SPORTS LITIGATION ALERT

October 18, 2024 Vol. 21, Iss. 20

Cases

Utah Court Less Than Charitable Toward Pro Sports Drug Testing Lab

By Gary Chester, Senior Writer

The Utah Constitution provides that property owned by a nonprofit entity is exempt from property tax if it is used exclusively for charitable purposes. Would the tax exemption apply to a laboratory that tests blood and urine samples for government agencies and charitable organizations for free or at a deep discount but charges market rates for professional sports leagues? The Supreme Court of Utah considered the issue in *Sports Medicine Research and Testing Laboratory v. Board of Equalization of Salt Lake County*, 2024 Utah LEXIS 91 (August 8, 2024).

Founded as a nonprofit organization in 2003, the plaintiff ("Sports Medicine") conducts drug testing to deter athletes from using performance enhancing drugs; it also conducts research to improve drug testing procedures. In addition to performing free or

Table of Contents

Here's the latest issue of Sports Litigation Alert, the nation's only subscription-based periodical reporting on the intersection of sports and the law. We also publish 23 other sports law periodicals. Visit www.hackney-publications.com to learn more.

Cases

- Utah Court Less Than Charitable Toward Pro Sports Drug Testing Lab 1
- From Sidelines To Stops Signs: A Clash Between Zoning Boards And Scholastic Athletics Expansion 3
- National Experiential v. Chicago: Free Speech, Zoning, a Fight Over Commercial Displays, and the NBA All-Star Game 5
- DraftKings Loses Motion To Dismiss Class Action Consumer Lawsuit 7
- Judge Hands Partial Victory to Former Basketball Coach, Who Sues After Son Fails to Make Baseball Team . 9

Articles

- Alleging Gender Discrimination, Longtime Women's Ice Hockey Coach Sues Harvard University 10
- Could Matthew Sluka's NIL Dispute Change the Game Forever? 12
- Trouble in The Beautiful Game – The New FIFA Club World Cup 2025 14
- SLA President Elect Chris McCleary, GC of the U.S. Olympic and Paralympic Committee, Shares Insights . . . 16
- PGA Decision on LIV Golfers Likely Lies in Antitrust Law, Not Magnanimity 17
- Sports Law Expert Podcast Features Daniel Wallach, 'Nation's Preeminent Sports Betting Attorney' 18
- Seattle Sounders FC And Seattle Reign FC Name Christine Masse as Chief Legal Officer 19
- Shoshanna Engel Leaves Brown to Start Own Consultancy in Collegiate Athletics Space 20
- Sports Law Attorney Jeffrey Schlerf Joins Stinson in Tampa 21
- AI and Sports – Security vs. Privacy 21
- Q&A with Concussion Expert Dr Alan Pearce About the Dangers of Concussion and Brain Injuries 22
- Gamers Say They Hate 'Smurfing,' But Admit They Do It -- Study Reveals Complexity Behind Some 'Toxic' Gaming Behaviors 24

News Briefs

- NFL Player Suspended for Potential Concussion-Producing Play 25
- Holland & Knight Advises Attain Sports in Acquiring Controlling Interest in Aberdeen IronBirds 26
- ABA Forum on the Entertainment & Sports Industries on November 14-16 26

Hackney Publications

Copyright © 2024 Hackney Publications. All rights reserved.

discounted testing to government agencies and nonprofit organizations, Sports Medicine performs testing for professional sports organizations. These include the National Football League, Major League Baseball, and the United States Anti-Doping Agency. Annual revenues from testing have ranged from $9 million to $12 million.

Sports Medicine uses data taken from its testing for research purposes and makes its research publicly accessible at no charge. This is required by the World Anti-Doping Agency, which is the international testing organization that accredits Sports Medicine. The company conducts research and publishes papers relating to sports and public safety. For example, Sports Medicine has published papers on the methods used to detect novel forms of performance-enhancing drugs as well as the medical effects of blood transfusions.

In 2019, Sports Medicine constructed a facility in South Jordan, Utah and requested an exemption from county property taxes. The Salt Lake County Board of Equalization rejected Sports Medicine's request for an exemption because the property was not used exclusively for charitable purposes. On appeal, the Utah Tax Commission considered briefs, held a hearing, and in 2022 affirmed the Board's decision. Sports Medicine then filed a legal action in Utah's highest court.

Sports Medicine argued that it needs to perform tests on professional athletes to sustain its philanthropic mission, and that a vacant portion of its property warrants an exemption because it will be used for charitable purposes in the future.

Hackney Publications

Sports Litigation Alert (SLA) is a narrowly focused newsletter that monitors case law and legal developments in the sports law industry. Every two weeks, SLA provides summaries of court opinions, analysis of legal issues, and relevant articles. The newsletter is published 24 times a year.

To subscribe, please visit our website at http://www.sportslitigationalert.com

The Court Applies State Tax Law

The court noted that Utah's property tax is based on the state constitution, which originally provided for a tax exemption for property used exclusively for charitable purposes. A 1982 amendment added that the property must be "owned by a nonprofit entity." Under the case law interpreting this constitutional provision, courts must assess the following: (1) how the nonprofit entity uses the property; (2) whether any of the uses of the property serve a charitable purpose; and (3) whether the non-charitable uses of the property represent more than a de minimis share of the property's overall usage.

The Tax Commission's unchallenged findings were that Sports Medicine used the property for charitable and government testing and for testing professional athletes, and that part of the property is vacant. The plaintiff argued that charging market rates to test professionals is "substantially related" to its charitable testing because it offsets the losses on free or discounted testing. The court rejected Sports Medicine's position based on a precedent case which held that charging market rates to subsidize nonprofit services does not serve a charitable purpose.

A closer call was Sports Medicine's contention that its nonprofit testing provides insufficient data for its research and for the education of its employees; additional testing is necessary to generate more data relating to its charitable mission. The court rejected this argument because even if the company needs to perform additional testing, the need for data "doesn't explain why Sports Medicine charges market rates for those tests." The decision to charge market rates for testing of professional athletes is motivated by the desire to produce profit, which is not a charitable use of property.

As to the proposed use of a vacant portion of the property, the court cited a case where a church sought a tax exemption based on future plans to construct a church on its property. The court held that the Tax Commission there had properly denied a tax exemption because a promise to use the property for an exempt purpose in the future was insufficient to qualify for an exemption in the present.

Sports Medicine tried to distinguish the case by noting that its building was completed, in contrast to the promise to build a church in the future. The court

Copyright © 2024 Hackney Publications. All rights reserved.

rejected this distinction because the unused portion of Sports Medicine's property, although completed, is not currently used for charitable purposes.

Was Drug Testing of Pro Athletes a Minimal Use of the Property?

Finally, the court considered the third factor in the appropriate analysis: whether Sports Medicine's non-charitable uses of its property are more than de minimis. The court answered in the negative because about half of the organization's laboratory usage was for market-rate testing. "Because market-rate testing is not a charitable use, this portion of Sports Medicine's property is not eligible for a property tax exemption," the court wrote. "And because keeping the other portion of its building vacant likewise is not a charitable use, we do not need to ask whether any part of Sports Medicine's property can be constructively severed from the whole."

Since Sports Medicine did not use its property exclusively for charitable purposes, the Utah Supreme Court upheld the Tax Commission's denial of a property tax exemption.

Takeaway: this case is a reminder that charitable organizations receive tax exempt status because they typically provide important services that local, state, and federal governments cannot or do not provide. Examples of charitable services include food kitchens, homeless shelters, and medical research. To obtain a property tax exemption, Sports Medicine could have charged discounted rates for professional sports drug testing and made up the difference through fundraising. Since market-rate testing was a substantial portion of its activities and revenue, the organization clearly did not qualify for an exemption.

Gary Chester

Return to Table of Contents

From Sidelines To Stops Signs: A Clash Between Zoning Boards And Scholastic Athletics Expansion

By John E. Tyrell, Esq. and Joyce Adelugba, Esq of Ricci Tyrell Johnson & Grey

The baseball game refrain reminds us to, "Root! for the home team, if they don't win it's a shame." The lines between home and away blur when the surrounding neighborhood housing the home team is not supportive of its growth and expansion. When the interest of the home team and its neighbors collide, what is in the best interest of the community at large? Apparently, it is a balancing test between community comfort and an existing private school's plan to expand its grounds to include an athletic facility.

In the matter of *Friends of the Field v. District of Columbia. Board of Zoning Adjustment* 2024 D.C. App Lexis 329*, the appellate court balanced competing statutory interpretations concerning the application of a non-conforming use grant initially to the Episcopal Center for Children in 1930. The Parochial education institution owned the property and used it as a playing field and open space for students attending its' day school for over eighty years. Id at 333*. In 2021, the Episcopal Center entered into an agreement with Maret School, a private school serving 650 students between kindergarten and twelfth grade. The agreement included a leasehold of the property for up to fifty years and the right to develop athletic facilities on site. The proposed athletic facilities development plan included an outdoor baseball diamond and indoor multipurpose athletic building for football, soccer, and lacrosse. Maret requested a special exception from the zoning board to construct the athletic Regulation title 11-B sect. 200.2 (k)(1), and a balancing test between the harmony with the general purpose and intent of the zoning regulation. According to the statute, the zoning board is bound by District of Columbia, Municipal Regulation Title 11-X section 901.2, which states an applicant has the burden of proving its entitlement to a special exception. Under District of Columbia, Municipal Regulation, Title 11-B, section 200.2(k)(1), athletics are a form of education when athletics facilities are operated as an integral component of a principal private school use. The Appellate Court considered each

Copyright © 2024 Hackney Publications. All rights reserved.

statutory issue separately, finding in its overall analysis to affirm the zoning board's decision granting Maret's special exception request.

First, the Court addressed District of Columbia Municipal Regulation Title 11-B, section 200.2(k)(1), that an athletic facility constitutes a principal private school use. District of Columbia Municipal Regulation Title 11-X, section 104.2, permits special exceptions for private educational uses in areas otherwise zoned for residential housing. Educational uses may include but are not limited to accessory play and athletic areas, dormitories, cafeterias, recreational use or sports. As applied to the facts, Maret's special application to develop the athletic facilities was primarily an educational use by the private school. Moreover, the statute directly extended educational use to include athletic facilities. An exclusion of the athletic facilities from the education use non-conforming use exception would contravene the purpose and intent of the zoning regulation statutory extension. Thus, the appellate court rejected the assertion that athletic facilities exceed the scope of the education use as suggested by Friends of the Field.

Next, the Court addressed the absence of any objectionable conditions which adversely impact the surrounding facilities and parking lot for private school use. The District of Columbia Office of Planning recommended the approval of Maret's application, subject to conditions that would require green space surrounding the parking lot to minimize the visual impact, along with a prohibition on sound amplification devices and other sound related nuisance. Maret submitted a memo to its application adopting the conditions proposed by the Office of Planning. Subsequently, The Advisory Neighborhood Commission adopted Maret's application reflecting Maret's agreement to implement the aforementioned conditions.

However, The District of Columbia Office of the Attorney General vehemently opposed the construction of a multipurpose athletic facility. The Attorney General argued that the commercial scale of the athletic facility would negatively impact the surrounding neighborhood's traffic, noise and appearance. Friends of the Field joined the Attorney General's opposition and suggested that the multi-sports complex did not support academic development, and as such exceeded the initial non-conforming use grant extended to academic facilities. Id at *335. The zoning board heard testimony from Maret's School leadership, and Friends of the Field's traffic expert, and acoustics expert. While the zoning board accepted that Friend of the Field's argument that an athletic facility and potential third-party use of the athletic facilities exceeds the scope of the non-conforming academic use granted in 1930, ultimately the zoning board found Maret's planned use did not create any objectionable impacts to the surrounding neighborhood, and as such Maret's special exception application was granted. Friends of the Field appealed the decision to the District of Columbia's Court of Appeals.

At the heart of the issue before the Court of Appeals was statutory interpretation of D.C Code Municipal community. Absent an adverse impact or violative condition which disrupts the harmony or general purpose of the zoning regulation, a denial of a special application would be deemed arbitrary and capricious. According to the zoning board summary of the testimony heard from experts and the community there was no such adverse impact found in Maret's planned development of the sporting facility. Thus, the grant of Maret's special exception application was valid according to the statute.

Ultimately, the Appellate Court found the expansion to be harmonious with the zoning regulation purpose and intent. Athletic pursuits and the facilities which house them remain protected under the educational use exception and the Appellate Courts' statutory interpretation.

Return to Table of Contents

National Experiential v. Chicago: Free Speech, Zoning, a Fight Over Commercial Displays, and the NBA All-Star Game

By Amelia Taylor

In *National Experiential LLC v. City of Chicago*, the U.S. District Court for the Northern District of Illinois dismissed several claims filed by National Experiential, LLC against the City of Chicago, the Chicago Sports Commission (CSC), and other related parties. National Experiential sought to challenge the City's decision to cancel a laser-light display project planned

Copyright © 2024 Hackney Publications. All rights reserved.

for the 2020 NBA All-Star Weekend. While many of National Experiential's claims were dismissed, the court allowed portions of its First Amendment claims to proceed, particularly those contesting the City's permit requirements and discretion in granting permits. Additionally, the court dismissed all claims against MB Real Estate Services, the Chicago Sports Commission, and its Executive Director, Kara Bachman. The court's Memorandum Opinion and Order, signed by Honorable Steven C. Seeger on August 9, 2024, presents a complex picture of the interplay between local regulations and constitutional rights.

The City Fights Back: Zoning Rules Defeat a Creative Display

A key issue at the center of the case was whether the City of Chicago acted within its rights when it revoked National Experiential's license to project the display. The court found that the light projection required a permit under Chicago's zoning ordinance, which mandates that "temporary signs that are illuminated" must receive prior approval. This added a layer of regulatory scrutiny for projects like the planned laser-light display by National Experiential. In its defense, the City argued that the zoning rules, including special permit requirements for illuminated signs, were in place to maintain control over public spaces and ensure compliance with local regulations.

The court dismissed some of National Experiential's First Amendment claims but allowed others to proceed, specifically those challenging the City's discretion in applying the permit requirements. It found that further factual development was necessary to determine whether the City's actions were lawful. The court also noted that it had not definitively ruled on whether all provisions of the City's zoning ordinance were content-neutral, leaving this question open for further exploration.

A Big Plan, an Even Bigger Hurdle: The NBA All-Star Projection

In February 2020, National Experiential, LLC, a marketing and advertising company, entered into a contract with Nike to project a laser-light display on two iconic skyscrapers in downtown Chicago—the Aon Center and the Prudential Building—during the NBA All-Star Weekend. The display was to feature an image of Michael Jordan's famous dunk from the 1988 slam-dunk contest and Nike's "Jumpman" logo. National Experiential paid $325,000 to use the buildings as projection screens.

In addition to its contracts with Nike and the building owners, National Experiential secured a license agreement with the City of Chicago to use Millennium Park for projection equipment. The agreement, however, included a clause allowing the City to terminate the project "at any time, for any reason," and required the company to secure any necessary permits for the event.

SPORTS LAW EXPERT

Sports Litigation Alert is proud to offer a directory of Expert attorneys and witnesses at our Sports Law Expert website.

Here is this issue's featured expert.

Expert Attorney

Stokely G. Caldwell, Jr., Esq.

Expertise: *Sponsorship agreements in all sports; personal services and endorsement agreements; organization of motorsports teams and entities; sports mergers and acquisitions; driver/rider agreements; etc.*

Robinson Bradshaw

(704) 377-8332

Copyright © 2024 Hackney Publications. All rights reserved.

Despite assurances from MB Real Estate Services that no additional permits were needed, National Experiential's plans soon faced unexpected hurdles.

Last-Minute Shutdown: How the City Pulled the Plug

Just two days before the event, MB Real Estate Services notified National Experiential that the project was not approved due to the absence of required zoning permits. Despite prior communications indicating no permits were necessary, the City's zoning rules prohibited illuminated, temporary signs without prior approval. MB Real Estate's email threw the company's plans into disarray, and its subsequent efforts to secure last-minute approval from the City were unsuccessful. The City ultimately revoked National Experiential's license, and Nike followed by canceling the display.

First Amendment vs. Fair Enforcement: A Legal Showdown

The court's legal analysis focused on several key issues, including First Amendment claims, breach of contract, and tortious interference. National Experiential argued that Chicago's zoning ordinances violated its First Amendment rights by requiring a permit for the temporary illuminated signs, which the company contended had both commercial and artistic elements. While the court dismissed some of the First Amendment claims, it allowed others to proceed, particularly those challenging the City's discretion in enforcing permit requirements.

The court highlighted the need for more factual development before ruling on whether the City's application of the permit process was lawful. Moreover, the court did not definitively rule on whether the City's zoning ordinance was content-neutral, allowing for further scrutiny on this issue.

Art or Advertisement? The Failed Bid for Artistic Exemption

One of the more intriguing aspects of the case was National Experiential's argument that its projections should be considered "works of art" exempt from regulation under Chicago's zoning code. The ordinance exempts works of art that do not contain commercial messages, but the court rejected this argument, stating that the inclusion of Nike's "Jumpman" logo clearly constituted a commercial message. While the company argued that the display had artistic elements, the court reasoned that the blend of commercial and artistic content disqualified it from being exempt as art under the ordinance.

Importantly, the court did not make a final ruling on whether the display should be classified as commercial speech or artistic expression, instead leaving the matter open for further factual exploration. This distinction could prove critical in future proceedings.

No Favoritism Here: The Court Dismisses Discrimination Claims

National Experiential also claimed that the City had applied its zoning rules in a discriminatory manner by imposing permit requirements on its display while allowing other illuminated signs to proceed without similar scrutiny. However, the court found no evidence of favoritism, concluding that the regulations were applied uniformly, regardless of the type of content being displayed. The court rejected National Experiential's assertion that its projections, which contained both artistic and commercial elements, should have been subject to different rules than other commercial displays.

Contract Loopholes Sealed: The Legal Basis for the City's Cancellation

In its breach of contract claim, National Experiential contended that the City acted unlawfully when it terminated their agreement. The court disagreed, ruling that the City had acted within its rights under the terms of the license agreement, which allowed the City to cancel the contract "at any time, for any reason." National Experiential had accepted these terms and paid the associated fees, and the court found no basis for challenging the cancellation provision. Additionally, the court noted that the dismissal was based on multiple factors beyond just the cancellation clause, which further undermined National Experiential's breach of contract claim.

Behind the Scenes: Allegations Against the Chicago Sports Commission

National Experiential also filed tortious interference claims against the Chicago Sports Commission and its Executive Director, Kara Bachman, alleging that they had influenced the City's decision to cancel the project. The company claimed that the CSC had lobbied for the Prudential Building to be lit in Bulls' red during NBA

Copyright © 2024 Hackney Publications. All rights reserved.

All-Star Weekend, in direct competition with the Nike projection. The court dismissed these claims, finding no evidence of unlawful conduct by the CSC or Bachman. The court emphasized that, as a private entity, the CSC had no authority to act on behalf of the City and could not be held liable for tortious interference without evidence of wrongdoing.

Key Takeaways: Navigating Public Displays and Legal Boundaries

This case serves as a cautionary tale for event organizers and advertisers navigating the complex landscape of local ordinances and permitting requirements. National Experiential's failure to secure the necessary permits was a decisive factor in the case's outcome, and the court's decision underscores the importance of compliance with local regulations before launching large-scale projects in public spaces. While some of National Experiential's claims remain for further factual development, the company's experience highlights the need for thorough preparation and careful attention to municipal requirements in order to avoid similar legal obstacles in the future.

Return to Table of Contents

DraftKings Loses Motion To Dismiss Class Action Consumer Lawsuit

By Christopher R. Deubert, Senior Writer

When sports betting was legalized in Massachusetts in August 2022, Boston-based DraftKings made the Commonwealth the target of aggressive advertising. As sports fans have become all too aware in recent years, such advertising is ubiquitous as the major sports betting operators fight for market share. In December 2023, two DraftKings customers, represented by a public health advocacy group, initiated a putative class action lawsuit alleging that certain of DraftKings' promotional practices violated Massachusetts consumer protection and false advertising laws. The Superior Court of Massachusetts just denied DraftKings' motion to dismiss the case, subjecting its practices to further interrogation and the possibility of substantial financial liability.

Massachusetts' Sports Betting Law

On August 10, 2022, Massachusetts became the 36th state to legalize some form of sports betting. With a large and passionate sports fan base, and extensive preexisting culture of illegal sports betting, it was a big win for the legal sports betting operators. The text of the law – and that it took so long to pass – is also reflective of particularized concerns in Massachusetts.

Contemporaneous with the law's passage, there was considerable discussion around problem gambling, a term that includes gambling addiction and other harmful, repetitive gambling behaviors. However, as the Boston Globe reported at the time, the Commonwealth did not know how many problem gamblers there were. The most recent study, published in 2015, found that about 2% of Massachusetts adults had a gambling problem, about the same as most other states. There were and are concerns that, in fact, Massachusetts has a particularly large gambling problem.

For this reason, the Massachusetts law contains extraordinary consumer protections. The law includes voluntary exclusion lists and other common regulations but also: (1) requires operators to submit a problem gambling plan annually, in consultation with the department of public health; (2) prohibits lines of credit; (3) prohibits the use of credit cards; (4) creates a Sports Wagering Fund to distribute sports wagering revenues to a variety of youth programs; and, (5) requires the Massachusetts Gaming Commission to research "the social and economic effects of sports wagering in the commonwealth and to obtain scientific information relative to the neuroscience, psychology, sociology, epidemiology and etiology of sports wagering" and to "make scientifically-based recommendations" on an annual basis.

The Law In Practice

As anticipated, there was a large market for legal sports betting in the waiting. According to data from the Gaming Commission, between August 2023 and July 2024, an average of $556,068,998 was wagered every month. On average, $280,525,282 (50.5%) of that was wagered with DraftKings, by far the market leader in the state. The Commonwealth has

Copyright © 2024 Hackney Publications. All rights reserved.

collected average monthly taxes of $10,130,016 on those wagers.

Nevertheless, handles of those amounts do not come without some concerns. Although sports betting did not begin in Massachusetts until March 2023, a recent report from the Gaming Commission concerning gambling activity in 2022 identified that 31% of gamblers "could be classified as problem gamblers."

The Consumer Lawsuit

On December 8, 2023, two DraftKings accountholders sued the sports betting operator alleging that one of its promotional offerings violates Massachusetts consumer protection and false advertising laws. Specifically, the plaintiffs take issue with a promotional offer through which DraftKings offered new customers a "$1,000 Deposit Bonus" for opening a new account. According to the plaintiffs, it looked like a new account of any value would automatically receive an additional $1,000 for wagering.

In fact, the plaintiffs allege, the $1,000 bonus was a ruse only discoverable through the "unreadable" fine print. In order to obtain the bonus, a customer would have to meet three criteria: (1) deposit at least $5,000 initially; (2) make at least $25,000 in wagers within 90 days; and (3) the $25,000 in wagers would have to be bets with odds of "-300 or longer" (bet $300 to win $100).

According to the plaintiffs, these requirements would leave customers "chasing the money" and "statistically likely to lose money." To this point, plaintiffs allege that "they would have had to wager an average of more than $276 gambling on sports every day for three months" to meet the bonus requirements. Because the bonus was directed to new sports bettors, plaintiffs alleged that the promotion was intentionally deceptive and predatory.

The plaintiffs seek to represent a class of Massachusetts citizens who opened a DraftKings account in response to the bonus offer. They are represented by the Public Health Advocacy Institute, a Boston-based non-profit that pursues litigation and legislative changes to protect and promote consumer health. The organization has its roots in the anti-smoking movement. Mark Gottlieb, one of the Institute's attorneys, said at the time that the lawsuit was filed that the "market for sports gambling is simply out of control" and hoped this action would be "the first of many" challenging the industry.

DraftKings sought to have the case dismissed, principally arguing that its website adequately identified the terms and conditions of the offer about which the plaintiffs complain. Moreover, it argued that no reasonable customer could have been misled by the terms and conditions.

Justice Debra A. Squires-Lee of the Superior Court of Massachusetts disagreed. On a motion to dismiss, where the court is required to take everything the plaintiff alleges as true, the court stated "while, based on my review of the small print provided with the Complaint, the terms and conditions disclosed to Plaintiffs accurately describe the very conditions about which Plaintiffs now complain, the overall deceptiveness of the mobile app and website, sign up process, and terms and conditions cannot be resolved without additional information."

The case will now proceed to discovery where the plaintiffs will have the opportunity to obtain that additional information – specifically, documents and emails concerning DraftKings' advertising practices. They will also be able to question DraftKings' employees under oath about the same. Massachusetts regulators may be interested in what is uncovered. Moreover, the Justice's comments suggest that she believes a jury will ultimately have to decide whether DraftKings' advertising was misleading. Lastly, the consumer protection law under which the consumers sued provides for potential double or triple damages.

For all of those reasons, DraftKings is likely evaluating a potential settlement of the matter. If the number of Massachusetts residents who signed up for the offer at issue is manageable, providing them some kind of reimbursement could save them further legal and financial headaches.

Deubert is Senior Counsel at Constangy, Brooks, Smith & Prophete LLP

Return to Table of Contents

Copyright © 2024 Hackney Publications. All rights reserved.

Judge Hands Partial Victory to Former Basketball Coach, Who Sues After Son Fails to Make Baseball Team

A federal judge from the Middle District of Florida has dismissed, in part, a lawsuit brought by a former middle school girls' basketball coach, Althea Owens, who alleged that her son (E.S.P) suffered discrimination based on race when he tried out for the at Suwannee Middle School baseball team and failed to make the squad.

Owens, who made a dual-filed charge with the Equal Employment Opportunity Commission and the Florida Commission on Human Relations after her son failed to make the team, was subsequently fired as the basketball coach at Suwannee Middle School, leading to an additional claim of retaliation.

Owens, who is African American, lodged claims for retaliation and race discrimination.

In Count II of her complaint, the plaintiff alleged retaliation, pursuant to 42 U.S.C. §2000e et seq. (Title VII). The defendant, Suwannee County School Board, countered in a motion to dismiss that the coach "is attempting to raise both opposition and participation claims, and that the opposition claims are not properly plead. It is not necessary for the Court to decide whether an opposition claim has been properly plead, because Plaintiff has sufficiently plead her retaliation claim, including that she engaged in protected activity," according to the opinion. "Although Defendant challenges whether the Board had knowledge of Plaintiff's complaint, the temporal proximity (two weeks) between Plaintiff's EEOC charge and her termination is sufficient to survive a motion to dismiss. See Thomas v. Cooper Lighting, Inc., 506 F.3d 1361, 1364 (11th Cir. 2007)."

Count III of the plaintiff's complaint also centered on retaliation, this time pursuant to 42 U.S.C. §2000d et seq. (Title VI). "Title VI claims involving employment are limited to circumstances when federal funds are provided for the purpose of providing employment," wrote the judge. "Plaintiff's allegation that Defendant receives federal funds and that such funds are fungible is insufficient. See Jones v. Metro. Atlanta Rapid Transit Auth., 681 F.2d 1376, 1378 (11th Cir. 1982); Russell v. Pub. Health Tr. of Miami-Dade Cnty., No. 8-23442-CIV, 2009 U.S. Dist. LEXIS 34315, 2009 WL 936662, at *6 (S.D. Fla. April 6, 2009) (collecting cases that Title VI claims require employer receive federal funds for purpose of employment). Deficiencies with this claim were previously identified, but not adequately corrected in the amended complaint. Compare Doc. 12 at 15-16, with Doc. 19 at [*3] 8-9."

Count IV alleges retaliation against the plaintiff under 42 U.S.C. §1981, through 42 U.S.C. §1983. "Section 1981 claims against a state actor are properly treated as §1983 claims and must show that the violation of the right to make contracts is 'caused by a custom or policy within the meaning of Monell and subsequent cases.' See Jett v. Dallas Indep. Sch. Dist., 491 U.S. 701, 735-36, 109 S. Ct. 2702, 105 L. Ed. 2d 598 (1989); Butts v. Cnty. of Volusia, 222 F.3d 891, 894 (11th Cir. 2000); Mizzell-Bullock v. Seminole Cnty. Pub. Sch., No. 23-11599, 2024 U.S. App. LEXIS 317, 2024 WL 65199 at * (11th Cir. Jan. 5, 2024). What Plaintiff describes as a policy sufficient to meet Monell requirements is not related to her termination," wrote the court.

Specifically, the plaintiff alleged that "the longstanding practice of denying African American children the opportunity to participate in sports teams, often in favor of white and non-black students, has been prevalent and predates E.S.P. for at least the prior two years to E.S.P. trying out for the team."

The court continued, noting that this "allegation describes a practice of discrimination against African American children, such as E.S.P., and does not identify a policy, custom or practice, related to Plaintiff's termination. In addition, Plaintiff alleges she was terminated by the Principal Williams but does not allege facts as to how the termination was ratified by the School Board, other than a conclusory statement that such ratification occurred. Doc. 19 ¶¶58, 62. Deficiencies with this claim were previously identified, but not adequately corrected in the amended complaint. Compare Doc. 12 at 7-9, with Doc. 19 at 10."

Count V centered on allegations of race discrimination against E.S.P. under the Florida Education Equity Act (FEEA), Fla. Stat. §1000.05, and seeks both compensatory and punitive damages under Fla. Stat. §760.07. "The Parties agree that FEEA only provides equitable relief. The Parties disagree whether

Copyright © 2024 Hackney Publications. All rights reserved.

other relief is permitted under Fla. Stat. §760.07, which provides:

'Any violation of any Florida statute that makes unlawful discrimination because of race, color, religion, gender, pregnancy, national origin, age, handicap, or marital status in the areas of education, employment, or public accommodations gives rise to a cause of action for all relief and damages described in s.760.11(5), unless greater damages are expressly provided for.'"

The court continued, "In turn, §760.11(5) provides 'the states, and its agencies and subdivisions shall not be liable for punitive damages.' Thus, punitive damages are not permitted against the School Board. The Court is not persuaded that compensatory damages are also prohibited but declines to expressly rule on the issue at this time."

Finally, the court considered Count VII, which alleged race discrimination against E.S.P. under 42 U.S.C. §1981, through §1983.

In order to state a claim under § 1981, a plaintiff "must allege (1) intentional racial discrimination (2) that caused a contractual injury. Ziyadat v. Diamondrock Hosp. Co., 3 F.4th 1291, 1296 (11th Cir. 2021)." The plaintiff's claim failed here "because there is no alleged interference with a contract. Cf. Jackman ex rel. K.J. v. Kindergarten Prep, Inc., No. 8:23-cv-1598-TPB-AEP, 2023 U.S. Dist. LEXIS 185057, 2023 WL 6809647, at *2 (M.D. Fla. Oct. 16, 2023) (denying motion to dismiss because plaintiff alleged interference with a right to contract with defendant to provide educational services)."

The court reasoned, "Even if E.S.P. was not selected for the baseball team due to his race, Plaintiff has not alleged a contractual right was involved and has not cited any authority that would support finding a contractual right was involved in these circumstances. Deficiencies with this claim were previously identified, but not adequately corrected in the amended complaint. Compare Doc. 12 at 22-23, with Doc. 19 at 14-15."

In sum, the court granted without prejudice the defendant's motion to dismiss Counts III, IV, and VII, while denying the motion as it related to Counts II and V.

Althea Owens v. Suwannee County School Board; M.D. Fla.; Case No. 3:23-cv-1174-TJC-SJH; 9/9/24

Return to Table of Contents

Articles

Alleging Gender Discrimination, Longtime Women's Ice Hockey Coach Sues Harvard University

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

Longtime Women Ice Hockey Coach, Katey Stone, filed a federal lawsuit with the U.S. District Court, District of Massachusetts against the President and Fellows of Harvard College based on sex discrimination, claiming that the school forced her to resign as its Head Women's Ice Hockey Coach over false misconduct allegations and that the university has historically underpaid female coaches. Coach Stone's eight-count complaint alleges Sex/Gender Discrimination in violation of Title VII of the Civil Rights Act of 1964, Discrimination on the Basis of Sex/Gender in violation of Mass. General Law Chapter 151B, Failure to Pay Equal Wages in violation of the Federal Equal Pay Act of 1963, Failure to Pay Equal Wages in violation of Massachusetts Act to Establish Pay Equity, Retaliation, Defamation, Civil Conspiracy, and Intentional Interference with Contractual Relations.[1]

With over 500 career wins, Coach Stone is a highly regarded women's hockey coach both within the United States and abroad. As Harvard's Head Coach since the 1994-95 season, Stone's teams have won nine Ivy League Championships, six ECAC tournament championships, eight ECAC regular season championships, have made it to the NCAA tournament twelve times, reached the Frozen Four six times and the NCAA Championship four times. In addition, she led the U.S. Women's Ice Hockey

1 Case 1:24-cv-11897 Document 1 Filed 07/23/24.

Copyright © 2024 Hackney Publications. All rights reserved.

Team to a silver medal in the 2014 Winter Olympic Games in Sochi, Russia.[2]

But with success, comes controversy and after her 29th season with the Crimson, Coach Stone resigned due to an investigation by the university that her coaching practices created a toxic environment for the student-athletes who played under her. Specifically, there were allegations of various forms of mistreatment that included insensitivity to mental health issues, downplaying injuries, leading derogatory chants and creating awhere athletes were pitted against each other to curry favor with her and the other members of the coaching staff.

Harvard's investigation came on the heels of reports published in the *Boston Globe* and *The Athletic* which quoted former Harvard ice hockey players contending that Stone willingly turned a blind eye to harmful and possible injurious hazing practices among athletes on her team. Specifically, *The Athletic* reported in March 2023 that worrisome hazing of new team members was occurring under Coach Stone's watch that included initiation rituals of forced alcohol consumption and sexualized skits and traditions, including an annual occurrence entitled *naked skate* that left some team members with "ice burns and bleeding nipples."[3] In addition, the reports cite former players who alleged that Stone used discriminatory language, including once saying that there were "too many chiefs and not enough Indians" on the team while looking at an Indigenous player.[4]

Coach Stone claims that the allegations of hazing were false and points to an internal investigation commissioned by the school's Athletic Director that did not find, after an exhaustive survey, that a "culture of hazing" existed on the women's ice hockey team. Nonetheless, Coach Stone claims that Harvard endorsed these false accusations and narratives and used them to push her out of her role as the team's head coach. Specifically, Coach Stone claims that she received unfair treatment compared to her male counterparts who were permitted by Harvard hierarchy "to use their discretion in how best to coach and motivate the players on their respective teams . . . while she was harshly punished and excoriated for engaging in the same coaching strategies and behaviors." Coach Stone has gone on to describe Harvard's actions as "part and parcel of a larger culture at the University wherein female coaches are undervalued, underpaid, heavily scrutinized, and held to a breathtakingly more stringent standard of behavior than their male counterparts."[5]

Whether such allegations of hazing and abuse were or were not part of the culture of the women's ice hockey team under Coach Stone that led to her leaving the team as its head coach may become legally moot, however, because the university on October 7, 2024, moved to dismiss the complaint in its entirety. The rationale behind Harvard's motion is twofold – a) they believe that most of Stone's claims fall outside the statute of limitation, and b) that "the factual allegations in the Complaint do not plausibly point in the direction of discrimination and away from the 'obvious alternative explanation' that Stone was separated from Harvard due to mounting concerns regarding her conduct as head coach — concerns that were publicized."[6]

Robert J. Romano

Return to Table of Contents

2 Coach Stone did not coach the Harvard women's team during its 2013-2014 season as she stepped away to coach the U.S. Olympic Women's Hockey Team.

3 https://www.athleticbusiness.com/magazine/30510

4 Id. Note: At the time of the alleged comments, there were two Native American players and a Native American coach who were part of Harvard Women's Ice Hockey team. Coach Stone claimed in her lawsuit that at the time of the incident she "immediately paused, recognized her poor word choice, apologized to the players in attendance."

5 https://www.nytimes.com/athletic/5653911/2024/07/23/katey-stone-harvard-hockey-lawsuit/

6 Case 1:24-cv-11897 Motion to Dismiss Filed 10/07/24.

Copyright © 2024 Hackney Publications. All rights reserved.

Could Matthew Sluka's NIL Dispute Change the Game Forever?

By Joseph M. Ricco IV

UNLV starting quarterback Matthew Sluka has made waves by deciding to redshirt the remainder of the 2024 college football season and leave the team, citing unmet promises regarding his Name, Image, and Likeness (NIL) compensation. Sluka, who transferred from Holy Cross to the University of Nevada, Las Vegas, led the Rebels to their first 3-0 start in 40 years before announcing his decision to step away. According to Sluka, financial commitments made during his recruitment were not upheld, sparking controversy over the lack of formal agreements in the NIL landscape. While UNLV claims no formal contract was in place beyond a $3,000 relocation stipend, his representatives argue that a verbal promise of $100,000 was made. This situation is drawing attention not only for its impact on UNLV's season, but also for its broader implications in college football, where disputes over NIL agreements are becoming more common. This article will break down the details of Sluka's decision, explore precedent in this area, and examine how this move could shape the future of NIL in college athletics.

The Fallout

After transferring to UNLV from Holy Cross for the 2024 season, Sluka was expected to be a key player for the Rebels, helping lead the team to an impressive 3-0 start, which included wins over Big 12 opponents Houston and Kansas. However, Sluka announced that he would redshirt the remainder of the season and leave the team, following a dispute over NIL compensation. His representatives claim that an assistant coach verbally guaranteed him a $100,000 NIL deal, though he only received a $3,000 relocation stipend upon joining the program. UNLV has since denied the existence of any formal agreement for the larger sum.

This situation is emblematic of the growing challenges surrounding NIL deals in college athletics. Since the NCAA began allowing student-athletes to profit from their name, image, and likeness in 2021, there has been little regulation or oversight in how these agreements are structured and enforced. In Sluka's case, the lack of a written contract led to conflicting accounts between his representatives and UNLV's athletic department, raising concerns about the accountability of verbal promises in the NIL era. UNLV maintains that Sluka's demands for further compensation violated the NCAA's "pay-for-play" rules and Nevada state law, while Sluka's side insists they were merely seeking the fulfillment of what was initially promised.

Ultimately, Sluka chose to redshirt, preserving his final year of eligibility, and leave the UNLV program. His decision allows him to explore other opportunities, likely through the NCAA transfer portal, once it opens in December. By taking this route, Sluka not only steps away from the team midseason but also sends a clear message about the importance of upholding NIL agreements. This unprecedented move by a starting quarterback midseason has drawn national attention, with many viewing it as a sign of potential changes and challenges ahead for college football in the NIL landscape.

Precedent for NIL Disputes

The controversy surrounding Matthew Sluka's departure from UNLV is not the first time an NIL agreement has led to a public breakdown between a player and a university. A notable precedent occurred in 2023 when former high-profile recruit Jaden Rashada found himself in a similar dispute with the University of Florida. Rashada, a highly touted quarterback, had initially committed to the Gators after reportedly being promised a massive NIL deal worth $13 million. However, when the deal collapsed and the promised money wasn't delivered, Rashada requested a release from his letter of intent, ultimately transferring to Arizona State. The situation sparked widespread discussions about the need for greater regulation and oversight of NIL agreements in college sports, highlighting the vulnerability of verbal promises and the potential for conflict when those promises go unfulfilled.

Rashada's case, much like Sluka's, points to the growing tension between athletes and institutions in the NIL era. Both situations reveal the lack of formal contracts and legal frameworks that protect players from broken agreements, leaving them with limited recourse when promises are not honored. While NIL was intended to empower student-athletes and allow them to profit from their own brand, the lack of oversight has created a "wild west" atmosphere where deals can easily collapse, as seen with Rashada and now Sluka.

Copyright © 2024 Hackney Publications. All rights reserved.

These high-profile cases have prompted calls for stricter rules, including mandatory formal contracts and legal protections for student-athletes entering NIL deals.

Loopholes and Vulnerabilities

NIL deals today are largely informal because NCAA rules prevent schools from directly offering players compensation contracts. Instead, third-party collectives, which operate separately from the schools, oversee these agreements. These collectives often rely on verbal promises or informal arrangements, which don't offer the same level of protection as formal contracts. As a result, athletes may not receive the compensation they were promised, leading to disputes like Matthew Sluka's.

Since schools cannot directly handle NIL deals, players have limited options when these promises aren't upheld. Without formal contracts in place, athletes like Sluka and Jaden Rashada have little legal recourse if they don't receive the agreed-upon compensation. This creates uncertainty for student-athletes, who must rely on the word of collectives without binding agreements. As NIL continues to evolve, many are pushing for clearer regulations and stronger protections to safeguard players from these risks.

Redshirting: A Tool for NIL Negotiations

Looking to the future, the redshirt rule may increasingly become a tactical advantage for athletes navigating NIL disputes. Matthew Sluka's decision to redshirt and leave UNLV has set a new precedent for how players can protect their eligibility while negotiating or contesting NIL agreements. By sitting out midseason, athletes like Sluka can maintain their leverage without losing a year of eligibility, signaling a shift in how athletes manage their NIL contracts and team commitments.

As this tactic becomes more common, schools and NIL collectives will likely face growing pressure to deliver on their promises or risk losing key players at critical moments in the season. The ability to redshirt and transfer gives athletes considerable control, pressuring programs to meet their NIL commitments to retain talent. Without stronger protections and formal agreements in place, this emerging trend could disrupt the stability of teams and further complicate the already unpredictable nature of college athletics.

The Sluka situation reflects a broader transformation in college football, where athletes are gaining more control over their futures. With the use of redshirting as a strategic tool, it becomes even more important for schools, collectives, and governing bodies to formalize NIL agreements and provide clearer protections. As these dynamics evolve, both players and institutions will need to adapt to ensure a more balanced and secure environment in college football's rapidly changing landscape.

Joseph M. Ricco IV is a junior Sport Management and Government double major at the University of Texas at Austin. Joseph is actively involved as a Texas Longhorns Football Recruiting Operations Intern and currently works with Pro Football Focus as a Data Collector. He also has experience as a Training Camp Operations Intern with the Kansas City Chiefs. Joseph aims to leverage his sports management and legal knowledge to pursue a career in football administration.

References

Henderson, B. (2024, September 25). As Matthew Sluka proves, Jaden Rashada was the first but not the last bad nil deal. Hail Florida Hail. **https://hailfloridahail.com/posts/as-matthew-sluka-proves-jaden-rashada-was-the-first-but-not-the-last-bad-nil-deal-01j8n0bqjgpq**

Hughes, G. (2024, September 25). UNLV QB Matthew Sluka's intention to redshirt, enter transfer portal draws cries for Nil Reform. 247Sports. **https://247sports.com/longformarticle/unlv-qb-matthew-slukas-intention-to-redshirt-enter-transfer-portal-draws-cries-for-nil-reform-236881072/**

Hummer, C. (2024, September 25). UNLV QB Matthew Sluka's sudden redshirt, intent to enter transfer portal is a major shift in college football. 247Sports. **https://247sports.com/article/unlv-qb-matthew-slukas-sudden-redshirt-intent-to-enter-transfer-portal-is-a-major-shift-in-college-football-236883533/**

Kelly, D. (2024, September 25). UNLV QB Matthew Sluka's Nil Holdout: A new trend in college football? DraftKings Network. **https://dknetwork.draftkings.com/2024/09/25/jason-fitz-gojo-golic-unlv-qb-matthew-sluka-redshirt-nil-compensation/**

Leuzzi, J. (2024, September 25). UNLV athletics issues statement after Matthew Sluka opts to redshirt remainder of season. USA Today. **https://www.usatoday.com/story/sports/ncaaf/2024/09/25/matthew-sluka-unlv-statement-rebels-football-nil-dispute/75380961007/**

Morales, A., Ubben, D., & Hamilton, B. (2024, September 25). After 3-0 start, UNLV QB Matthew Sluka to sit rest of season over nil payment dispute. The New York Times. **https://www.nytimes.com/athletic/5793011/2024/09/25/matthew-sluka-unlv-redshirting/**

Olson, M. (2024, September 25). QB Matthew Sluka leaving UNLV: What we know and what's next. ESPN. **https://www.espn.com/college-football/story/_/id/41438443/qb-matthew-sluka-unlv-rebels-nil-dispute-next**

Schoen, D. (2024, September 25). UNLV QB's decision to redshirt over nil dispute could set trend. Las Vegas Review-Journal. **https://**

Copyright © 2024 Hackney Publications. All rights reserved.

www.reviewjournal.com/sports/unlv/unlv-football/unlv-qbs-decision-to-redshirt-over-nil-dispute-appears-unprecedented-3176876/?utm_campaign=widget&utm_medium=latest&utm_source=post_3171075&utm_term=UNLV+QB%E2%80%99s+decision+to+redshirt+over+NIL+dispute+appears+unprecedented

Sports, F. (2024, September 25). Why is UNLV QB's decision to redshirt a big deal? here's what you need to know. FOX Sports. https://www.foxsports.com/stories/college-football/why-unlv-qbs-decision-transfer-big-deal-need-to-know

Vessels, C. (2024, September 25). Scott Van Pelt on Matthew Sluka, nil promises: "there are no cops to enforce rules which don't exist." On3. https://www.on3.com/nil/news/scott-van-pelt-on-matthew-sluka-nil-promises-there-are-no-cops-to-enforce-rules-which-dont-exist/

Return to Table of Contents

Trouble in The Beautiful Game – The New FIFA Club World Cup 2025

By John T. Wendt, J.D., M.A., Professor Emeritus, Ethics and Business Law, University of St. Thomas

The Fédération Internationale des Associations de Footballeurs Professionnels (FIFPRO) is the multi-national soccer players' union. As FIFPRO states, they actively work "to ensure players have basic protections upheld across the institutions and governance mechanisms that steward the football industry. Players need, and are entitled to, the same human rights and good governance practices as any other member of society, and the same legal protections as any other employee. This includes the right to organise (sic) and to bargain collective agreements."[7] The Fédération Internationale de Football Association (FIFA) is the international governing body for soccer and "FIFA exists to govern football and to develop the game around the world."[8] At times the two organizations can work harmoniously. As with other organizations, there is tension and conflict. This tension has come to the forefront as FIFA has decided to add a new 29 day, 32-club competition in the USA entitled "FIFA Club World Cup 2025" onto the end of the 2024-25 soccer season.

To illustrate how brutal the proposed soccer schedule will be, the Premier League season will conclude on May 25, 2025. Then, the UEFA Champions League Final will take place in Munich, Germany a week later on May 31, 2025. Then, there is the UEFA Nations League Final that runs from June 2 to June 10, 2025. Then finally, the newly proposed expanded FIFA Club World Cup that starts just four days later in the USA and runs from June 14 to July 13, 2025. On top of this schedule all players may also have club commitments which could include the FA Community Shield game at Wembley that showcases the winners of the Premier League and the winners of the FA Cup. And then, the Premier League starts again in mid-August.9

FIFPRO is now involved in litigation against FIFA. The fight may not necessarily be about the new Club World Cup 2025 itself, but rather the cumulative effect of additional matches. As FIFPRO also states, "Our work is driven by the workforce priorities of players and, along with our member unions and partners, we strive to improve a player's working environment and overall wellbeing."10 With the addition of the new event there is little to no recovery time.

On June 13, 2024, the players' unions from England, Professional Footballers Association (PFA), Italy, Associazione Italiana Calciatori (AIC) and France, Union Nationale des Footballeurs Professionnel (UNFP) supported by FIFPRO Europe filed a complaint in the Brussels Court of Commerce that challenged the legality of FIFA's decision to unilaterally create and schedule the FIFA World Cup 2025. The complaint alleges that the rights of players are being violated under European laws after FIFA unilaterally added a new competition in the USA. The plaintiffs were asking for the case to be referred to the European Court of Justice.

PFA chief executive Maheta Molango said, "Everyone across football knows that the fixture calendar is broken to the point that it has now become unworkable…The most in-demand players are now part of an endless schedule of games and competitions for club and country, with their limits constantly being pushed through expansion and the creation of new competitions. I am constantly told by those members that what they want is a properly protected break where they can rest and recharge."11

7 Fédération Internationale des Associations de Footballeurs Professionnels, *FIFPRO: Football Players Worldwide,* FIFPRO (2024), https://fifpro.org/en/who-we-are (last visited Sep 24, 2024).

8 Fédération Internationale de Football Association, *Inside FIFA*, (2024), https://inside.fifa.com (last visited Sep 24, 2024).

9 Professional Footballers' Association, *PFA Joins Legal Case Against FIFA*, (2024), https://www.thepfa.com/news/2024/6/13/pfa-joins-legal-case-against-fifa (last visited Sep 16, 2024).

10 Fédération Internationale des Associations de Footballeurs Professionnels, *supra* note 1.

11 Philip Buckingham, *Player Unions Begin Legal Action against FIFA*

Copyright © 2024 Hackney Publications. All rights reserved.

The English Professional Footballers Association (PFA), the Italian players' union (AIC) and their French counterparts, the Union Nationale des Footballeurs Professionnels (UNFP), are claiming that a new competition in the United States right after the end of the 2024-25 season violates the rights of players under European Union (EU) laws. The unions and players have for many years argued that the current soccer schedule is already overloaded.

The unions and players are arguing that Articles 5, 15, 28 and 31 of the EU Charter of Fundamental Rights guarantee workers and trade unions various fundamental rights including the prohibition of forced or compulsory labor, freedom of work, the right to negotiate and conclude collective agreements, the right to healthy working conditions and the right to an annual period of paid leave.

On July 23, 2024, the European Leagues and FIFPRO Europe announced that they would jointly file a formal complaint to the European Commission against FIFA on competition law grounds regarding the international match calendar. The complaint alleges that FIFA's conduct constitutes an abuse of dominance.12 On July 23, 2024, England's Premier League and Spain's Liga joined the complaint,13 which was referred to the European Court of Justice asking that the Court look at four questions:

- Whether the rights guaranteed to workers and their trade unions by the EU Charter of Rights prohibit FIFA from scheduling the new Club World Cup 2025 at a time that has traditionally been an annual break and against the formal objections of player/worker unions.
- Whether FIFA's unilateral decision infringes the rights under Article 28 of the Charter for players to collectively bargain over their terms and conditions of employment.
- Whether FIFA's unilateral decision to implement the new Club World Cup 2025 imposing significant additional workload violates Article 28 guaranteeing the right to healthy working conditions.
- Whether FIFA's unilateral decision regarding the Calendar and the new Club World Cup 2025 is a "restriction of competition" pursuant to article 101 of the Treaty on the Functioning of the European Union.14

FIFA responded by saying that the decision to add the new Club World Cup 2025 was not decided unilaterally and FIFPRO was consulted and involved in the decision.15 FIFA also said in a statement that, "Some leagues in Europe – themselves competition organisers (sic) and regulators – are acting with commercial self-interest, hypocrisy, and without consideration to everyone else in the world. Those leagues apparently prefer a calendar filled with friendlies and summer tours, often involving extensive global travel. By contrast, FIFA must protect the overall interests of world football, including the protection of players, everywhere and at all levels of the game."16

On top of all this, FIFA has several problems before the 2025 Club World Cup. On September 19, 2024, FIFA president Gianni Infantino called an emergency briefing as FIFA has failed to announce a single broadcast deal for the new tournament. The Clubs who are supposed to compete have yet to be told the amounts of participation or prize money. And FIFA has not announced the sponsors, venues, training bases or even broadcasters.17

over Club World Cup Schedule, The New York Times, Jun. 13, 2024, https://www.nytimes.com/athletic/5560886/2024/06/13/pfa-fifpro-fifa-legal-action/ (last visited Sep 16, 2024).

12 FIFPRO World Players' Union, *European Leagues and FIFPRO Europe to File Joint Complaint to European Commission against FIFA Regarding International Match Calendar - FIFPRO World Players' Union*, FIFPRO (2024), https://www.fifpro.org/en/who-we-are/what-we-do/foundations-of-work/european-leagues-and-fifpro-europe-to-file-joint-complaint-to-european-commission-against-fifa-regarding-international-match-calendar (last visited Sep 11, 2024).

13 Colin Millar, *Premier League Joins Legal Action over 'beyond Saturated' FIFA Calendar*, The New York Times, Jul. 23, 2024, https://www.nytimes.com/athletic/5652381/2024/07/23/premier-league-legal-action-fifa-calendar/ (last visited Sep 11, 2024).

14 FIFPRO World Players' Union, *FIFPRO Europe Statement: Legal Claim against FIFA*, FIFPRO (2024), https://www.fifpro.org/en/supporting-players/health-and-performance/player-workload/fifpro-europe-statement-legal-claim-against-fifa (last visited Sep 11, 2024).

15 Alex Donaldson, *FIFPRO, European Leagues Take Legal Action against FIFA over Calendar*, Sportcal (Jul. 23, 2024), https://www.sportcal.com/news/fifpro-european-leagues-take-legal-action-against-fifa-over-calendar/ (last visited Sep 11, 2024).

16 Mark Ogden, *Could Star Players Really Go on Strike over Football's Packed Schedule?*, ESPN.com (2024), https://www.espn.com/soccer/story/_/id/41339843 (last visited Sep 25, 2024).

17 Adam Crafton, *Infantino Calls Emergency Meeting with Broadcasters over Lack of FIFA Club World Cup Deal,* The New York Times, Sep. 19, 2024, https://www.nytimes.com/athletic/5779549/2024/09/19/fifa-club-world-cup-broadcast-rights/ (last visited Sep 25, 2024).

Copyright © 2024 Hackney Publications. All rights reserved.

One of the biggest supporters of soccer in the United States is CBS Sports which paid $1.5 billion for the six-year rights to broadcast UEFA competitions, including the Champions League, Europa League and Conference League, the Italian Serie A and English Football League. CBS CEO was asked about their possible coverage of the Club World Cup 2025. Berson responded by saying, "We will look at all the properties that come up. I'm not trying to avoid it, but it's going to be on a case-by-case basis on the value of that. The reality is we now have marquee European football content almost all year long. So we have to see what the incremental value is for that period of time…So we are determining whether or not the incremental content that you're referring to would be worthwhile and add value. But we're thrilled with the portfolio that we have."18

Hopefully both sides can come to some agreement and soon. BBC soccer reporter Nick Mashiter called the union and players' actions as "the nuclear option. It is the red button the unions and leagues hoped not to press but they feel they have been left with no alternative."19 Time is of the essence as the proposed new competition is less than nine months away.

Return to Table of Contents

SLA President Elect Chris McCleary, GC of the U.S. Olympic and Paralympic Committee, Shares Insights

A seasoned leader, legal advisor, and guide with broad experience across a range of business and legal disciplines in U.S. and international matters, Chris McCleary will become president in 2025 of the Sports Lawyers Association, the preeminent organization for the sports lawyer profession.

To learn more about his background and plans for the new role, we sought him out for the following interview.

Question: How did you get your start in sports law/ What was your big break?

Answer: In law school I just couldn't see how I would ever become one of those Cool Sports Lawyers who'd visit once in a while. Then after a bit of big law firm time (where I frankly was not killing it) I weaseled my way into a junior attorney position at Visa, pitching myself as an advertising & marketing lawyer. Yeah, right! To this day I don't know why then Visa USA General Counsel Paul Allen took a chance on me. But once onboard I endlessly chased the Cool Sports Sponsorship people at Visa, trying to be so available and hard working that they couldn't resist throwing me a bit of work here and there. Over time at Visa my responsibilities changed and morphed but the one thing I just would NOT let go of was our sport work, including Olympics and Paralympics. When a random chance opened up at USOPC, where I could make Team USA my whole day rather than just my favorite part of the day, I grabbed it!

Q: How would you describe your role with the USOPC?

A: I came to the Olympic & Paralympic community to strengthen and head up our legal team, and stayed to lead our "back of house" operations division more broadly – legal, compliance, finance, IT, facilities, events. USOPC is the Team Behind the Team for Team USA, and the Operations Division is the Team Behind the Team Behind the Team. Most of all I value and feel honored to serve as part of a USOPC leadership team that's been able to transform our organization and the ways we support Team USA athletes.

Q: How long have you been involved with SLA?

A: I've been a fan and conference attendee going back 20 years anyway! Got involved in a bit of committee work and ultimately joined the board in 2020.

Q: What is the best aspects of the SLA?

A: I know this sounds obvious, but it's the membership. What a group of people to connect with, learn from, help out, have fun with.

There just isn't anything like it for sports law, anywhere in the world. From the members comes everything else good: Content, thought leader- ship, real impact for people at all stages of their careers. SLA is truly my favorite professional group.

Q: Why did you decide to join the board and pursue the officer track?

18 *Id.*

19 Nick Mashiter, *Fifa: European Leagues & Fifpro Take Legal Action over "Abuse of Dominance*," BBC Sport (2024), https://www.bbc.com/sport/football/articles/cye0148e10go (last visited Sep 11, 2024).

Copyright © 2024 Hackney Publications. All rights reserved.

A: The more I've see of what SLA has done for me and others in our careers, the more mindful I've been that it's got to be a two-way street. My focus in recent years has been more and more on Who's Next? Who are our next sport lawyers, sport law leaders, role models? Working with and for the SLA board is my chance to help SLA continue to be a great resource for them and continue to make our community stronger, more diverse, and more dynamic.

Q: In what areas do you feel like you can have the most impact with the SLA and why?

A: Without getting into the weeds too much, in the next couple of years I'd love it if we can (i) further sharpen the professional benefits and the fun of SLA membership for an ever larger and more diverse group of people; (ii) feature SLA committees as the places where particularly dynamic and impactful SLA members can find the most engagement and impact for themselves and their colleagues; and (iii) make sure SLA board service, for those members ready and able to make that further commitment of time and energy, allows sport law leaders to truly lead our com- munity to new heights and have the kind of experience that makes it all worthwhile.

Return to Table of Contents

PGA Decision on LIV Golfers Likely Lies in Antitrust Law, Not Magnanimity

By Christopher R. Deubert, Senior Writer

The PGA of America recently announced that LIV Golfers would be eligible for the PGA Championship and the Ryder Cup. The organization described the decision as designed "[t]o ensure the PGA Championship will continue to deliver the strongest field in golf and that the U.S. Ryder Cup team will continue to have access to the best American players." Not mentioned was the fact that a decision to ban the LIV Golfers might have violated antitrust law.

The (Dis)organization of Golf

To evaluate the legal considerations associated with the PGA of America's decision-making, it is important to understand the ways in which professional golf is organized – and the ways in which it is not. The PGA Tour has for decades been the leading tour and organizer of professional golf events in North America, if not the world. It does not, however, organize any of the four major golf tournaments.

The Masters is run by Augusta National Golf Club, the U.S. Open is put on by the United States Golf Association (USGA), the PGA Championship is conducted by the PGA of America, and the (British) Open Championship is hosted by the Royal and Ancient Golf Club of St. Andrews (R&A) based in the U.K. The PGA of America, a membership organization of golf professionals, also operates the Ryder Cup. Instead, the PGA Tour's marquee event is the Tour Championship, which concludes the Tour's FedEx Cup Playoffs.

Antitrust Law

The multiplicity of actors in professional golf creates interesting antitrust considerations. Specifically, Section 1 of the Sherman Act prohibits unreasonable restraints of trade among two or more parties. Antitrust lawsuits are particularly concerning to defendants because the law allows for triple damages and attorneys' fees, as well as the possibility of a court order prohibiting certain practices or policies.

Athletes in the major American professional sports leagues have brought many lawsuits over the years alleging that restraints on the player labor market agreed upon by the clubs within a league (such as drafts, salary caps, and free agency restrictions) violated antitrust law. Those lawsuits achieved substantial success in the 1970s and 80s, forcing the leagues to collectively bargain with the players unions over such issues.

While professional golfers are independent contractors and not employees of the PGA Tour or any of the other organizations, there is still a market for their services. Indeed, the emergence of LIV Golf has continuously shown that there is a competitive market for the services of professional golfers. LIV Golf has paid a lengthy roster of golfers tens or hundreds of millions of dollars to leave the PGA Tour.

The Legal Challenges and Issues

The PGA Tour suspended its members who defected to LIV Golf. Those golfers, led by Phil Mickelson, filed an antitrust lawsuit against the PGA Tour alleging that it had conspired with the DP World Tour, aka the European Tour, to prohibit them from playing on those tours. In antitrust parlance, the golfers alleged they had

Copyright © 2024 Hackney Publications. All rights reserved.

been subjected to an illegal group boycott, an agreement among competitors to exclude or refuse to deal with certain market participants.

A federal court denied the golfers' request for a preliminary injunction against the suspensions. Citing the large payments the golfers received to switch to LIV Golf, the court held that there was no evidence that the golfers had been harmed. Moreover, the court was inclined to defer to the PGA Tour's interpretation and application of its own rules in suspending the players.

The golfers' initial loss contributed to the eventual agreed upon but still unclear financial relationship between the PGA Tour and LIV Golf. As part of that preliminary agreement, the golfers agreed to drop the lawsuit.

Nevertheless, there have been ongoing concerns about the degree to which the different professional golf organizations may be coordinating efforts to penalize or exclude LIV Golfers. Such efforts could run afoul of antitrust law.

Likely in light of these concerns, in February 2023, the R&A announced that LIV Golfers could play in the Open Championship.

Then, as part of the golfers' lawsuit against the PGA Tour, they sought communications between the PGA Tour and Augusta National. The golfers' hope was to be able to find evidence that the two separate organizations were acting in concert to exclude LIV Golfers from the Masters. Nevertheless, the court denied the golfers' request.

Finally, Rory McIlroy recently revealed his understanding that the U.S. Department of Justice, responsible for enforcing antitrust law, has been an impediment to finalizing the PGA Tour-LIV Golf arrangement. Indeed, Congressional intervention was necessary for the 1966 merger between the NFL and AFL.

The PGA's Decision

As it said in its statement, the PGA of America has let LIV Golfers play in the PGA Championship the last two years and Brooks Koepka, a LIV Golfer and three-time PGA Championship winner, was a member of the United States' 2023 Ryder Cup team. The PGA suggests these policies – and their continuation – are in the best interests of golf, and American golf in particular.

The truth is almost certainly murkier – and covered in a layer of legal opinion. If the PGA were to have prohibited LIV Golfers from its events, an antitrust lawsuit may have only been a putt away.

Deubert is Senior Counsel at Constangy, Brooks, Smith & Prophete LLP

Return to Table of Contents

Sports Law Expert Podcast Features Daniel Wallach, 'Nation's Preeminent Sports Betting Attorney'

Hackney Publications (HP) has announced that Daniel Wallach, founder of Wallach Legal (https://sportsgaminglaw.com/), has been interviewed on the Sports Law Expert Podcast. The segment can be heard **here**.

Wallach is well-known in the sports industry as one of the foremost legal authorities in the country when it comes to sports betting legal issues. His firm Wallach Legal LLC is focused exclusively on this burgeoning field.

"Dan is the nation's preeminent sports betting attorney," said Holt Hackney, the CEO of Hackney Publications. "He is enlisted by professional sports teams, sports betting operators, fantasy sports companies, casinos, racetracks, skill-based gaming operators, video game developers, gaming vendors, sports integrity firms, sports data providers, peer-to-peer platforms, and startups to navigate the rapidly changing climate in this space."

Wallach discusses legal trends in sports betting in the podcast, as well as recognizes those who have been instrumental in paving the way for his success, like University of New Hampshire Sports Law Professor and Journalist Michael McCann, as well as those attorneys with whom he works closely in the profession, like Dan Lust of Moritt Hock & Hamroff

Among his many qualifications, Wallach is a general member of the prestigious **International Masters of Gaming Law** (IMGL), an invitation-only organization for attorneys who have distinguished themselves through demonstrated performance and publishing in gaming law, significant gaming clientele and substantial participation in the gaming industry.

Wallach was recently named one of the "Top 100 Most Influential Figures in the US iGaming Industry" by US iGaming Hub. As described in the

Copyright © 2024 Hackney Publications. All rights reserved.

accompanying article, "[w]hat sets Wallach apart is his hands-on role in shaping some of the most significant developments in U.S. sports betting. His testimony was a game-changer in New York, helping to unlock the door to what would become the largest legal sports betting market in the country. In Florida, he's been a critical voice in challenging the legality of the Seminole Tribe's gaming compact, pushing the conversation on how state and federal laws intersect in the world of sports betting."

In recognition of his efforts and continued influence in the nationwide sports betting industry, PoliticsNY named Wallach to their first-ever "Sports Betting Power Players" list, which recognizes those "who have worked both behind the scenes and at the forefront to guarantee the industry's early success."

Wallach speaks regularly to lawmakers, regulators and stakeholders seeking guidance on sports betting legislation. He has testified before the California Legislature, the Connecticut General Assembly, the Kentucky General Assembly, and the New York Senate as a subject matter expert on legal issues related to sports betting. He was invaluable in the efforts to pass an online sports betting law in New York. His Senate testimony in May 2019 helped persuade lawmakers that an amendment to the New York State Constitution was not a prerequisite to the legalization of online sports betting in New York and that the Legislature could accomplish that objective through a purely statutory enactment. In part due to Wallach's crucial legislative testimony, online sports betting was finally approved in New York, creating the largest legal sports betting market in the United States with a record handle of nearly $2 billion in the first month alone.

In his home state of Florida, Wallach has blazed a path as one of the state's most visible and reputable gaming lawyers, especially proficient in Florida's laws and regulations surrounding pari-mutuel wagering, slot machine gaming, fantasy sports contests, and game promotions and sweepstakes. His reputation—both nationally and within the state—was such that he was asked by several Florida lawmakers and policymakers to draft key sections of a proposed Florida sports betting bill. He has advised multiple Florida professional sports teams on the legal landscape surrounding daily fantasy sports contests and Florida's game promotions statute. Wallach is the author of the most authoritative article on the legality of daily fantasy sports contests in Florida, and is considered a leading expert on the hotly-debated issue of whether Florida Amendment 3—which bars any non-voter-approved expansion of casino gambling—applies to sports wagering, having authored three articles (here, here and here) devoted to that important topic. he has worked with virtually every stakeholder group in the State of Florida.

Wallach is the co-founding director of the University of New Hampshire School of Law's Sports Wagering and Integrity Program, the nation's first law school certificate program dedicated to the regulatory and legal aspects of sports wagering law and related integrity issues. He is also an adjunct professor of law at the University of Miami School of Law, where he designed the nation's first law school course programs centered on sports betting law and regulation.

Prior to forming his own law firm in 2018, Wallach was a shareholder at Becker & Poliakoff, where he practiced for nearly 20 years, concentrating in business and appellate litigation and representing a variety of clients in the regulated gaming and sports betting industries. He is AV-Rated (the highest level attainable) by Martindale-Hubbell.

Return to Table of Contents

Seattle Sounders FC And Seattle Reign FC Name Christine Masse as Chief Legal Officer

Seattle Sounders FC and Seattle Reign FC announced today the appointment of Christine "Chris" Masse as Chief Legal Officer of the greater business enterprise representing both clubs. Masse brings 25 years of extensive legal experience to the Sounders and Reign, with deep-rooted expertise navigating transactions in a highly regulated environment.

Masse marks the second executive recruited to specifically work across the wider enterprise comprising both Sounders FC and Reign FC following the hire of Courtney Carter as Chief Revenue Officer this summer. The two clubs were joined earlier this year as part of blockbuster agreement between Sounders FC's ownership group and leading global investment firm

Copyright © 2024 Hackney Publications. All rights reserved.

Carlyle. Masse is set to drive all legal strategy that supports business objectives across the enterprise.

In her role, Masse is leading the clubs' in-house legal team, aligning the organization's legal strategies with its overarching mission, values and business goals. She will be responsible for ensuring legal compliance across all organizational and club operations, providing expert and tactical legal guidance to proactively manage risk and facilitate strategic business initiatives.

"Chris' exceptional leadership experience in legal and community affairs in the sports and entertainment space make her the ideal choice at an important time for the organization," said Sounders FC President of Business Operations Hugh Weber. "Her experience will be instrumental in guiding the Sounders and Reign in strategic growth areas. We are pleased to welcome Chris and her family into our organization."

Masse joins Sounders and Reign FC from Miller Nash LLP, where she practiced for 25 years, serving as a partner in the firm's Seattle office since 2007. With expertise in corporate governance, economic development, regulatory matters and government affairs, Masse co-chaired Miller Nash's tribal team, providing experienced counsel to Native American tribes and organizations on various economic development issues, including gaming, real estate, construction and more. She also chaired the firm's cannabis industry team, where she was a sought-after advisor in the constantly evolving matrix of state law and federal enforcement priorities, helping to shape the regulatory framework in Washington State.

Most recently, she was appointed co-chair of the Sports, Entertainment and Media team, providing legal advice to Seattle-area clubs and venues on a variety of operational matters and strategic efforts.

"As a longtime fan of both the Reign and Sounders, I'm thrilled to join the passionate executive leadership team that stewards these vibrant organizations," said Masse. "This is a unique opportunity to use my experience to help the enterprise navigate the evolving legal landscape during an exciting time for soccer in Seattle. As I look forward to being a part of building the legacies of these championship teams, I also want to thank my colleagues and clients for 25 wonderful years at Miller Nash. I'm grateful for their support as I move on to this new chapter."

Masse's expertise is in supporting complex and sophisticated legal landscapes. She has co-authored multiple Washington State House and Senate bills and has been recognized regionally and nationally for her work in gaming law, cannabis law and Native American law.

An Illinois native, Masse attended law school at the University of Washington and has been in the Seattle area since departing Montlake. She is a passionate soccer fan and former player. Additionally, Masse has been involved in the local youth soccer landscape, having coached Rocket 88, a boys' premier soccer team for the Woodland Soccer Club in Seattle from 2001-2007 and now cheering for her sons' Seattle United and Seattle Youth Soccer Association teams.

Return to Table of Contents

Shoshanna Engel Leaves Brown to Start Own Consultancy in Collegiate Athletics Space

Shoshanna Engel, former Assistant Vice President for Athletics and Recreation/SWA at Brown University and Past President of the National Association of Athletics Compliance, has started her own consulting firm – VH Consulting!

Engel, who possesses great expertise in strategy, organizational efficacy, governance, and leadership development, plans to "work with individuals and stakeholders across all levels of an organization."

She added: "We are shaped in incredible ways by our experiences that tie together the people we connect with and the places and spaces we occupy. I've experienced an embarrassment of riches in all of these categories, especially during my professional evolution. I pursued a career in college athletics because so much was right about my own experience, but I also saw opportunity and so much room to grow. Though scope, breadth, and depth of experience increase over time, I am proud that my why – to unlock opportunity at the magical intersection of higher education and sport – remains at the core of who I am and what I do. And now what I plan to do is help people and organizations solve complex problems, develop innovative strategies, and engage in meaningful leadership and thought partnership to navigate the future.

Copyright © 2024 Hackney Publications. All rights reserved.

"I owe a debt of gratitude to so many and over time I hope to spotlight some of those people, places, and spaces that continue to shape me. I am immensely grateful to those who've stamped my professional passport and especially to those who continue to pour into me, those that took a risk on me, and those that model what I do – and don't – want to be like when I grow up."

Engel Lewis joined Brown in July 2021 as Deputy Director of Athletics, Governance and Student Services/Senior Woman Administrator and was promoted a year later to Assistant Vice President for Athletics/ Senior Woman Administrator.

Previously, Brown worked at Georgia Tech, where she was associate vice president for athletics governance and inclusion, facilitating all athletics governance, ethics, and compliance, legal and diversity, equity, and inclusion efforts. She started at Georgia Tech in 2013 as its associate and senior associate athletics director for compliance. She became its first deputy Title IX coordinator for athletics from 2015 to 2020. She was also a member of the NCAA Interpretations Committee from 2015 to 2019.

Engel Lewis previously held positions at Yale University, North Carolina State University, the University of North Carolina, and Tulane University.

A graduate of Yale University, Engel Lewis was a standout Academic All-American gymnast for the Bulldogs. She graduated with a bachelor's degree in political science in 2003 and went on to earn a master's degree in sport administration from the University of North Carolina in 2007.

Return to Table of Contents

Sports Law Attorney Jeffrey Schlerf Joins Stinson in Tampa

Stinson LLP has announced the addition of Jeffrey Schlerf to the firm's Tampa office. Schlerf joins as of counsel in the firm's Bankruptcy & Creditors' Rights and Sports & Recreation practices. He also maintains an office in Wilmington, Delaware, to support work in that jurisdiction.

"Jeff is a fantastic addition to our bankruptcy practice," Stinson's Bankruptcy & Creditors' Rights Practice Division Chair Ed Caldie said. "His impressive track record in financial restructuring and corporate reorganization, paired with his unique and in-depth knowledge of the business of sports, brings an invaluable perspective to the firm."

Schlerf has a proven record of success advising on creditors' rights, financial restructuring and corporate reorganization matters for over 30 years. His diverse skill set has allowed him to effectively represent creditors, debtors, committees, trustees, purchasers and other parties in major U.S. restructurings, including those involving professional sports teams. Schlerf's extensive understanding of both the legal and business aspects of the sports industry enables him to provide clients with counsel on a range of issues that organizations face, including complex financial challenges and other business-related matters.

"The addition of Jeff reflects our ongoing commitment to strategic growth and expanding our capabilities not just in Florida, but in other markets, including through his continued work in Delaware," Stinson's Tampa Office Managing Partner Marc Weintraub said. "Jeff's extensive knowledge and experience providing comprehensive and insightful counsel will be instrumental as we continue to provide exceptional service to our clients."

During his career, Schlerf has been an equity partner and office practice leader at an AmLaw 100 firm and the chairman of another firm. In addition to his legal practice, Schlerf has been engaged in the community and his profession in various activities, including more recently serving as chair of the American Bar Association's Business Law Section's Sports Law Committee. He is also co-owner of a Minor League Baseball franchise and a William & Mary Law School adjunct professor.

Schlerf earned his J.D. from William & Mary and a master's degree in sports industry management from Georgetown University. He also earned a master's degree from the University of Delaware and an undergraduate degree from the University of Pennsylvania.

Return to Table of Contents

AI and Sports – Security vs. Privacy

By Jonathan Maddalone, of Baker & Hostetler LLP

With the United States preparing to host the 2026 FIFA World Cup, the 2028 Summer Olympics in Los Angeles and the 2034 Winter Olympics in Salt Lake

Copyright © 2024 Hackney Publications. All rights reserved.

City, the race is on for venues, individual states and the federal government to balance the increased security risks of exceptionally large crowds with the Fourth Amendment right to be free from unreasonable searches, the U.S. Foreign Intelligence Surveillance Act, and compliance with a variety of state data privacy and biometric security laws.

A widely covered feature of the 2024 Paris Summer Olympics was the French government's contracts with security companies to use AI-powered surveillance to provide real-time video analysis to detect potential threats in public spaces. This AI-powered surveillance uses algorithms to identify predetermined "events," and then sends alerts to human beings who decide if the alert is real and whether to act. These events can include crowds surging toward a gate, a person leaving a backpack on a street corner, certain traffic violations, and smoke or flames. Privacy advocates argue that the surveillance captures, collects and analyzes physiological features and behaviors of individuals, including their movements, gestures and more, which privacy advocates argue is problematic to the extent that this type of information could be considered personally identifiable information (PII).

The extent to which privacy laws are implicated will depend on how the AI-powered system functions, its purpose and the type of information it collects. Before implementing an AI-powered security system, it is important to consider how much and what type of data will be collected and analyzed to identify these events; what happens to and who has access to the data after it is collected; and how the AI-powered system addresses training data, error rates and evidence of bias.

A hotly debated topic concerning AI-powered systems is the use of facial recognition technology to enhance physical security. Navigating the compliance requirements under applicable biometric privacy laws and state comprehensive consumer privacy laws will be critical. For example, states like Illinois, Texas and Washington have implemented biometric privacy laws that may limit a party's ability to capture, collect or disclose biometric identifiers and/or biometric information without informed consent unless an exemption applies. At the same time, states across the U.S. have passed comprehensive consumer privacy laws that consider biometric information to be a form of "sensitive" information. Some of these states, including California and Utah, are set to host major sporting events such as FIFA World Cup matches and the Olympics, raising nuanced privacy considerations for the state and local governments as well as the venues.

Understanding exceptions to these laws and their applicability is also crucial. For example, California has an exception to the CCPA's regulations where service providers can retain, use, or disclose personal information obtained while protecting against fraudulent and illegal activity. Cal. Code Regs. Tit. 11, § 999.314. Meanwhile, Texas permits the disclosure of biometric identifiers if the disclosure is made by or to a law enforcement agency for a law enforcement purpose in response to a warrant. Tex. Bus. & Com. Code Ann. § 503.001(c)(1)(D).

The potential for AI-powered surveillance is seemingly endless; it can be used during concerts and sporting events as well as by cities in metro and train stations during heavy use periods. Because the question of whether PII is present in AI models is hotly debated, we expect privacy lawsuits involving these technologies as the law and technology continue to evolve.

Return to Table of Contents

Q&A with Concussion Expert Dr Alan Pearce About the Dangers of Concussion and Brain Injuries

Sporting organisations across the country and the world have began to implement concussion policies, along with a myriad of rules and regulations to ensure the effects of head injuries are mitigated.

Recently, the PFA has worked with Preston Lions to provide support for former Socceroo Warren Spink – who suffered a life altering brain injury playing for Australia in the 90s – raising money to help manage his wellbeing and financial situation. The two held a fundraiser last month at BT Connor Reserve, where a documentary about Spink was shown to help raise awareness of his condition, concussion, and head injuries.

The PFA have also enacted a number of initiatives on concussion and head trauma, **including an expert education program on how to respond to head injuries that's been developed in collaboration with FIFPRO for A-Leagues players**.

This includes a partnership with the Concussion Legacy Foundation Australia (CLFA), whose helpline is available to all PFA members who are struggling with the outcomes of repeated concussions, brain injuries, their

Copyright © 2024 Hackney Publications. All rights reserved.

lingering symptoms, and help those who are concerned about suspected CTE.

In order to continue bringing further awareness around the risks associated with concussions and brain injuries, the PFA posed a range of questions to Dr Alan Pearce – who works with both the CLFA and Australian Sports Brain Bank (another PFA partner).

Q: Are you able to provide a clear differentiation between a concussion and brain injury?

AP: When we think of "brain injuries", we tend to picture the individual who has had a moderate or severe brain injury that includes quite obvious signs where the skull has been fractured or that the individual has clear obvious injuries. Concussion on the other hand, is still a brain injury (it falls within the mild traumatic brain injury), but the signs and symptoms appear more subtle.

This doesn't mean that it is any less serious, indeed a concussion can be catastrophic, and for some people they may take months or years to recover.

Q: What are the main symptoms of a concussion/brain injury and how long does it take to properly evaluate?

AP: There is, what we call, a "constellation of signs and symptoms" associated with concussion. These can also differentiate quite significantly between individuals, so two people can be concussed and have vastly different symptoms. However, in saying that, more obvious signs and symptoms of concussion include confusion, dizziness, dazed, headaches, nausea and/or vomiting, lack of coordination, unaware of surroundings, blurred vision, slurred speech, difficulties in concentrating, being emotional (sad or crying), and fatigued.

Loss of consciousness (being 'knocked out' only occurs in about 10% of cases). However, it's important to note that these signs or symptoms need to be happening following an observed or suspected physical impact to the individual. Further, someone does not need a direct impact to the head to cause concussion.

A concussion can happen to someone who has had an impact to the body, with the force travelling to the brain tissue. Finally, a concussion is an 'evolving injury' a player may not show symptoms immediately, but could show signs 5, 10 or even 30 minutes after the collision. Therefore it is important with a suspected concussion to bring a player off and let them rest for 10 minutes prior to starting the assessment to ensure any symptoms masked by adrenaline may show up.

Q: What are some of the measures players can take when they feel they have sustained a concussion?

AP: This is a little tricky because in many situations a concussed player, being dazed and/or confused may not even realise that they are concussed. So we need team mates to look out for each other, and if a team mate (or opponent) is seen to be "not quite right" after a collision, then they should call for a trainer and get the player off the field to be assessed. Remember the lines "recognise and remove" and "if in doubt, sit it out".'

Watch FIFPRO's advice on concussion for footballers: ***watch***

Q: What needs to be done to provide greater education to football (soccer) teams to be prepared for instances where they may be a concussion or brain injury?

AP: Just like CPR, all soccer teams and clubs should have annual concussion education updates. This is to remind not only players, but coaches and officials what the signs and symptoms of concussion are, and what should be done. It could save a life.

Q: Do you think enough is being done in the football space when it comes to recovery and education?

AP: I think right across the board we can all improve when it comes to encouraging proper recovery after a concussion (do not be too quick to try and return to play). We need to have not only education but also a cultural change to concussion. We can no longer afford to accept that a concussion is a "badge of honour" to illustrate athletic toughness, or not disclosing having a concussion for fear of not being selected to play. As I have said in the Australian football (AFL) and rugby space, an extra couple of weeks recovery and rehabilitation, can extend a career by many years.

Q: Should teams (at an elite level) start to incorporate brain scans as part of their medical?

AP: This is an interesting question. Routine clinical brain scanning (i.e. MRI and CT) do not have the resolution to detect subtle changes in the brain following concussion or even repetitive physical trauma. There are more advanced techniques, but currently they are being used in an experimental setting until we can get more information on their clinical capacity. While brain scanning may not be quite ready as yet, all clubs can, as part of their preseason screening, include baseline data which could be as simple as doing some elements of the Sports Concussion

Copyright © 2024 Hackney Publications. All rights reserved.

Assessment Tool V6 (such as the working memory and concentration components).

Clubs should also try and actively reach out to a local medical practice and physiotherapy practice that could be their preferred medical/physio clinic for clearing players to return to contact training and matches.

Q: Is there a clear link between dementia/brain disease and professional footballers?

AP: We have seen over the years, starting with the late Jeff Astle [former English footballer], that there is a link between repetitive brain trauma exposure and risk of diseases including dementia, in particular chronic traumatic encephalopathy (CTE), but also Alzheimer's disease, motor neurone disease and parkinsonism.

However, while we need to be aware, we should not allow ourselves to be alarmed. We can reduce the risks quite significantly by reducing both exposure to repetitive physical trauma to the brain (through excessive heading of the ball), but also providing proper assessment and recovery/rehabilitation protocols following a concussion."

Q: What is CTE and how does CTE occur?

AP: CTE stands for chronic traumatic encephalopathy. It's a neurodegenerative disease that is linked to repetitive physical trauma to the brain. While the majority of cases that have been published have been in the football codes (American, Australian rules and rugby) there have been growing number of cases in soccer, including female soccer players recently published by Boston University.

CTE occurs when physical impacts to the brain release a protein called tau. In normal situations, tau helps maintain structural integrity of the brain cells (neurons) but when its released from repetitive physical trauma, it becomes toxic and kills the brain cells that then affect an individual's cognitive, behavioural, and movement functions and subsequently mental health.

Q: How much of an impact does heading the ball have?

AP: This is something we are still currently researching. The first study to really look at this was Dr Tom Di Virgilio from Stirling University who, in 2017, showed that after a series of repeated heading of the ball, as someone may do in practice, there were physiological changes in the brain, as well as temporary memory impairments, for 24 hours. Since then, there have been supporting studies leading to the IFAB trial to phase out heading at youth levels in some countries.

Return to Table of Contents

Gamers Say They Hate 'Smurfing,' But Admit They Do It -- Study Reveals Complexity Behind Some 'Toxic' Gaming Behaviors

Online video game players believe the behavior known as "smurfing" is generally wrong and toxic to the gaming community – but most admit to doing it and say some reasons make the behavior less blameworthy, new research finds.

The new study suggests that debates about toxicity in gaming may sometimes be more complex and nuanced than is often acknowledged, according to the researchers.

Online video games use what are called "matchmaking systems" to pair players based on skill. "Smurfing" is when players cheat these systems by creating new accounts so that they can play against people lower in skill.

The practice has become controversial in the gaming community, with some people defending it while others say it ruins the game.

This study suggests the practice is common, even though many players claim to hate it, said Charles Monge, lead author of the study and a doctoral student in communication at The Ohio State University.

"Gamers say they really don't like smurfing. They also say they do it, but they're not ruining games and they only do it for valid reasons," Monge said.

Monge conducted the study with Nicholas Matthews, assistant professor of communication at Ohio State. The research was published recently in the journal New Media & Society.

"Gamers put smurfing in the bad category, but bad has nuance," Matthews said. "It was really quite interesting to see people say they were being 'bad' by smurfing, but only a little – unlike others whose behavior was much worse."

The research started with a baseline study of 328 people from gaming-specific subreddits on the social media site reddit and a gaming club at Ohio State. Participants reported playing video games slightly more than 24 hours a week on average.

Copyright © 2024 Hackney Publications. All rights reserved.

Results showed that participants perceived smurfs as more likely than other players to be toxic – such as trolling and flaming the weaker players that they dominated.

But 69% reported that they smurfed at least sometimes, and 94% thought other people smurf sometimes. Still, relative to themselves, participants thought that other gamers were more likely to be toxic when they smurfed.

But the researchers were surprised by the responses they received when they asked participants at the end of the study if they had any comments.

"There was this outpouring of comments saying basically, 'Hey, I do smurf sometimes, but really it is not bad all the time,'" Monge said.

"It got us interested in trying to figure out more about what made smurfing OK in their minds and in what circumstances."

In a second study, the researchers aimed to explore how gamers determined blame for smurfers. They had 235 participants from reddit who were heavy gamers complete an online experiment where they evaluated smurfing in competitive team-based video games.

Participants were given various reasons for smurfing to evaluate. Some reasons were less blameworthy – such as wanting to play with friends who were less experienced at the game. Other reasons were more blameworthy – such as just wanting to "crush a bunch of [lesser skilled players]."

In some cases, the researchers tried to bias the judgments of participants by suggesting scenarios in which the reasons players gave for smurfing might be ignored.

In general, the study found that participants fairly evaluated people who smurfed based on the reasons they gave – and did not show strong evidence of bias in any scenario.

The response by participants in this study is in line with what scientists call the "socially regulated" perspective on blame, which suggests there can be some nuance, that there are reasons that can make an action more or less blameworthy.

That's not what the researchers thought would happen.

Based on what most online research predicts, the response the researchers expected is called a "motivated-blame perspective," and it considers what is blameworthy to be black and white, Matthews said.

"This perspective says if something is wrong, it doesn't matter your reason for doing it, it is always wrong."

Monge added: "The idea is that it shouldn't matter if you were just smurfing so you can play with your friends, you made me lose this game and now I am mad."

A third study involved a group of non-gamers, to see if they would have the same perspectives on blame even though they were not so invested in the importance of the games. It turns out they did – they also used the socially regulated perspective.

The issue of smurfing in the gaming community has only grown recently, the researchers said. Valve, the company behind the gaming platform Steam, banned 90,000 smurf accounts in their game DOTA2, publicly declaring that "smurfing is not welcome."

But this study makes it clear that many gamers may have a more complex relationship to smurfing and that saying it is not welcome may be an oversimplification for them, the researchers said.

The issues explored in this study may have broader applicability beyond gaming, the researchers explained.

"Games may offer a really potent tool to test things that are not about games," Monge said. "How we attribute blame in an online context may allow us to understand how people place blame more broadly."

Matthews added: "Social scientists can use virtual game environments to test human interactions at mass scale. We can understand people in these social contexts when usually the mind is a black box."

Return to Table of Contents

News Briefs

NFL Player Suspended for Potential Concussion-Producing Play

Derwin James Jr. of the Los Angeles Chargers has been suspended without pay for one game for repeated violations of playing rules intended to protect the health and safety of players, including during this Sunday's game against the Pittsburgh Steelers. NFL Vice President of Football Operations Jon Runyan issued the suspension for a violation of Rule 12, Section 2, Article

Copyright © 2024 Hackney Publications. All rights reserved.

10 (a) which states that "it is a foul if a player lowers his head and makes forcible contact with his helmet against an opponent." In a letter to James, Runyan, who noted that James has had multiple offenses for personal fouls in recent seasons, wrote: "*During the third quarter of Sunday's Chargers-Steelers game you were involved in a play that the League considers a serious violation of the playing rules. The video of the play shows that you lowered your head and made forcible contact to Steelers tight end, Pat Freiermuth. You had an unobstructed path to your opponent and the illegal contact could have been avoided. Your continued disregard for NFL playing rules will not be tolerated. Substantial penalties are warranted when players violate the rules intended to protect player safety on a repeated basis, particularly when the violations carry with them a significant risk of injury to an opposing player*."

Holland & Knight Advises Attain Sports in Acquiring Controlling Interest in Aberdeen IronBirds

Holland & Knight represented Attain Sports in its purchase of controlling interest in IB Professional Holdings, the owner of the Aberdeen IronBirds, Class A affiliate of the Baltimore Orioles, from Hall of Famer Cal Ripken Jr. and former Major League Baseball (MLB) veteran Bill Ripken. The deal was announced on October 1. Attain Sports is a sports team operator led by Greg Baroni, also owns the Bowie Baysox, Double-A affiliate of the Baltimore Orioles; the Frederick Keys, a collegiate summer baseball team of the MLB Draft League; the Spire City Ghost Hounds of the Atlantic League Professional Baseball; and the Loudon United Football Club of the United Soccer League. Holland & Knight led the acquisitions of these teams as well. The acquisition of IB Professional Holdings presents an opportunity to grow Attain Sports, which will "continue to deliver baseball as affordable entertainment with a commitment to community engagement, exceptional customer service and innovative experiences." The Ripkens will remain part of the ownership group. Holland & Knight Partners Adam August and Aaron Goldberg led the firm's representation of Attain Sports. They were assisted by Associates Brittany Cangelosi and Katya Mingov.

ABA Forum on the Entertainment & Sports Industries on November 14-16

The 2024 annual conference for the ABA Forum on the Entertainment & Sports Industries will be held November 14-16 in Las Vegas. Registration is now open.

The Forum – an ideal venue for lawyers in sports law, who passionate about staying current on legal issues, mentorship, and networking – features a theme of "Bright Lights, Big Opportunities… Best Bets in IP, Sports, and Entertainment Law."

The event will be held at the **Resorts World Las Vegas**, and feature more than 20 CLE panels, including the following sports-focused discussions:

- The Ace Up Your Sleeve: Legal Insights into Sports Analytics
- Sports Sponsorships: Trends, Key Considerations, and Legal Risks
- Collective Action: Unionization and Collective Bargaining in Sports that Traditionally Have Not Had Unions
- Showdown at the Coliseum: Considerations for Organizing Global Events
- Jackpot Strategies: Safeguarding Trade Secrets in Sports
- Renewed Challenges to Daily Fantasy Sports and Pick 'em Games
- Preparing a Game Plan: Incident Response and Preventing Corporate Crises for Sports & Entertainment Legal Teams
- Behind the Jersey: Sweating the Details of Sports IP Licensing

Register today at **https://lnkd.in/gaYAGZ54**

About the Forum

The Forum is the largest organized group dedicated to fostering excellence, collaboration, and innovation within the dynamic realms of entertainment and sports law. As the premier resource and community for legal professionals, the Forum offers unparalleled opportunities for education, networking, career and business development, market intelligence, and community engagement.

LinkedIn group: **https://lnkd.in/gM4KnUZw**

Copyright © 2024 Hackney Publications. All rights reserved.