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Cases

Judge Issues Critical Ruling in the University of Kentucky Title IX Athletics Case

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In a case involving a question of whether the University of Kentucky (UK) provided women athletes with equal access to varsity athletic opportunities compared to men athletes under Title IX of the Education Amendments of 1972, U.S. District Judge Karen Caldwell, of the Eastern District of Kentucky, ruled in favor of the University of Kentucky on October 28, 2024. According to Judge Caldwell, while UK did not offer proportional athletic opportunities for women athletes and has not had a history and continuing practice of expanding athletic opportunities for women

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athletes, the Plaintiffs were not able to prove that UK failed to effectively accommodate the interests and abilities of women athletes on the campus warranting expansion of the women's athletic program.

Background

As articulated in a policy interpretation addressing Title IX's application to athletic departments issued in 1979, the gender balance within varsity athletic opportunities sponsored by athletic departments is assessed using a three-part test with a provision that a school need meet only one part of the test to comply. The first part of the test, substantial proportionality, considers whether the proportion of athletic participation opportunities broken down by gender reflects the proportion of men and women within the undergraduate student population. In effect, if 50% of the undergraduate population is comprised of women and 50% of athletic opportunities are available to women, an athletic program meets the substantial proportionality standard. If a school offers women athletes disproportionally fewer athletic opportunities, the analysis turns to the second part, that being a history and continuing practice of program expansion. This effectively acknowledges that women athletes have disproportionally fewer opportunities, but the school can demonstrate that it has been working to remedy that gap by adding new women's teams and continually updating its program. Failing that, a school then must explain in response to the third part of the test that it has fully and effectively accommodated the interests and abilities of women athletes on its campus.

The Plaintiffs in this case, Elizabeth Niblock and Ala Hassan, on behalf of themselves individually and others similarly situated, argued that UK was not in compliance with any part of the three-part test. During the bench trial, UK's executive associate athletic director and legal counsel both conceded that the athletic program at Kentucky was not in compliance with the substantial proportionality standard. In point of fact, UK has always offered substantially fewer athletic opportunities to women than to men. Although the parties disputed what should be included in the analysis, with UK trying to reduce the proportionality gap by arguing that the sports of cheer, junior varsity soccer, and dance be included in the calculation, the shortfall in opportunities for women was still large and would have required adding, conservatively, 59 more opportunities for women athletes. Removing those three sports would have required as many as 116 additional opportunities for women athletes.

The University of Kentucky was unsuccessful in putting forward a record of actions to support a determination that it had a history and continuing practice of expanding opportunities for women athletes. Over the span of 10 years between 2012-2013 and 2022-2023, athletic opportunities for women fluctuated up and down. Further, at times when growth was recorded it was attributed to two things – the addition of women athletes to existing rosters and the decision to count women athletes in the sports of cheer and dance.

As noted in the ruling, counting junior varsity players was inappropriate because they do not have access to athletic scholarships, do not receive coaching from the head coach, and are not in a position to have a comparable experience compared to varsity athletes. Further, in the case of cheer and dance, Judge Caldwell noted that neither are sponsored by the NCAA; that cheer has failed to be recognized by the U.S. Department of Education; and that the Court could not find one case where cheer or dance were found to be recognized as varsity sports under Title IX. The Judge further considered the process UK used to add sports, noting inconsistencies in the deliberations done by UK's Sports Review Committee (SRC), and the narrow way in which the Committee used survey information to determine developing interests and abilities among women athletes. The Judge took issue with the fact that the Committee relied solely on the number of students who included contact information in their responses rather than taking into consideration women athletes

who reported that they had been recruited by other Division I institutions. In the case of the sport of equestrian, between 2019 and 2023 46 students expressed an interest with 28 of them having been recruited by a Division I program.

Having failed the first two parts of the test, the final consideration was whether UK was fully and effectively accommodating the interests and abilities of women athletes in a way that would warrant the addition of one or more sports. The Plaintiffs had sought consideration for at least one of three sports - equestrian, field hockey, or lacrosse - to be elevated to varsity status. The Plaintiffs were able to demonstrate that there was ample interest among women athletes on the UK campus in these sports based on the survey data. Between 2019 and 2023, women athletes expressing interest in equestrian (195 to 244); field hockey (44 to 72); and lacrosse (111 to 146).

However, when it came to proving that these women athletes could compete at a Division I varsity level, the finding went against the athletes for several reasons. First, while women athletes expressed their interest in these sports through the university's administered survey, many failed to leave contact information. UK administrators claimed that in the absence of being able to contact the athletes they were unable to assess their ability to compete at a Division I level. The records of the existing women's clubs in each of these sports were also used to undermine the Plaintiffs arguments. Judge Caldwell found that the Plaintiffs were tasked with demonstrating that the women athletes had "actual" interests and abilities to field a Division I varsity team, not a club team. As a result, they were not able to meet the standard of the third part of the test.

Conclusion

This ruling potentially puts women athletes in a difficult position to successfully argue that there is actual interest and ability to support a viable varsity team. The finding in favor of UK in this case ignores the structural impediments built into the club sport system that make it difficult to prove that women athletes in those circumstances can compete at the varsity level. It becomes a catch-22. There is no varsity option so interested women compete on the next best thing, a club team. However, when they seek varsity status, their club sport efforts are viewed as being diminished precisely because they are only competing on a club team. The circularity of that logic is problematic.

At a practical level, club teams do not have resources for recruiting, often club sport coaches are not full-time. Club teams are typically run by the athletes themselves, thus there is an additional burden of having to manage the team while competing and dealing with funding issues ordinarily handled by full time athletics administrators in a varsity program. There

is also something about this finding in terms of UK being able to passively claim that the failure on the part of the women athletes responding to the survey to share contact information prevented administrators from assessing their credentials seems disingenuous. UK claimed that it took several measures to make sure that students responded to the survey, putting holds on the ability of students to register for classes and sending out reminders to academic advisors to encourage students to complete the survey. The very fact that UK used its email system to contact students and impose those holds demonstrates there was capacity to contact the women athletes who may not have listed their contact information.

As discouraging as the ruling was for the Plaintiffs, in the case of the sport of equestrian, there were some glimmers of hope. First, the club equestrian team had a record of competing favorably at the national level. And Judge Caldwell wrote, "…the survey numbers indicating significant interest and self-reported ability to compete at the varsity level in the sport should motivate the committee (Sports Review Committee) to research the viability of a varsity hunt seat equestrian team…and should include measures of interest and ability beyond the survey" (p. 30).

References

Black, R., & Berkowitz, S. (2024, October 28). U.S. District Court ruling finds University of Kentucky in compliance with Title IX. *Courier Journal*.

Niblock et al., v. University of Kentucky, Mitch Barnhart, and Eli Capilouto (2024). Findings of Fact and Conclusions of Law. United States District Court Eastern District of Kentucky Central Division Lexington. Civil Action No. 5:19-394-KKC.

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Federal Judge Sides with University of Miami in Trademark Litigation

By Gary Chester, Senior Writer

About five years ago, The Bleacher Report compiled a list of the 50 best logos in sports, with the New York Yankees taking the top spot. The only colleges in the top ten were Notre Dame and Miami. Yes, the orange and green "U" of the Miami Hurricanes was rated above recognized trademarks such as Michigan's block "M," Alabama's fanciful "A," and Texas' longhorn silhouette. Perhaps that explains why a Florida sports footwear and apparel business used the derivative tradename "CANEUP" on its products, prompting a legal challenge by the University of Miami.

In *University of Miami v. Caneup LLC*, 2024 U.S. Dist. LEXIS 188057 (S.D. Fla. 2024), a federal magistrate considered trademark infringement claims and Miami's request for a permanent injunction and attorney's fees. At stake was a percentage of Miami's share of the $4.6 billion market for licensed collegiate products.

Caneup Enters the Market for Miami Merch

In or about 1965, the University used the "CANES" trademark in association with clothing, mugs, and other products to generate revenue for the school. About seven years later, Miami started to use an orange and green split "U" design mark, which became so popular that that University is often referred to as the "U." The University registered both marks with the United States Patent and Trademark Office (USPTO) in the 1990s.

In 2021, the defendant filed an application with the USPTO to register the word "CANEUP" for use on clothing and apparel. CANEUP LLC stated that it had used its mark in commerce since 2014. The mark was rendered in Miami's school colors, orange and green, and some of its merchandise used white, orange, and green in the "U," while the other letters of the marks were a solid color. Miami claimed that by emphasizing the "U" in the CANEUP mark in the exact colors as the University's colors, CANEUP LLC was "implying an association between its CANEUP Mark and the University that does not exist."

Miami further contended that the defendant's chief operating officer had admitted that he spent years developing the concept with the University of Miami in mind. Miami claimed that it had sent Caneup a cease-and-desist letter in 2023, but Caneup did not respond.

On October 6, 2023, the University filed a trademark infringement complaint against Caneup in the U.S. District Court for the Southern District of Florida. The University raised four claims, including trademark infringement in violation of Section 32 of the Trademark Act of 1946, 15 U.S.C. § 1114. When the University was unable to serve Caneup after eleven attempts, the

court permitted alternative service by email and certified mail. Caneup failed to respond, and Miami sought a default final judgment and a permanent injunction.

Were Consumers Likely to be Confused?

Pursuant to the law of the Eleventh Circuit, U.S. Magistrate Marty Fulgueira Elfenbein applied the same legal standard that is used in a defendant's motion to dismiss a complaint. The court recognized that a trademark infringement plaintiff "must show that it owns a valid trademark, that its mark has priority, that the defendant used such mark in commerce without the plaintiff's consent, and that the defendant's use is likely to cause consumer confusion as to the source, affiliation or sponsorship of its goods or services."

The most important of these requirements is the likelihood of consumer confusion. The court described seven factors for analysis: (1) the type of trademark; (2) the similarity of the marks; (3) the similarity of the products; (4) the similarity of the parties' retail outlets and purchasers; (5) the similarity of the advertising media used; (6) the defendant's intent; and (7) actual confusion. The weight given to each factor depends on the circumstances of a given case.

The court found that the University held valid common law and statutory trademark rights in the CANES and U marks, so their "validity is presumed." Since Miami had been using its marks for at least 34 years before the defendant started using the CANEUP mark, and because the University held registrations for its marks at least five years before the defendant filed to register the CANEUP mark, the University's marks had priority. The court further found that the defendant used the CANEUP mark in commerce without Miami's consent.

The magistrate then examined the critical issue of consumer confusion. The court found that the CANES mark did not bear a relationship to the product, which was an education at the University of Miami. This made the trademark fanciful or arbitrary, which is a stronger type of mark than descriptive or generic marks. It was also clear that the marks were similar because both featured the word "CANE" or the green and orange "U" design, which sports fans instantly associate with the University.

That the University's marks and the CANEUP mark are used on the same kind of products (clothing and apparel), available through the same retail outlets (websites), offered to the same purchasers, and advertised in the same way (online), also weighed in favor of the University's position. In addition, Caneup's own communications showing that it developed the Caneup mark with the University in mind was evidence of bad intent. Thus, six of the seven factors for consumer confusion were satisfied. Miami did not allege actual confusion, which is often demonstrated through consumer surveys.

Although actual confusion is a heavily weighted factor in determining whether the allegedly infringing mark is likely to cause consumer confusion, courts decide the issue based on the "circumstances surrounding each particular case." Since six factors in the University's favor outweighed the one factor in Caneup's favor, the court held that the CANEUP mark is likely to cause consumer confusion with the CANES mark. Since the "U" in the CANEUP mark resembled the split "U" mark, the court found that Caneup had also infringed Miami's split "U" mark.

The court also found that Miami's claims of unfair competition, false designation of origin, federal trademark dilution, and Florida common law trademark infringement were valid. The court proceeded to consider the University's request for a permanent injunction and attorneys' fees.

Did Miami suffer irreparable harm?

To obtain a permanent injunction, the University needed to show that it suffered irreparable harm, money damages would be inadequate, the balance of hardships favor awarding equitable relief, and a permanent injunction would not disserve the public interest. The trademark infringement by Caneup met the first requirement, and the second requirement was satisfied because the Eleventh Circuit has held that there is no adequate remedy at law for continuing infringement.

As to the balance of hardships, the University would stand to lose goodwill and reputation if consumers were dissatisfied with the quality of CANEUP products and associated them with the school. They "might stop purchasing the original product, which would leave the mark's owner at the mercy of the infringer because it had no control over the quality of the infringing product." Conversely, Caneup would suffer

a legitimate hardship through an injunction prohibiting the sale of products that it had no legal right to sell.

Finally, the Eleventh Circuit has explained that "the public deserves not be led astray" by inevitably confusing marks, which is why a "complete injunction" against an infringer is "the order of the day." Since the University satisfied all four requirements for a permanent injunction, the magistrate recommended that a permanent injunction be issued against Caneup prohibiting it from using the CANEUP mark.

As to attorney's fees, the court found that Caneup had not litigated the case in a manner that made it more difficult or expensive for the University, as other parties against whom attorney's fees have been awarded have done. In addition, since one of the most important factors in the likelihood of confusion analysis (actual confusion), favored Caneup, there was not a complete imbalance in the case to make it exceptional, as in Tobinick v. Novella, 884 F.3d 1110 (11th Cir. 2018) (fee award upheld in exceptionally vexatious case under the Lanham Act).

Magistrate Fulgueira Elfenbein's recommendations were submitted to Judge Jose E. Martinez, who ordered a final default judgment and a permanent injunction against Caneup on October 31, 2024.

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Ivy League Secures a Legal Victory in Antitrust Case

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

On March 7, 2023, Tamenang Choh, a former Brown University basketball player, together with current player Grace Kirk, filed a lawsuit in the U. S. District Court for the District of Connecticut claiming that the eight schools that make up the Ivy League engage in a conspiracy in violation of federal antitrust laws since they have chosen not to provide athletic scholarships to their Division I student-athletes.[1] Their lawsuit argued that restrictions imposed by the NCAA and its member intuitions, which the Ivy League is a part of, regarding college athletes' compensation have been deemed unfair and anticompetitive to those same athletes by various federal courts over the last fifteen years, while also highlighting the increased commercialization of the Ivy League over the past decades and the fact that its eight Ivy institutions have, collectively, over $170 billion in endowments.

In response, on May 15, 2023, the Ivy League schools, together with the League itself, filed a Motion to Dismiss any and all claims by the two named plaintiffs putting forth this simple proposition: it was their choice to attend an Ivy, they could have elected to attend any other elite non-Ivy League institution that would have offered them a student-athlete scholarship.

To bolster their position, the Ivy League and its schools also argued through its motion that "common sense and precedent confirm that a single athletic conference in the NCAA is not an antitrust market,"[2] and cites the district court's ruling in *Alston* that permitted individual conference-level compensation rules for student-athletes as determinative regarding this issue. The League commented that the "plaintiffs' anticompetitive claims are conclusory and speculative allegations of direct anticompetitive effects cannot save their claim,"[3] before continuing with the position that "The only direct effect they [the plaintiffs] allege is that the Ivy League does not offer athletic scholarships, and that this allegation is facially insufficient because it does not suggest market-wide harm (or any harm) to competition. Other schools in other conferences – including many academically selective schools that compete in Division I – offer athletic scholarships and the undergraduate athletic experience that comes along with those priorities. Student-athletes who prefer that option are free to choose it."[4]

This past October, Connecticut Federal Judge Alvin W. Thompson granted the defendants' Motion to Dismiss finding that "The deficiencies in the Complaint that are the basis for granting the motion to dismiss are substantive in nature, and nothing in the plaintiff's papers suggests that they could amend the Complaint to overcome these substantive deficiencies."[5]

1 Case 3:23-cv-00305 Document 1 Filed 03/07/2023.

2 Case 3:23-cv-00305 Document filed 05/15/2023.

3 Id.

4 Id.

5 2024 U.S. Dist. LEXIS 185260

The decision was based on Judge Thompson's belief that the plaintiff's lawsuit failed to adequately identify a relevant market for antitrust scrutiny, writing in his opinion that "The Complaint does not allege a per se antitrust violation, nor does it allege a restraint that violates the rule of reason. The Complaint fails to allege a restraint that violates the rule of reason because it does not allege any properly defined market, and consequently, it also fails to allege market-wide anticompetitive effects."[6] Judge Thompson additionally, in echoing the defendants' argument, stressed this point by highlighting the fact that while Ivy League schools offer "athletically and academically high-achieving students" the chance to graduate from an elite college and play Division I sports without providing athletic scholarships, other elite colleges and universities, i.e., Duke, Georgetown, Michigan, Notre Dame, Rice, Stanford, UNC Chapel Hill, Vanderbilt and Virginia, that are just as selective," [7] in fact do and that any student-athlete is free to choose one of these schools as an option over any Ivy League institution."

Judge Thompson went on to comment that although since 1954 when the eight schools that make up the Ivy League signed the "Ivy League Agreement" wherein agreeing amongst themselves that "The members of the Group reaffirm their prohibition of athletic scholarships. Athletes shall be admitted as students and shall be awarded financial aid only on the basis of economic need,"[8] they do, however, provide substantial aid—sometimes full rides—to their student-athletes.

It should be noted that Judge Thompson was appointed U. S. District Judge for the District of Connecticut on October 11, 1994, after receiving his Bachelor of Arts degree from Princeton University in 1975 and a Juris Doctor from Yale Law School in 1978. It is doubtful, however, that he played on a sport team for either of these two prestigious Ivy League institutions.

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6 2024 U.S. Dist. LEXIS 185260

7 Id.

8 Ivy Manual at p. 39 (quoting the 1954 Ivey League Agreement).

Passing Opinion or a Defamation Blitz? Analyzing *Favre v. Sharpe*

By Ben Coulthard

In *Favre v. Sharpe*,[9] a Fifth Circuit decision levied in September 2024 has affirmed a 2023 district court ruling from the Southern District of Mississippi.[10] The decision effectively dismisses a defamation suit by former Green Bay Packers quarterback Brett Favre against fellow NFL legend Shannon Sharpe.

Facts/Background

Favre, former quarterback for the University of Southern Mississippi and the Green Bay Packers, recently came under fire after allegedly committing financial improprieties.[11] The Mississippi native was connected to a scheme that misused government welfare funds. Favre reportedly received some of the misused funds.[12]

The first time any reports surfaced of such financial improprieties was in October 2021.[13] The Mississippi State Auditor's Office reportedly found that seventy-seven million dollars were illegally misused by various individuals across the state.[14] These funds were meant to be used for the federal Temporary Assistance for Needy Families (TANF) program, which provided financial support to low-income Mississippians.

In May 2022, the Mississippi Department of Human Services (MDHS) filed a civil suit against Favre and others to recover the missing funding. Six individuals have since pled guilty to state and federal felony charges related to their involvement. Favre, however, has not been criminally charged.

9 *Favre v. Sharpe*, 117 F.4th 342 (5th Cir. 2024) OR 2024 U.S. App. LEXIS 23519

10 *Favre v. Sharpe*, No. 2:23-cv-42-KS-MTP, 2023 U.S. Dist. LEXIS 193928 (S.D. Miss. Oct. 30, 2023).

11 Isabel Gonzalez and Steven Taranto, *Brett Favre scandal explained: Ex-NFL QB accused of misusing Mississippi state welfare funds*, CBS Sports (Aug. 10, 2023, 4:03 PM) https://www.cbssports.com/nfl/news/brett-favre-scandal-explained-ex-nfl-qb-is-accused-of-misusing-of-mississippi-state-welfare-funds/.

12 *Id.*

13 *Favre*, at *2.

14 *Id.*

What Happened in MDHS's Suit?

After discovering the missing funds, MDHS sought $1.1 million in recovery from Favre, the amount Favre received from a Mississippi non-profit, the Mississippi Community Education Center, Inc. (MCEC). Favre received this money from MCEC for 2017 and 2018 speaking engagements he never actually performed.

While Favre repaid the $1.1 million amount before MDHS's civil suit commenced, MDHS amended its original complaint, seeking a new total of $5 million in misallocated TANF funds. The new figure was calculated as being the amount allegedly funneled from TANF by Favre, who instead used the money to help fund the construction of a brand-new volleyball facility at the University of Southern Mississippi.

MDHS alleged that Favre approached MCEC seeking funding for the volleyball facility campaign. The building campaign would not reach its initial target amount through donations alone. Ultimately, the TANF funds were used to help fund the new USM volleyball facility. This disclosure became central to the scandal, generating media coverage.

Media Coverage Following the Initial Revelations

Media coverage began with an article published by a Mississippi news source, *Mississippi Today*. Their article detailed the civil suit MDHS filed against Favre. It included text messages between Favre and Nancy New, former president and CEO of the MCEC non-profit. New was one of the six individuals eventually criminally charged for involvement related to the scandal. The messages discussed the construction funding of the new USM volleyball facility. Favre and New also talked about how unlikely they thought it would be that the media determined the source of the funds.[15][16]

15 *Favre*, at *4.

16 https://www.cbssports.com/nfl/news/brett-favre-scandal-explained-ex-nfl-qb-is-accused-of-misusing-of-mississippi-state-welfare-funds/

How did *Undisputed* and Sharpe Classify Favre's Conduct and the Scandal in the Media?

National media personalities and outlets discussing the news included Shannon Sharpe on his sports talk show *Undisputed*. At the time, Undisputed aired on Fox Sports 1. Sharpe and his co-host Skip Bayless held debate-style programs about relevant sports news or sports-related stories. The duo discussed the welfare scandal on *Undisputed*.

On September 14, 2022, the day after the *Mississippi Today* article first appeared, Sharpe and Bayless discussed the scandal on *Undisputed*. The show's moderator, Jen Hale, asked "for…thoughts about [the scandal's] impact on Favre's legacy."[17] The analysts eviscerated Favre's character, labeling him as "a sleazeball," "shady," "gross," and a "diva," and accusing him of "steal[ing]," "egregious" behavior, and "illegal activity."

What was in Question? How did Favre Respond? What Happened Afterwards?

After the *Undisputed* segment aired, Favre asked Sharpe for three specific statements that Sharpe made about Favre during the *Undisputed* segment to be retracted.[18] These were: 1. "The problem that I have with this situation, you've got to be a sorry mofo to steal from the lowest of the low." 2. "Brett Favre is taking from the undeserved" in Mississippi; and 3. Favre "stole money from people that really needed the money."[19]

Sharpe denied Favre's request,[20] leading Favre to sue Sharpe for defamation.[21] In the complaint, Favre alleged the three statements he asked Sharpe to retract "injured his reputation, falsely accused him of serious crimes, and were defamatory in nature."[22]

After Favre's filing, Sharpe removed the case from state court to the United States District Court for the Southern District of Mississippi[23] based on a

17 *Favre*, at *4.

18 *Favre*, at *5.

19 *Id.*

20 *Id.*

21 *Id.*

22 *Id.*

23 *Id.*

diversity jurisdiction claim.[24] Sharpe filed a FRCP 12(b)(6) motion to dismiss, alleging Favre failed to state a claim.[25] Sharpe argued that the comments he made on *Undisputed* regarding Favre and the welfare scandal were "a classic example of the kind of rhetorical hyperbole and loose, figurative language" protected by the First Amendment. Sharpe's motion argued that Mississippi law protects such comments because "they discuss a matter of public concern and are drawn from official proceedings."[26]

How did the Lower Court Respond?

The district court granted Sharpe's 12(b)(6) motion, ruling that listeners would have recognized the comments made on *Undisputed* as "mere rhetorical hyperbole," making the comments "unactionable."[27] The court concluded that "no reasonable person listening to the Broadcast would think that Favre actually went into the homes of poor people and . . . committed the crime of theft/larceny."[28] Favre appealed the district court decision, leading to the case at hand.

5th Circuit's Analysis of District Court's Rulings

The Fifth Circuit reviewed the district court's dismissal *de novo*, taking the factual allegations from the original complaint as true. The court's complaint stated that, to survive a Rule 12(b)(6) motion, "[a] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face."[29]

To avoid dismissal, "a plaintiff need not provide exhaustive detail, . . . but the pleaded facts must allow a reasonable inference that the plaintiff should prevail."[30] After considering these two precedential notions, the Fifth Circuit "[took] the factual allegations in the complaint as true but disregard[ed] conclusory allegations and legal conclusions,"[31] all while resolving questions of fact "in the plaintiff's favor."[32]

The Fifth Circuit noted how the district court's ruling only ruled on the "rhetorical hyperbole" argument, concluding Favre's original defamation claim failed as a matter of law.[33] The district court did not analyze any of Sharpe's other claims, which included that "his statements were protected under state law as opinions based on disclosed facts or as reports of official proceedings."[34]

The Fifth Circuit ruled it could affirm a district court's dismissal of a suit for failure to state a claim "on any basis supported by the record."[35] It decided not to analyze rhetorical hyperbole and instead analyze whether the statements in question were protected opinions based on previously disclosed factual premises.[36]

How Do the Fifth Circuit and Mississippi Law Interpret the Statements in Question?

The Fifth Circuit's inquiry focused on whether any statements made "could be reasonably understood as declaring or implying a provable assertion of fact."[37] The court noted its analysis does not turn on the mere labeling of a statement as "fact" or "opinion."[38]

The Fifth Circuit found that statements, "even if phrased as [] opinion[s], will not enjoy constitutional protection if the court concludes that the substance…of such statements could reasonably be found as declaring or implying an assertion of fact.[39]

State-specific, the Fifth Circuit found that Mississippi law holds "defamatory communication may [be] . . . in the form of an opinion," and that "[o]pinion statements are actionable *only if they clearly and unmistakably imply* the allegation of undisclosed false and defamatory facts as the basis for the opinion."[40]

24 *Id*., at *5-6.

25 *Id*., at *6.

26 *Id*.

27 *Id*.

28 *Id*.

29 *Allen v. Hays*, 65 F.4th 736, 743 (5th Cir. 2023).

30 *Mandarala v. Ne. Baptist Hosp*., 16 F.4th 1144, 1150 (5th Cir. 2021).

31 *Id.; Allen* 65 F.4th at 743.

32 *Favre*, at *7, citing Lewis v. Fresne, 252 F.3d 352, 357 (5th Cir. 2001).

33 *Favre*, at *7.

34 *Id*.

35 *Id*., quoting *Ferrer v. Chevron Corp*., 484 F.3d 776, 780-81 (5th Cir. 2007).

36 *Favre*, at *7.

37 *Id*., quoting *Milkovich v. Lorain J. Co*., 497 U.S. 1, at 21-22.

38 *Id*., citing *Roussel v. Robbins*, 688 So. 2d 714, 723 (Miss. 1996).

39 *Favre*, at *7-8.

40 *Favre*, at *8, citing *Ferguson v. Watkin*s, 448 So. 2d 272, 275-76

Further, Mississippi law says that "offensive insults and opinion statements" "generally are not actionable in Mississippi"[41] because "nothing in life or our law guarantees a person immunity from occasional sharp criticism," and "no person avoids a few linguistic slings and arrows, many demonstrably unfair."[42]

The Fifth Circuit stated in conclusion that "strongly stated [opinions] . . . based on truthful established fact . . . are not actionable under the First Amendment."[43] The Mississippi Supreme Court has ruled similar commentary based on disclosed facts qualifies as "fair comment[s]."[44]

Reactions from Both Parties

From Sharpe's perspective, his statements were protected opinions that were "fair comments" on a publicly known and reported matter.[45] He also claimed that "contemptuous language" and "unfair" criticism regarding previously reported facts do not rise to the level of defamatory speech.[46] While the comments made on *Undisputed* paint Favre in an unpleasant light, Sharpe asserted that the broadcast clearly stated any comments made were based on reports from elsewhere in the media regarding Favre's involvement.[47]

Sharpe claimed that such involvement was a matter of public concern,[48] and he also stated that his comments were made based upon "truthful established fact[s]," entitling him to voice his opinion and "sharp criticism" of Favre.[49]

Favre wholly disagreed, arguing that even if Sharpe's statements were "protected opinions," it would not change the fact the comments would still be actionable, as Sharpe never provided "a correct and complete recitation of "the facts upon which he base[d] his opinion and the statements "imply a false assertion of fact."[50]

To Favre, the facts behind Sharpe's opinions were "incorrect and incomplete" since the Undisputed broadcast left out key facts from the original *Mississippi Today* article.[51]

How did the Fifth Circuit Rule?

The Fifth Circuit found that Sharpe's statements about Favre that were made on the *Undisputed* broadcast, which Sharpe based on facts reported in the original *Mississippi Today* article, could not have been seen by outsiders as anything more than strongly stated opinions.[52]

The court corrected Favre's claim that several of the statements from Sharpe were inaccurate, saying that they were corrected on the broadcast.[53] Since Favre did not allege any other statements made on the broadcast were false, the court found there were no more inaccuracies to correct.[54]

Conclusion

While Favre surely wanted to avoid sharp criticism regarding his involvement in the welfare scandal, it was found that Sharpe relied only upon the facts that were reported in local and state news within Mississippi and specifically what the *Mississippi Today* article stated.

Sharpe's statements relied on information from other sources when he talked about what Favre objected so vehemently to on the *Undisputed* broadcast. Since Sharpe relied on facts that were publicly known, he had a right to characterize those facts in a way he wanted. Therefore, his statements about Favre were "strongly stated" opinions "based on truthful facts," making the allegedly defamatory statements unactionable.

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(Miss. 1984); Restatement (Second) of Torts § 566 (Am. L. Inst. 1977) (emphasis added)

41 *Favre*, at *8, citing *Trout Point Lodge, Ltd. v. Handshoe,* 729 F.3d 481, 493 (5th Cir. 2013).

42 *Id*.

43 *Id*., quoting *Texas Beef Grp. v. Winfrey*, 201 F.3d 680, 688

44 *Favre*, at *8, citing *Ferguson* at 276.

45 *Favre*, at *8-9.

46 *Favre*, at *9.

47 *Id*.

48 *Id*.

49 *Id*.

50 *Id*.

51 *Id*.

52 *Id*., at *10.

53 *Id*.

54 *Id*.

Federal Judge Denies Connecticut Defendants' Motion to Dismiss Title IX Claim Involving Trans Issue

A federal judge from the District of Connecticut has denied the Connecticut Association of Schools (CIAC) and its co-defendants' motion to dismiss a claim brought by four student athletes, who alleged that they were denied "opportunities at elite track-and-field levels" when the defendants facilitated the participation of transgender athletes against them.

The latest decision came after the U.S. Court of Appeals for the 2nd Circuit remanded the case back to the district court, and the plaintiffs - Selina Soule, Chelsea Mitchell, Alanna Smith, and Ashley Nicoletti - filed an amended complaint, which led to the instant opinion.

The plaintiffs were former high school track athletes who raced against transgender girls in events sanctioned by the CIAC. Their original complaint alleged trans girls have unfair physiological advantages over their cis gender competitors, and as such, "students who are born female now have materially fewer opportunities to stand on the victory podium, fewer opportunities to participate in post-season elite competition, fewer opportunities for public recognition as champions, and a much smaller chance of setting recognized records, than students who are born male." To remedy these purported Title IX violations, the plaintiffs-appellants sought monetary relief and injunctions to:

1. Prevent future enforcement of the Transgender Participation Policy, thereby barring transgender athletes from participating in CIAC-sponsored sports inconsistent with their biologically assigned sex; and

2. Remove athletic records/times achieved by trans athletes in sports inconsistent with their biologically assigned sex."

The district court, however, dismissed each claim on April 25, 2021, determining that the request for enjoinment became moot after Andraya Yearwood and Terry Miller (the trans athletes at the center of the case) graduated in June 2020. The court further stated that the plaintiffs' arguments concerning the records were speculative, and the request for damages was barred.

That led to the appeal to the 2nd Circuit, its decision remanding the claim, and the amended complaint.

In addition to the chronology of events, the amended complaint alleged that the defendants' "conduct negatively impacted the plaintiffs by conveying the dispiriting message that their interests and aspirations as student athletes were less worthy of protection than those of their male counterparts on the boys' team.

"The amended complaint further alleges, either explicitly or by fair implication, that when the plaintiffs or their parents complained to the defendants, the response they received was dismissive at best. For example, a representative of CIAC told Chelsea Mitchell's mother that further complaints on her part would receive no response and school officials admonished Chelsea herself to stop complaining.

"Finally, the amended complaint alleges that there has been a long history of systematic discrimination against women and girls in high school athletics in Connecticut. Construed most favorably to the plaintiffs, this allegation implies that the defendants would have responded differently if similar complaints about unfair competition had been made by and on behalf of boys."

The court found enough merit to the plaintiff's argument in the amended complaint.

The "allegations of the amended complaint, accepted as true and construed favorably to the plaintiffs, provide the basis for a disparate-treatment claim within the scope of Title IX's implied private right of action; the plaintiffs' home schools are potentially liable for subjecting the plaintiffs to discrimination under their athletic programs in violation of Title IX; and the impact of *Pennhurst State School & Hospital v. Halderman*, *451 U.S.1, 101 S. Ct. 1531, 67 L. Ed. 2d 694 (1981*) on the plaintiffs' ability to obtain nominal damages, attorneys' fees and costs cannot be determined at this time as a matter of law. Accordingly, the motions to dismiss are denied."

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Articles

A New Model for Legal Services: How Sports Organizations Can Embrace Subscription-Based Outside General Counsel Services

By Sarah Pack

In recent years, sports organizations—whether teams, leagues, conferences, or governing bodies—have increasingly sought innovative legal solutions to meet the complex demands of their operations. From player contracts and labor relations to intellectual property, sponsorship agreements, and compliance with ever-evolving regulations, the scope of legal needs is immense. The traditional outside general counsel (OGC) model, with its often exorbitant hourly rates and unpredictable costs, has proven inefficient for organizations that need ongoing legal support but want more predictable pricing structures.

Enter the tiered-subscription model for outside legal services, an emerging trend reshaping how sports organizations manage their legal needs. This model offers flexible, tiered pricing plans that allow teams and organizations to pay for different levels of service depending on their needs, much like subscription services in other industries.

The Shift: From Hourly Billing to Subscription Models

For years, sports organizations have relied on external legal counsel for high-stakes transactions and regulatory compliance, retaining law firms that specialize in sports law. However, this has often meant unpredictable legal fees, which could balloon during times of crisis or complex legal matters. The traditional hourly billing model, which rewards time spent rather than outcomes, has increasingly come under scrutiny.

The subscription-based model offers a way out of this cost unpredictability. Much like subscription services that have gained popularity in technology and media industries, the new model provides a more user-friendly, predictable, and transparent way to access legal services. Instead of billing by the hour, sports organizations can subscribe to a tiered plan, paying a flat monthly fee based on their specific needs.

Key Features of the Subscription Model

1. Tiered Pricing: The most appealing aspect of this new model is its flexibility. Legal service providers offer different tiers of subscription plans, each corresponding to a different level of service. For example:

- Basic Tier: Covers day-to-day legal queries, contract drafting, and basic compliance advice.
- Mid-Level Tier: Includes more involved legal services such as litigation support, negotiation of larger contracts (e.g., sponsorship deals), and more specialized counsel (e.g., antitrust, intellectual property).
- Premium Tier: Provides full legal coverage, including litigation management, certain levels of litigation and arbitration, high-level strategy, conference realignment, crisis management, investigations, and access to top partners at the firm.

2. Predictable Costs: Unlike the traditional OGC model, where legal fees could spike unpredictably, a subscription model provides sports organizations with consistent, predictable monthly or annual fees. This not only helps with budget planning but also allows teams and leagues to better manage their legal risks without hesitation.

3. Scalability: The tiered system allows organizations to scale their legal services based on changing needs. If a team faces a period of litigation or complex transactions, they can upgrade to a higher tier. Conversely, in quieter times, they can switch to a lower tier, keeping their costs manageable.

4. Tailored Service Bundles: Some subscription models allow sports organizations to select specific services a la carte, customizing their legal support to match their exact needs. This can be particularly useful for smaller organizations that may not need a full suite of legal services but do need specialized advice in areas like employment law, compliance, or contract negotiations.

5. Access to a Dedicated Team: In many cases, subscribing sports organizations receive access to a dedicated team of attorneys who understand the nuances of their operations. This setup fosters a stronger partnership, as legal advisors become more ingrained in the daily workings of the organization, offering more proactive and strategic counsel rather than just reacting to crises.

Why Sports Organizations Are Adopting This Model

1. Cost Efficiency

Sports organizations often have limited budgets and need to be strategic in how they allocate funds. The unpredictability of hourly legal fees can be a significant burden. With a subscription model, they gain access to high-quality legal services without breaking the bank, knowing exactly how much they will spend each month.

2. Comprehensive Legal Needs

From regulatory compliance and player, coaching, and executive contracts to intellectual property disputes, sports teams face a wide range of legal issues. By subscribing to a tiered legal service, organizations can ensure that they have the right legal expertise at their fingertips whenever needed.

3. Risk Management

Legal risks in sports can arise unexpectedly, whether due to player misconduct, labor disputes, facility and event management, or regulatory issues. Subscription models allow teams to have instant access to legal counsel in high-pressure situations, without the delays and uncertainty that might come from an ad-hoc engagement of outside counsel.

4. Flexibility and Customization

In the fast-paced world of sports, legal needs can shift rapidly. The flexibility to change subscription tiers based on current needs (e.g., during off-season vs. in-season) allows sports organizations to remain agile and responsive to legal challenges as they arise.

Boutique Sports Law Firms

Boutique law firms that focus on legal needs of sports related clients are particularly well suited to provide a subscription-based model to serve their sports clients. These firms often specialize in high-level matters like labor disputes, athlete representation, industry-specific arbitration, and compliance with league rules. They offer subscription models for organizations that need consistent access to their expertise but may not need a full-time in-house legal team.

For example, a professional sports team might subscribe to a premier-tier plan during their regular season to ensure they have legal support on contract negotiations and regulatory compliance but may scale down to a mid-tier plan during the off-season when fewer legal issues arise.

Challenges and Considerations

While the subscription model offers numerous benefits, it is not without challenges. For one, not all legal issues can be neatly bundled into a subscription plan. For example, complex, high-stakes litigation or arbitration may require services beyond what a subscription covers, potentially leading to additional fees. Furthermore, firms must carefully design their pricing structures to ensure they are both profitable and provide value for sports organizations.

Another consideration is the level of expertise offered at different tiers. Premium-tier clients will likely expect access to senior attorneys or partners, while basic-tier subscribers may receive more junior-level support. Firms must strike a balance to maintain quality service across all subscription levels. Boutique firms are more likely to be able to provide access to high-level support in all tiers.

Conclusion

The shift toward a subscription-based, tiered legal services model reflects broader changes in how professional services are delivered, particularly in the sports industry where organizations need flexibility, cost certainty, and tailored solutions by specialized legal counsel with a strong history of working in the sports industry and with knowledge of the "lockeroom". By adopting this model, sports organizations can better manage their legal risks, control costs, and ensure that they have access to top-tier and specialized legal advice when it matters most. As this trend continues to grow, it has the potential to revolutionize the relationship between legal service providers and their clients, making the law more accessible and strategic for organizations of all sizes.

Sarah Pack is Senior Counsel at Dennie Sports Law, a boutique sports law firm that provides outside general counsel services to sports organizations using a subscription-based, tiered legal services model.

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High School Football Hit Sparks Federal Lawsuit

By Joseph M. Ricco IV

The Peninsula School District in Pierce County, Washington, is at the center of a federal lawsuit after a high school football rivalry game took a dangerous turn. During the 2023 "Fish Bowl", an annual showdown between Gig Harbor and Peninsula High Schools, a late hit on Gig Harbor's quarterback left him with a broken jaw and temporary paralysis. The lawsuit claims that Peninsula High's football program encourages overly aggressive play and accuses the district of failing to ensure proper medical care at the game. This article takes a closer look at the allegations and the broader questions this case raises about safety and accountability in high school sports.

Background and Allegations

The Fish Bowl is one of the biggest high school football events in Pierce County, Washington. It's a heated rivalry game between Gig Harbor High School and Peninsula High School that draws thousands of fans each year. The 2023 game, however, ended in controversy. A late hit on Gig Harbor's quarterback left him with serious injuries, including a broken jaw and temporary paralysis. He reportedly lost feeling in his legs for several hours after the game, and his family is now suing the school district over what happened.

According to the lawsuit, this wasn't just an isolated incident. The quarterback's family claims that Peninsula High's football program has a history of encouraging aggressive and dangerous play. The complaint points to head coach Ross Filkins, who is also the school's athletic director, saying he created a culture where targeting and injuring players—especially quarterbacks—was tolerated or even encouraged. The suit also includes a screenshot of a social media post allegedly shared by Filkins, celebrating the late hit, which the family argues reflects a harmful mindset within the program.

The lawsuit also raises questions about how the school district handled safety during the game. Shockingly, the injured player didn't receive medical attention for nearly 30 minutes, as emergency responders were busy with another situation. The family also says the district failed to make sure there were enough medical staff on-site, which caused an unsafe delay in treatment. They argue that this lack of planning put their son at even greater risk and reflects a pattern of negligence when it comes to student-athlete safety.

Implications for Safety and Accountability

This lawsuit raises questions about safety and accountability in high school sports. The claims of a "culture of aggression" at Peninsula High School certainly highlight concerns about whether winning is being prioritized over player safety. Schools also have a responsibility to create an environment where competition doesn't come at the cost of young athletes' well-being. If the allegations are true, this case could push districts to rethink coaching practices and take a closer look at how they oversee athletic programs.

The issue of medical preparedness is another major focus of the case. The alleged delay in treatment for the injured quarterback points to the risks of inadequate planning for emergencies at high-contact sporting events. For schools, ensuring proper medical coverage isn't just a best practice—it's a necessity. Depending on the outcome, this case may prompt districts nationwide to reevaluate their safety protocols to avoid similar situations and the potential legal fallout.

Closing Thoughts

The allegations against the Peninsula School District raise difficult but necessary questions about how high school sports are managed. This case is not just about one injury or one game—it's about the responsibility schools have to protect their athletes and promote a safe environment. As the lawsuit progresses, it will likely spark important conversations about safety protocols, coaching practices, and the broader culture of high school athletics. Whatever the outcome, this case serves as a reminder of the risks young athletes face and the steps schools must take to keep them safe.

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.

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Analyzing Michael Jordan's 23XI Racing Antitrust Lawsuit Against NASCAR

By Gigi Wood

The ongoing antitrust litigation involving 23XI Racing, co-owned by NBA legend Michael Jordan, and Front Row Motorsports against NASCAR illuminates significant concerns regarding the allegedly monopolistic practices within the stock car racing industry. This lawsuit emerges mostly from NASCAR's charter system, implemented in 2016, which guarantees entry for 36 teams into each Cup Series race and incorporates revenue-sharing agreements.[55] Critics argue that this system fosters a coercive environment, binding teams too closely to NASCAR and its affiliated suppliers, many of which are controlled by the France family, who have long dominated the organization.[56]

NASCAR's governance has historically been characterized by a family-centric model, established by its founder, Bill France, Sr., in 1948.[57] Over the decades, this model has allowed the France family significant discretion in decision-making processes, leading to practices that many now see as detrimental to the competitive landscape.[58] While NASCAR has seen changes in leadership, the influence of the France family remains strong, raising concerns about the lack of checks and balances within the organization. This concentration of power has prompted calls for reform and collective bargaining among stakeholders. Previous antitrust cases against NASCAR, including those involving Speedway Motorsports, Inc., have highlighted ongoing concerns about the league's market control and its adverse effects on competition.[59]

The charter system was originally intended to stabilize competition in NASCAR by providing teams with guaranteed participation in races and a share of revenue.[60] However, the plaintiffs assert that it has created a monopolistic structure that severely limits competition.[61] The system allocates revenue disproportionately, primarily benefiting NASCAR and the France family, while leaving teams struggling to achieve financial sustainability.[62] This disparity is particularly troubling given NASCAR's lucrative television contracts, including a recent seven-year media rights deal valued at $7.7 billion, much of which flows directly to NASCAR and its affiliated entities, rather than to the teams themselves.[63]

55 Alex Schiffer, *Michael Jordan Sues NASCAR: 'Monopolistic Bullies'*, Front Office Sports (Oct. 2, 2024), https://frontofficesports.com/michael-jordan-nascar-bullies-lawsuit/

56 Id.

57 Ryan McGee, *2 Teams Suing NASCAR Ask Court to Let Them Compete Under New Charter Agreement*, ESPN (Nov. 16, 2024), https://www.espn.com/racing/nascar/story/_/id/41699105/2-teams-suing-nascar-ask-court-compete-new-charter-agreement.

58 Cian Brittle, *What's Going on with NASCAR's Charter System?, Blackbook Motorsports* (Aug. 5, 2024), https://www.blackbook-motorsport.com/features/nascar-charter-agreement-sponsorship-2025/

59 Schiffer, supra note 4

60 *23XI Racing LLC d/b/a 23XI Racing & Front Row Motorsports, Inc. v. National Association for Stock Car Auto Racing, LLC & James France*, No. 3:24-cv-886, U.S. Dist. Ct. W.D.N.C. (filed Oct. 24, 2024)

61 Id.

62 Schiffer, supra note 4

63 NASCAR.com, *How the NASCAR Charter System Works*, NASCAR (Sept. 22, 2020), https://www.nascar.com/news-media/2020/09/22/how-the-nascar-charter-system-works/.

The plaintiffs allege that the charter agreements compel teams to operate under stringent terms that favor NASCAR's economic interests.[64] They contend that the negotiations surrounding charter renewals have been coercive, often presenting offers that can be characterized as "take it or leave it."[65] This lack of flexibility severely undermines teams' ability to negotiate better terms and creates an environment where competition is stifled, according to the complaint.

The financial stakes in this litigation are significant. The plaintiffs argue that NASCAR's charter agreements are structured to maintain the league's dominance rather than promote healthy competition.[66] This economic imbalance, they allege, has forced teams into practices such as "start-and-park," where teams withdraw from races early to save costs, reflecting the financial strains imposed by the current system.[67] While NASCAR allegedly profits disproportionately from its media rights deals, many teams find themselves in precarious financial situations, struggling to make ends meet. The charter agreements, introduced in 2016, include provisions that compel teams to accept anticompetitive terms, including restrictions on competing in other racing series.[68] The economic strain on teams is exacerbated by high operational costs, estimated at around $18 million annually (excluding driver salaries), and a revenue distribution model that leaves them heavily reliant on sponsorships due to insufficient prize money.[69]

The lawsuit contends that NASCAR's dominance stems from exclusionary practices rather than superior business strategies. The organization has actively acquired rival racing circuits, such as ARCA, and restricted access to racetracks, preventing competition.[70] Additionally, the introduction of the "Next Gen" car program in 2022 requires teams to purchase proprietary parts without ownership, further escalating operational costs and locking teams into NASCAR's framework.[71] Additionally, the plaintiffs contend that the lack of equitable revenue distribution leaves teams at a severe disadvantage compared to their counterparts in other major sports leagues, where television revenue is more evenly shared.[72]

The legal foundation of this lawsuit is based on claims of monopolization and unreasonable restraints of trade, specifically under Sections 1 and 2 of the Sherman Act.[73] The plaintiffs assert that NASCAR's practices create barriers to entry for potential competitors and lead to ongoing economic harm. They seek relief from provisions in the upcoming 2025 Charter Agreement, which they argue would further grow NASCAR's monopoly.[74]

The first count alleges NASCAR's actions violate section 2 of the Sherman Antitrust Act which focuses on monopolization.[75] Plaintiffs claim NASCAR maintains a monopoly through exclusionary practices, such as acquiring competitors and enforcing restrictive contracts.[76] The charter agreements are cited as anticompetitive, limiting teams from participating in other racing series.[77] The second count states NASCAR also violated section 1 of the act because they have engaged in an unreasonable restraint of trade.[78] Plaintiffs argue that contracts with racetrack owners and teams involve unlawful exclusive dealings, preventing teams from exploring other racing options and forcing them to accept unfavorable terms.[79] The plaintiffs are seeking a preliminary injunction which would allow the teams to operate under the 2025 Charter without relinquishing legal claims.[80] They also seek permanent injunctive relief to end NASCAR's exclusionary practices and treble damages for the harm suffered under anticompetitive terms.[81]

The plaintiffs' legal strategy aims to dismantle the alleged structural inequities imposed by NASCAR's current operational model. By highlighting the coercive nature of the charter negotiations and the resulting financial implications for teams, they hope to establish

64 Brittle, supra note 4
65 McGee, supra note 3
66 23XI Racing LLC, supra note 6
67 Id.
68 Id.
69 Id.
70 Id.
71 Id.
72 23XI Racing LLC, supra note 6
73 Schiffer, supra note 4
74 23XI Racing LLC, supra note 6
75 Id.
76 Schiffer, supra note 4
77 23XI Racing LLC, supra note 6
78 Id.
79 Id.
80 Id.
81 Id.

a case that not only seeks damages but also calls for greater transparency and reforms in how NASCAR operates.[82] The lawsuit also allegedly spotlights the broader competitive practices within NASCAR. The plaintiffs claim that NASCAR has leveraged its monopoly to manipulate revenue distribution in ways that undermine competition. For example, the introduction of the "Next Gen" car in 2022 is cited as a means of locking teams into NASCAR's framework.[83] Under this system, teams are required to purchase standardized parts, and the cars themselves remain under NASCAR's ownership.[84] This arrangement makes it financially burdensome for teams to transition to other racing circuits, thereby reinforcing NASCAR's hold on the sport, according to the complaint.

As NASCAR approaches the implementation of the 2025 Charter Agreements, the plaintiffs argue that the organization is intensifying its efforts to impose unfavorable terms on teams.[85] By negotiating individually with teams, NASCAR can exert greater pressure and limit the ability of teams to advocate for their interests collectively. The implications of this lawsuit extend beyond the immediate parties involved. If successful, the lawsuit could lead to significant reforms in the charter system and alter the relationship between NASCAR and its teams. This could pave the way for a more equitable competitive environment, enabling teams to negotiate better terms and fostering a healthier competitive landscape. The monopolistic practices used within NASCAR raise critical questions about the future of stock car racing. Should the plaintiffs prevail, it could serve as a catalyst for broader changes in how NASCAR operates, potentially restoring competitive balance within the sport.[86] This litigation could mark a pivotal moment in the ongoing struggle between teams seeking fair treatment and an organization that has historically wielded considerable power.

The antitrust litigation initiated by 23XI Racing and Front Row Motorsports against NASCAR challenges the very framework of how the organization governs and conducts its business. It purports to raise essential questions about competition, fairness, and the long-term viability of stock car racing. The plaintiffs contend that NASCAR's current operational model is fundamentally flawed, creating an environment that favors monopolistic practices and undermines the competitive spirit of the sport.[87] As this case progresses, it may have far-reaching implications for the stock car racing industry and could redefine the relationship between NASCAR and its teams. If the plaintiffs succeed in their claims, the outcome may lead to a restructuring of the charter system and a more equitable distribution of resources, benefiting the entire racing community. Furthermore, the resolution of this litigation may set a precedent for future cases in professional sports, influencing how sanctioning bodies interact with the teams they govern. It represents not just a battle for fair treatment in NASCAR but also a broader fight for competitive integrity in all professional sports.

Sports Litigation Alert will be reporting on NASCAR's answer to the lawsuit in coming issues.

Cian Brittle, *What's Going on with NASCAR's Charter System?*, Blackbook Motorsports (Aug. 5, 2024), **https://www.blackbookmotorsport.com/features/nascar-charter-agreement-sponsorship-2025/**

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82 Schiffer, supra note 4

83 23XI Racing LLC, supra note 6

84 Id.

85 Id.

86 Schiffer, supra note 4

87 Id.

College Volleyball Player Sues, Claiming She Failed to Receive Proper Treatment After Brain Injuries

By Austin Spears

Serena Hodson, a former student-athlete at San Diego State University, is suing Cal State University's Board of Trustees, claiming that she suffered multiple traumatic brain injuries and failed to receive correct medical treatment while playing for the university's women's volleyball team.

Hodson claims that during her three years as a member of the SDSU women's volleyball team, she suffered a minimum of three concussions and was dealt countless blows to the head on top of that. Hodson suffered her first concussion in October 2019, keeping her out of all volleyball-related activities for six weeks. Hodson had three appointments with SDSU trainers and health care providers and completed 41 daily symptom evaluation sheets before being cleared to return to volleyball activities on December 11, 2019. The average recovery time for 80% of concussions is 7 to 14 days, with an average length of recovery of 10 days. Her six weeks of recovery time for her first concussion suggests she had intense concussion symptoms.

Hodson would suffer a second concussion in the following October that kept her out of volleyball activities for two weeks and resulted in a diagnosis of post-concussion syndrome from SDSU Health care providers. Post-concussion syndrome is persistent concussion symptoms that can consist of headaches, dizziness, and memory issues.

Hodson suffered her third concussion eight months later, in June 2021; she would return to SDSU in the fall for the upcoming school year and was cleared to return on August 18th for that year. According to the lawsuit, zero daily evaluation sheets were filled out by the SDSU staff in the weeks leading up to her clearance, a stark contrast to the 41 filled out following her first concussion.

Hodson alleges that following her clearance from her third concussion, she suffered multiple hits to the head in various games and practices. She specifically claims that over the course of a two-day tournament, she reported concussion symptoms to her coaches. Despite reporting these symptoms and her past medical history, Hodson was cleared to return to the match, where she was hit three more times in the head without being assessed or removed.

Following these events, Hodson withdrew from San Diego State and filed this suit. Her complaint claims she suffered personal and financial losses from the treatments of her concussions and lost out on future earning potential.

San Diego State has denied these allegations in a statement, saying, "The well-being, health and safety of our students is of utmost importance... We do not comment on active litigation, however, we can confirm that the CSU is defending against the allegations in the lawsuit."

The Cal State system has also argued multiple different defenses in court, saying that Hodson signed a liability waiver that assumed the risk for injuries. The CSU did not go into further detail on how the waiver impacts the alleged lack of proper medical care from SDSU staff. CSU is also planning to argue Hodson's claims are "diminished by the amount or percentage that said conduct, misconduct, or negligence caused or contributed to the alleged damages, should they be proven."

The Daily Aztec reached out to Hodson's Los Angeles-based lawyer, Andrew Biren, who specializes in personal injury cases. Biren said, "The school should have known better. The school should have done better. She's a kid… she is, last I checked, not a doctor," Biren said. "To blame her would be ridiculous, and to say that she was cleared as some sort of positive when that is the root of the whole problem is that she was cleared when she shouldn't have been."

Hodson received multiple SDSU and Mountain West scholar-athlete awards during her time with the Aztecs. She appeared in 14 matches with 4 starts over her career and led the Aztecs with an average of 0.76 blocks in 21 sets played in 2021. San Diego State Women's volleyball has struggled for the past decade, failing to make the playoffs since 2012. Current coach Brent Hilliard replaced former coach Deitre Collins-Parker in 2020 after Collins-Parker was in charge of the Aztecs volleyball program for the previous decade.

In 2019, the NCAA faced a **suit** from a former football and men's soccer student-athlete. The suit claimed the NCAA failed to adopt appropriate rules regarding concussions and failed to manage the risk

of concussions. The NCAA denied liability but eventually reached a settlement that allowed many former student-athletes to receive compensation.

The battle between Hodson and the Cal State Board of Trustees rages on, and a trial date has been set for May 2025.

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The Problem with PEDs in Collegiate Esports

By Bradyn Rogers

Because collegiate Esports is in its infancy, it is currently facing a plethora of growing pains. One such issue is the use of performance enhancing drugs (PEDs). Prominent PEDs in this field range from cannabinoids to stimulants. Specifically, the legality of stimulants like caffeine, Vyvanse, and Adderall is garnering increased attention. Alongside the issue of PEDs noticeably increasing, the paramount concern is over enforcement of PED usage. Two of the largest organizations in collegiate Esports, the National Association for Collegiate Esports (NACE) and the National Esports Collegiate Conference (NECC), seek to provide clarity for the entire space on these issues.

NACE and NECC serve as the two main leaders in collegiate Esports boasting 220 member institutions for the former and 530 member institutions for the latter. In the NECC, there are schools that have only Esports or gaming clubs and those that have a varsity program with a director and/or scholarships. Both groups compete against each other in this league despite not being held to the same standard or having similar availability of resources. In NACE however, the membership qualifications to compete are much stricter because they do not want to deal with inconsistencies in competition, attitude, accountability, and responsibility that often adjoin student-led clubs at times. NACE requires members to be a varsity program with a full-time staff member to oversee any competition and programs must compete in-person on campus for any and all competitions. On the other hand, student-led clubs are not able to put forth the resources to monitor each competition or even have a dedicated space to play from. The difference in expectations for holding students accountable from student-led clubs compared to varsity programs has made this issue difficult to find a solution for all of the relevant stakeholders.

The NECC Rulebook bans the use of the following online and at in-person events: "Stimulants, anabolic agents, alcohol and beta blockers, diuretics and other masking agents, narcotics, cannabinoids, peptide hormones growth factors, related substances, mimetics, hormone and metabolic modulators, and beta-2 agonists." In the same vein regarding online and in-person competition NACE's rules state: "The use of drugs or alcohol, legal or otherwise, may lead to disruptive behavior. Players believed to be under the influence of drugs or alcohol may be suspended or disqualified from the Competition at the sole discretion of League Officials." Consequently, both NACE and NECC have competition councils that come together to deal with PED issues that arise and to propose updates to current rules. If a new rule is proposed for NACE, the entire membership votes on it at their general assembly, the NACE Conference, in the summer in order to be put into effect the following semester. If a new rule is proposed for NECC, the competition council that brought about the proposal will work with the assigned staff to implement it into the next iteration of the rulebook that is released.

While both of these stances may serve as part of the correct way to deal with issues emerging from PEDs, enforcing them is another issue entirely. To date, there has been little to no enforcement of these rules that are documented; therefore, public knowledge and media coverage remains limited on the subject matter. As a result, many questions remain. How can you detect these infractions while players are playing from home? Should you subject players to random drug tests? Do you force participation with their cameras on? These questions and others deserve increased attention moving forward in the Esports domain.

One of the most common protocols in the National Collegiate Athletic Association (NCAA) pertaining to PED usage is that if a drug test is positive, it will result in loss of eligibility and suspension from the sport. While that is the case for traditional collegiate sports, collegiate Esports are made up of smaller rosters and are often competing without substitutes due to roster composition. Subsequently, the consequences for suspending one player could lead to suspending the entire team. Furthermore, collegiate Esports does not maintain the same eligibility requirements as NCAA sanctioned sports. The only eligibility requirements are that players must have a 2.0 GPA and be a full-time student. For collegiate Esports,

bans from regular season matches, postseason play, and the entire season should be considered when navigating eligibility issues. Allowing the team affected by this suspension of play to be able to register an emergency substitute could be a possible option that would alleviate the potential negative effects for an entire team.

In traditional sports and in collegiate Esports, the attitude around cheating is generally negative and people do not tend to forget or move on very easily. For example, MLB fans and players still give grief to the Houston Astros following their scandal in 2017, and the usage of PEDs in collegiate Esports has a similar negative effect on both spectators and players. Unlike traditional sports, collegiate Esports does not have a consistent governance structure. This lack of consistency in enforcing disciplinary actions for PEDs has the potential to create a hostile environment between the players, spectators, and the leagues which reinforces the notion of urgency in raising awareness on these issues.

Moreover, the use of a player "camera on" requirement may serve as a means of potential detection of PEDs through observable behavior otherwise visibly hidden. This strategy could also serve as a precursor in preventing other forms of cheating and may even improve an element of broadcasts conducted by the respective league. However, one concern with player cameras is performance issues that they may cause. Player cameras can take up bandwidth for those with troublesome internet connections or affect game performance by taking up a portion of computer resources.

Given the aforementioned context, updating the rules regarding the use and enforcement of PEDs for online competition must be a priority for either of these leagues going forward as they both pursue the frontrunner position in collegiate Esports. Currently, NACE is perceived to have the edge as the leader in collegiate Esports, but the NECC has made significant changes propelling them to a position considered a close second. The successful implementation of updated protocols that deal with PEDs will be vital to put them in the lead or to uphold NACE's current position.

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NHL Players Aim To Bring CBA Into Compliance With Bioethics

By Christopher R. Deubert, Senior Writer

The current NHL-NHL Players Association (NHLPA) collective bargaining agreement (CBA) expires in September 2026, shortly before a new season would start. ESPN has recently reported on the NHLPA's priorities entering those negotiations. The players' share of league revenues is a constant source of discussion. But one issue raised by the NHLPA arises out of a 2021 dispute between the Buffalo Sabres and Jack Eichel concerning his medical treatment. The players' proposed fix would bring the CBA into compliance with bioethical principles.

The Sabres-Eichel Dispute

The Sabres drafted Eichel with the second overall pick in the 2015 NHL Draft and he was immediately considered the face of the franchise for the foreseeable future. Indeed, Eichel had a fairly excellent first five seasons in the league, averaging 27.4 goals and 67.4 points per season.

Things changed when Eichel's 2020-21 season ended early due to a neck and back injury. Thereafter, Eichel and the team disagreed about the appropriate course of treatment. According to ESPN, in October 2021, with Eichel missing the start of the new season, "[t]he Sabres prefer[red] Eichel to receive a fusion surgery, which would have [had] him back on the ice in six months." However, Eichel's doctors recommended "a disk replacement surgery, which would have him sidelined for six weeks and carries a much lower risk that the center would need future surgeries later in life." Yet, the "disk replacement surgery ha[d] never been performed on an NHL player." As a result of the dispute, the Sabres stripped Eichel of his captaincy and placed him on long-term injured reserve.

In such disputes, it is standard to first examine the relevant CBA. Article 34.4 of the NHL-NHLPA CBA governs second medical opinions. The Article provides a process through which a player can obtain a second medical opinion which might conflict with the club physician's opinion. If the club physician and second opinion physician do not agree on a course of treatment, the two doctors may recommend that the player be evaluated by a third doctor. Despite these multiple

layers of medical review, including the possibility that two doctors might disagree with the club doctor, the CBA declares that "the team physician shall determine the diagnosis and/or course of treatment (including the timing thereof) after consulting with the Second Medical Opinion Physician and the Third Physician Expert, if any, and giving due consideration to his/her/their recommendation(s)." In other words, the team doctor had the final say.

Bioethical Considerations

The club physician's ultimate authority to determine the course of treatment raises serious bioethical concerns. Bioethics refers to the application of ethics – the philosophical discipline pertaining to notions of right and wrong – to the fields of medicine and healthcare. Bioethical analyses are generally conducted through the lens of specific principles, the most commonly-recognized being respect for autonomy, non-maleficence (the duty to avoid harm), beneficence (the duty to do good), and justice.

Of most relevance to Eichel's situation was the concept of autonomy. As described by leading bioethicists Tom Beauchamp and James Childress, "[p]ersonal autonomy is, at a minimum, self-rule that is free from both controlling interference by others and from limitations, such as inadequate understanding, that prevent meaningful choice." Autonomy is considered a "basic moral and political value" in western societies.

The Eichel situation – and the related-CBA provision – appear to run afoul of the principle of autonomy. Pursuant to Article 34.4 of the CBA, Eichel did not have the right to choose his own course of treatment, depriving him of both "self-rule" and "controlling interference" in one of the most important domains of life – the right to control what is done to one's own body.

Unfortunately, the NHL's approach is not unique. Both the NBA and MLS CBAs also provide the clubs with the right to determine a player's course of treatment. The better approach – and the one that comports with bioethical principles – is that adopted by the NFL and MLB, which permits the player to make the final decision about his treatment.

Legal Considerations

The situation also raised legal concerns. An important step in the performance of any non-emergency medical procedure is obtaining the patient's informed consent. Failure to do so generally constitutes medical malpractice. If the Sabres had prevailed in their preferred course of action, it is debatable whether Eichel could have provided informed consent. Even if he were to sign the medical provider paperwork indicating consent, given his long-standing and publicly known protestations against the Sabres' preferred course of treatment, it is unclear whether Eichel's consent would have been legally valid.

What Happens in Vegas... Happens Leaguewide?

Fortunately for both parties, the situation was resolved without having to adjudicate these challenging issues. In November 2021, the Sabres traded Eichel to the Vegas Golden Knights. He subsequently had his preferred back surgery and returned to stellar play. Indeed, since then, several other players have had the same surgery. And while players state that it has become much easier to obtain second medical opinions as compared to years past, they remain peeved that clubs retain final say over a player's medical care. They therefore intend to negotiate a change in the next CBA to prevent any player from going through a situation like Eichel did.

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Who's the Greatest No. 8? When a Jersey Number Isn't Just a Jersey Number

By Vinny Badolato and Katherine Dearing, of Brown Rudnick

When you think of the No. 8 on a sports jersey, which professional athlete comes to mind first – Kobe Bryant? Cal Ripken Jr.? Alex Ovechkin? Perhaps even Yogi Berra (for those "seasoned" N.Y. Yankees fans)? Certainly, these are all extraordinary players with a legitimate claim to being the "Greatest 8" of them all, but this is a discussion that is more likely to

occur on a bar stool than at the U.S. Trademark Trial and Appeal Board ("TTAB").

Nevertheless, Lamar Jackson and Troy Aikman, one a current and the other a former quarterbacking great, have chosen the rather unusual form of the TTAB to try to settle that score. Jackson, of the NFL's Baltimore Ravens, has challenged the trademark application of Aikman, of the NFL's Dallas Cowboys, for the trademark "EIGHT" on the basis of likelihood of confusion with Jackson's own trademark registrations for the mark "YOU 8 YET?" and the design mark  (and prior pending applications for the marks "ERA 8" and "ERA 8 BY LAMAR JACKSON").

In the opposition, Jackson also alleges that Aikman's EIGHT mark creates a false suggestion of a connection with Jackson, who asserts that he is "well-known by this number due to his notoriety and fame, along with his promotion of this number in his trademarks and in media coverage." Opposition No. 91292541 at 46 ¶ 10. This dispute raises an interesting question for athletes: is a jersey number really a solid basis upon which to build one's own brand?

As an initial matter, Jackson faces an uphill climb in the opposition proceeding with regard to his "false suggestion of a connection" claim. A successful assertion of a false connection claim requires that a mark would point "uniquely and unmistakably to that person or institution." TMEP 1203.03(c)(i)(2). Proving a "unique" connection between the No. 8 and Jackson will prove difficult for Jackson when there have been, and currently are, many famous athletes wearing the No. 8, including another Hall of Fame quarterback in Steve Young, not to mention the athletic legends listed above, as well as other former baseball superstars like Joe Morgan and Carl Yastrzemski. More pointedly, the significance of the No. 8 found on a sports jersey to a consumer (i.e., a sports fan in this context) will depend heavily on what sport a fan grew up watching, where they grew up or lived in the U.S., what sports figure they identified with, and any number of other factors that will determine the significance of the No. 8 to a particular sports fan. With so many "the" No. 8s in the sports world and other variables vying for fan identification, Jackson will be hard-pressed to make the claim to a "unique" connection between him and his No. 8 jersey number.

It is important to note, however, that Jackson does not exclusively rely on his jersey number for his personal brand development, but rather uses a successful approach adopted by other famous athletes. Tom Brady, for example, one of the more famous athletes to wear the No. 12, has also incorporated his initials into his registered "TB12" mark, which provide a more unique connection to him and his personal brand. Other professional athletes have taken a similar tack, such as Anthony Edwards of the NBA's Minnesota Timberwolves, who promotes himself and his projects under the mark "AE5", and Luka Doncic of the NBA Dallas Mavericks, who has registered his "LUKA 77" mark with the U.S. Patent & Trademark Office ("USPTO"). Similarly, Jackson includes additional design and word elements in his trademark applications and registrations, such as a stylized wild dog, the term "ERA," and his full name. All of these creative elements, in addition to just a jersey number, add to the ability of these athletes to develop and protect their individual brands, including registering the marks with the USPTO.

An additional consideration for an athlete in building their brand might be the use of an insignia related to the sport they play or the team for which they play. Here, too, however there are challenges. Sports leagues and franchises have carefully and vigilantly protected and invested in their own intellectual property. Aikman could not, for example, add the NFL logo or the ubiquitous Dallas Cowboys star (which is registered on its own for several classes of goods) to his EIGHT trademark in an attempt to distance his brand from other athletes and brand owners. Aikman would be well-served to follow the example of Brady (which might be a hard pill for him to swallow) and other athletes by incorporating other unique words and design elements into his "EIGHT" mark to render it more distinctive so as to merit trademark protection.

This is not to say that a number by itself can never be registered by the U.S. Patent and Trademark Office, even a jersey number. The best example belongs to arguably the greatest basketball player of all time – Michael Jordan – and his business empire, which own multiple trademarks for his famous jersey number, "23." Given the extraordinary worldwide fame of Jordan, though, his ability to protect his jersey number only is likely the exception rather than the rule. Few athletes will reach that level of fame – Tiger Woods

comes to mind, but golfers typically don't wear jersey numbers – and still fewer will do so as the only famous athlete to use a particular jersey number.

Whether or not the TTAB ultimately determines that there is a likelihood of confusion between Jackson's No. 8-formative marks and Aikman's "EIGHT" application – or if, as with most disputes in the U.S., the matter is settled between the two NFL greats before it reaches an ultimate decision – the lesson to be drawn from it is the creativity required in building a personal brand as an athlete and the care with which those applying for trademarks for those brands should approach use of a jersey number.

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WNBA Players Look to MLS and NWSL Financial Models; It's Risky

By Christopher R. Deubert, Senior Writer

In February 2020, MLS and the MLS Players Association (MLSPA) agreed to an unprecedented provision in their new collective bargaining agreement (CBA) – the salary budget (cap) would increase if MLS' broadcast revenues increased "above the amount generated by the league in 2022 plus $100 million." This past summer, the NWSL and NWSL Players Association (NWSLPA) also agreed to share media revenues in their new CBA. The Women's National Basketball Players Association (WNBPA) recently opted out of its CBA with the league, effective after the 2025 season. Early reports indicate that the players may be looking for an explicit share of media revenues like their soccer colleagues. They should be careful.

The MLS Exemplar

MLS' broadcast arrangements had traditionally looked like those of MLB, the NBA, and NHL. The league sold a package of games to be broadcast nationally, and teams contracted with local networks for the bulk of their games. This model had limited success. In 2022, MLS' national television deals were worth a reported $105 million, of which $25 million went to U.S. Soccer. Moreover, teams made little money selling their local rights, with some teams even paying just to get their games on television (Disclosure: I was General Counsel of D.C. United of MLS from November 2018 to March 2021).

MLS thought instead that it could maximize revenues by adopting the NFL model – selling all league games as a collective package. MLS Commissioner Don Garber was confident in the expected largesse from such an arrangement, predicting annual rights fees of $300 to $400 million.

The players heard Garber loud and clear. When their CBA approached expiration in January 2020, the players faced the prospect of executing a multi-year agreement on player pay, only to have that agreement undermined by a large jump in league revenues during the term of the CBA.

To avoid that fate, the players and league agreed that the salary cap would be adjusted upward if league media rights grew substantially (as Garber apparently expected). Specifically, the parties agreed that the salary cap and player expenditures would increase by a share of league media revenues in an amount over effectively $205 million annually. The players' share of the incremental media revenue was slated to be 12.5% in 2023 and 25% in subsequent years.

The NFL, NBA, and NHL have shared percentages of their revenue with their players for decades. However, the MLS deal was the first time that players got a specific portion of broadcast revenues. Moreover, it was the first time a league had agreed to adjust the salary during the life of a CBA based on a forthcoming broadcast agreement (the NBA has a salary cap smoothing system to prevent the cap from jumping too much in any one season, as may happen from its recent media rights agreements).

Unfortunately for the players, MLS did not get the media revenues it expected. In June 2022, MLS signed a broadcast agreement with Apple TV worth $2.5 billion over ten years The deal was below the annual values predicted by MLS, tied MLS into a long-term deal without any ability to re-enter a dynamic market for sports broadcast rights (such as after the 2026 World Cup), and put the vast majority of its games behind a paywall. MLS has the ability to earn more money from the deal if it hits certain subscription metrics. Yet, to date it has not done so, casting further doubt on the value of the deal.

The NWSL Comparison

In November 2023, the NWSL announced impressive new media rights deals. Having previously only received $1.5 million annually from CBS, the league secured new agreements with CBS, ESPN, Amazon Prime and Scripps Sports worth $240 million over four years, or $60 million annually.

The NWSL deals compare favorably against that of MLS. First, the NWSL deal provides its 14 clubs with $4.3 million each, half of the approximate $8.6 million each of the 29 MLS clubs receives from the Apple deal. Second, the term of the NWSL deals are only four years and thus permit the league to go back into the market right after the 2027 Women's World Cup, when interest is at its highest. Third, while some NWSL games will be behind paywalls, many will still be broadcast on the largest and best networks. Fourth, the NWSL retained the rights to about a third of its games which it airs domestically on NWSL+, a direct-to-consumer service.

At the time of the NWSL's new broadcast agreements, the NWSL and NWSLPA had a CBA that extended through 2026. However, this past summer the league and players quietly and surprisingly agreed to a groundbreaking new CBA. The CBA did away with the player draft and provided all players with unrestricted free agency upon the expiration of their contracts, among other changes. The league also agreed for the first time to share a percentage of revenues with the players through a salary cap, a portion of which is explicitly drawn from the league's broadcast agreements.

The league and players have thus embarked on a partnership that will see both sides make more money based on the success of the league's media rights deals. On the whole, the agreement aids the NWSL's domestic and international competitiveness amid growing popularity, revenue, and team valuations.

The WNBPA's Shot

Like the NWSL, the WNBPA has been experiencing a boom in interest. Nevertheless, monetizing that interest is complicated. Most importantly, the WNBA and its clubs are substantially owned and controlled by the NBA and its member clubs. Thus, when the NBA signed new broadcast agreements this past summer, the WNBA's rights were folded into the deals. The WNBA is set to receive about $200 million annually, a large increase over the $60 million it was receiving, but only about 3% of the $75 billion, 11-year deals agreed to by the NBA. At the time, the WNBPA expressed concern that the WNBA's media rights had been undervalued, resulting in depressed player salaries.

At the same time, WNBA teams have jumped in value to an average of $96 million on average annual revenues of $13.2 million. The league is in growth mood with teams in Golden State, Toronto and Portland joining soon with more expected to follow.

The players do not want to miss out on that growth by waiting until 2027 to negotiate a new CBA. They want better pay and benefits now, described as an "equity-based" model.

The term equity can mean multiple things. It is not realistic to think that the league will provide players with equity ownership in clubs, which would make salary cap calculations a nightmare. Equity also means fairness, and for sure the players are striving for what they believe will be a fairer financial model.

Providing the players with a share of league revenue, including a percentage of broadcast rights, would certainly let the players share in the upside of the league's growth. However, if the revenues do not grow as expected (as in the case of MLS), the players will not see the pay increases they want.

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Going Off-Track: NASCAR, DraftKings and NBA Face Down Secrets Theft

By Daniel F. Roland and Christopher C. Howes, of Finnegan, Henderson, Farabow, Garrett & Dunner, LLP

As an owner of a National Association for Stock Car Auto Racing (NASCAR) team and a three-time Super Bowl champion as a head coach in the National Football League (NFL), Joe Gibbs fully understands competition.

But while Gibbs undoubtedly knows that his adversaries may try to gain an advantage by studying or replicating the competition, he may not have expected that his NASCAR competitors would look for an edge

by stealing IP. And that is exactly what may have just happened.

Formula 1's 'Spygate'

NASCAR recently learned of allegations that an engineer for Joe Gibbs Racing accessed proprietary information and shared it with another Cup Series team. Reports indicate that the engineer in question–who is in a contract year—had discussed future employment opportunities with other teams and allegedly received a cash payment for the proprietary information. While the allegations appear to have made their way around the track, NASCAR cannot intervene until a lawsuit is filed or a complaint is lodged with NASCAR.

This is not the first time a potential trade secrets scandal has hit the racetrack. In 2007, two of the biggest teams in Formula 1 were embroiled in a controversy now known as 'Spygate'. McLaren was found to have illicitly possessed confidential Ferrari technical information—essentially the blueprints for the 2007 Ferrari F1 car—and was ultimately fined $100 million by the Fédération Internationale de l'Automobile and thrown out of the constructor's championship.

The potential NASCAR scandal is just the latest in a trend of cases involving alleged IP theft among rivals. For example, DraftKings, the popular sports gambling company, recently sued a former senior vice president in federal court, claiming that he tried to lure away its customers and misappropriated its trade secrets when he left the company to join its competitor Fanatics (DraftKings v Hermalyn, 2024).

And in 2023, the New York Knicks, a National Basketball Association (NBA) team, sued the Toronto Raptors, alleging that the Raptors poached a former Knicks employee and directed him to steal the Knicks' trade secrets and confidential information on the way out, such as scouting reports, diagrams of opponents' key plays, and the Knicks' prep book (New York Knicks v Maple Leaf Sports & Ent).

Factors at play

The uptick in cases involving purported IP theft should not necessarily be surprising with the increase in employee mobility and the ease with which employees can access and transfer information today.

The courts have played a role too, handing out astronomical damages awards in the hundreds of millions to trade secret plaintiffs. In fact, in 2022, a jury awarded one plaintiff over $2 billion for the theft of its trade secrets. Although the case was remanded for a new trial by the appellate court, the huge damages figure made headlines and surely caught the attention of would-be plaintiffs.

The passage of the Defend Trade Secrets Act (DTSA) in 2016 also expanded the reach of US trade secret law, and plaintiffs have used it to take aim at international theft.

For example, in an issue of first impression for a federal appellate court, the Court of Appeals for the Seventh Circuit examined the extraterritorial reach of the DTSA after Motorola sued China-based Hytera for misappropriation, claiming Hytera "poached three engineers from Motorola in Malaysia, offering them high-paying jobs in exchange for Motorola's proprietary information" (Motorola Sols v Hytera Commc'ns Corp, 2024).

On the extraterritoriality issue, the Seventh Circuit sided with Motorola on appeal, concluding that the DTSA permits plaintiffs to recover damages against foreign defendants even if most of the wrongful conduct occurs outside the US.

As the court explained, there need only be an "act in furtherance" of the offence within the US, which in this case was marketing products embodying stolen trade secrets.

After concluding that Motorola could recover damages for all foreign sales involving the trade secrets acquired by theft, the Seventh Circuit affirmed the compensatory and punitive damages award that totaled over $400 million.

Foreign actors

The increased scrutiny on trade secret theft has extended to the criminal context too, with the Department of Justice prioritising its efforts to combat theft by foreign actors. For example, in one recent case, an engineer was caught stealing General Electric's trade secrets and sending them through surreptitious means to himself and a co-conspirator to support their business ventures abroad.

He was convicted of conspiracy to commit economic espionage under 18 U.S.C. § 1831(a)(5) and sentenced to 24 months in prison. On appeal, he argued that the statute requires proof of foreign government

sponsored or coordinated intelligence activity, i.e., that he was in cahoots with the foreign government.

The Second Circuit examined the criminal statute and rejected his argument, explaining that, under § 1831, "a volunteer spy is just as guilty as one recruited and handled by a foreign government" (US v Zheng, 2024).

New laws and non-competes

Proposed legislation also looks to implement added measures to stop trade secret theft.

One bill, for example, targets the border, aiming to prevent non-citizens from immigrating into the US and/or classifying them as deportable if they violate certain laws, including theft of trade secrets.

Another bill looks to increase monitoring efforts to counter "national security threats and espionage in the US, including trade secret theft [and] theft of US IP and research".

But the shifting legal landscape is not all in favour of the 'offence'. The Federal Trade Commission (FTC) recently sought to ban most non-compete clauses in employment agreements—a move that would make it easier for employees to leave their current job to join or start rival companies. Although a federal court issued an injunction preventing the FTC from implementing its rule nationwide, (Ryan v Fed Trade Comm'n,2024) the effort to ban non-competes will not likely go away.

Not only has the FTC appealed the court's decision, but several states have also banned employee non-competes, with at least six others having pending legislation to do the same. This potential shift will force companies to rethink employee agreements and consider alternative ways to protect their business interests without non-competes.

As evidenced by these cases and the recent efforts of legislative and governmental bodies, companies must consider a host of factors when seeking to protect their intellectual property. While it appears the NASCAR saga is far from a chequered flag in terms of a resolution, this developing story serves as a strong reminder about the importance of protecting proprietary information, especially when a rival is just around the turn.

The following article appeared initially in World Intellectual Property Review, and is reprinted here with its permission.

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New Study Links Sports Gambling to Violence, Senator Weighs In, Expert Opines

A study by researchers at the University of Oregon has demonstrated that legalized sports gambling is correlated to an increase in local domestic violence incidents.

The study, conducted by Researchers Kyutaro Matsuzawa and Emily Arnesen within the Department of Economics, explores "the relationship between legalized sports gambling, unexpected emotional cues, and reported intimate partner violence.

"Using crime data from the 2011 to 2022 National Incident-Based Reporting System (NIBRS) and extending Card & Dahl (2011)'s model, we find that when sports gambling is legalized, the effect of NFL home team upset losses on IPV increases by around 10 percentage points," according to the researchers.

"Heterogeneity analyses reveal that these effects are larger: (i) in states where mobile betting is legalized, (ii) in locations where higher bets were placed, (iii) around paydays, and (iv) for teams who were on a winning streak. Together, these findings support that financial losses from participation in sports gambling can amplify the emotional cues from a favorite team's unexpected loss."

In response to these findings, Minnesota Senators John Marty (DFL-Roseville), Erin Maye Quade (DFL-Apple Valley) and Scott Dibble (DFL-Minneapolis), for example, issued the following statement:

"As the Legislature has considered legalizing sports gambling in Minnesota, virtually all the discussion has been focused on the benefits to those who would profit from bookmaking. Unfortunately, there has been little to no discussion of the health impacts or the economic harm from that legalization. The addictive nature of online sports betting is already well-documented, with known links to financial hardship, mental health struggles and suicide. Now, this study on domestic violence and sports betting shows that after losses in certain sporting events, there is a 10 percent increase in intimate partner violence in states that legalized sports betting compared to those that have not. Legislative debate over sports betting must include a recognition that this legislation will make the horrific problem of

family violence even more common. We call on our legislative colleagues to conduct thorough hearings on the harmful impacts of sports bookmaking, addressing both the financial costs and the human toll, including domestic violence. The stakes are too high to ignore these issues. We must prioritize the health and safety of Minnesotans over the profits of a predatory industry."

Expert Weighs In

Dr. Gil Fried, Professor at the University of West Florida and Editor-in-Chief of Legal Issues in Sports Betting, shared his thoughts on the study.

"This does not surprise me at all," said Dr. Fried. "In the United States we are now several years behind the United Kingdom which has already seen the problems associated with legalized sport wagering. While many states have tried to find what might be possible solutions to the perceived problems that can result from sport wagering, both legal and illegal. There have been educational and informational efforts along with hot lines and exclusion lists.

"However, that does not limit individuals from placing large wagers they cannot afford, or they can possibly spiral into addiction. Then when things go south people can unfortunately try to solve their issues with alcohol, drugs, inappropriate financial decisions, wrecked marriages, lost jobs, and violence. Thus, these research findings do not shock me. The question is what to do with these findings? Will limiting the amount of wagers, similar to what is done in the UK, help? Will a federal effort of minimum protections help?"

To access the paper, visit **https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4938642**

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Sports Lawyer Aarij Wasti Appointed to SLA's 2025 International Committee

Aarij Wasti, a partner and member of Toronto-based Gowling WLG's Entertainment & Sports Law Group, has been appointed to SLA's 2025 International Committee.

Wasti brings more than a decade of experience providing legal support to mega sporting events from bid and host country planning, to operations and implementation, through to wind-up and dissolution. With an event focused legal practice including corporate and regulatory compliance and brand protection-related matters, he provides valuable assistance to bid teams, host nations/cities, event organizers, suppliers and service providers and sponsors alike.

Prior to joining Gowling WLG, Wasti spent more than 14 years working on the FIFA World Cup Qatar 2022– the last four of which he spent as the Director of Legal & Compliance on the event's management team and as Company Secretary of FIFA Ticketing Qatar. Other roles on the WC project included external legal counsel to the Qatar 2022 Bid Committee and Senior Legal Counsel (Sports & Media) at Supreme Committee for Delivery & Legacy (Qatar).

During his time at Supreme Committee, Wasti managed the legal functions of Qatar 2022 Local Organising Committee LLC (LOC) and legacy projects including Generation Amazing Foundation (CSR/ ESG), B4Development Foundation (Nudge Unit), Josoor Institute (Knowledge Excellence), Challenge 22 (Innovation Hub) and Worker's Welfare Program (Human Rights programme focused on migrant workers).

Wasti's extensive experience with FIFA Qatar spans a wide range of strategic issues including communications, crisis management and investigations. This breadth and depth of event focused experience provides him with unique perspectives and insights.

His other career highlights include serving as counsel on the Doha 2020 Olympic Bid, being elected to the Board of Directors of the American School of Doha and being appointed by the Ambassador of Pakistan in Doha as a Board Member of the Pakistan Business Council – Qatar. The Legal 500 Middle East named Aarij on its GC Powerlist in 2023, 2022 and 2019.

Qualified in Canada, England & Wales and Pakistan, Wasti possesses a rich global perspective to his work, helping clients forge strategic connections and make inroads into exciting new markets.

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An Interview with Ultimate Fighting Championship Agent Lance Spaude

By Mia Thurow

(Editor's Note: The following interview with Marquette University Law School alumnus Lance Spaude ('16), who works as an Ultimate Fighting Championship agent for Iridium Sports Agency in Las Vegas, appeared in Marquette Wire.)

Question: For those who don't know who you are, can you tell me a bit about yourself?

Answer: My name is Lance Spaude. I'm a partner with the Iridium Sports Agency. We are one of the largest sports representation agencies in combat sports and currently represent over 100 athletes in the UFC. So, that's what I do, as far as my job goes. I'm located in Las Vegas and have been in Las Vegas for, on and off, nine years now, I think almost 10. That's the 1,000-foot overview.

Q: What are your passions? Why are you working in the career that you are in, and what interested you in that career?

A: I've always had an interest in sports from a very young age, competing in it and playing in it up until the collegiate level, where I actually transitioned from the very traditional sports that you would have in Wisconsin. I grew up playing football, basketball and baseball. When I got to college, I actually started training in mixed martial arts, and that's where I gained my passion for that sport specifically. From the moment that I started training and competing as an undergrad, when I was going to [college], it just grew from there and that's where I fell in love with the sport, fell in love with the athletes and fell in love with the dedication that that it takes to do well in the sport. That really started with my passion for mixed martial arts and for combat sports in general, and then it's kind of always built on it from there. I've been involved in the sport in a number of different capacities. I started out as a competitor, then had the opportunity to go to law school at Marquette, where I continued to pursue that passion. While I was getting my law degree and was a member of the sports law program, I was able to do an internship with the UFC. I did a semester at [the University of Nevada, Las Vegas] while I did that, but I was still involved in the combat sports world. And then, throughout that, it has always been something I've been drawn to. I always had an interest in working in the sports field, and even more specifically, in the combat sports space.

Q: Could you always tell that you wanted to go into a law-related career, or was that something that developed over time as you got into MMA?

A: My dad is actually an attorney based in Appleton, Wisconsin. So, I grew up always having an inclination that I would end up going to law school and end up being a practicing attorney. He does personal injury and workers' compensation. I had anticipated that at some point in my life I was going to go back and work at my dad's firm and make it a father-son law firm. He never really wanted that for me. I don't think that he really had any interest in me even going into the legal field. It's not something he pushed on me, it's just something that, naturally, I gravitated to, with my relationship with my dad being pretty close. Law school was always on my mind. The sports side of things, I really didn't have. I enjoyed sports, and there was always this idea like, 'Oh, I'd love to be **Jerry Maguire**, I'd love to be a sports agent.' But it wasn't necessarily anything that was driving my decisions up until I started looking at law schools. I started considering, what would a career look like post-law school? What would that be? I don't think I actually thought that I would end up working in the sports field. But I thought, 'If I'm going to go to law school, I might as well pursue something that I think would be of interest.' So, I would say that started to develop when I was looking at law schools to attend. I always planned on going to law school but really anticipated doing personal injury work or workers' compensation for my father, or potentially working at another firm based in Wisconsin. I think the sports side of things developed as I started competing and training in combat sports, but at the same time, looking at what law school I was going to go to and what my post-law school career would look like.

Q: Tell me a little bit more now about your time at Marquette Law School. What was that experience like for you, and what were some opportunities you were provided with, especially in the realm of sports law?

A: Attending Marquette Law School was great. The big thing that was a huge benefit for me was Marquette's connection with both the local community as far as

Milwaukee and southern Wisconsin goes, but additionally in the sports context, the connection with the sports community. I got a great legal education, very standard, what you would expect in a law school. But the more important thing for me was the experiences that I had my first summer. I got to work for Direct Supply, which was a great experience. It's a great company based in Milwaukee. Then after that, I had a number of internship opportunities, the most prominent probably being with the UFC. That was something that the Marquette sports law program helped facilitate. And then Marquette Law School was very encouraging to me of going to a different school, doing a semester there and getting that experience. So, I think one of the most beneficial things about the Marquette Law School, and specifically the sports law program, is their effort to get you engaged in opportunities outside of just the classroom. I think that really paid huge dividends for me post-law school. Even something as simple as my first job out of law school, working for the NCAA, was facilitated through the relationships and the experiences I had outside of the classroom provided by the Marquette Law School and the sports law program. Simple things like that, I really think go a long way. In my experience, that is a huge strength that Marquette Law has when compared to other law schools.

Q: I completely understand that. Across the entire school, too, I think the opportunities they provide are kind of incredible, especially in the athletics world. So, that definitely doesn't surprise me at all.

A: I didn't go to Marquette for undergrad, so I can only speak to my law school experience, but they do such a great job of keeping those strong connections, specifically with the sports community. The law school has alumni that work for the Bucks, alumni that work for the Brewers. They do a really good job of cultivating a sense of community. Milwaukee is a 'small, big city.' It's a larger city, but it really has a small feel to it. I've had the fortune to live in a number of different cities, and there really is a sense of community in Milwaukee that's different from other places, and Marquette does a great job of building on that community.

Q: Now, switching gears a bit, you work with some of the biggest names in the UFC and you mentioned earlier that the agency represents over 100 of those stars. Can you tell me what it's like working with some of those big names in the UFC?

A: I think it can be incredibly rewarding and incredibly challenging at the same time. Any time you're working with individual athletes, the demands can vary from day to day. You're dealing with personalities, you're dealing with high-stress and high-pressure situations. So, it's a very challenging job, especially when you're dealing with different individuals. One client might have very different expectations and different needs than another. But the rewarding part of that is you get to work with these athletes, these individuals, and you get to be a small part of their dream, and you get to be a small part of their journey to achieve in the sport that they chose to pursue. So, the rewarding part is when they have success, you also are part of that success. It's, like I said, both challenging and rewarding at the same time.

Q: Speaking of that challenge and reward, the sports industry is high-risk, high-reward. It's very competitive and ever-changing, compared to a more static work environment. How are you able to navigate that dynamic work environment and be successful in your position?

A: I think the important thing, at least in my experience, is really having a passion for the sport and having a shared goal with my athletes. It's very challenging, it's extremely competitive, and it can be stressful to the point where at times it can almost be debilitating. But if you truly care about the people that you work with, and you truly believe in the work that you're doing, I think that really fuels you to do your best. One thing I will say is that I've worked in other industries, and as you mentioned, the sports industry can be significantly more stressful due to the competitive nature, due to the fact that wins and losses can have huge impacts on the individuals involved. You're constantly talking about people losing their jobs or potentially losing something that they worked their entire life for, and they have to shift into a new career. It has its own stresses that weigh on you, almost to a personal extent, where it's hard to detach the business from the personal side of things. But that's also what fuels me to work so hard and to put everything I can into what I do for my athletes

and my clients because of how personal it is. So, it's a double-edged sword, but it's unique compared to any other industry I've ever worked in.

Q: I saw that you wrote a piece called "Time to Act" regarding legislation for concussions in youth athletics. Can you tell me more about when you wrote that, as well as what sparked you to write and what the piece is about?

A: I wrote that when I was in law school. I believe I started it my [second] year, and it was something where the law school always encourages you to write these pieces and submit them to the various journals for potential publication. It's really part of the educational process of Marquette Law School and it's great because you get to focus on a subject that you're passionate about, really delve into the research and start drafting arguments forward. It's a really helpful tool as far as growing, as far as developing you into a critically thinking attorney. My interest in it is that I've always had an interesting relationship with concussions. I work in combat sports where concussions are extremely prominent. I grew up playing football. I sustained several concussions myself. It's something that I've always been concerned about, and it's something I've always had an interest in mitigating. How do we continue to participate in the sports that we love, but at the same time minimize the risks, specifically when it comes to head trauma? That's probably the one thing that you can't repair. You can always have knee surgery. You can have shoulder surgery. But to this day, they still don't know how to counteract the damage that can be done from head trauma. So, I've actually researched a number of different pieces regarding concussions, and it just so happened that on that project, I had initially worked for an agency that was involved in the space of youth concussions, reducing the impact of concussions in youth athletics. That's when it initially sparked. My interest was seeing what this company was doing, and that's when I began researching what could be done, in a legal sense, to help prevent or minimize the dangers that come with participation in youth athletics in regard to concussions and head trauma.

Q: That's a fascinating topic. I'm interested to know more about it.

A: It's a great concern. I would say I've only become more concerned about it now that I work in the combat sports space. I'm working with these athletes, and you can see the cognitive decline. There's a number of individuals and entities involved in our sport that are there to help protect the athletes, but ultimately, it's the athletes' decision on when to decide enough is enough. There's always questions of, 'How can you encourage that decision to be made at the right time?' whether that's legally, whether that's based on personal relationships you have with the athlete. It's something that I've always had an interest in and something that has been consistent throughout my career, starting from an [athlete], all the way to where I am now. It's one thing that's always been a part of my discussions with athletes and my shared experiences with those athletes.

Q: What advice would you offer to any Marquette Law School students right now who are wanting to go down a similar career path as you, whether they're in the sports law program or they just know they want to work in sports law?

A: The advice initially would be to get involved. I think a lot of people are so hesitant and so afraid of failure that they never start, and I think starting is the hardest part. Whatever that may be, whether it's an internship, whether it's volunteering, if that's the space you want to work in and it's something you're passionate about, I think the most important step is starting. I think the second-most important thing that you can do is be persistent. You're going to have a lot of failures, you're going to have a lot of 'no's,' you're going to have a lot of doors that get shut on you. But if you're persistent and you're passionate and you do good work, eventually it'll work out for you. So, I would say the two most important things would be to start, and then once you start, just be persistent regardless of the outcome. Don't focus on individual outcomes, focus on the process, being persistent and doing good work. I probably applied for over 100 jobs in the sports field, and I got interviews for maybe five of them. Maybe I had one yes, and I ended up working in that job. It's just the nature of an incredibly competitive field, but if you are persistent and passionate, I think it's something that can work out for whoever is seeking to work in the space, for sure.

Q: Marquette's motto is 'Be the Difference,' to go out and serve others and make a difference in the world. How would you say you aspire to be the difference in the world?

A: I think I'm really fortunate in the position I'm in because my job allows me to have a significant impact, and to essentially be a difference, both on an individual level and on a greater industry level. I had the opportunity to not only work with, but educate a lot of my clients, and work with individuals that, some of the things that I can teach them, or we can learn together, can go on and impact the people that they work with and the students they might have in the sport. It's really beneficial in the sense that I'm helping an individual, but I also know that if I help that individual and I do it right, that they're then going to pay it forward and they're going to start helping others to be a difference and build on that. So, I'm really fortunate in the sense that my job allows me to be a difference. Sometimes, people in certain positions look at 'be the difference' as community work or volunteering outside of their nine-to-five, which is great, and I would encourage everyone to do that. But I really got lucky in the sense that I can make a major difference in a number of people's lives just by doing good work in the position I'm in and by educating the people that I work with, working to have a better industry and a better sport through my day-to-day interactions with people. So, I'm really fortunate in that regard.

This story was written by Mia Thurow. She can be reached at mia.thurow@marquette.edu.

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Cozen O'Connor Announces Sponsorship of Rising Star LPGA Star Rachel Kuehn

Cozen O'Connor has announced its sponsorship of rising star Rachel Kuehn for the 2024-2025 LPGA season. One of the top amateurs in the world for the last several years, Kuehn made her professional debut last month at The Annika driven by Gainbridge LPGA tournament, sporting the Cozen O'Connor logo.

Ally Ewing, the LPGA Tour golfer the firm sponsored for the last two years, announced her retirement from professional golf effective at the end of this year. In order to continue its support towards women's golf, Cozen O'Connor has made the strategic decision to throw its support behind Kuehn as she begins her career as a professional golfer.

"After significant due diligence and thought, we decided to help a young woman begin her career and work to get her full-time status on the LPGA Tour rather than sponsor a more seasoned veteran golfer," said Michael J. Heller, Cozen O'Connor's Executive Chairman and Chief Executive Officer. "Accordingly, we are thrilled to announce our sponsorship of Rachel Kuehn."

Kuehn is a former Wake Forest standout, All-American, and was named the Atlantic Coast Conference Player of the Year back-to-back in 2022 and 2023. Many golf fans will recognize her name as she was featured in the second season of the popular Netflix series Full Swing. While she does not currently have full-time status on the main tour, she will move between LPGA Tour events where she can get exemptions and the Epson Tour, which is the feeder tour to the LPGA Tour.

Kuehn was born in 2001 in Asheville, North Carolina to an athletic family. Her mother, Brenda Corrie-Kuehn, was a Hall of Fame golfer at Wake Forest and represented the United States in two Curtis Cups, a biennial golf tournament that pits the United States against Britain and Ireland. Her father, Eric, and two uncles were Division I baseball players, and her brother Corrie played collegiate golf at Rhodes College.

Kuehn's sponsorship, Heller said, reflects the firm's long-standing commitment to providing a supportive, collaborative culture for female attorneys — an initiative that's of vital importance to clients, potential laterals, and colleagues.

"Ally was a wonderful ambassador for the firm, and we are all excited for her next chapter in life," Heller said. "At the same time, we're very much looking forward to cheering Rachel on as she embarks on an exciting new chapter in her career."

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News Briefs

Las Vegas Night Owls of Major League Pickleball Announce Sports Lawyer as General Manager

The Las Vegas Night Owls of Major League Pickleball (MLP) has announced the appointment of Chris Patrick as their new General Manager.

The franchise noted that it believes that Patrick's "wealth of experience will significantly enhance their prospects for success. As a former Vice President of Basketball at Relativity Sports, Managing Partner at the Sports Law Group, and Deputy Commissioner & General Counsel at the PPA Tour, Patrick's diverse background will make him an asset to the Night Owls' operations.

"In his new role, Patrick will oversee front office and off-court matters, manage business operations, secure sponsorships, and serve as the key liaison between the players, coach, and ownership group."

Hogan Lovells Advises Tom Gores in Joining the Los Angeles Chargers Ownership Group

Global law firm Hogan Lovells advised Tom Gores of Platinum Equity and owner of the Detroit Pistons, on his purchase of a minority stake in the Los Angeles Chargers. The Hogan Lovells deal team was led by Global Head of Sports and partner Matthew Eisler (New York, Denver), partner Michael Turrill (Los Angeles), as well as partners Mark Weinstein and Jessica Millett (both New York), senior associates Ben Shellhorn (Denver), Spencer Caldwell-McMillan (New York), Stephen Weinstein (Washington, D.C.), associate Hanna Wynn (Denver), and law clerk Alec Kohli (Denver).