rules Book, NCAA 26 (2020), https://www.ncaapublications.com/productdownloads /FR20.pdf. Rule 1, section 4 under Prohibited Field Equipment Subsection F of the official 2020 NCAA football rules book states: "[a]ny attempt to record, either through audio or video means, any signals given by an opposing player, coach or other team personnel is prohibited."

Cowboys Quarterback Dak Prescott Defends Himself After 'Extortion' Attempt

By Patrick George

Dallas Cowboys quarterback Dak Prescott took a lot of heat when his team exited the playoffs, prematurely, over the winter.

But that heat may have been nothing compared to the heat he felt when a letter arrived on January 16, 2024 from the attorneys of Victoria Shores, which accused Prescott of sexual assault in February 2017 and demanded $100 million to forestall further legal proceedings.

Just as he is done on the football field, Prescott bounced off the turf after the latest misfortune, filing his own lawsuit on March 11, 2024 in the Collin County (TX) Court against Shores, alleging defamation and extortion.

Up until this point, details about the case had been scarce, leaving the public with little insight into the veracity of the allegations or Prescott's intentions. However, the initiation of legal proceedings shed light on Prescott's stance, as he adamantly refuted the claims, characterizing them as false and part of an extortionate maneuver.

In the filing, Prescott's legal team cite several causes of action, including defamation and slander, civil extortion/duress, business disparagement, tortious interference with current and/or prospective business relations, civil conspiracy, and intentional infliction of emotional distress.

Following the filing of the lawsuit, Dak Prescott's lawyer, Levi McCathern, made the statement "Mr. Prescott — a new father to a baby girl — has great empathy for survivors of sexual assault. He fervently believes that all perpetrators of such crimes should be punished to the fullest extent of the law. To be clear, Mr. Prescott has never engaged in any nonconsensual, sexual conduct with anyone. Lies hurt. Especially, malicious lies. We will not allow the Defendant and her legal team to profit from this attempt to extort millions from Mr. Prescott."

In a tit-for-tat exchange, Mrs. Shores' legal team, represented by Bethel and Yoel Zehaie, fired back, portraying Prescott and his attorneys as aggressors

attempting to intimidate them. They went so far as to directly accuse Prescott of being a liar and a rapist, framing the lawsuit as an act of bullying. In an email statement to the *Washington Post*, Bethel stated "Dak and his lawyers are trying to be bullies and play hardball and victim blame."

As the legal battle escalates, recent developments indicate interventions by the Dallas Police Department, which has hinted at investigations into both the sexual assault allegations against Prescott and the extortion claims against Mrs. Shores and her legal representatives.

In the midst of this legal turmoil, Prescott's attorney disclosed that their client is seeking $1,000,000 in damages, with the intention of donating the sum to the Joyful Heart Foundation—a charitable organization dedicated to supporting survivors of sexual assault.

Given the complexity and gravity of the situation, the outcome of these legal proceedings could have far-reaching consequences, not only for the individuals involved but also for Prescott's NFL career, as the league maintains strict policies regarding off-the-field conduct.

George will graduate from the University of Texas with a Master's Degree in Sports Management in May. He can be reached at **patrickgeorge@utexas.edu**

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Sports Lawyer Irwin Kishner Shares Insight on His Remarkable Career

Consistently recognized as a leader in the sports law field by colleagues, clients, and industry experts, Irwin Kishner of Herrick Feinstein has architected some of the largest and most innovative deals in the world of professional sports.

Specifically, he has acted as lead counsel in all aspects of 14 major stadium transactions, most significantly the new Yankee Stadium and the development of Citi Field. Kishner also represents financial institutions and bond insurers in stadium finance matters as well as loans to teams and team owners. In addition, he has advised on significant naming rights, joint venture transactions, media rights transactions, sponsorship, and concessions transactions for major stadiums across the U.S. as well as executive compensation and employment matters.

More on the breadth of his legal work can be found in his bio: **https://www.herrick.com/irwin-a-kishner/**

But we also wanted to learn more from Kishner about his career in his own words, which is why we sought him out for the following interview.

Question: How did you get into Sports Law?

Answer: When I first joined Herrick over thirty years ago, I became interested in joining their sports law practice. I have been lucky enough to work with clients in the sports industry since that time and have continued to grow our group in deal volume, deal size as well as grow the size of the practice internally. Our work touches almost every department in the firm. We have represented major athletic teams and affiliated entities in hundreds of billions of dollars of transactions. Countless novel and transformative concepts have been brought to fruition by our attorneys – including regional sports broadcasting, pay-per-view and premium stadium experiences.

Q: How would you describe your practice?

A: I provide creative and strategic corporate counsel to my clients through their most critical transactions in the corporate and sports space with a focus on mergers and acquisitions along with a diverse range of joint ventures. Our team counsels on a broad scope of matters for our sports clients including league and team formation and operation, arena and stadium financing and development, naming rights, sponsorships, concession and venue related services agreements, media rights, team acquisitions dispositions and investments and a range of ancillary concerns.

Q: Who are your typical clients?

A: We do not have one typical client. In the sports world, we represent a diverse roster of clients including professional teams in almost every league, emerging sports and leagues, investors, owners, lenders, leagues, collegiate athletic conferences, private equity funds, venture capital funds, joint ventures, mass media companies, internet service providers, not-for-profit corporations, governmental entities, food, beverage, merchandise, retail, and stadium operations corporations, venue development, management, and premium hospitality service companies and other key stakeholders.

Q: What is the best part about being an attorney at Herrick?

A: The people – which includes our attorneys and staff, but most importantly our clients, many of whom we have worked with for decades. Herrick was originally established in 1928 as a boutique law firm in New York City. What makes Herrick unique is the way the firm and its practices have grown and evolved over the last 96 years. We continue to embrace our history and core values, which includes maintaining an excellent level of professional service for our clients and a culture of respect and collegiality at the firm. As we have evolved, we have honed and developed several nationally recognized practices in a number of areas – including our sports practice. We are in the unique position for a firm of our size in that we are able to provide a wide range of services to our clients.

Q: What trends are you watching in 2024 and why?

A: I have seen the rise in the use of Artificial Intelligence (AI) over the last few years. There have been many applications in the sports world including the role of Generative AI in content creation, advertising and marketing and operational efficiency. The institutionalization of sports teams has also been trending. With the increase in team valuations, we have seen significant activity in the sports stack. We are seeing an increase private equity investments in professional teams, as well as additional assets related to the teams. Women's sports are rapidly increasing in popularity, as are new opportunities for female athletes. The prospect that college athletes will be classified as employees has also created a range of considerations and issues for players, schools, and conferences.

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Owner of Arkansas Derby Winner Sues Churchill Downs to Gain Horse's Entry into Kentucky Derby

Zedan Racing Stables Inc. (Zedan) has announced the filing of a lawsuit in Kentucky Circuit Court against Churchill Downs Incorporated (CDI), the company that operates the Kentucky Derby.

The lawsuit seeks a temporary injunction that would enjoin the ban of Zedan, and all other horses trained by iconioc trainer Bob Baffert, from running in this year's Kentucky Derby.

Zedan's horse, Muth, which was trained by Baffert, won the Arkansas Derby on March 30, which would normally make it an automatic qualifier for the Kentucky Derby. Muth is considered one of the fastest three-year-olds in the country.

The complaint asserts that CDI's indefinite extension of its ban on Baffert-trained horses, "led by" CEO Bill Carstanjen, "has no basis in law or in fact – apart from Carstanjen's inflated ego and personal vendetta – and it cannot withstand scrutiny."

CDI imposed a ban after the 2021 Kentucky Derby, "which by its terms was to expire after two years on the condition that Baffert did not incur additional violations," according to Zedan. "The ban was then extended indefinitely despite Baffert having demonstrably and unequivocally complied with this stipulation. The complaint specifically alleges that CDI's most recent extension of its ban, which was publicly announced by Carstanjen in 2023:

"Is not grounded in any contractual or common law. CDI based its two-year ban on two 2021 agreements that were no longer in effect in 2023, rendering them inapplicable.

"Defies the federal authority of the Horse Racing Integrity and Safety Authority (HISA). HISA was established by Congress specifically to standardize horseracing regulations and prevent situations like this from occurring. CDI supported the creation of HISA. But at the moment, racetracks owned by CDI are the only place where Baffert-trained horses cannot race if they otherwise qualify to compete. As the complaint alleges, this is a direct challenge to HISA's authority, 'imperiling the assurance of industry-wide safety and integrity that HISA is meant to ensure.'

"Threatens to undermine the preeminent value of the Kentucky Derby – CDI'S most prized asset. This year, with the omission of the country's best horses, the Derby is 'relegating the winning horse to having an asterisk next to its name.' In the future, CDI is risking that 'subsequent Derbies may be rendered largely irrelevant as industry leaders transition elsewhere.' This scenario has outsized adverse implications for CDI's key stakeholders, including its venerable institutional shareholders like BlackRock, Fidelity and Vanguard, and for the Commonwealth of Kentucky,

which depends on both the Derby as a key source of revenue and on the thoroughbred horseracing business as a major driver of economic growth. Carstanjen, the complaint alleges, is consequently 'putting his own personal interests above those of all stakeholders.'"

CDI responded with a statement calling Zedan's lawsuit a "meritless attempt to relitigate" Baffert's suspension, adding that lifting it now "would threaten the safety and integrity of races at Churchill Downs by changing the qualification rules just before the Derby.

Furthermore, it said that the "same issues in this complaint have been decided by the courts and the Kentucky Horse Racing Commission, which have repeatedly upheld Baffert's suspension and the disqualification of Medina Spirit."

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International Sports Lawyer Discusses How 'Women in Sports Law Promote Fairness and Justice on and off the Field'

(Editor's Note: The following was shared by the UN Office on Drugs and Crime)

Despite vast advances in gender equality within the sporting sector, it still remains a male-dominated arena. From athletes to criminal justice authorities, the involvement of women in sports promotes good governance and justice.

Martina Spreitzer-Kropiunik

The UN Office on Drugs and Crime's (UNODC) Programme on Safeguarding Sport from Corruption and Economic Crime works with female leaders to inspire future generations of women to pursue careers in sports law, challenge gender stereotypes, and promote integrity on and off the field.

Martina Spreitzer-Kropiunik, Judge and Vice-President of the Vienna Criminal Court, discussed with UNODC the challenges of prosecuting manipulation of competitions while emphasizing the key role women play in this endeavour.

Question: What do you believe are the primary responsibilities of judges in ensuring fairness and integrity in sports?

Answer: The primary responsibilities of judges include impartially interpreting and applying the rules, conducting hearings in an unbiased manner, weighing evidence and delivering fair and just decisions. In safeguarding matters [i.e., prosecuting the manipulation of competitions], judges play a critical role in protecting the well-being and rights of individuals involved, particularly minors and vulnerable.

Q: Who are the main victims of crimes related to competition manipulation?

A: This is a good question, because there are multiple possible victims:

Organizers of sport events invest significant resources into competitions, and their success depends on maintaining the integrity and credibility of the competitions. When the integrity of a sporting event is compromised, it can result in legal liabilities.

Sponsors suffer financial losses if the credibility of the event is called into question, leading to reduced brand loyalty and trust, as well as public backlash or criticism.

Athletes may be coerced or bribed to underperform or manipulate the outcome of a game or match, leading to financial losses, damage to their reputation, or even physical harm if they refuse to comply. Coaches and officials may also be targeted or pressured to participate in or turn a blind eye to such activities.

Fans, spectators and those who place bets based on the assumption of fair competition or invest emotionally in the integrity of sports competitions can suffer losses and disillusionment when results are manipulated.

Betting companies can also be damaged by distorted betting patterns that differ from what was expected based on legitimate factors, such as team strength, player performance, and historical data. This undermines the integrity of the betting process and erodes trust in the sports industry.

And finally, society as a whole. The economic and social impact of compromised sports competitions can affect industries such as tourism, entertainment, and media, which rely on the integrity and popularity of sports for their success. If competition manipulation leads to money laundering, this poses a multifaceted threat, with potential victims being financial institutions and regulatory bodies.

Therefore, safeguarding the integrity of sports is crucial for maintaining societal trust and preserving the positive influence of sports on communities.

Q: In your experience, what are the challenges involved in successfully prosecuting corruption in sports, specifically competition manipulation?

A: A solid, well thought-out and strategically prepared prosecution is the key to a possible conviction. Prosecutors have to raise the level of understanding of the judge or tribunal. In order to do this, they might use the MPRC (manipulated performance, reward and communication) approach, explained in detail in the recently launched UNODC – IOC Practical Guide to the Prosecution of Cases of Competition Manipulation .

Q: What do women bring to the table when they get involved in the legal aspect of combating corruption in sports, and what strategies can be implemented to increase female involvement in these efforts?

A: Sports law in particular is still dominated by men, which is why it is fundamentally important to increase the proportion of women, especially in decision-making bodies. This can help ensure diversity and representation on the bench, which is crucial for fair and impartial decision-making. It can also serve as a means to challenge systemic biases and stereotypes within the legal system, ultimately promoting equality and justice for all individuals regardless of gender.

Practice has shown that the introduction of a mandatory women's quota increases the proportion of women. And as soon as there are women who are also seen as role models, other women are attracted to work in this area. We women also have to learn to use the same techniques and networks that men have employed for centuries to support each other and bring each other forward.

Learn more about UNODC's campaign **Women In / For Justice**.

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Taking the First Step Toward Teaching Athletes and Staff About NIL – a Weeklong Plan

(Editor's Note: What follows is a weeklong plan for athletic directors to educate their staff and athletes about NIL. This article is excerpted from a guide written by Mark Koesterer, Founder of The Players NIL. To purchase the guide, visit https://www.amazon.com/NIL-ALL-30-Minute-Guide/dp/B0BW2QMGSQ)

As a college athletic director, helping your athletes learn more about Name, Image, and Likeness (NIL) is an essential and proactive step to ensure their success both on and off the field. Here's a plan for what you can do this week to educate your athletes about NIL:

Day 1: Monday - Introduction to NIL

Hold a Team Meeting: Start the week with a team meeting to introduce the concept of NIL to all your athletes. Explain what NIL is, its significance, and how it impacts them as student-athletes.

Guest Speaker: Invite a guest speaker, such as a sports agent, attorney, or a former professional athlete with experience with NIL, to talk to your athletes about the potential benefits and challenges.

Day 2: Tuesday - NCAA Guidelines and Rules

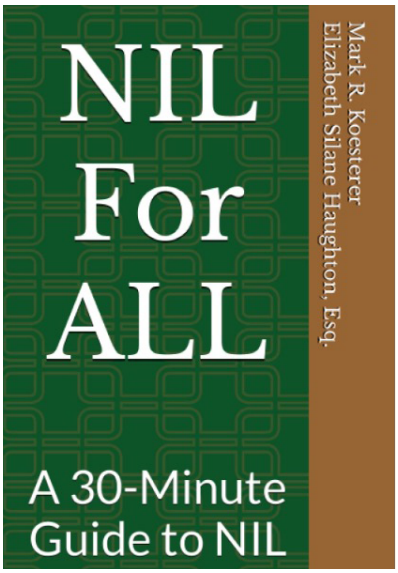
Review NCAA Guidelines: Spend the day reviewing the NCAA's NIL rules and guidelines. Emphasize the importance of compliance with these rules to avoid any eligibility issues.

Provide Resources: Share resources and documents from the NCAA and your institution that explain NIL regulations in detail.

Day 3: Wednesday - Financial Literacy and Brand Building

Financial Literacy Workshop: Organize a workshop or bring in a financial advisor to educate your athletes about budgeting, taxes, and managing their earnings from NIL opportunities.

Brand Building Seminar: Host a seminar on personal branding, including social media management, public relations, and image maintenance. Help athletes understand how to create and maintain a positive online presence.



Day 4: Thursday - NIL Opportunities

Panel Discussion: Arrange a panel discussion featuring successful athletes or alumni who have capitalized on NIL opportunities. They can share their experiences, challenges, and advice.

Identify Opportunities: Help your athletes identify potential NIL opportunities in their respective sports and regions. Please encourage them to explore partnerships and collaborations with local businesses.

Day 5: Friday - Legal and Contractual Education

Legal Considerations: Bring in a sports attorney or legal expert to explain the legal aspects of NIL agreements, including contract negotiation, rights, and responsibilities.

Mock Negotiations: Conduct mock negotiation sessions where athletes practice negotiating NIL deals, emphasizing the importance of seeking legal counsel before signing contracts.

Day 6: Saturday - NCAA Compliance and Reporting

Compliance Workshop: Review NCAA compliance requirements related to NIL and provide examples of scenarios that might violate the rules. Ensure athletes understand their responsibilities.

Reporting Process: Explain the process for reporting NIL agreements to your institution's compliance department. Ensure athletes are aware of their disclosure obligations.

Day 7: Sunday - Q&A and Recap

Open Q&A Session: End the week with an open Q&A session where athletes can ask any remaining questions or seek clarification on NIL-related topics.

Recap and Resources: Provide a summary of the week's discussions, key takeaways, and a list of resources they can refer to for ongoing guidance.

Throughout the week, encourage open communication and make yourself available for one-on-one discussions with athletes who may have specific questions or concerns. NIL education is an ongoing process, so consider scheduling periodic follow-up sessions to ensure your athletes stay informed and compliant with the evolving rules and opportunities in the NIL landscape.

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SafeSport Says It 'It Is Implementing Improvements to Increase Efficiency and Information Sharing'

The U.S. Center for SafeSport (the Center) has announced process changes aimed at increasing efficiency, information sharing, and trauma-sensitivity.

After spending the past eight months conducting a top-to-bottom review of its processes and seeking feedback from athletes and national governing bodies (NGBs) along the way, the Center has launched an initial set of process improvements that impact nearly every aspect of its work.

Ju'Riese Colón, CEO of the Center, previewed the updates during testimony before sub-committee hearings of the U.S. Senate Committee on Commerce, Science, and Transportation on March 20, 2024, and the U.S. House Energy and Commerce Committee on March 21, 2024.

The Center's Response and Resolution team hosted an initial training for NGBs on March 21, 2024, and the Center issued a memo last week to inform stakeholders in the U.S. Olympic and Paralympic Movement of these improvements.

"We are listening to athletes and responding with improvements to better serve them," Colón said. "We are proud of the progress we've made, but we are clear-eyed about the work ahead of us. We will continue to seek input as we evolve to meet the needs of athletes of all levels – from the practice fields in our neighborhoods to the podium in Paris."

Summary of process improvements:

Streamlined Response & Resolution

The Center has restructured the Response and Resolution department to align internal communication and improve efficiency, combining the Intake and Resolutions, Investigations, and Legal teams to make a cohesive Response and Resolution unit reporting to General Counsel and Vice President of Response and Resolution, Jessica Perrill.

Improved Process Communication

The Center has created a new Process Education unit within the Education and Research department. Process Navigators (formerly Resource & Process Advisors) were transitioned from the Response and Resolution department over to Education with the goal of grounding their work in a department with strong subject matter expertise on pedagogy and the psychology of learning. This team is tasked with designing role-specific educational materials (for Claimants, Respondents, parents/friends/support people) that will account for the neurobiological impact of trauma on the way that people learn and retain information about processes and procedures. Participants in the Center's process can contact Process Navigators at: Process.Navigators@safesport.org

Enhanced Training Development

The Center is dedicating 50% of an employee's time to implementing a comprehensive training curriculum for its Response and Resolution department, including enhanced trauma-sensitivity training grounded in research and best practices.

Categorizing Outcomes for Case Closures and Holds

Starting April 1, 2024, the Center will be redefining and recategorizing Administrative Closures and Holds to provide more clarity and understanding. As a part of this change, the Center will provide to participants in its process and NGBs specific categories that explain the reason for these outcomes, without compromising Claimant confidentiality. The Center continues to preserve its ability to hold a case with the potential for re-opening it if more information becomes available or a Claimant later decides to participate in the investigative process. The Center maintains that while NGBs are free to impose safety plans, limit one-on-one access to athletes, and make membership and employment decisions, federal law prohibits them from investigating allegations of sexual misconduct.

Specialized Interview Team for Minor Claimants

In January of 2024, the Center established a Specialized Interview Team trained in forensic interviewing of minors and trauma-sensitivity. The team travels for interviews as needed and is partnering with Child Advocacy Centers throughout the nation to use their locations for interviews and provide families with resources. The goal is for this highly-trained team to eventually conduct all interviews of minor Claimants.

Opportunity to Review and Respond to Evidence

After active investigations conclude, Claimants and Respondents will now have the option to review the Center's evidence (with the exception of confidential information such as medical records or personal identifiable information). Within a 14-day window, Claimants and Respondents may submit a written response and provide any additional relevant information. This procedural change will limit Respondents' ability to introduce new information during arbitration. This change will take effect on April 1, 2024.

Ensuring Consistent Communication

The Center is taking steps to ensure consistent communication with those involved in its process by asking Claimants their preferred method and cadence of communication and committing to providing updates as requested. The Center will also contact Respondents every 30 days. With the new case hold and closure types (discussed in #4), the Center will be providing more clarity to NGBs and encouraging them to engage with the Center more on process questions. These enhanced communication protocols go into effect on April 1, 2024.

Improving Data Collection and Accuracy

The Center has built a Research, Evaluation & Data team who are working to develop new software architecture to more accurately capture information that is unique to the Center. The goal is to implement more robust systems that will allow the Center to collect, analyze, and share more complex and impactful information about cases and trends. The Center is also investing in staff training to ensure data consistency.

Revamping Online Education

The Center is currently overhauling its online courses to make them shorter, role-specific, and sport-contextual. Newly-created guiding philosophies will be applied to ensure all education is theory and data informed, rooted in best practices, and trauma-informed. The Center will be forming an advisory group, consisting of subject matter experts in the fields of prevention education, trauma-informed learning, and sport culture to solicit insight and feedback on educational content. The new online courses are expected to roll out in 2025.

Expanding Event Audits into Grassroots Sports

Considering the substantial number of minor athletes competing at non-national level events, the Center began conducting audits to seek accountability deeper into grassroots sports. These audits began in January of 2024 and were announced in 2022. In preparation, NGBs were provided site visits and technical assistance, and additional information was codified in the updated National Governing Body Audit Manual released to NGBs on November 16, 2023.

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SRLA Presents Awards to Sports Law Professors at Annual Conference

The Sports and Recreation Law Association (SRLA) presented a slate of prestigious annual awards at its recent conference in Baltimore.

Among them:

- The Bernard "Patrick" Maloy Student Research Award was presented to Scott White, a doctoral student at Florida State University.
- The SRLA Research Fellow honor was given to Dr. Sungho Cho, who teaches at Bowling Green State University.
- The Lori K. Miller Young Professional Award was presented to Dr. Katie Brown, who teaches at Texas Tech University.
- The Herb Appenzeller Honor Award was given to Dr. Nita Unruh, who teaches at the University of Nebraska at Kearney.
- The Betty van der Smissen Leadership Award Dr. Mary Hums, who teaches at the University of Louisville.
- The JLAS Best Paper Award was presented to Anita M. Moorman and Adam R. Cocco, of the University of Louisville, College Athlete for their work on *NIL Activities and Institutional Agreements at a Crossroads: An Analysis of the Regulatory and 'Conflict Language' in State NIL Legislation*.

In addition, Dr. Jeffrey Levine, of Drexel University, "passed the gavel" as President of SRLA to incoming President Dr. Natasha Brison, of Texas A&M University.

SRLA serves academicians and practitioners in private and public sport and recreation settings. Members have diverse educational and experiential backgrounds and represent a variety of occupations and interests. They may teach or be students at institutions of higher education (sport and recreation management programs, law schools), practice law, operate risk management firms, or serve in other related fields.

Each year, SRLA hosts a conference, which provides high-quality, peer-reviewed scholarship in the area of sport and recreation law. Scholarship is disseminated through 25 or 50-minute presentations, 75-minute symposium sessions, and poster sessions. Conference attendees also have opportunities to interact with scholars and practitioners from across the country, engage in social activities, and network with industry professionals. The annual conference is beneficial for professionals, academics, and students alike. The 2025 SRLA Conference will be held in February in Myrtle Beach, South Carolina.

For more details about SRLA and the conference, visit h**ttps://www.srlaconference.com/**

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CCHA's Sports Law Group Listed as One of Industry's Best; Attorney Paia LaPalombara Featured on Sports Law Expert Podcast

Hackney Publications has announced the inclusion of Church Church Hittle + Antrim (CCHA) to its "100 Law Firms with Sports Law Practices You Need to Know About."

Paia LaPalombara

In addition, the company announced that Paia LaPalombara, who joined the firm's **Sports Law** and **Higher Education** sections last fall, has also been featured on Sports Law Podcast. The segment can be heard here.

CCHA's recognition on 100lawfirms.com marks the second straight year the firm has been included on the list, which serves as a resource for those in the sports industry who need capable counsel with experience in sports law. Hackney Publications relies on readers, professors, and other industry experts in creating the list.

CCHA's team is comprised of former athletes, coaches, campus staff, general counsel, and conference and NCAA national office administrators. Its perspective and knowledge uniquely positions it to guide clients through the constantly evolving issues in the collegiate sports industry. CCHA provides clients the benefit of working with a team of practicing attorneys and industry professionals – across the country – with more than 100 years of experience in college sports is areas such as NCAA compliance, Title IX, campus investigations, and name, image, and likeness.

The group represents NCAA member institutions, coaches, administrators, student-athletes, boosters, and collectives and strives to provide effective and passionate representation for all of its clients through reviewing, analyzing, and investigating all aspects of a case.

LaPalombara, in particular, has "a diverse skill set, cultivated through extensive experience at an NCAA Division I Power 5 university and the NCAA National Office, uniquely positions her to approach NCAA compliance and regulatory issues from multiple perspectives," noted Holt Hackney, CEO of Hackney Publications.

Her national reputation in college athletics is emphasized by her roles as Vice Chair of the NCAA Division I Student-Athlete Reinstatement Committee, a member of the NCAA Division I Board of Directors Infractions Process Committee, and service on the National Association for Athletics Compliance (NAAC) Board of Directors.

Her professional journey includes leadership roles on several prominent NCAA committees, demonstrating her commitment to staying at the forefront of industry trends.

LaPalombara's expertise encompasses a wide range of areas, including:

- NCAA investigations, case processing, and infractions appeals
- Student-athlete eligibility matters (reinstatement, amateurism, transfer and legislative relief waivers, academic eligibility, and limited immunity)
- NIL support (policy creation, collective and third-party support, risk management, contract review, and institutional best practices)
- Independent investigations (coach and staff conduct, hazing, sports wagering, Title IX sexual harassment and violence, substance abuse, and student-athlete welfare)
- NCAA compliance reviews
- Program culture and risk assessments
- Title IX gender equity reviews
- NCAA Policy on Campus Sexual Violence

Prior to joining CCHA, LaPalombara served as the Assistant Athletic Director for Compliance at The Ohio State University. Her role involved overseeing the Department of Athletics' investigatory function, executing its Name, Image, and Likeness program, and assisting student-athletes through the development of the school's first Elite Student-Athlete program.

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News Briefs

Canucks Hire Chow as new Chief Legal Officer

The Vancouver Canucks has hired Catherine Chow as its new chief legal officer. Chow was previously vice president of legal and general counsel for Keg Restaurants Ltd., a trendy Canadian restaurant franchise. Months before the Chow announcement, the NHL team retained Michelle O'Connor as a senior legal director and associate general counsel. Chow essentially replaces Christopher Beardsmore, who left the Canucks last year for Blackfin Sports Group, a Vancouver-based consultancy, which advises on sports and entertainment matters.

Sidley Represents Monumental Sports & Entertainment in a Partnership with DC to Modernize Capital One Arena

Sidley represented Monumental Sports & Entertainment (MSE) in a strategic partnership with the District of Columbia to Modernize Capital One Arena, home to the NHL's Washington Capitals and the NBA's Washington Wizards. The US$515 million District investment also includes plans to expand business and hospitality operations into Gallery Place. The Capital One Arena renovations, combined with the revitalization of the surrounding area, are set to transform this location into a key entertainment destination for downtown Washington, D.C. The Sidley team was led by Entertainment, Sports and Media (ESM) partner and co-chair Irwin Raij, and included partner Evie Whiting (ESM/Global Finance), senior managing associate Michael David Williams (Real Estate), as well as associates Max Budowsky, Greg Fritzius, and Alyssa Levy (ESM/M&A and Private Equity), and associate Jessica Lamour (M&A).

Hackney Publications Sponsors Sports Lawyers Association's Annual Conference

Hackney Publications (HP), the nation's leadingpublisher of sports law publications, is one of the sponsors of the Sports Lawyers Association's 49th annual conference, which will be held May 9-11 at the Baltimore Marriott Waterfront in Balti- more, MD . This year's conference is centered around the theme "Where Sports and Culture Collide ." To see the agenda, visit here: **https://www.sportslaw. org/conferences/2024conf/agenda/index.cfm** .To register for the event, visit here . HP will staff the event and provide printed copies of some of its latest publications, including Professional Sports and the Law and Sports Litigation Alert . "The SLA's annual conference is the pre-imminent event for sports law- yers," said Holt Hackney, the CEO of HP . "We are very excited to be a sponsor this year, as many of the attendees are subscribers or are friends of HP ."