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Cases

California Appellate Court Upholds Dismissal of USC Linebacker's Wrongful Death Claim Against NCAA

By Scott White[1] and Noah Kalter[2]

On December 24th, 2024, a three-judge panel for the California Court of Appeals upheld the dismissal of a wrongful death claim against the National Collegiate Athletic Association (NCAA) filed on behalf of Matthew Gee, a former linebacker at the University of Southern California (USC).[3] Gee was one of twelve linebackers on the depth chart for USC in the fall of 1989—he became the fifth member of that group to die before the age of fifty. Junior Seau, another member

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3 *Gee v. National Collegiate Athletic Association*, No. B327691, Slip Op. (Cal. Ct. App, 2024). All references contained in this article refer to this slip opinion.

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of that group, committed suicide in 2012, and the National Institutes of Health (NIH) later confirmed that Seau had Chronic Traumatic Encephalopathy (CTE).

Matthew Gee's widow, Alana, filed a wrongful death action against the NCAA, contending that the NCAA negligently "failed to take reasonable steps which would have reduced [Gee's] risk of contracting CTE" (p. 3). A jury found for the NCAA at trial, and Gee appealed that judgment contending the trial court erred in applying the assumption of risk doctrine.

The appeals panel began by reviewing the circumstances related to Gee's death. Gee passed away in 2018 at age 49. The coroner attributed Gee's death to the "combined toxic effects of alcohol and cocaine, as well as hypertensive and atherosclerotic cardiovascular disease, anomalous small coronary arteries, complications hepatic of cirrhosis, obstructive sleep apnea and obesity" (pp. 2-3). In a footnote, the court mentioned "it is undisputed that the immediate cause of [Gee's] death was an alcohol and cocaine overdose" (p.7). Gee's widow donated Gee's brain to Boston University's CTE Center, and their doctors determined Gee had Stage II CTE, which is commonly known as "low level" CTE. Gee's attorneys alleged CTE caused mood changes and behavioral disorders in Gee, which in turn were a substantial factor contributing to the substance abuse that led to Gee's death.

Gee's estate claimed there is a clear link between repeated head trauma and CTE, citing studies from the Centers for Disease Control and NIH. Gee argued that the NCAA could have prevented Gee's death by implementing the following measures:

1. Share medical literature about repetitive head injuries and neurodegenerative disease when they knew it;
2. Educate players about the true nature of Grade 1 concussions;
3. Educate coaches and players about the dangers of leading with their head;
4. Make playing rules that would have reduced head impact;
5. Enforce the existing rules;
6. Implement return-to-play guidelines; and
7. Limit the number of full contact practices. (pp. 8-9).

The NCAA denied that it had any ability to reduce the risks surrounding repeated head hits in football. Furthermore, the NCAA denied the *existence* of CTE and suggested that the protein levels used to identify CTE are the result of other factors, such as age, genetics, sleep apnea, or drug use.

At trial, the jury heard these arguments, and said "no" to the following questions:

1. Did the NCAA do something or fail to do something that unreasonably increased the risks to Matthew Gee over and above those inherent in college football?

2. Did the NCAA unreasonably fail to take a measure that would have [minimized] the risks to Matthew Gee without altering the essential nature of college football?

As a result, the trial court dismissed the claims against the NCAA. Gee appealed, contending that the lower court misapplied the assumption of risk doctrine.

Assumption of Risk and Sports – California Law

The Court of Appeals began their analysis by discussing the doctrine of assumption of risk under California case law. In *Knight v. Jewett*, the California Supreme Court addressed the duty of care owed by participants in sport and held that "defendants generally do have a duty to use due care not to increase the risks to a participant over and above those inherent in the sport" (p. 12). In *Kahn v. East Side Union High*, the court addressed the duty owed by coaches, holding that

coaches owe a duty to avoid instructing athletes to engage in conduct "outside the range of ordinary activity" for the sport (p. 12). In both cases, the assumption of risk doctrine narrowed the types of duties owed by participants and instructors. The court summarized the assumption of risk doctrine in sports by saying: "Applied in the sporting context, [the doctrine] precludes liability for injuries arising from those risks deemed inherent in a sport; as a matter of law, others have no legal duty to eliminate those risks or otherwise protect a sports participant from them" (pp. 16-17).

Gee argued the assumption of risk doctrine does not apply to deaths resulting from CTE in football because CTE was not recognized as a risk inherent in the sport of football at the time of Gee's injury. The Court of Appeals countered this argument by stating participants assume the risk of certain *conduct* rather than certain *injuries*. The court provided the following example to help with this distinction:

"Knowing that a skier suffered a broken leg from a fall while skiing is not sufficient to determine whether the [assumption of risk] doctrine applies. If the skier broke his or her leg in a fall while skiing moguls, the injury was caused by a risk inherent in the sport and the doctrine applies; if the skier broke his or her leg due to a poorly maintained towrope, the doctrine does not apply. Thus, it is not the specific injury which is determinative, it is the nature of the conduct or condition which caused it" (p. 17).

Under this precedent, the *Gee* panel found it necessary to separate the underlying conduct (i.e. what led to the CTE) from the injury itself. In Gee's case, the panel noted "it is undisputed that the conduct which causes CTE is repeated head hits, and head hits are an inherent risk of college football" (p.20). Gee's argument failed under California law because the head injuries were the risk inherent in the activity, and the NCAA could not prevent those without changing the nature of the sport. Accordingly, the panel found the trial court did not err in instructing the jury of the assumption of risk doctrine.

Reasonable Care and Head Injuries

The question then became whether the NCAA breached its duty to protect Gee by increasing the risk of repeated head hits in college football. The NCAA pointed to a few measures it took regarding head injuries in football: they provided information on head injuries to team medical personnel, and they warned players and coaches of the dangers of leading with the head. The NCAA also implemented playing rules that prohibited "spearing" and other actions where a player would use the crown or top of their helmet to strike a runner. Similarly, NCAA members implemented rules that limited

contact practices during the first three days of the preseason practice period. In addition to these measures, the NCAA argued that the standard of care in the medical community before 2005 did not encompass warning players about CTE.

Holding and Implications

The Court of Appeals panel agreed with the NCAA and upheld the lower court's dismissal of Gee's claim, finding "the assumption of risk doctrine does apply, and any instructional error relating to the NCAA's responsibility for the action or inaction of its members was harmless" (p. 3).

For practitioners, there are several takeaways from this case. First, the court highlighted the factual dispute at the lower court surrounding the existence of CTE and the link between CTE and concussions in football. In cases where a plaintiff alleges harm due to CTE, one defense strategy may be to deny the existence of CTE as a cause of injury. Second, the lower court did not reach the issue of causality, but the Court of Appeals panel suggested that causality may not be present in this case, as the NCAA argued that Gee's substance abuse predated his CTE (p. 7). Moving forward, causality will be an element that may be difficult to prove for certain plaintiffs, as it can be difficult to disentangle the impact that CTE has on mental health, which in turn can contribute to substance abuse.

The *Gee* decision also shows how the standard of care for head injuries continues to evolve. Potentially negligent actions should be considered in the context of the time they occur rather than the time they are litigated. However, once information becomes available that changes the standard of care, organizations have a responsibility to conform to those standards. In this case, the NCAA pointed out that CTE research did not begin until 2002, and there were no studies on CTE in college football players until 2005. The NCAA used this to argue CTE education was not a duty owed to players when Gee was competing in the early 1990s, and the trial court agreed, finding CTE was not acknowledged by the medical community at that time.

Ultimately, litigation relating to CTE and concussions in football have increased as knowledge surrounding the lasting impacts and severity of head injuries has grown. The stakes associated with these cases are high, and there are often implications for medical treatment that arise from these cases. In this case, the numbers surrounding Gee's linebacker cohort at USC are shocking. Five of the twelve linebackers on the 1989 USC roster died before the age of fifty. If these types of outcomes are attributable to a risk inherent in the sport, then football players assume an immense amount of risk when they step onto the field.

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Motion to Dismiss Denied in High School Basketball First Amendment and Retaliation Case

By Dr. Rachel S. Silverman

Jake Whalen attended Waunakee High School and graduated in 2024. During his 2021-22 basketball season he was the junior varsity team's captain and starter. A group of parents, including the Whalens, attempted to remove Dana Mackenzie, the head coach, partly due to concerns of financial misconduct related to the "Waunakee Hoops" youth basketball camp. The parents believed Mackenzie was keeping money that should have gone to the school district or been spent directly on the camp. Jake's father, Mark Whalen, raised his concerns at a school board meeting in October 2022. Thereafter, Whalen noticed his son's playing time significantly reduced through the next season until it was almost nonexistent by the end of the season. Jake Whalen was considered a better player than those in the rotation playing on the court. After the 2022-23 season, Mackenzie's contract was not renewed, and the assistant coach, Tyler Selk, became the new head coach. Selk did not allow Jake Whalen to play in many summer games. Selk commented to Mark Whalen, alluding to this being a consequence or punishment for Whalen's remarks about the previous coach.

Mark Whalen contacted the Waunakee Police Department in August 2023 and alleged Mackenzie and Selk had been siphoning funds from the booster club back to themselves. This instigated a four-month-long criminal investigation. During the police interviews the coaches asked if Mark Whalen was the one who made the complaint. In October 2023, Jake Whalen met with the school principal and Selk to discuss his place on the basketball team. Jake stated in the meeting he believed

he was being retaliated against for comments his father had made. During a preseason meeting for potential team members and parents in November 2023, Selk said he was weeding out the toxic parents. During the next tryouts, Selk had Jake practice with the freshmen players, and the Whalens believed this decision was made to humiliate Jake. Although Jake performed well during the tryouts and met every requirement, Selk cut him from the team.

The Whalens asserted three retaliation claims under the First Amendment. A First Amendment retaliation claim needs three elements: 1. Plaintiff engaged in protected speech. 2. Defendant took action that would dissuade the average person from speaking out. 3. Defendant took adverse action because of the protected speech (*Harnishfeger v. United States*, 2019; *Bridges v. Gilbert*, 2009). Defendants, Mackenzie and Selk, assert the complaint does not satisfy any of those elements and that they should be entitled to qualified immunity.

There are many standards for determining protected speech, and the court determined that even with the narrowest protection, the Whalens adequately alleged they engaged in protected speech. Mark and Jake's comments were not indecent, threatening, or promoting illegal conduct. The comments did not disrupt the basketball team's operations, and the Whalens' statements were about alleged misconduct, not bad coaching decisions.

The Whalens allege two adverse actions were taken: 1. Mackenzie reducing Jake's playing time to almost nonexistent, and 2. Selk cutting Jake from the team in 2023-24. Many courts have confirmed that being cut or suspended from a school sports team could qualify as retaliation under the First Amendment. In *B.L. v. Mahoney Area School District* (2020) the Supreme Court declared the school district violated the First Amendment by suspending a student from the cheerleading squad for her posts on social media. The courts reason that losing the ability to play a sport would deter the average student or parents from speaking out against a coach, and the Whalens adequately demonstrated this in their case.

The plaintiff must demonstrate that the adverse action resulted directly from the protected speech or was at least a motivating factor for the adverse action. The court agreed the Whalens had enough to state a plausible claim. The Whalens met all three elements needed for a retaliation claim under the First Amendment.

The defendants believed they were entitled to qualified immunity because it is not established that a minor may bring a First Amendment retaliation claim based on a parent's protected speech. However, Jake's claim is based on his speech, not his father's. The other reason defendants stated they were entitled to qualified immunity is that it is not established that a coach can be held liable under the First Amendment for discretionary decisions about the team's roster. The court stated it is incorrect to assert that discretional decisions may not be subject to the First Amendment. Also, the court disagrees, stating it is clearly established that being benched or removed from a school team can serve as the basis of a retaliation claim. Both reasons the defendants provided for qualified immunity were not adequate. Therefore, the court denied the defendants' motion to dismiss due to a sufficient case for a retaliation claim under the First Amendment, and defendants are not entitled to qualified immunity.

References

Bridges v. Gilbert, 557 F.3d 541, 546 (7th Cir. 2009)

Harnishfeger v. United States, 943 F. 3d 1105, 1112-13 (7th Cir. 2019)

Whalen v. Mackenzie, 2024 U.S. Dist. LEXIS 230098

Dr. Rachel S. Silverman is an Assistant Professor and Program Coordinator for the Sport and Recreation Management Program in the Kinesiology and Sport Sciences Department at the University of Nebraska at Kearney. Her research agenda focuses on women in sports, including legal, sociological, and ethical aspects of sports management.

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Judge Awards Trial in Wrongful Termination Suit Involving Fired Female Athletic Director

By Russell C. Garner

Dianthia Ford-Kee was appointed as Mississippi Valley State University's (MVSU) Athletic Director on November 18, 2013, and was the first woman appointed to the role in the University's history. Of note, Ford-Kee's hiring was not contractual, but rather that of an at-will employee of MVSU. Prior

to her appointment, the University's athletic department had a history of NCAA noncompliance issues as well as a history of losing. However, during her nine-year tenure, the University won Southwestern Athletic Conference (SWAC) division championships in both cross country and women's soccer. While Ford-Kee claimed MVSU enjoyed academic success among many student athletes under her guidance, the overall program continued to hold an overall losing record.

During her 2020-2021 performance review, which noted the lack of success by University athletic teams, Ford-Kee still received ratings of either "exceptional" or "exceeding expectations" in all areas. On February 8, 2022, University President Jerry Briggs requested a meeting with Ford-Kee, who – based on information received earlier in the day – presumed the purpose of the meeting was to discuss issues involving men's basketball coach Lindsey Hunter. However, Briggs informed Ford-Kee during the meeting that she would be placed on administrative leave, effective March 1, 2022, and that her final day of employment would be March 31, 2022. Following a national search, MVSU hired Hakim McClellan, a male approximately 27 years younger than the 62-year-old Ford-Kee, to fill the vacancy. The University insisted that her termination was due to poor job performance based on the athletic program's win/loss record during her tenure.

On August 30, 2022, Ford-Kee filed an EEOC complaint against MVSU. Six days later, Briggs submitted an employee evaluation report of Ford-Kee to the University's human resources office, noting that Ford-Kee was no longer employed, along with ratings of "Improvement Necessary" under "work results" and "Unsatisfactory" regarding "creativity and innovation." In its response to Ford-Kee's complaint dated February 9, 2023, the University claimed that Ford-Kee's reason for termination was the underperformance of teams under her leadership. However, Ford-Kee alleged that she first learned this rationale for her termination upon receiving a copy of the EEOC response and that she was unaware that her own job performance was measured by the teams' performance.

Ford-Kee subsequently filed suit on June 12, 2023 against Mississippi Valley State University and the Mississippi Board of Trustees of State Institutions of Higher Learning (IHL). She brought forward two claims, alleging that her termination was due to age and gender bias. The University and IHL attested that Ford-Kee was terminated solely due to poor performance of athletic teams and requested a motion for summary judgment.

Title VII Gender Discrimination

Ford-Kee's first claim was that of gender discrimination under Title VII of the Civil Rights Act of 1964, relying on circumstantial evidence to establish the claim. Title VII provides that it is unlawful "for an employer to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin."

Using the McDonnell Douglas framework – used to prove discrimination in employment decisions when lacking direct evidence, Ford-Kee demonstrated that she met all four factors of a *prima facie* case for gender discrimination: (a) that she belongs to a protected class, (b) that she was qualified for her position, (c) that her termination adversely affected her, and (d) that she was replaced by someone outside of her protected class. The University was unable to dispute that she satisfied these elements, instead arguing that her reason for termination was due to poor performance based on the underperformance of its athletic teams during her stint.

Ford-Kee presented circumstantial evidence arguing pretext and discriminatory intent, in addition to evidence pointing to her gender as a motivating factor in her dismissal. She argued four reasons to question the University's justification: (a) the teams' losing records were not previously attributed to her job performance; (b) the University's reasoning was revealed and documented post-termination and post-EEOC charge; (c) inconsistencies present in the University's proffered reason after litigation commenced; and (d) contradictory statements in the University's EEOC position statement and Briggs' testimony regarding his informing Ford-Kee of the reason for her firing. Considering this evidence, the

Court questioned the sincerity of the University's stated reason for Ford-Kee's dismissal, noting:

> *While there is a dispute as to when Ford-Kee was informed that she was terminated for poor work performance, an unfavorable employee evaluation documented by the decision-maker, Briggs, only after Ford-Kee had filed her EEOC charge, certainly casts doubt on the University's proffered reason.*

The University argued that Ford-Kee failed to present evidence of Briggs making any comment regarding her gender and that she did not otherwise establish gender as a motivating factor in Briggs' decision. Briggs testified that he was told by "hundreds" of unnamed persons that he should terminate Ford-Kee.

The Court, while noting that Ford-Kee had not presented specific evidence that Briggs himself commented about her gender, pointed out that Briggs was influenced by the biases of others in his decision and that a jury could infer his decision was based on discriminatory animus. As such, summary judgment was not granted, as genuine issues of material fact remained in the case.

29 U.S.C. § 623(a)(1): ADEA Age Discrimination

Ford-Kee also made an Age Discrimination in Employment Act (ADEA) discrimination claim against the University, alleging that she was unlawfully discriminated against because of her age at the time of her termination. Under the ADEA, an employer cannot "discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age." In essence, the ADEA prohibits discrimination in hiring, promotion, discharge, and other employment decisions as it relates to age. To prevail on such a claim, a plaintiff must show that age was a "but for" case of termination, more than simply proving age as a motivating factor in the decision.

By meeting the three elements present in her Title VII claim, along with showing that her replacement – McClellan – was much younger than her at the time of her termination, Ford-Kee satisfied elements needed for a credible ADEA complaint. McClellan was approximately 27 years Ford-Kee's junior at the time. Meanwhile, the University continued to insist that its reason for terminating Ford-Kee was the underperformance of its athletics teams and not due to anything age-related.

According to *O'Connor v. Consol. Coin Caterers Corp.* (1996), the replacement of a worker by someone substantially younger may indicate a strong *prima facie* case for discrimination. The Court found that, given the substantial age gap between Ford-Kee and McClellan, along with the previously discussed evidence, a jury could infer that the plaintiff was terminated because of her age. The Court further found that Ford-Kee's strong *prima facie* case, in combination with the sufficient evidence questioning the validity of the University's stated reason for her termination created a genuine issue of material fact on whether age was the cause of termination. As a result, the Court denied plaintiff's motion for summary judgment.

Conclusion

In conclusion, the court granted in part and denied in part the University's Motion for Summary Judgement. Ford-Kee was granted a trial against Mississippi Valley State University on her Title VII and ADEA discrimination claims based on wrongful termination. All other claims were dismissed with prejudice, including claims against IHL.

Russell C. Garner is a Sport Management doctoral student at Troy University. He currently serves as Director of Athletics Media Relations at Arkansas State University in Jonesboro, AR, where he resides.

References

Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621, et seq.

Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1).

Ford-Kee v. Miss. Valley State Univ., Civil Action 4:23-cv-107-SA-JMV (N.D. Miss. Aug. 2, 2023).

O'Connor, J. v. Consolidated Coin Caterers Corp., 517 U.S. 308 (1996).

Owens v. Circassia Pharmaceuticals, Inc., 33 F.4th 835 (5th Cir. 2022).

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq.

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Appeals Court Affirms Ruling Parent's Lawsuit, Alleging Basketball Academy's Slogan Misrepresented Its Promise

By Jackson Whaley (Graduate Student, The Citadel - The Military College of South Carolina) and Dr. Kwangho Park (Assistant Professor, The Citadel - The Military College of South Carolina)

Plaintiff Robert Lafayette (Lafayette) enrolled his son in a youth basketball skills academy, Blueprint Basketball (Blueprint), after being influenced by the company's slogan, "Skills over politics." He interpreted this slogan to mean that his son would receive basketball training without external interference. However, he found himself at odds with the company and criticized them via email, leading Blueprint to remove his son from the program. Additionally, Blueprint allegedly communicated with other programs, advising them to deny Lafayette's son entry into their programs due to Lafayette's conduct. From his perspective, politics had been placed over skills.

Lafayette sued Blueprint, alleging that its slogan, "Skills Over Politics," was deceptive because, contrary to its representation, Blueprint excluded his son from participation for political reasons due to Lafayette's criticisms of the program. He further claimed Blueprint's actions constituted unfair conduct, which he argued fell within the protection of the Vermont Consumer Protection Act (VCPA). In response, Blueprint filed a motion to dismiss, which the Vermont Civil Division Court granted. Lafayette appealed to the Vermont Supreme Court.

The VCPA is a state law intended to protect consumers from unfair or deceptive business practices. While it includes provisions related to antitrust principles, its primary focus is consumer protection rather than broad market regulation. The VCPA became the cornerstone of the case for both sides. The defendant, Blueprint, filed a motion to dismiss, arguing that Lafayette's complaint failed to meet multiple legal requirements under the VCPA. The Vermont civil division granted the motion to dismiss based on three deficiencies in Lafayette's claim: 1) Lafayette's complaint did not allege any facts establishing that he qualified as a 'consumer' under the VCPA; 2) The alleged conduct involved competition within a youth sports program rather than 'competition in commerce,' which is required for a claim under the VCPA; 3) Lafayette attempted to seek damages on behalf of his minor son without legal representation such as an attorney, which is not allowed under Vermont law. Lafayette appealed each of these rulings to the Supreme Court of Vermont.

The court considered three key questions in ruling on Lafayette's appeal of the trial court's dismissal of his case:

1) Did Lafayette allege sufficient facts to establish that he qualified as a consumer under the VCPA?

2) Did the trial court interpret "competition in commerce" too narrowly when determining whether Lafayette's claims fell the scope of the VCPA?

3) Could Lafayette seek damages on behalf of his son, who is a minor, without legal representation?

As for the first issue, the Supreme Court of Vermont ruled that Lafayette did not provide information that would define him as a consumer. This determination was critical because a plaintiff needs to be deemed a consumer to receive protection from the VCPA. The court relied on a previous ruling in *Mansfield v. Heilman, Ekman, Cooley. & Gagnon, Inc*., VT 47 (2023), which reaffirmed that a plaintiff must establish that they are a consumer to obtain a consumer-protection claim. Additionally, the court referenced *Messier v. Bushman*, 2018 VT 93 (2018), which defined a consumer as a person who purchases, leases, contracts for, or otherwise agrees to pay consideration for goods or services. Lafayette's complaint failed to allege any facts that would place him within this definition.

Although Lafayette failed to establish himself as a consumer under the VCPA, the Vermont Supreme Court proceeded with its analysis of his appeal. The court relied on *Elkins v. Microsoft Corp*., 174 Vt. (2002), which recognized that private plaintiffs may bring claims involving unfair competition under the VCPA. However, the Supreme Court of Vermont reiterated that while a plaintiff does not need to qualify as a consumer to assert an unfair competition claim under the VCPA, the statute applies only to unfair methods of competition in commerce. Lafayette's complaint against Blueprint alleged unfair competition within a youth athletic program, but the court

determined that such competition does not constitute 'competition in commerce' as required under the VCPA.

Regarding Lafayette's argument that the trial court's interpretation of 'competition in commerce' was too restrictive, the Vermont Supreme Court applied similar reasoning. The court pointed out that Lafayette's complaint specifically invoked the VCPA to address fairness in 'youth sports' but failed to reference any commercial activity. This omission was significant because the VCPA's protections apply only to unfair methods of competition in commerce, not to disputes arising within youth athletics. Consequently, the court determined that Lafayette's claims fell outside the statute's scope.

The court also cited previous cases that outlined unfair competition practices under the VCPA and found that Lafayette's complaint did not allege any recognized forms of unfair competition within commerce, such as price-fixing, monopolization, or deceptive business practices. All these failures in Lafayette's complaint proved to the court that Lafayette's complaint failed to state a claim under the VCPA. Relying on the precedent established in *Montague v. Hundred Acre Homestead, LLC*, VT 16 (2019), the court upheld the dismissal of the plaintiff's claims. The court in *Montague* stated that dismissing claims under the VCPA is appropriate if the plaintiff's claim is not within the law.

Here, because Lafayette's complaint failed on fundamental legal grounds, the Vermont Supreme Court did not address whether he could seek damages on behalf of his minor son without legal representation, as resolving this issue was unnecessary to the disposition of the case.

Ultimately, the Vermont Supreme Court affirmed the civil division's decision granting Blueprint Basketball's motion to dismiss.

Lafayette v. Blueprint Basketball (24-AP-127), Filed 10/11/24.

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North Carolina Court Rejects Lawsuit From Former Women's Basketball Players Alleging Racism, Discrimination, and Bias

By Myles White

This article discusses a case arising out of events that took place during and after the 2020-2021 academic and athletic school year, which was affected by the COVID-19 pandemic.

Plaintiffs in this case were comprised of nine women's basketball players that were recruited to play basketball at Lenoir- Rhyne University in Hickory, NC. During the height of the pandemic, the team had been battling with racial tensions and discrimination that later resulted in coaches and athletic leadership to step in and call a meeting with the team. At this meeting, it was insisted that the team would limit communication and only discuss things that were related to basketball and the goals of the team for the upcoming year. Laney Fox (plaintiff), was the sole leader of this upheaval and wanted to bring light to the situation. To add more fuel to the fire, she would later host a symposium for the team and campus administrators to discuss concerns and experiences of racial prejudice to be followed by yet another meeting to discuss experiences involving discrimination and racism. Fox would claim that the head coach retaliated against her and other African American teammates following the conclusion of these events and ultimately led to her and her teammates being forced off of the team at the conclusion of the 2020-21 basketball season.

Plaintiff Fox and the coaches had a meeting regarding the effects and the dismissal from the team. The coaches stated that she did not fit with the culture that the team needed at the moment and that they wanted to part ways with her immediately. The University relied that it would still honor her Grant-In-Aid (GIA) contract to pay her scholarship for the remainder of the year, but she would not be welcomed back to the team. In response to the decision of the coaches, plaintiff Fox published a letter that was posted on a social media platform, addressed to Lenoir- Rhyne University and combined with pictures entitled "The Racist 'Culture' of Lenoir-Rhyne University" listing quotes of racism from her teammates, coaches, and other NCAA personnel.

The letter signified reasons for the claims of racism, players being forced to leave, and coaches' discriminatory comments towards them. This letter initiated a response from the president of Lenoir-Rhyne University, Fredrick Whitt, who subsequently published a letter with the following statement:

> *"Yesterday, a former student athlete published false claims on social media with also stating she was dismissed from the women's basketball program for speaking out against racism and fighting for social justice. Lenoir-Rhyne is against the student's version of events. The dismissal from the program was a collective and intentional coaching decision and all the claims are false."*

On July 8, 2021, plaintiffs filed a lawsuit against Lenoir-Rhyne, Grahm Smith, and Frederick Whitt, alleging breach of contract, negligent misrepresentation, tortious interference with contractual rights, tortious interference with prospective economic advantage, and libel. Defendants filed a Rule 12(b)(6) motion to dismiss, and the trial court granted the motion to dismiss in part by dismissing the claims against Smith but leaving the breach of contract claim and the claim for libel, subject to two interpretations against Lenoir-Rhyne and Whitt. After reviewing the evidence, the trial court ultimately granted summary judgment to defendants, which plaintiffs appealed.

Plaintiffs list three issues on appeal: (a) whether the trial court erred by granting summary judgment in defendants' favor for plaintiffs' breach of contract claim and plaintiff Fox's libel claim; (b) whether plaintiffs are entitled to mental and emotional distress damages under the breach of contract claim; and (c) whether plaintiff Fox presented sufficient evidence for punitive damages on her libel claim.

Breach of Contract

Each of the plaintiffs signed a National Letter of Intent (NLI) contract when deciding to attend Lenoir-Rhyne University to play basketball. For each player to be able to receive their awarded scholarship they had to complete a Grant-In-Aid (GIA) contract for the 2020-2021 season. That scholarship would be labeled on the contract for a one-year time period under NCAA and Lenoir-Rhyne University policy. Plaintiffs stated that they had an oral contract agreement that gave the players four years of scholarship eligibility and that was supposed to be honored. After careful and thorough investigation, the NLI and GIA contracts were addressed and showed that the contracts were for one year of limitations and were nullified under the policies and procedures which every player signed that had an option of opting out of for the athletic and academic school year for 2020-2021. The evidence in the record demonstrates the only obligation listed is to notify the student athlete of the institution's decision, but there is no obligation to renew the grant for the following year. Accordingly, based upon the record before the court, plaintiffs fail to demonstrate a genuine issue of material fact as to any breach of contract of the GIA terms by defendants.

Negligent Misrepresentation

Plaintiff Fox also stated that the University president defamed her through the letter and statement he made and that the trial court erred in granting summary judgment on her libel claim. Although she cited numerous cases in support, Fox made no real argument or legal analysis to support that the evidence submitted at the time of the grant of summary judgment was sufficient for each element of defamation and that a genuine issue of material fact was present as to her claim. As such, the court ruled that Fox's challenge was overruled and that the trial court did not err in granting summary judgment to defendants.

Conclusion

Having found that there was no breach of contract with respect to any of the contractual claims made in the appeal, the court did not consider the alleged emotional or mental distress damages argued by the plaintiffs and affirmed the trial court's summary judgment motion in favor of the defendants.

References

Fox v. Lenior Rhyne University No. COA24-16 (Ct. App. NC. 2024). https://caselaw.findlaw.com/court/nc-court-of-appeals/116738219.html

Myles White is a doctoral student in Sport Management at Troy University. He also is an Assistant Athletic Director at Fayetteville State University who is over marketing, development, and operations and holds a master's degree in Sport Management from East Carolina University. Recently he was promoted to Director of Football Operations as another role he will coordinate starting this year of 2025.

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Articles

Recent Budget Cuts to Search and Rescue Will have Massive impact

By Jon Heshka

It's impossible to know the scope and scale of how and where President Trump's budget cuts will be felt by visitors to national parks but it is safe to say that there will be pain.

Last year, 331.9 million people visited national parks. This was an increase of 6.4 million visits, or 1.9%, from 2023.

There can be little doubt that the cuts will be felt.

That pain has been felt by the 1000 provisional employees of the National Park Service who have already been laid off and the inconveniences – toilets that won't be cleaned as often, trails that won't be maintained as well, longer lineups to enter the parks – that will occur due to the reduced levels of service to the public.

What can't be written off as mere inconvenience is the effect the cuts will have on the people who rely on search and rescue.

From 1992 to 2007 (the most current dates publicly available), there were, on average across the US National Park Service, 11.2 SAR incidents each day, or 4090 incidents per year, at an average cost of $895 per operation or $3.66 million per year. Personnel costs accounted for 49.8% of the total costs from 1992 to 2007. Aircraft costs accounted for 49.7% of the total cost.

More recent estimates put the annual cost around $6-7 million per year.

Hiking accounted for nearly half (48%) of all search and rescue missions between 1992 and 2007, boating was 21%, swimming was 6%, climbing 5%, and the remaining 20% was due to vehicle/driving, canyoneering, mountaineering, animal riding, aircraft, snowmobile, fishing, surfing, biking, skiing, and suicide.

During the same period there were 2659 reported fatalities, 24,288 individuals reported as either ill or injured, 51,541 individuals who were neither ill nor injured, and 13,212 individuals classified as a save (meaning the person would have died without the intervention of search and rescue).

Search and rescue will be adversely affected and people's lives impacted by the budget cuts.

Here's how.

Searches will be less efficient and effective. They will be staffed by fewer people. It will take longer to deploy. It will take longer to search. The consequences of this are that it will take longer for people to be found. This translates to greater suffering for those who are lost, or injured, or ill and in need of search and rescue. This also means that some will die as a result of the delays caused by the cuts.

Will any liability attach due to the diminished search and rescue capacity because of the budget cuts?

Probably not.

The U.S. National Park Service is not obligated to provide search and rescue. In a 1992 landmark decision, the 10th Circuit Court of Appeals ruled in *Johnson v. US Department of the Interior* that search and rescue is a "discretionary function" of government that is protected under general rules of exception of the Federal Tort Claims Act at 28 U.S.C. § 2680(a).

Along with three friends, Ben Johnson hiked to the 11938 foot summit of Buck Mountain in Grand Teton National Park. The group divided into two during the descent, Johnson got separated from his partner, and he subsequently fell to his death.

His family sued the Department of the Interior claiming the National Park Service failed to: properly warn him of the dangers of climbing; adequately regulate recreational climbing activity in Grand Teton National Park; initiate a rescue effort after Macal's initial report; and conduct a reasonable rescue effort.

The 10th Circuit affirmed the inherent dangers of mountain climbing are patently obvious, that both manpower and economic resources should be conserved to preserve availability during emergency situations and that many park visitors value backcountry climbing as one of the few experiences free from government regulation or interference.

The 10th Circuit further said that decisions concerning when and how to regulate mountain climbing go to the very essence of the Park Service's judgement in

maintaining the Park according to the broad statutory directive.

By their very nature, the 10th Circuit held, these decisions involve balancing competing policy considerations pertaining to visitor safety, resource availability, and the appropriate degree of governmental interference in recreational activity. Consequently, the Park Service's actions, insofar as they relate to the regulation of mountain climbing in Grand Teton National Park, were therefore shielded from judicial review by the discretionary function exception.

The 10th Circuit affirmed that "No statute imposes a duty to rescue, nor are there regulations or formal Park Service policies which prescribe a specific course of conduct for search and rescue efforts. Instead, the decision if, when, or how is left to the discretion of the SAR team. Therefore, the rangers must act without reliance upon fixed or readily ascertainable standards when making a search and rescue decision in the field."

The Park Service, the 10th Circuit said, has limited human and capital resources that it must allocate and deploy carefully. Decisions around "if, when or how to rescue inherently involves the balancing of safety objectives against such practical considerations as staffing [and] funding."

Search and rescue decisions in national parks are grounded in social and economic policy and are thus shielded from liability under the Federal Tort Claims Act. Consequently, while more people will suffer and die because of the budget cuts, it's unlikely that any liability will follow.

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Navigating Vanderbilt's $850,000 Court Storming Problem

By Joseph Michael Ricco IV

Vanderbilt University has faced repeated fines from the Southeastern Conference (SEC) after fans stormed the court following major basketball victories, racking up $850,000 in penalties during the 2024-25 season alone. In response, the school has introduced a new postgame policy aimed at allowing fans to celebrate on the court in a controlled manner while avoiding further penalties. This article breaks down the challenges schools like Vanderbilt have had with court storming, the financial and safety concerns that come with it, and how programs are trying to find a balance between celebration and regulation.

Vanderbilt's Court Storming Problem

Vanderbilt's court-storming fines have quickly added up after fans rushed the floor following wins over Tennessee and Kentucky. Under the SEC's escalating penalty structure, repeated incidents come at a steep cost, pulling funds away from other areas of the athletic department. With the risk of even higher fines looming, the school needed a solution to avoid further financial hits.

Beyond the money, safety remains a major concern. When large crowds flood the court, the risk of injuries to players, coaches, and fans increases. Visiting teams have struggled to exit safely, and security has often been unable to contain the chaos. The SEC has made it clear that preventing these uncontrolled celebrations is a priority to protect everyone involved and avoid a situation that could turn dangerous.

Finding a Middle Ground

With mounting fines and safety concerns, Vanderbilt needed a way to keep its fans engaged without facing further penalties. Instead of attempting to ban court-storming altogether, the school introduced a postgame policy aimed at structuring celebrations in a way that satisfies both fans and the SEC. The new rule enforces a one-minute countdown on the video board after each game, giving players, coaches, and officials time to exit before allowing students onto the court for up to 30 minutes. By delaying the rush rather than prohibiting it, Vanderbilt hopes to strike a balance between protecting its athletes and preserving the excitement of a big win.

Other programs have also introduced similar policies to avoid fines while still allowing fans to celebrate. Georgia successfully avoided a $100,000 fine after its upset over Florida by implementing a 90-second delay before fans took the court. The approach allowed students to celebrate while preventing an immediate surge that could create safety risks. As fines continue to increase and security concerns grow, more schools may look for similar solutions to avoid financial penalties while maintaining a strong home-court atmosphere.

The challenge, however, is making sure fans comply. While structured delays provide a path to avoid fines, there is no guarantee that students will wait. If crowds ignore the countdown and storm the court early, schools will still face penalties, leaving enforcement as a key concern. Vanderbilt and other schools will have to see if these strategies keep fans in check, or if stricter measures will eventually be needed.

The Road Ahead

Vanderbilt's new policy provides a structured alternative to traditional court storming, but its long-term success remains uncertain. If fans comply, the model could serve as a blueprint for other programs looking to manage celebrations without facing steep fines. However, if students continue to rush the floor before the countdown expires, schools may be forced to take stricter measures, whether through heavier security, larger penalties, or outright bans. As the SEC and other conferences continue to evaluate their policies, schools will have to decide whether structured celebrations are enough to satisfy both the excitement of their fan base and the demands of league officials.

Joseph Michael Ricco IV is a junior at the University of Texas at Austin studying sport management and government. He has experience in recruiting operations with Texas Football, training camp operations with the Kansas City Chiefs, and football data analytics with Pro Football Focus. He also publishes work on sports law topics, including salary cap, NIL, and CBAs. Joseph plans to attend law school and pursue a career in football operations, player personnel, or administration.

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Paying Dearly for Soccer Referee Abuse

By John Wendt

In the French Ligue 1 soccer on February 22, 2025, AJ Auxerre secured a 3-0 victory over Olympique de Marseille (OM). What made legal news is that following the game, OM president Pablo Longoria took exception to the officiating and roundly criticized referee Jérémy Stinat for penalizing OM defender Derek Cornelius with a second yellow care. Longoria stated, "This is corruption. I've never seen anything like it. You can write it down: 'Pablo Longoria says it's corruption.' Everything has been organised. It's planned, it's rigged…It's a s****y championship. If OM has a proposal for the Super League, we'll leave straight away,"[4]

That was too much for the French referees' union, Syndicat des Arbitres du Football d'Élite (SAFE) which quickly responded by saying that it would refer the matter to the French league's discipline committee, Ligue De Football Professionnel (LFP), noting that it had already issued a warning to OM for similar remarks made in January, 2025.[5] In a press release the union said, "No, Mr Longoria, French referees are not corrupt! Losing a match cannot justify calling into question the integrity of French referees. Mentioning an organized corruption system is not only defamatory for referees playing in professional championships: it is proof of a lack of understanding of their work and their commitment to football and it is throwing all referees officiating at professional and amateur levels to the wolves, with the consequences that this can entail… SAFE cannot accept this and has therefore decided to refer the matter to the National Ethics Committee following these particularly scandalous remarks. Complaints will be filed for defamation. And against all the

4 Tom Burrows & Nnamdi Onyeagwara, *French Referees Union to Take Legal Action after Corruption Accusations from Marseille President Pablo Longoria*, The New York Times, Feb. 23, 2025, https://www.nytimes.com/athletic/6154095/2025/02/23/marseille-ligue-1-corruption-referee-france/ (last visited Feb 23, 2025).

5 Samuel Petrequin, *Marseille President's Corruption Rant Sparks Backlash from French Soccer Federation, Referees*, AP News (2025), https://apnews.com/article/soccer-ligue-1-marseille-referee-6848b3f17240a8db72c48037b8cbd5e9 (last visited Feb 23, 2025).

people behind the hateful messages and death threats received since yesterday evening…"[6]

Olivier Lamarre, spokesperson for SAFE went on to say, "We have decided to contact the National Ethics Committee, following these comments which are, in our opinion, extremely serious and which are causing great difficulties for French football. We cannot attack French football like this without there being bodies or disciplinary committees to judge what would be the right thing to do. We have full confidence in these committees to measure the seriousness of the comments. There is no one club more than another. But overall, when we do not respect the values of football, the National Ethics Committee comes into play. We have also decided to file a complaint against all the people who make death threats on the networks…"[7] Lamarre also later announced a massive defamation complaint against Longoria: "The filing of complaints by the referees is not yet finalized, but it will be a collective complaint. All referees from Ligue 1 and Ligue 2, including central and assistant officials, feel defamed by these accusations of corruption and will take legal action. There are 111 referees in total, which represents 100% of the officiating staff."[8]

Philippe Diallo, president of the Fédération Française de Football (FFA) criticized Longoria, "I condemn in the strongest possible terms the remarks made by the president and officials of Olympique de Marseille against French refereeing in general and the referee of yesterday's match, Jeremy Stinat, in particular, to whom I offer my full support…Calling into question the integrity of our referees is defamatory, unacceptable and reprehensible. Such comments seriously damage the image of our league."[9] Diallo went on to say, "I am aware of the pressure and the issues that can arise for professional clubs…Everyone must remain calm and I cannot remember any accusations of corruption against our refereeing in the past… The federation supports all its referees, both professional and amateur, and of course Mr Stinat. Before the match, the tyres of his two vehicles were punctured. His wife noticed it when she was about to take the motorway. We need to call for reason. Such remarks are unacceptable."[10]

There had been questions about appointing Stinat to referee the match. A spokesperson for OM said that OM had sent a letter to the referees' committee stating that they had felt that the referees had been too harsh on them, especially since they had already received six red cards. However, they said that they had received no response from the committee. They also noted that Stinat was the fourth referee in a January match between OM and Lille where again red cards were given, and OM sporting director Medhi Benatia was given a three-month suspension for his bad behavior against a referee.[11] However, Lamarre noted, "Was it a mistake to appoint Jérémy Stinat for this match? The decision might have been surprising, but he is capable of officiating such matches. I feel like, week after week, the system is being escalated by OM, as if they were just waiting for an opportunity to speak about corruption. It's putting French refereeing in difficulty, and that's not acceptable."[12]

Longoria quickly apologized for his comments, "There is no corruption in French football. The manner in which I expressed myself was inappropriate, and I regret using that word. I am very self-critical, and

6 Onefootball.com, *OM - Le Syndicat Des Arbitres Répond Fermement Aux Accusations de Corruption de Pablo Longoria*, OneFootball (2025), https://onefootball.com/fr/news/om-le-syndicat-des-arbitres-repond-fermement-aux-accusations-de-corruption-de-pablo-longoria-40746855 (last visited Feb 23, 2025). *See also*, Syndicat des Arbitres du Football d'Élite, *Communique de Presse: NON, Les Arbitres Ne Sont Pas Corrompus*, (2025), https://www.safe-arbitres.fr/Communiques-de-presse-30/COMMUNIQUE-DE-PRESSE-14455.html (last visited Mar 3, 2025).

7 Onefootball.com, *supra* note 3.

8 Footboom, *111 French Referees to Sue Pablo Longoria!*, (2025), https://www.footboom1.com/en/news/football/2400832-111-french-referees-to-sue-pablo-longoria (last visited Mar 3, 2025). *See also*, Syndicat des Arbitres du Football d'Élite, *Communique de Presse: Proteger L'Arbitre, C'est Proteger Le Football*, (2025), https://www.safe-arbitres.fr/Communiques-de-presse-30/COMMUNIQUE-DE-PRESSE-14457.html (last visited Mar 3, 2025).

9 Petrequin, *supra* note 2.

10 George Boxall, *'Serious and Unacceptable Remarks' – French FA President Philippe Diallo Reacts to Pablo Longoria Outburst*, Yahoo Sports (2025), https://sports.yahoo.com/article/serious-unacceptable-remarks-french-fa-110600101.html (last visited Mar 1, 2025).

11 Etienne Moatti & Benjamin Henry, *Medhi Benatia suspendu trois mois ferme, Olivier Létang écope d'un mois*, L'Équipe (2025), https://www.lequipe.fr/Football/Actualites/Medhi-benatia-suspendu-trois-mois-ferme-olivier-letang-ecope-d-un-mois/1536327 (last visited Mar 1, 2025).

12 Tribuna.com, *French Referees' Union Responds to Longoria's "corruption" Accusations: "It's Unacceptable,"* Tribuna.com (2025), https://tribuna.com/en/news/2025-02-23-french-referees-union-responds-to-longorias-corruption-accusations-its-unacceptable/ (last visited Feb 23, 2025).

as a club president, I cannot behave like that. Nothing justifies my approach, and I am not pleased with myself…"[13] OM also defended Longoria, a Spaniard, by stating that English was not his first language, and he misspoke using the word "corruption."[14] Longoria tried to clarify his remarks: "Everyone has explained to me the meaning of the word corruption in French, because in Spanish it has a broader meaning. Mind you, that doesn't justify anything. But I've never in my life thought about something like exchanging money or financial transactions, and I'd never allow myself to do that."[15]

Yet, some questions remained. Former soccer star turned commentator Jérôme Rothen said that he noticed that OM is not refereed as other clubs: "I try to be as objective as possible with Olympique de Marseille. Today, when I watch OM matches, I understand the anger of the leaders. Mind you, I don't understand Pablo Longoria's behavior. But I understand the anger of Medhi Benatia, Fabrizio Ravanelli, the coach (Roberto De Zerbi), the players. They don't feel they are refereed in the same way as another club. That's the reality."[16]

Arguing with the referees seems to be part of the game, but it also seems to be getting out of hand. Tony Chapron, a former Ligue 1 referee and now television consultant said, "When I see a whole team surrounding the referee, I tell myself that we have messed up somewhere."[17] Those arguments are not confined to France. In Germany referee Patrick Ittrich said, "We should hand out a red card to every player who approaches the referee to protest against one of his decisions, even if it means playing a team with 7 players against 10."[18] In Spain, after losing to Barcelona, Real Madrid sent a letter to the Spanish football federation complaining that the officiating in the country was "rigged" against Real Madrid. One of Madrid's stars, Jude Bellingham was sent off by referee Jose Munuera Montero who then faced abuse on social media. Barcelona's German coach Hansi Flick said that referees have to be protected: "The referees at the moment, what they are doing here in Spain with them is unbelievable...You have to think about the families of the referees, all of us make mistakes, and if it happened in a match I think it's the responsibility of the coaches and the players to protect them…We always look for excuses, if we lose it's the referee's fault... I say, everyone makes mistakes, I do too and maybe a referee... We have to protect the match because we cannot play without referees, so this is what we have to do."[19]

Former French soccer star commentator turned commentator Jean-Michel Larqué is concerned that these conflicts with referees are escalating and will seriously hurt the game: "What is most troubling in what I see is the atmosphere of distrust that will now prevail on the fields. Today, no one will interpret a referee's whistle in a completely normal way; questions will always arise, and doubts will persist."[20] Larqué went on to say, "What bothers me the most is that the players, referees, and coaches will all be hyper-aware of even the smallest errors. It's going to be dreadful…It makes me incredibly anxious. There will be reactions on the field, and reactions off the field. Honestly, I don't know how to halt this trajectory. No one trusts anyone anymore. It's only going to get worse."[21]

There was speculation over the extent of Longoria's suspension. These included a three-game suspension for "excessive or inappropriate behavior"; four-game suspension for "offensive behavior"; up to a twelve-game suspension for "rude or insulting behavior"; and a six-month suspension for "intimidating or threatening

13 Footboom, *OM: Longoria's Apology and the Referees' Response*, (2025), https://www.footboom1.com/en/news/football/2400429-om-longoria-s-apology-and-the-referees-response (last visited Mar 1, 2025).

14 Burrows and Onyeagwara, *supra* note 1.

15 Paul Myers, *French Football Chiefs to Decide Fate of Marseille Boss over "corruption" Slur*, RFI (2025), https://www.rfi.fr/en/sports/20250225-french-football-chiefs-to-decide-fate-of-marseille-boss-over-corruption-slur (last visited Mar 2, 2025).

16 `RMCSport, *Polémique Sur l'arbitrage: "L'OM n'est Pas Arbitré Comme Les Autres Clubs", Juge Jérôme Rothen*, RMC Sport (2025), https://rmcsport.bfmtv.com/football/ligue-1/polemique-sur-l-arbitrage-l-om-n-est-pas-arbitre-comme-les-autres-clubs-juge-jerome-rothen_AV-202502270795.html (last visited Mar 1, 2025).

17 Julien Rossignol, *Arguing with Refs: The Slow Poison Spoiling Football*, Feb. 5, 2023, https://www.lemonde.fr/en/sports/article/2023/02/05/arguing-with-refs-the-slow-poison-spoiling-football_6014517_9.html (last visited Feb 23, 2025).

18 *Id.*

19 Agence France-Presse, *Barcelona's Flick Upset by Referee Harassment*, France 24 (2025), https://www.france24.com/en/live-news/20250221-barcelona-s-flick-upset-by-referee-harassment (last visited Feb 23, 2025).

20 Footboom, *Jean-Michel Larqué Voices Concerns Over Distrust in Refereeing in French Football*, (2025), https://www.footboom1.com/en/news/football/2407369-jean-michel-larque-voices-concerns-over-distrust-in-refereeing-in-french-football (last visited Mar 1, 2025).

21 *Id.*

behavior."[22] On February 26, 2025, the LFP Disciplinary Commission handed Longoria an extraordinary fifteen-game suspension beginning on March 4, 2025 that will last this season and into the next season. No other Ligue 1 soccer club president every been given such a long suspension. In effect, Longoria is banned from "all official functions and access to the bench, the players' and officials' locker rooms, the pitch, the tunnel and all corridors leading to these areas."[23] Sebastien Deneux, the head of the LFP disciplinary committee stated that. "The commission considered offensive remarks and behaviour which are a breach of the ethics charter and which harm the image of football."[24] In a statement OM acknowledged the sanction, but noted that, "Pablo Longoria will also continue to make every effort to develop and promote French football, both nationally and internationally."[25] Longoria and OM have paid dearly for the outburst.

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The New 'Moneyball': Legal Considerations When Using Medical Information for Predictive Analytics in Professional Sports

By Aloke S. Chakravarty and Nikhil A. Mehta, of Saul Ewing

The sports world is adapting to advancements in technology both on the field and off. Data science is being deployed in professional and quasi-professional sports in ways that directly affect the bottom line such as marketing, ticketing, and in some cases, on the field performance. The use of an athlete's medical information for predictive analytics is a sensitive and complex issue governed by a combination of privacy laws, medical regulations, league regulations, contractual obligations and ethical standards. While there are no specific federal laws that were designed to govern the use of an athlete's medical data for purposes of predictive analytics, there are several relevant laws and frameworks that should be considered when handling such sensitive information. This is an area in flux, with data analytics and artificial intelligence allowing for extrapolations and calculations far beyond that to be gleaned exclusively from an athlete's personal medical information. This article examines some of the key legal and regulatory considerations when considering the use of health information to perform predictive analytics.

1. Health Insurance Portability and Accountability Act (HIPAA)

Overview: HIPAA governs the use and disclosure of protected health information (PHI) in the U.S. It applies primarily to healthcare providers, health plans, and healthcare clearinghouses, but also to their business associates (entities that process or analyze healthcare data).

Relevance to Athletes: When an athlete's medical information is provided to a club or if such information is shared by a healthcare provider or team physician, HIPAA protections may apply. Under HIPAA, PHI cannot be disclosed without the athlete's consent, except for specific purposes such as treatment, payment, or healthcare operations. For predictive analytics, if PHI is used, athletes must generally give consent or their information must be de-identified.

Key Compliance: If an organization is using an athlete's health data for predictive analytics, it must ensure that the data is either sufficiently de-identified or that proper consent is obtained from the athlete prior to such data use.

2. State Privacy and AI/Automated Decision Making Laws

Overview: Many U.S. states have their own laws that govern the protection of personal data, including medical information, which may apply to entities even if they are not physically located in California. Increasingly, some states are also regulating automated decision making to avoid unfair discrimination algorithmically. For example, California's Consumer Privacy Act (CCPA) provides protections for personal data of

22 Myers, *supra* note 13.

23 Ligue De Football Professionnel, *Commission De Discipline : Les Décisions Du 26 Février 2025*, (2025), https://www.lfp.fr/article/commission-de-discipline-les-decisions-du-26-fevrier-2025 (last visited Feb 26, 2025).

24 Agence France-Presse, *Marseille President Banned 15 Matches for Corruption Accusation*, theScore.com (2025), https://thescore.com/fra_fed/news/3227884 (last visited Mar 2, 2025).

25 Olympique de Marseille, *Official Statement*, (2025), https://www.om.fr/en/news/4808/club/96432-official-statement (last visited Mar 2, 2025).

California residents, including health-related data, and these protections can apply extraterritorially and have regulations pertaining to automated decision making. Colorado similarly has passed its first-in-the-nation Colorado Artificial Intelligence (AI) Act to prevent unfair discrimination and requiring certain procurement diligence.

Relevance to Athletes: If the athlete is a resident of a state with strong privacy laws (like California), that state's privacy laws may overlap with other laws governing how personal information is used, particularly if the data is linked to the individual and not anonymized.

Key Compliance: Organizations must identify whether specific onerous state data privacy laws apply to them and comply with applicable state privacy laws that protect personal information, including health data, ensuring that athletes' rights regarding the collection, use and sharing of that data are respected.

3. Americans with Disabilities Act (ADA)

Overview: The ADA prohibits discrimination against individuals with disabilities and requires that medical information be handled confidentially by employers.

Relevance to Athletes: If predictive analytics involves the use of data that relates to an athlete's disability status, the ADA may govern how that data is used, especially in the context of employment (such as with a professional sports team).

Key Compliance: Teams and organizations must ensure that they are not using an athlete's disability-related medical data in a discriminatory way, and they must maintain the confidentiality of all medical records.

Key Distinction: An ordinary sports injury is unlikely to be considered a disability under the ADA. Instead, only pre-existing or new medical issues which are persistent and debilitating in nature will be considered a disability under the Act. In other words, any injury that can be "healed" is not likely to be considered a disability. For example, torn ligaments and other similar injuries would not appear to be disabilities under the ADA because they can be healed by a procedure or surgery. To the contrary, former PGA Tour golfer Casey Martin suffered from a degenerative leg disorder, which the U.S. Supreme Court ruled was a disability under Title III of the ADA and was grounds for an accommodation by the PGA Tour (in his case, the use of a golf cart during PGA Tour events).

4. Major League Baseball (MLB), National Football League (NFL), the Premier League & Other League-Specific Regulations

Overview: Professional sports leagues like the Premier League, MLB, NFL, NBA, and others often have specific rules governing the collection and use of player medical information.

Relevance to Athletes: These leagues typically require teams to maintain confidentiality about player health and medical information. For example, the NFL has a medical policy that requires teams to handle player health information confidentially and restricts disclosure to third parties without the athlete's consent.

MLB: In addition, the Collective Bargaining Agreement (CBA) between the MLB and the MLB Players Association (MLBPA) lays out specific provisions about the handling of player health and medical data, including Attachment 18 which provides a general consent to use health information with the proviso that "The health information may not be utilized for any purpose other than that specified herein without my express written consent." The CBA includes rules about:

> *Medical Privacy: Teams are generally required to keep medical records private and may only share certain information on a need-to-know basis within the organization.*
>
> *Informed Consent: Players must consent to medical treatments and share relevant medical information with team personnel when necessary for their health and well-being.*
>
> *Injury Reporting: Teams are required to report player injuries publicly, but there are limits on the specific medical details shared with the public, again balancing player privacy with team transparency.*

Premier League: The Premier League also has rules regarding the collection and use of player medical information, though these are largely governed by a combination of league regulations, player contracts, and broader data protection laws (such as the UK's Data Protection Act of 2018 and GDPR).

Key Compliance: If a league or team is using medical data for predictive analytics, they must adhere to league-specific medical privacy policies and may require the athlete's specific informed consent before the

data can be used for non-medical purposes, including analytics.

5. Data Privacy and Security Regulations

General Data Protection Regulation (GDPR): If the athlete is from the European Union (EU) or their data is processed in the EU, the GDPR applies. The GDPR sets strict guidelines for how personal data, including medical information, must be handled, including obtaining consent, ensuring data minimization, and protecting the data through security measures.

Relevance to Athletes: For European athletes or those whose data is stored in the EU, the GDPR requires that organizations obtain clear consent before using personal data for purposes like predictive analytics, and the data must be securely handled.

Key Compliance: Organizations must determine whether they are subject to EU regulations, including the GDPR, which has extraterritorial reach. If the organization is covered, they must ensure compliance with the GDPR's many restrictions on the collection, use, export and sharing of data.

6. Informed Consent and Ethical Considerations

Overview: Informed consent is a cornerstone of medical ethics, and it could also be a touchstone for the use of athletes' private medical data for predictive analytics. Athletes must be told how their private data will be used, the potential risks, and how their privacy will be protected. To the extent that non-private data is being used, this requirement becomes more grey, and the specific sources, combinations, purposes and uses of the data will all matter in the analysis.

Relevance to Athletes: Predictive analytics in sports often involves using an athlete's medical data as well as other available data to assess future injury risks or performance metrics. Ethically, to the extent that their own private information is being used to conduct this analysis, athletes should have the opportunity to opt in or out of these processes, and their consent should be informed, voluntary, and revocable.

Key Compliance: Organizations should provide athletes with clear information about the purpose of data collection and ensure that consent forms are accurate and understandable. Consent should be actively obtained before any predictive analytics are conducted using the athlete's private medical data.

7. Emerging Technologies

As technology like wearables (e.g., smart devices that monitor a player's health), Hawkeye, Statcast and telematics become more common among amateur and professional athletes, some leagues have begun to outline clearer rules on how data derived from such devices is used. Because these data are not being collected by a health care provider and are not for treatment purposes, these data may fall outside of the protections of protected health information. Where there are league rules, they aim to ensure that such biometric data is used for performance and health monitoring, while also protecting players' privacy and control over how their data is handled.

Some clubs and leagues may face heightened privacy concerns when using advanced technologies like biometric sensors which could collect personal health data (e.g., heart rate, sweat levels, etc.), and these clubs and leagues must ensure that any data collected in this manner is in compliance with privacy standards, player agreements and other relevant regulations.

8. Biometric Privacy Laws

Biometric Privacy: A growing trend among states is a broader regulation and enforcement of the collection of biometric data.

> *Illinois: The Illinois Biometric Information Privacy Act (BIPA) regulates the collection, use, and storage of biometric data, which includes identifiers like fingerprints, facial recognition, and voiceprints. BIPA has a robust enforcement history. While BIPA doesn't specifically target health information, it can intersect with the use of health data if it involves biometric identifiers. In the context of professional sports teams, BIPA could be relevant if they use biometric data for player identification, health monitoring, or security purposes. For instance, teams might use biometric data to track a player's health, manage security access, or authenticate medical services. This could raise legal issues under BIPA if the team collects, stores, or shares biometric data without adhering to the law's requirements, which include obtaining informed consent, maintaining secure data practices, and providing a clear retention policy (among other things).*

Other States: Many other states have laws that govern the collection and handling of biometric data, even if not expressly so designated. For example, under the Massachusetts Consumer Protection Act (Mass. Gen. Laws Chapter 93A), there are general protections for personal data, including biometric data, but unlike BIPA, many states do not have the same specific framework or requirements, but in practice have specific requirements for handling sensitive data. In addition, many states have taken a growing interest in category-specific data privacy in recent years, and are adopting biometric and genetic-specific laws such as Colorado's 2024 Protect Privacy of Biological Data law, which includes protection of neural data among other types of biological data, which could include sport-related metrics.

9. Potentially Viable Predictive Analytic Streams and Alternative Practices

Analysis of Certain Data for Performance Projection : The restrictions above pertain to private personal and protected health information. Information available through other sources may remain viable as surrogates or proxies for protected information and may still provide meaningful athlete-specific analysis, particularly for draft, assignment, acquisition/release, free agency and trade decisions. For example, organizations may be able to use AI protocols to mine publicly available data when evaluating potential player acquisitions. Sources of publicly available data can include official injury reports filed by teams, injury information reported during press conferences, news articles, or other publicly reported information, including via social media. Analysis may also be done by extrapolations of de-identified data related to comparable or statistically meaningful cohorts. However, it is important to carefully consider and document the source and perceived validity of any reported information, as the quality and utility of the AI analysis is only as good as the quality of the data inputs which are used when performing such analysis. As some analysts have observed, "When the data is available and robust, the accuracy of AI prediction mechanisms is significant."[26]

Use of Machine Learning to Predict and Prevent Injuries: Recent studies, including one published in the November 2024 issue of the Journal of Diagnostics found that machine learning has "demonstrated effectiveness in predicting injury risk due to its ability to learn from historical data and refine predictions with new inputs. AI algorithms can integrate data from various sources, including wearable devices, biomechanical assessments, performance metrics, and psychological factors, creating individualized profiles for athletes[27]. By analyzing these complex, multidimensional datasets, AI can detect subtle trends or anomalies that might indicate an increased risk of injury."[28]

Conclusion: Key Steps for Compliance

Establish a Compliance Program: With business units increasingly finding new technologies set to improve their performance, organizations should consider a process to conduct risk-based assessments, consider the privacy and compliance implications, implement controls and mitigation, and to ensure a feedback loop that will identify whether the program is working.

Some of the issues that Compliance Program should consider include the following:

Obtain Explicit Consent: Athletes must provide informed, explicit consent before their medical or other sensitive data is used for predictive analytics.

Publicly Available Data: Procurement of relevant biometric or statistical data pertaining to an athlete is not inherently immune from privacy laws simply because it was obtained from publicly available sources. A careful analysis is required to determine whether the information is lawfully collected and can be used for the intended purposes.

De-identify Data: Where possible, organizations should use anonymized or de-identified medical data to avoid privacy concerns and reduce compliance risks.

26 Bobby, Liv. *Artificial Intelligence for Injury Prevention: the Economics and Effectiveness*. September 13, 2023. Accessed at: https://sportsologygroup.com/articles/artificial-intelligence-for-injury-prevention-the-economics-and-effectiveness.

27 Topol, Eric J. *High-Performance Medicine: the Convergence of Human and Artificial Intelligence*. 2019. Accessed at: https://www.nature.com/articles/s41591-018-0300-7.

28 Musat, Carmina Liana, et al. *Diagnostic Applications of AI in Sports: A Comprehensive Review of Injury Risk Predication Models*. November 10, 2024. Accessed at: https://pmc.ncbi.nlm.nih.gov/articles/PMC11592714/#B7-diagnostics-14-02516.

Applicable Privacy Laws: Comply with relevant laws (HIPAA, state laws, GDPR) regarding the collection, storage, and use of medical data.
Confidentiality: Ensure that all medical and sensitive data is kept confidential and disclosed and shared securely only to authorized individuals or entities, and for specific, permissible purposes.
Monitor Ethical Standards: Adhere to ethical standards in data collection and analytics, ensuring that predictive analytics are used responsibly and that athletes' rights are protected and that appropriate documentation is maintained.
Use of Emerging Technologies: The use of AI for performance prediction, preventative injury analysis, and injury recovery, is a development that can provide competitive advantages, but must be sourced and used properly with adequate controls.

By working within these legal and regulatory frameworks, organizations can mitigate the risks of using an athlete's health information for predictive analytics and ensure that it is done in a way that is compliant with applicable laws and is ethically sound, while also leveraging the advances in data science to maximize the performance of the organization and the athlete.

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Hackney Publications Publishes Fifth Annual '100 Law Firms with Sports Law Practices You Need to Know About'

100lawfirms.com is portal that recognizes excellence and serves as a resource for those in need of experienced and capable legal counsel in the sports law arena.

Hackney Publications announced today that it has published the fifth annual "100 Law Firms with Sports Law Practices You Need to Know About," a portal that serves as a resource for those in the sports industry who need experienced and capable legal counsel.

The law firms are listed alphabetically, a testament to the difficulty in actually ranking such firms. Narrowing the list to just 100 law firms was also a challenge, according to Holt Hackney, the founder of Hackney Publications and editor of Sports Litigation Alert.

"We have had our finger on the pulse of the sports law industry for almost 25 years," said Hackney, a recent recipient of the President's Award from the Sports and Recreation Law Association. "Living and breathing in this space has given us a keen understanding of who should be included in 100lawfirms.com."

TRENDS IN THE SPORTS LAW INDUSTRY

Hackney believes the list of firms that are worthy of consideration will only grow in the future.

"More and more firms are embracing the sports industry as a practice group," said Hackney. "The growing movement around NIL and the concept of sports as an entertainment product are just two emerging catalysts for this trend.

"Another factor is how higher education is empowering law students as well as undergraduates to embrace becoming a sports lawyer as a profession. You check out the top sports law programs here."

NOTABLE LAW FIRMS ON THE LIST

Among the many firms included on the list are:

- Baker & Hostetler LLP
- Barnes & Thornburg
- Boies Schiller Flexner LLP
- CCHA
- Constangy, Brooks, Smith & Prophete LLP
- Dennie Firm, PLLC
- DLA Piper
- Fisher & Phillips LLP
- Frieser Legal
- Greenspoon Marder LLP
- Haynes Boone
- Herrick, Feinstein LLP
- Hogan Lovells
- Jenner & Block LLP
- Kroger, Gardis & Regas, LLP
- Lewis Brisbois
- Lightfoot Franklin & White, LLC
- Maher Legal Group
- Munck Wilson Mandala

- Power & Cronin LTD
- Ricci Tyrrell Johnson & Grey, PLLC
- Segal McCambridge Singer & Mahoney
- Shumaker, Loop & Kendrick, LLP
- Spencer Fane LLP
- Thompson Coburn LLP

The portal has synergy with Sports Law Expert, a blog that features regular content on a daily basis as well as a directory of legal experts and their particular specialty. "This directory has been around for a decade and has led to new business for many attorneys as well as expert witness engagements for the academic community," said Hackney.

RECOGNITION CARRIES WEIGHT

Hackney Publications has become a reputable partner for many firms through the years, whether through its insightful journalism or a trusted analyst of the industry.

"I've known and worked with Holt for more than a decade," said Gregg Clifton, who leads the sports group at Lewis Brisbois. "His publications always deliver insightful and original analysis that you can't find anywhere else. It has become a must-read for me as a sports lawyer."

Carla Varriale-Barker, the Chair of the Sports Recreation and Entertainment practice at Segal McCambridge, concurs.

"Whether it is his periodicals, or portals like 100lawfirms.com, the sports lawyer profession is fortunate to have him as an advocate," said Varriale-Barker, who has known Hackney for more than 20 years. "His creativity, when it comes to raising our profile as sports lawyers, is a benefit for all of us."

ABOUT HACKNEY PUBLICATIONS

Hackney Publications (www.hackneypublications.com) is the nation's leading publisher of sports law periodicals. The company was founded by journalist Holt Hackney. Hackney began his career as a sportswriter, before taking on the then-nascent sports business beat at Financial World Magazine in the late 1980s. A few years later, Hackney started writing about the law, managing five legal newsletters for LRP Publications. In 1999, he founded Hackney Publications. Today, Hackney publishes or co-publishes 25 sports law periodicals, including Sports Litigation Alert.

The Alert, which publishes 24 times a year, offers subscribers a searchable archive of more than 5,000 case summaries and articles, the largest sports law-specific archive in the world. Not surprisingly, the Alert is used in more than 100 sports law classrooms any given semester, entraining students destined for a career in the sports industry, as well as the next generation of sports lawyers.

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Examining Morality Clauses in Collegiate Athletics

By Alexandra Miljanic, 3L, University of North Carolina School of Law

The evolution of college athletics has not only impacted student-athletes, but also football coaches, whose contracts have evolved from handshake agreements to written ones containing increased salaries and responsibilities which in turn require more sophisticated contract language.[29] Contracts address key issues including salary, responsibilities, duration, and the focus of this blog post, termination.[30] Termination provisions are usually either: (1) "termination for cause" which "provide for circumstances under which the university may terminate the coach . . . [and] is relieved of its duty to further provide the coach with compensation and benefits due under the contract,"[31] or (2) "termination without cause" which "provide what the coach's compensation will be if the university [dismisses them] for any reason other than those laid out in the termination for cause provision. . . ."[32]

The distinction between termination type is of immense importance, as demonstrated by Michigan State University's (MSU) firing of football head coach Mel Tucker (Tucker) for cause on September 27, 2023 – a

29 Matthew J. Mitten, Timothy Davis, N. Jeremi Duru & Barbara Osborne, Sports Law and Regulation: Cases, Materials, and Problems 287 (6th ed. 2024).

30 *Id.*

31 Martin J. Greenberg, *Termination of College Coaching Contracts: When Does Adequate Cause to Terminate Exist and Who Determines its Existence?*, 17 Marq. Sports L. Rev. 197, 205 (2006).

32 *Id.*

distinction that, for MSU and Tucker, has at least 80 million reasons to matter.[33] MSU terminated Tucker for cause under what is "known as the morals clause sometimes referred to as moral turpitude or morality clause."[34] Morality clauses allow contracting parties (university) to terminate a contract when the other party (coach) behaves in a manner that could harm the reputation of the university or embarrass it, which is rather subjective and leads to disputes.[35] This paper will explore the legal issues surrounding the enforceability of morality clauses using MSU's termination of Mel Tucker as a model, and applying Patricia Sanchez Abril & Nicholas Greene's five-factor legal rubric for analyzing morality clauses to conclude that MSU properly enforced the morality clause when terminating Mel Tucker with cause.

Mel Tucker and Michigan State University

MSU hired Tucker as its head football coach in February 2020, later signing him to a guaranteed ten-year contract extension worth approximately $95 million in total compensation, "meaning that if the University terminate[d] [Tucker] without cause, it [was] responsible to pay the outstanding balance of compensation owed to [Tucker]."[36] Upon signing his extension, Tucker became the second highest paid college football coach in the U.S., which was, according to him, "[i]n recognition of [his] exceptional performance and impeccable reputation as well as the concern that [he] might leave MSU for another position after the season."[37] Tucker's contract included an early termination for cause provision that stated in part, "[c]ause for such termination includes . . . the Coach engages in any conduct which constitutes moral turpitude or which, in the University's reasonable judgment, would tend to bring public disrespect, contempt, or ridicule upon the University."[38]

In 2021, Brenda Tracy (Tracy), a rape survivor and professional advocate, was paid $10,000 to speak to MSU's football players and coaches about sexual violence prevention.[39] It is undisputed that Tucker and Tracy developed a relationship following the event, though the nature of the relationship is disputed – Tracy claims it was strictly professional while Tucker claims it was personal.[40] Furthermore, it is undisputed that over the phone on April 28, 2022, Tucker made sexual comments to Tracy and masturbated but again, there is a dispute as to the nature of the interaction, with Tracy reporting Tucker's actions as "unwelcome sexual advances … without her consent," and Tucker classifying his actions as consensual "phone sex".[41]

33 Matt Mencarini & Kenny Jacoby, *Experts: Ugly Court Fight Between Former Coach Mel Tucker, MSU Likely*, Lansing State J. (Aug. 1, 2024, 12:45 PM), https://www.lansingstatejournal.com/story/news/local/campus/2023/09/27/mel-tucker-michigan-state-sexual-harassment-litigation-whats-next/70902024007/.

34 Adam Epstein, *An Exploration of Interesting Clauses in Sports*, 21 J. Legal Aspects of Sport 5, 22 (2011) (emphasis removed).

35 *See* Patricia Sanchez Abril & Nicholas Greene, *Contracting Correctness: A Rubric for Analyzing Morality Clauses*, 74 Wash. & Lee L. Rev. 3 (2017).

36 Tucker v. Michigan State University, Case 1:24-cv-00795, at 32 (W.D. Mich. filed Aug 1, 2024).

37 *Id.*

38 Michigan State University Department of Intercollegiate Athletics Amended Employment Agreement §III(B)(1) (Nov. 24, 2021) [hereinafter Tucker Contract Extension] (§III(B)(1) "Early Termination; Damages" reads in its entirety: "(1) The university may terminate this Agreement prior to the expiration of its term at any time, for cause, without liability to the Coach or any other penalty. Cause for such termination includes, without limitation, the following: (a) the Coach materially breaches this Agreement; (b) the Coach is convicted of a crime, other than a minor traffic offense; (c) the Coach engages in any conduct which constitutes moral turpitude or which, in the University's reasonable judgment, would tend to bring public disrespect, contempt, or ridicule upon the University (e.g., material insubordination or impropriety involving a student). Notwithstanding anything to the contrary herein, the University shall not terminate the Coach for cause unless the University has provided the Coach with written notice, specifying the grounds for termination, and afforded the Coach the opportunity to present reasons to the Athletic Director and the University's President ad to why he should not be terminated on the grounds stated therein.")

39 Kenny Jacoby, *Michigan State Football Coach Mel Tucker Accused of Sexually Harassing Rape Survivor*, USA Today (Sept. 11, 2023, 10:02 AM), https://www.usatoday.com/story/news/investigations/2023/09/10/michigan-state-football-coach-sexual-harassment-claim/70679703007/.

40 *Id.* ("Over eight months, they developed a professional relationship centered on her advocacy work. Tucker invited Tracy to campus three times – twice to speak to his players and staff and once to be recognized as an honorary captain at the team's spring football game.")

41 Letter from Alan Haller, Vice President and Director of Athletics at Michigan State University, to Mel Tucker Re: Termination of Employment Agreement (Sept. 18, 2023), https://msu.edu/-/media/files/msu/issues-statements/supplemental-documents.pdf?rev=217e3abf7eb74a64b1bcb13e2957a015

Tracy filed a complaint with MSU, prompting an investigation which concluded that Tucker violated the "University's Relationship and Sexual Misconduct and Title IX Policy," and in doing so, demonstrated conduct that constitutes moral turpitude and "brought public disrespect, contempt, or ridicule upon the University," findings which amount to grounds to terminate his contract with cause, which MSU did on September 27, 2023.[42] At the time of his termination, Tucker had a remaining $80 million owed to him which has led to a contentious legal fight over the validity of MSU's stated reasons for termination with cause and the enforceability of the morality clause.[43]

Morality Clauses

A morality clause is a written provision that allows contracting parties to terminate a contract when the other party behaves in a manner that could harm the reputation of the contracting party or embarrass it, and depending on how it is written can be rather broad or narrow.[44] Morality clause can be classified as "Bad Behavior clauses", which ban certain "bad" behaviors completely (e.g., stealing, using drugs, etc.) or "Reputational Impact clauses", where "the act triggering termination is not measured by its own substance, but rather by the effect that it produces in the community, or, more specifically, on the other contracting part," (e.g., a scandal or harm to contracting party's reputation).[45] It is important to note that when written broadly, Reputational Impact clauses do not require any actual damage to the contracting party, just that the other party acted in a way that the contracting party thinks will cause negative association.[46] Additionally, morality clauses rarely define "moral turpitude" leading the courts to apply a "'I-know-it-when-I-see-it' standard" when determining whether the contracted party violated the provision, causing morality clauses to be viewed as an subjective, "get out of jail free card" for contracting parties wishing to end a contractual relationship.[47]

To reduce the subjectivity of enforcement, Patricia Sanchez Abril & Nicholas Greene developed a two-part test: (1) "courts should analyze the clause itself to see if it enforceable . . . clauses might be deemed unenforceable for vagueness, lack of consideration, duress, or any other contract fault," and then, (2) "courts must determine whether . . . such clause was violated by the acts of the allegedly offending party."[48] Trying to balance the business interests of the contracting party with the rights on the other party and further reduce the subjectivity of enforcement, the test relies on a five-factor rubric: (1) "nexus between misconduct and business interest," (2) "degree of meaning transfer: likelihood of association," (3) "the scope and definiteness of the restrictive clause," (4) "impact of offending behavior," and (5) "burden on the restricted party."[49] The factors come from comparable areas of law and are intended to be assessed on a spectrum to maintain some subjectivity but now within guardrails.[50]

&hash=7A6107843D7A5E925C3D14A436355435, (in addition to Tracy's claims, the letter states that Tucker "admitted to the following behaviors:

> Commenting to the Vendor [Tracy] about her looks, body, and body parts, specifically her 'ass'; Making flirtatious comments to the Vendor in conversations that you state 'happened often'; Masturbating and making sexually explicit comments about yourself and the Vendor while on the phone with the Vendor, which you describe as 'phone sex' and 'a late-night intimate conversation'.") [hereinafter *Letter from Haller*].

42 *Id.*

43 Mencarini & Jacoby, *supra* note 5.

44 *See* Abril & Greene, *supra* note 7.

45 Abril & Greene, *supra* note 7, at 10-11.

46 Abril & Greene, *supra* note 7, at 11 & 14.

47 Abril & Greene, *supra* note 7, at 37 & 45.

48 Abril & Greene, *supra* note 7, at 50.

49 Abril & Greene, *supra* note 7, at 4-5. *See also* Abril & Greene, *supra* note 7, at 75 ("Simply put, morality clauses should be enforceable only when (1) there is a reasonable nexus between the offending activity and the imposing party's legitimate business interests, (2) those business interests are definite enough so as to assist a reasonable person in predicting what is prohibited, and (3) the offending activity causes or will foreseeably cause a reputational backlash against the imposing party. In addition, courts should examine (4) the degree of meaning transfer, or associative power that the restricted party has with the company in the public's esteem. For instance, the private, moral failings of low-level employees may be unlikely to mar an employer, but when the purpose of the contract is to create an association or endorsement, the scales tip in favor of the imposing party. Finally, courts should scrutinize (5) the burden imposed on the restricted party, as morality clauses can especially harm individuals with little bargaining power.")

50 Abril & Greene, *supra* note 7, at 50 (emphasis added).

Analyzing the Morality Clause in Mel Tucker's Contract with MSU

The morality clause in Tucker's contract can be categorized as a Reputational Impact clause given that MSU could contractually "fire Tucker for cause, if, in its own 'reasonable judgment,' it finds that Tucker's behavior would '*tend to* bring'" negative attention to the university and does not require actual harm to MSU or specific acts for moral turpitude.[51]

My five-factor rubric analysis of the enforceability of the morality clause included in Tucker's contract considers what MSU's investigation determined to be the facts, and is as follows:

1) Nexus: While ordinarily a head football coach's private relationships are unrelated to his primary roles as a coach, Tracy was hired to speak to Tucker's football team about sexual violence prevention and served as an honorary team captain which creates a nexus to his role as the leader of the team.

2) Meaning transfer: While not his primary coaching responsibility, as the head football coach at well-known university, Tucker was a high-profile, public representative of the school who served as a leader to students, and as such, his private actions represented the university publicly.

3) Scope of clause: While the morality clause in Tucker's clause is quite broad, he could have easily predicted that his conduct met the morality clause's requirements for moral turpitude and violated the terms of his contract.[52] *Additionally, given that his actions were potentially illegal, they do not deserve heightened protection.*

4) Impact: Given the national spotlight on MSU caused by recent scandals, MSU understandably distanced itself from Tucker (a married man) due to the potential havoc his actions (which he admitted, only disputing the non-consensual aspect) could cause the school's reputation if the public perceived it as being yet another sexual violence scandal.

5) Burden: Tucker's success and high level of interest by other universities (one of MSU's motivating factors for giving Tucker such a large contract) granted him significant bargaining power when signing his extension agreement with MSU. Additionally, it is likely his actions have more of a negative impact on his reputation moving forward, than the termination of his contract does.

When considering the factors individually and as a whole, the support is clearly in favor enforceability of the morality clause, and subsequent termination with cause of Tucker's contract.

Conclusion

It is important to note that Tucker denies any wrongdoing in regard to his interactions with Tracy, states his termination was improper, and in July 2024 sued MSU claiming that "[n]ot only did the Defendants trample upon [Tucker's] rights to due process and his contractual rights, but their actions against [Tucker], who is Black, violated [Tucker's] constitutional right to equal protection."[53] It will be interesting to see if the judge handling the case similarly applies the five-factor test coming to the same conclusion I did regarding enforceability of the morality clause, or applies the test and comes to a different conclusion, or uses another test completely.

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Attorneys, Administrators Point To Media Rights as the Catalyst for Conference Realignment

By Maggie Malaney

Over the winter, the Santa Clara University School of Law and Professor Leonard Lun hosted the 2nd Annual Sports Law Conference. Building on the

51 Mencarini & Jacoby, *supra* note 5.

52 *Letter from Haller*, *supra* note 13, (Tucker's "comments about the Vendor's 'ass,' admitted flirtation, and act of masturbating on the phone with the Vendor, while married, amount to moral turpitude. It is highly inappropriate and improper to engage in extramarital sexual conduct with a Vendor, let alone an Honorary Captain of the Football Team, whose mission is to educate coaches and student-athletes, and specifically the University's Football student-athletes under your direction, on sexual misconduct.")

53 Tucker v. Michigan State University, Case 1:24-cv-00795, at 9 (W.D. Mich. filed Aug 1, 2024).

success of last year's event—featuring keynote speaker Bill Duffy—this year's conference brought together a powerhouse lineup of some of the sports industry's leading attorneys and business professionals.

The day kicked off with a panel discussion on one of the most dynamic topics in college athletics: NCAA conference realignment. The distinguished panel featured Scott Petersmeyer, Chief Legal Officer of the Pac-12 Conference; Heather Owen, Santa Clara's Director of Athletics; Marina Carpenter, Head of Ownership & C-Suite Strategy at Navigate; and Julie Connor, Deputy Campus Counsel at UC Berkeley's Office of Legal Affairs. The discussion was expertly moderated by Joth Bhullar, former counsel for the Pac-12 Conference and current Director of Legal & Business Affairs.

When it comes to NCAA conference formation media rights deals are everything, according to the panelists. While factors such as viewership, growth potential, university branding, and location play a role, the ultimate driver remains the classic Jerry Maguire adage: "Show me the money." Media dollars—especially those tied to football—give conferences the upper hand over individual universities. As Pac-12 CLO Scott Petersmeyer pointed out, when conferences pool their media rights, the aggregate value is significantly higher than if schools negotiate individually. (Of course, Notre Dame remains an outlier, but it is the exception rather than the rule.)

But what about schools without football programs? How can they compete in an ecosystem where media rights are dictated by the sport? The short answer is: they don't—at least not on the same scale. Instead, they must be strategic, innovative, and carve out their own niche. Santa Clara, positioned in the heart of Silicon Valley, is uniquely suited to do just that. As Santa Clara's AD, Heather Owen, proudly stated, "We want to have competitive success." While Santa Clara may not be vying for a spot in a Power Five conference, it remains committed to staying relevant in the evolving collegiate athletics landscape.

Marina Carpenter reinforced this mindset, noting that "Schools that don't have football will see growth faster than schools that do." This presents a compelling opportunity for non-football schools to band together, advocate for their strengths, and leverage alternative revenue streams.

One of the biggest growth areas? Women's and Olympic sports. Schools like Santa Clara, along with others in similar positions, have a prime opportunity to invest in basketball, baseball, soccer, and other niche sports. Conferences such as the West Coast Conference can capitalize on this by negotiating with streaming platforms to showcase non-football sports, expanding their reach beyond traditional television deals. These streaming agreements could provide significant exposure and increased revenue for sports that have historically struggled for visibility.

Regardless of whether a school has a football program, all institutions are grappling with the lasting impacts of Name, Image, and Likeness (NIL) policies and the Transfer Portal—two of the most transformative changes in college athletics today. Julie Connor, Deputy Campus Counsel at UC Berkeley, emphasized the growing need for college coaches who understand the new landscape shaped by NIL policies and the Transfer Portal. Today, a coach's responsibilities extend far beyond developing a winning on-court strategy. Coaches must also navigate the complexities of working with 18-year-olds who have agents, negotiating NIL contracts, managing media deals, and retaining talent in an era where players can transfer freely without the traditional one-year sit-out period.

Beyond coaching, athletic programs must assess their competitive advantages and leverage their strengths—especially when they cannot compete dollar-for-dollar against schools with larger NIL collectives. Stanford and Cal, former Pac-12 members, have leaned into their academic prestige, leadership in innovation, and technological advancements—both on the court and in the classroom—as a means of attracting student-athletes who see value in the institution beyond athletics. This strategy helps recruit players who

are committed not just to their sport, but to being part of a broader university community.

However, as Scott Petersmeyer reminded the panel, money still talks. He pointed out that Ohio State, the reigning NCAA Football Champion, spent the most on NIL deals. In today's college sports landscape, it pays to play—and now, more than ever, it's incredibly expensive to be the best.

Athletic departments must rethink their financial models to stay competitive. Marina Carpenter, who works with colleges aiming to close financial gaps, emphasized that much of this burden falls on the fans. While professional sports leagues have mastered the art of monetizing their fanbases, college sports—despite having deeper and more loyal fandoms—only generate about 50 cents on the dollar compared to their professional counterparts.

Since the COVID-19 pandemic, premium live-event hospitality has remained in high demand. However, many college stadiums and arenas are outdated and lack the modern amenities that fans expect. To capitalize on this demand, schools must invest in upgrading their facilities to create premium hospitality spaces, which can, in turn, generate significant revenue.

This shift starts internally with college athletic departments hiring sales-minded, business-focused professionals to engage the community and secure funding. Silicon Valley, for example, is flush with tech money that could be leveraged for stadium investments. To succeed, athletic departments must adopt a more business-oriented structure, hiring individuals with revenue-generating expertise—regardless of whether they were former athletes. Strong sales and business development skills will directly translate to more dollars raised, better facilities, and stronger athletic programs.

All in all, universities must continue to adapt to the ever-evolving landscape of college sports—one defined by constant conference realignment, shifting NIL regulations, and looming antitrust litigation. Those who innovate and strengthen their programs will rise to the top.

In a college sports environment where top athletes hold the power, schools that aspire to attract elite talent must offer more than just competitive NIL deals—they must create an environment that feels like a home away from home. The programs that strike this balance will not only meet athletes' financial expectations but also position themselves as premier destinations for the next generation of professionals.

Maggie Malaney is a 3L at Santa Clara University School of Law working towards a career in sports and entertainment law. Maggie attended the University of Washington as an undergrad and is originally from Sacramento, CA.

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Artificial Intelligence & Privacy in the World of Sports

By Jason Lee, 1L, Santa Clara University School of Law

AI in Sports: Balancing Innovation with Privacy

This past winter a discussion on the intersection of artificial intelligence (AI) and privacy as it relates to sports took place at the second annual Sports Law Conference at Santa Clara University School of Law, hosted by Professor Leonard Lun. The 4th panel that day featured the following legal and industry experts:

- Linsey Krolik, An Assistant Clinical Professor at Santa Clara University School of Law with a focus on privacy compliance and responsible AI;
- Marianne McCarthy, Director of Business & Legal Affairs for the Golden State Warriors, specializing in data protection, AI, and Intellectual Property (IP);
- Zahir Rahman, Vice President & Deputy General Counsel for the Las Vegas Raiders, responsible for all legal matters related to team operations and stadium governance;
- Matt Coleman, Partner at Orrick Herrington & Sutcliffe LLP, advising clients on global privacy, cybersecurity, and AI risk management; and
- David Foster, General Counsel at Sports Solidarity PBLLC, a legal advocate for athletes and their rights in an ever-expanding data-centric industry.

Together, the panelists provided a glimpse into the legal and ethical complexities of AI in sports, as well as the fine line between innovation and privacy. The panelists engaged in an interdisciplinary discussion around the

effects of AI on athletes, teams, and fans, including player performance, fan engagement, and regulatory impediments.

AI and Player Data: Is it a New Asset or a Threat?

Teams are implementing AI as a tool to improve performance, identify talent, and mitigate injury. However, David Foster pointed out that athletes are being expected to provide more than just their physical performance — they're also giving up their personal data.

"There are players getting paid for their performance, but they're also now feeding data into AI systems that could ultimately be used to seek their replacement," Foster explained. The questions of compensation and consent are intriguing. For example, are athletes entitled to be compensated for their biometric and performance data? And what sort of control should athletes have over how this data is to be used?

One of the significant legal issues is whether athletes understand and are aware of how their data is being collected and used. AI-driven analytics can deliver powerful insights for teams but also have a lack of clear contracts and protections in the system, which could potentially result in players to unwittingly relinquish their rights to their most personal property — statistical data on their own performance that could ultimately be used against them.

Innovation and Privacy

AI is transforming the fan experience, giving rise to new and creative ways for teams to interact with its fans. Marianne McCarthy explained one recent application of AI technology, where fans scanned a QR code, uploaded a photo, and received an AI created animation of their likeness to the players. While this technology allowed fans to interact and engage in a fun new way, it could also lead to privacy issues. Thus, McCarthy emphasized the importance of data protection, ensuring that:

- Fans are made aware about the use of their images and information and how it is being used;
- Data retention policies are explicitly clear: for example, notice that photos and names will be deleted after 12 hours; and
- Being clear that AI-generated content is not infringing on intellectual property rights.

These measures show a delicate balance between innovation and privacy. And even though fan engagement tools such as ID programs, as described above, may seem harmless, organizations need to keep an eye out on the potential for unintentional privacy violations or copyright infringements.

AI in Scouting and Strategy

AI is also becoming integral to scouting and training. Zahir Rahman discussed the impact of AI-driven virtual reality on training quarterbacks. Some teams have employed AI-powered VR headsets that simulate game-time decision-making at high speed.

For teams, this presents a security concern. How can they safeguard proprietary playbooks and strategies all while trying to integrate AI? Data leaks or misuse could compromise the integrity of a team's competitive edge. Rahman clarified that the NFL regards data as one of its most valuable assets, making it particularly important to closely guard the use of AI against the potential risks of manipulating game results and data breaches.

Challenges of Legal and Regulatory Compliance on AI

The impact of AI on privacy laws is another area of concern. Matt Coleman shared a legal perspective on the expanding regulatory landscape, noting that state laws governing AI and data privacy are emerging quickly. To date, 140 AI related bills were already introduced in 2025 alone.

An example shared was AI-generated content such as deepfakes, which spark conflicts over commercial rights and privacy disputes. In turn, regulatory bodies are shifting their focus on harm-based legislation and trying to ensure that AI has no negative impact on people's employment, finances, or opportunities.

Sports organizations must be proactive and take initiative to monitor laws and regulations and implement compliance strategies in order to minimize the risks of expensive lawsuits and reputational damage.

What This Means for Sports Organizations

AI offers immense potential, but it also needs responsible governance. Both the NBA and NFL have taken different approaches — while the NBA encourages innovation, the NFL tends to be more conservative and prioritize data protection.

McCarthy explained that NBA teams collaborate closely together, sharing details on vendor contracts and AI best practices. By contrast, Rahman noted that the NFL's governance framework requires stricter protocols

to ensure teams are not using each other's data without permission.

This divergence embodies one of the challenges of AI adoption: the balance of technological advancement versus the ethical and legal implications of AI use. Whether for fan engagement, performance tracking of players, or AI-driven scouting, teams must create clear policies to protect not just competitive fairness but personal privacy as well.

The Future of AI in Sports Law: Practical Takeaways

As AI progresses, the future challenges for sports law professionals need to be anticipated. The panelists emphasized key takeaways in navigating AI in sports:

- Be Transparent – Organizations need to be transparent and disclose to the user how the player and fan data is collected, stored, and used;
- Data Protection is Non-Negotiable – Implementing robust security measures will prevent unauthorized access or misuse;
- AI Should Complement, Not Replace, Human Judgment – AI-driven tools can aid scouting and coaching, but should not replace human decision-making;
- Stay Ahead of Regulatory Changes – With the changes in the AI legal landscape occurring very rapidly, sports organizations should track these new laws and compliance requirements; and
- Athlete Education is Essential – Players must understand their rights and risks associated with data and AI.

Now Is the Time to Shape the Future of AI in Sports

AI in sports isn't merely a technological development — it's a legal and ethical challenge that needs careful oversight. While organizations, leagues, and legal professionals try to navigate this fast-moving landscape, proactive governance will be critical to realizing the potential of AI for the benefit of all stakeholder groups. This is just the beginning of the discussion regarding AI and the issue of privacy in sports. The question now isn't if AI will upend the industry, it is how we should approach the implications of AI so that we can protect players, fans, and the game itself.

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In-House Sports Lawyers Discuss Trends Involving IP and Strategic Roles

By Gabby Pacula

The second panel at the SCU Sports Law Conference last month provided an insightful exploration of the vital role attorneys play in representing major brands in the sports industry. The panel featured experienced in-house attorneys from The Coca-Cola Company, Lululemon USA, Inc., and adidas, all of whom shared their perspectives on business partnerships and the strategies essential for their companies' long-term growth.

Navigating Global Marketing at Coca-Cola

Ryan Becker, Senior Legal Counsel for The Coca-Cola Company, emphasized the importance of maintaining a global perspective. Coca-Cola operates in over 200 countries, and Becker's role involves supporting various operating units worldwide. Acting as the "connector" between the business client and the company, he negotiates deals with sports teams and talent, ensuring alignment with Coca-Cola's strategic goals.

With nearly two million drinks sold daily, Coca-Cola faces intense market competition. Becker shared the way his team evaluates how specific assets fit into the company's broader system and develops marketing initiatives that go beyond financial value. By identifying what additional benefits Coca-Cola can provide—whether in brand partnerships or consumer engagement—the company differentiates itself in a crowded marketplace. Moreover, Becker underscored the importance of understanding the regulatory landscape and staying informed about the company's operational and financial details.

Intellectual Property and Brand Protection at Lululemon

Jenny Vo, Legal Counsel for Brand Protection at Lululemon USA, Inc., delved into her critical role in combating fraud and counterfeiting. Her work often involves collaboration with law enforcement and cybersecurity teams to target networks harvesting consumer data. Vo's focus extends to protecting intellectual property (IP) and design rights by registering trademarks that enable Lululemon to enforce legal protections for their brand.

Beyond IP enforcement, Vo actively engages in the company's production process to anticipate and mitigate issues such as counterfeit goods infiltrating supply chains. This proactive approach allows Lululemon to address potential reputational and financial risks early, ensuring a secure and trustworthy consumer experience. Additionally, Vo's efforts to monitor trends and consumer interactions highlight the dynamic nature of brand protection, which requires a balance between innovative solutions and safeguarding brand integrity.

From Athlete to Attorney at adidas

Omar Salgado's journey from professional athlete to Legal Counsel at adidas provided a unique perspective on the intersection of sports and law. Drafted into Major League Soccer (MLS) at sixteen and sponsored by adidas, Salgado's career was deeply rooted in sports long before his transition to law. After an injury in 2021, he began studying law and eventually joined adidas as an in-house attorney. His responsibilities now include negotiating deals with influencers and celebrities and drafting sports marketing agreements.

Salgado's athletic background allows him to empathize with the athletes and influencers he works with, offering insights into their priorities and concerns during contract negotiations. He described his role as a "support system" for the entire business, ensuring compliance and aligning deals with adidas' strategic objectives. This athlete-driven perspective underscores the importance of understanding all stakeholders in sports marketing, particularly when crafting agreements that balance business goals with individual needs.

Key Takeaways: Attorneys' Role in Strategic Growth

A recurring theme among the panelists was the importance of maintaining a "birds-eye view" of their companies to prioritize successful business development. Whether negotiating high-stakes marketing deals, enforcing IP rights, or advising on compliance, the panelists demonstrated how in-house attorneys act as integral partners in their companies' strategic planning and execution.

For Coca-Cola, this involves leveraging its extensive global presence to innovate marketing strategies that resonate with consumers. At Lululemon, safeguarding IP and addressing fraud ensures the brand's longevity and consumer trust. Meanwhile, adidas relies on Salgado's unique athlete-driven perspective to enhance its sports marketing efforts.

In sum, the panel highlighted the multifaceted roles attorneys play in shaping the sports industry. Their expertise goes beyond traditional legal counsel, encompassing business acumen, strategic insight, and an unwavering commitment to their companies' missions. These roles underscore the evolving nature of sports law and its critical impact on the industry's future.

Gabby Pacula is a 1L student at Santa Clara University School of Law. Her interest in sports law stems from her time as a Division I rower at Colgate University.

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Not Just a Moment, But a Movement – Conference Panelists Discuss the Rise of Women's Sports

By Máire Rock

Over the winter, Santa Clara University School of Law hosted its annual Sports Law Conference.

The third panel, entitled "The Rise of Women's Sports," was especially provocative. The panel included Leslie Osborne Lewis (founder and co-owner of Bay FC and former USWNT member), David Kelly, (Chief Legal officer at Golden State Warriors and Golden State Valkyries), Kate Porter (General Counsel for Bay FC), Brianna Salvatore Dueck (CEO of Uplift Sports and Entertainment) and their moderator Mariah Cooks, Esq. (Associate and Co-Chair Sports & Entertainment Practice at Murphy, Pearson, Bradley & Feeney). The overarching theme of the panel was perfectly said by Ms. Cooks at the start of the panel: "This is not just a moment, it's a movement." She added that the panel was made up of "trailblazers."

A large topic that was discussed repeatedly during the panel was the new NWSL Collective Bargaining Agreement (CBA) and how it is reshaping the competitive landscape of the league. Kate Porter commented on how the new CBA "recognizes how players move through the market." She explained how the free agency rights under the new CBA more closely mirror the rights that soccer players have had for years in Europe. She also explained how the new CBA abolished the draft

and expansion draft for the NWSL—something that has impacted how she does her job. She stated that she had to learn a lot about how the new recruiting rules in the wake of the abolished draft and the new free agency transfer rules worked in practice, not just on paper.

Another topic that all the panelists jumped in on was how social media has transformed the landscape of brand building for women athletes. Brianna Salvatore Dueck pointed out that women athletes drive twice the engagement on social media when compared with men athletes, allowing them to connect with their audience. This connection—coupled with the fact that female sports now receive 15% of all sports media coverage compared to 4% from several years ago—allows these female athletes to build their brands outside of traditional media. By doing this Dueck says that it democratizes brand building for all athletes, gives women a voice, and allows them to connect directly with their fans. This allows the female athletes to not only bring in brand deals for themselves and champion the causes that they are passionate about, but it also puts more eyes and attention on women's sports.

David Kelly gave a great overview of the behind-the-scenes formation of the Golden State Valkyries and the key factors in the Golden State Warriors acquiring a WNBA team. He explained that about five years ago a task force was put together of each department at the Warriors to draft a report on what it would mean for the Warriors to acquire a team and why a WNBA team would do well in the Bay Area. These discussions ultimately led the Warriors to negotiations with the league and eventually acquiring a team.

Leslie Osborne Lewis spoke to the fact that former female athletes are now stepping into the world of ownership (not just team ownership, but the general business world as well) instead of being limited to broadcaster roles or retirement from the sports world altogether. By empowering female athletes to have the confidence to build their own brands, they are taking that leap to jump into the business side of sports whether that is team ownership or being a GM. Lewis then spoke about her experience bringing Bay FC to the Bay Area. She highlighted their lack of a business background as frowned upon, but it was their experience actually playing the game that gave them the knowledge to build a team that they know will last.

Porter and Kelly also touched upon the considerations that come with creating female sports, specifically training facilities. Porter said they wanted to make sure that the facilities were not just like the men's facilities "but pink." So, they took into consideration different ideas, like childcare facilities, as well as under-18 faculties and facilities that focus on player care. They wanted to make a space that was cognizant of the realities of women's sports. Kelly spoke to how the Valkyries wanted to ensure that their team had a dedicated facility that they could take advantage of in the off season and that they also had a dedicated corporate headquarters. This came to fruition with the Valkyries dedicated facility in Oakland, California, which allows the women to have a world-class facility that keeps the player's not only in market and engaged in the WNBA in the off-season, but engaged in the community, too.

In sum, the "Rise of Women's Sports" panel discussion incorporated strong voices and ideas that touched on a myriad of women's sports topics. From the minute it started until it ended the crowd could not get enough of these panelists. Several attendees stayed long after the panel ended to talk with each of the panelists, an indication that the conversation around women's sports is ongoing. This panel gave a fantastic overview of all the different ways that women's sports is on the rise in the United States and the ways that the legal profession is helping to support that meteoric increase.

Máire Rock is a 2L at Santa Clara University School of Law and is pursuing the Sports Law Certificate. She graduated from Seattle University with a degree in History and Political Science and a minor in English Literature. She is interested in pursuing sports law as a career after graduation.

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Marla Messing, Founding Partner of MLS, Gives Keynote Address at Santa Clara University School of Law Conference

By Brittany Prock, Santa Clara University School of Law

Santa Clara University (SCU) School of Law hosted its second annual Sports Law Conference over the winter in Santa Clara, CA. Among several dynamic sessions that took place throughout the day, the keynote address given by Marla Messing, founding partner of Major League Soccer (MLS), was particularly inspiring as she shared details and lessons learned about her remarkable 30-year career.

Messing began her legal career in the late 1980s working as an Associate at Latham & Watkins. While in this position, Messing met Alan Rothenberg, who, at the time of their meeting, was the President of U.S. Soccer and the Chairman and CEO of the 1994 FIFA World Cup. Messing was invited to serve as a World Cup Associate and quickly earned an invitation to join a four-person Executive Management Committee as Executive Vice President. In just her late twenties, Messing was one of the most influential people within the World Cup organization.

After the 1994 World Cup introduced world-class soccer to the United States, Messing and Rothenberg, along with a few other World Cup employees, founded MLS. The inaugural MLS match took place in 1996, just miles from the SCU campus, between the San Jose Clash (now San Jose Earthquakes) and D.C. United. When the MLS league office was moved from Los Angeles, CA to New York, NY Messing remained in Los Angeles and transitioned into the world of women's soccer.

The 1999 FIFA Women's World Cup was awarded to the United States and Messing served as President and CEO. This event was the first large-scale women-only sporting event in the world. Messing created and executed the strategic plan and led all business operations. The event was a massive success both financially and socially, but Messing was ready for a break when it was over. She spent 15 years away from the professional world to raise her three daughters, and it wasn't until they began heading away to college that Messing was ready to make a return.

In 2016, Messing was invited to join the Los Angeles Olympic and Paralympic Bid Committee as Vice President and Executive Director. Ultimately, Los Angeles was given the 2028 Olympics as opposed to 2024 and Messing once again needed to make a shift. She spent the next few years working for the United States Tennis Association as Chief Executive Officer for the Southern California Section. Though she excelled in this position like all her positions prior, Messing was asked by Cindy Cone, President of U.S. Soccer, to serve as Interim Chief Executive Officer for the National Women's Soccer League (NWSL), and Messing made her return to the world of soccer in 2021. At the time of Messing's service, the NWSL was consumed by a league-wide coaching scandal. It was Messing's responsibility to forge a new direction for the League and build renewed confidence.

Shortly after Messing's departure as Interim CEO, she decided she wanted to own part of an NWSL team and she was particularly interested in Seattle Reign FC (formerly OL Reign) out of Seattle, WA. Messing ultimately partnered with The Carlyle Group to assist them in their purchase of the team. Although she didn't become part owner herself, her participation led to a successful acquisition in June 2024.

With 30+ years of experience to reflect on, Messing has key pieces of advice for young professionals in the legal field:

1. **Be proud of a law school education.** Messing credits much of her professional success to her legal education and particularly notes that the critical thinking skills developed in law school will serve students well.
2. **Go to the office.** Professional sports may have never been graced with Messing's expertise if she hadn't shown up to the office every day and interacted with Rothenberg at the coffee machine.
3. **Take risks.** Messing left her Associate position at a big law firm to join the World Cup organization. Few careers are linear, and it may be necessary to make a move backward to eventually get ahead.

4. **Work hard.** Especially young professionals, who generally have fewer responsibilities. The best thing to do in the early years of one's career is to learn - the harder one works the more will be learned.
5. **One should get into what they enjoy and are good at.** A legal education, paired with a few years of high-quality work, will create a foundation that allows one to do anything they want to do. Those that are most successful are doing work they love.
6. **Be creative and question the status quo.** Those with a legal background may often be stereotyped as being uncreative, don't allow others to characterize legal skills.
7. **Operate with integrity.** Do the right thing, be honest, and accept mistakes - all things Messing did during her time with NWSL earned her the respect she needed to ensure a successful turn-around effort.

Whether in sports or big law, Messing's career serves as a reminder to all that success comes from hard work, integrity, and the willingness to take a chance.

Brittany Prock is a first-year student at Santa Clara University School of Law with an anticipated graduation date of April 2027. Brittany holds her MBA from San Jose State University and is interested in the legal areas of corporate, sports, and government.

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The Intersection of Pokémon and Copyright: Lessons from Recent Legal Challenges in Esports

By Rashan E. Isaac, Ph.D. Candidate- University of New Mexico (Sport Administration)

Introduction

The gaming community is familiar with disputes related to intellectual property, with the Pokémon franchise being heavily involved with multiple legal cases related to copyright infringement. A recent case is seen with the title *Palword* **[1]**, produced by the Tokyo-based indie gaming company Pocketpair Japanese-produced game that features many similarities to the Pokémon titles. As tension between game development companies and copyright holders continues to rise, the impact on the overall esports landscape cannot be overlooked. This article sheds light on key legal issues overlapping with Pokémon litigation; with a focus extended into copyright infringement and the impact on the esport ecosystem.

The Rise of Pokémon in Esports

Pokémon has origins that began as a globally enjoyed childhood game but has since evolved into one of the more prominent esports titles accompanied by competitive (and casual) tournaments and fan-driven events. The success of fan-driven events has led to legal conflict with the Pokémon company, an example seen in the legal issues stemming over the use of intellectual property (IP) rights in Pokémon Company International v. Jones et al **[2].** This case, in which a coffee shop owner used two popular Pokémon on a poster to showcase an event highlights the challenges faced at the intersection of gaming and IP rights. As a number of cases continue to point to how legal disputes related to Pokémon have become more pronounced, the challenges faced by both developers and players will increase based on the use of copyrighted elements from games and fan-generated content.

The 'Palworld' Case and Copyright Concerns

Palworld—the gaming title which leaned heavily on patents relating to the artistic style, characters, and in-game mechanics of the *Pokémon* franchise **[3]** —serves as a prominent example of the copyright concerns which plague the esport industry. Despite not being recognized as an official Pokémon title, *Palworld* faces multiple accusations of reproducing core elements originally created for the Pokémon universe. The center of this legal battle is driven by a single question: "Does *Palworld* constitute copyright infringement by imitating the look and feel of the *Pokémon* franchise?". At a larger scope, a case of this type amplifies the challenging balance of artistic inspiration and IP rights for the gaming community.

Copyright Infringement and Esports

Continuing to take a macro-view of this case, it would be critical to overlook the impact fan-made content and third-party tournaments have on the evolution of a

gaming title after its initial release. This is where concerns over copyright issues continue to be pressing. The success of a gaming title hinges on factors well after its release, with both game developers and fan-driven efforts required to navigate complex IP rights when incorporating copyrighted content into events and/or products. While some developers, such as those who created *Palworld*, argue that free expression should protect a title created for the enjoyment of fans **[4]**, others, such as Nintendo developers, have a history of being fiercely protective of their IP and initiating multiple legal actions to prevent unauthorized use **[5]**, **[6]**.

Lessons for Esports Professionals and Developers

From the *Palworld* case and other Pokémon-related IP disputes multiple takeaways can be used to inform the practices of esports professionals and developers, which include:

- **Understanding Legal Frameworks**: As IP law is well established as a core legal issue in esport, it is crucial for all stakeholders (e.g. game developers, tournament organizers, and content creators) to have a firm understanding.
- **Well-defined Licensing Agreements**: To mitigate IP issues, developers must ensure appropriate licensing and/or permissions are understood relating to copyrighted elements; especially in fan-organized esport events.
- **Potential for Legal Action**: An understanding of the possible monetary (from lengthy legal battles) and reputation damage resulting from the unauthorized use of intellectual property must be understood.

The rapid, continued expansion of the esports industry highlights the importance of understanding copyright law. Using the Palworld case as an example sheds light on the complex legal issues popular titles such as *Pokémon* have faced in esports; additionally emphasizing the necessity of transparent guidelines for the esport community. Learning from such legal challenges provides esport professionals (and all stakeholders in the esport industry) with a roadmap for navigating the delicate balance between individual creativity and IP protection.

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West Virginia Joins a Number of States Hoping to Further Limit the NCAA

By Alyssa Rodriguez and Gregg E. Clifton

West Virginia joins Georgia, Virginia, Texas, Oklahoma, and Missouri in an effort to protect the state's student-athletes and potentially prevent the National Collegiate Athletic Association ("NCAA") from enforcing rules related to Name, Image, and Likeness ("NIL") and athlete compensation. West Virginia state lawmakers are the latest to join in and advance proposed NIL legislation aimed at protecting their student-athletes and embracing player rights, especially in light of the growing resistance to NCAA regulations amid the looming finalization of the *House v. NCAA* settlement.

HB2576, also known as the "NIL Protection Act," was introduced in the West Virginia House of Delegates on February 18, 2025. This legislation would, among other things, attempt to create a legal framework governing how college student-athletes in the state can profit off their NIL. More specifically, it would prohibit the NCAA, conferences, or colleges from investigating or penalizing athletes for NIL-related activities. As the proposed NIL Protection Act states:

"No institution, athletic association, athletic conference, or other organization with authority over intercollegiate athletics may: open an investigation, penalize, suspend, take other adverse action, or declare a student-athlete ineligible from intercollegiate athletic competition."

This proposed legislation would also permit colleges to compensate athletes for using their NIL and

share earned revenue with their athletes. Proponents of the legislation believe it will empower student-athletes to recognize their contributions to college sports. Additionally, the legislation could challenge the NCAA's legal authority to enforce policies stemming from ongoing anti-trust litigation, including the potential finalization of the *House v NCAA* settlement in its current form.

The proposed NIL Protection Act comes amid a wave of state-level NIL legislation nationwide as states attempt to respond to the evolving policies on college athletes' compensation. States are increasingly adopting legislation that prevents the NCAA from enforcing rules related to NIL and athlete compensation in their states. These evolving policies could complicate the implementation of the anticipated finalization of the *House* settlement. As *House* is expected to be a transformative moment for college athletics and a historical turning point in the NCAA's resistance to student-athletes receiving direct compensation, the settlement provisions contain several provisions that could ultimately conflict with state laws if approved by the court.

For example, *House* would allow colleges to pay 22% of a set formula for average shared revenue with an initial, approximate $20.5 million cap, in addition to an independent review requirement for deals exceeding $600 to prevent pay-for-play arrangements. However, rather than resolving disputes, the settlement provisions set forth may further intensify and open the door to conflicts between state laws and NCAA regulations. Since a federal settlement cannot override state law claims, this could lead to an increase in lawsuits against the NCAA. For example, athletes in these states with specific legislative NIL protections can rely on those state laws to ultimately challenge the settlement provisions, once again prompting more litigation. As such, legislation in states like West Virginia, Georgia, Virginia, Texas, and Mississippi could potentially impact U.S. District Court Judge Claudia Wilken's April 7, 2025 Fairness Hearing, as she must decide whether to grant final approval of the *House* settlement. It is anticipated that Judge Wilken may not render her decision on that date and will take under advisement the numerous objections that will be offered from a pre-selected group of individuals who will get to address her in open court. Ultimately, it is believed that Judge Wilken will approve the settlement based upon the standard of review for an antitrust class action case like *House*, which does not require a judge to find a perfect settlement, Instead, among other considerations, the settlement must only adequately resolve the legal issues raised in the case, not all related problems arising from the action. If Judge Wilken believes the settlement is fair, reasonable and adequate she will approve it.

The growing conflicting state laws provide even greater motivation for the NCAA to lobby Congress for federal legislation that would shield it from ongoing legal disputes over athlete compensation with states' legislation. Without a national framework, states will continue passing laws that protect their athletes, keep their institutions competitive, and limit the NCAA's ability to regulate compensation within their state. We can expect that when the *House* litigation door closes, an overwhelming number of new litigation filings against the NCAA will commence.

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PTPA Launches Pro-Bono Legal Program, 'Ensuring Players Worldwide Equitable Access to Counsel & Due Process'

The Professional Tennis Players Association (PTPA), the leading advocates for professional tennis players worldwide, has announced the launch of its Athlete Counsel & Equity (ACE) Program. This initiative, co-founded by WTA player Tara Moore, will provide professional tennis players navigating complex legal challenges with expert pro-bono support through law firms King & Spalding LLP and Weil, Gotshal & Manges LLP. The PTPA ACE Program is the "first of its kind in tennis, ensuring equitable access to world-class legal expertise, regardless of a player's financial standing and personal resources."

The program will initially focus on assisting players with contentious cases related to anti-doping and anti-corruption issues – areas often fraught with high stakes and legal complexity. After an initial intake of each case, the PTPA will connect players with legal counsel to provide services at no cost. As the founding

partners of the PTPA ACE Program, King & Spalding and Weil, Gotshal & Manges have committed substantial time and resources to supporting players' unique legal needs.

Both firms are globally recognized for their expertise in navigating challenging legal battles. King & Spalding LLP is a global firm with 24 offices in 10 countries and more than 1,300 attorneys. The firm's leading international disputes practice counsels clients across various industries and has a wealth of experience in the sports sector, including representing clients before the Court of Arbitration for Sport, the FIFA Ethics Committee and international domestic courts, and advising on various regulatory, sponsorship and media and TV rights issues. Weil, Gotshal & Manges LLP features nine U.S. offices, five European offices, and one Asia office, and has a storied history working across high-profile athlete advocacy cases, including work with the National Women's Soccer League Players Association, MLB Players Association, NFL Players Association, and NBA legend Oscar Robertson.

"We are proud to partner with the PTPA to address this critical need and support professional tennis players through the ACE Program," said Tom Sprange KC, King & Spalding London Office Managing Partner. "When looking to defend their professional integrity, tennis players are faced with convoluted and costly legal processes, often without access to sufficient financial or legal support. These players can find themselves in exposed, vulnerable situations and deserve robust frameworks that ensure their careers and reputations are not unfairly jeopardized by a lack of resources. We look forward to working with the PTPA to ensure players have the resources and legal support they need to defend themselves."

"The professional tennis ecosystem has made it financially impossible for most players to defend themselves fairly," said Drew Tulumello, Co-Head of Weil's Complex Commercial Litigation Group. "Players need access to experienced legal support, and Weil is eager to work with the PTPA and its members to help even the playing field."

Ahmad Nassar, PTPA Executive Director, added: "Professional tennis players are governed by an opaque and deeply flawed legal system that places an enormous burden on them instead of the powers at large. The launch of the PTPA ACE Program underscores our commitment to player welfare and solidifies our role as the only truly independent players representative. While others in tennis could have and should have launched a similar initiative long ago, the PTPA is taking action now to deliver real, meaningful solutions. Players cannot afford to wait for governing bodies to step up; we are providing the support they need today."

The PTPA ACE Program was inspired by the experiences of Tara Moore, who was cleared by the Court of Arbitration for Sport of an anti-doping violation in December 2023 after a grueling 19-month battle and provisional suspension. During this time, the PTPA worked closely with Moore and her legal team. Moore's personal experience navigating the ITIA's legal process and the emotional and financial toll it took inspired the creation of this pro-bono program to assist players facing similar challenges.

"All players are entitled to due process – financial constraints or a lack of resources should never stand in the way of their rights," said Moore. "The fight to prove my innocence left me with hundreds of thousands of dollars in debt and overwhelming emotional distress. My hope is that the PTPA ACE Program and these incredible legal teams will ensure that no player has to face these challenges alone, especially in cases involving integrity issues. Every player deserves the chance to defend themselves without fear of financial or emotional ruin."

Looking ahead, the PTPA aims to expand the ACE Program by collaborating with additional premier global law firms to scale legal support for players further.

Additional details about the program will be shared with players and their teams in the coming weeks.

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DC Attorney General Secures $6.5 Million from Lottery and Sports Betting Contractor and Subcontractor for Defrauding the District

District of Columbia Attorney General Brian L. Schwalb has announced that Intralot, Inc. (Intralot) and its small business subcontractor, Veterans Services Corporation (VSC), will pay the District a combined $6.5 million for deceiving city officials to win and then obtain payments under the District's multimillion dollar, multiyear lottery and sports betting contract.

An investigation by the Office of the Attorney General (OAG) revealed that, in 2019, Intralot and VSC conspired to secure the DC Council's approval of the lucrative contract on a sole-source basis, without requiring a competitive bidding process, by promising that VSC would perform 51% of the work—all with its own resources—and receive an equivalent percentage of the revenue, with other small businesses receiving a minor additional share. That promise was false: Intralot and VSC secretly agreed that, in exchange for return payments from VSC to Intralot, an Intralot subsidiary—not VSC—would provide most of the resources for the sole-source contract. After securing the contract, Intralot and VSC teamed up under this covert agreement to obtain millions of dollars from the District under false pretenses, misrepresenting that VSC performed work that Intralot's subsidiary actually did and that VSC received a majority of the compensation despite funneling much of it back to Intralot.

"This is a warning to any company that tries to manipulate and exploit District contracting laws, especially laws intended to build the capacity of the local businesses vital to our economy," said Attorney General Schwalb. "Intralot and VSC's sports betting deal was a sham from the start—an elaborate scheme to secure a lucrative, high-profile opportunity on a sole-source basis while circumventing the District's small business contracting laws. My office will continue to enforce the False Claims Act to root out contracting fraud, hold accountable anyone who tries to get over on the District and its taxpayers, and level the playing field for law-abiding companies seeking to do business with District government."

The DC Council passed the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act (SBE Act) to create new opportunities for District small businesses. The SBE Act requires at least 35% of large government contracts to be subcontracted to small District-based businesses, called certified business enterprises (CBEs).

In 2019, Intralot and VSC sought to persuade District agencies and the Council to award them the multimillion dollar, multiyear contract to administer the District's lottery and new sports betting platform on a sole-source basis, without competition from other bidders, by representing that work done and money paid under the contract would benefit VSC and other CBEs, in accordance with the SBE Act. However, Intralot and VSC concealed the fact that, contrary to their representations, VSC would perform its subcontract using resources provided by an Intralot subsidiary, while funneling back to Intralot much of the contract money Intralot had promised to spend subcontracting with VSC. The legislative record shows that the Council approved the contract—and did so on a sole-source basis—because of Intralot's false promise that VSC and other small businesses would perform a majority of the work and receive a majority of the contract payments.

In implementing their scheme once they won the contract, Intralot and VSC falsely inflated the amount of money Intralot spent subcontracting with VSC and other CBEs, and Intralot paid VSC's owner, Emmanuel Bailey, hundreds of thousands of dollars per year for his participation. Both companies also submitted false and misleading documentation to District agencies and the DC Council, including the subcontracting plan originally used to obtain the Council's approval of the sole-source contract, verification forms that inaccurately documented the amount of work VSC performed, and quarterly reports that misrepresented how much Intralot spent subcontracting with VSC and other CBEs.

When District regulators discovered the companies' misconduct, the companies claimed they would cease and, in 2021, Intralot restated its previous reports and

disclosed approximately $4.3 million in previously undisclosed payments that it received from VSC. Yet on multiple occasions, Intralot's subsidiary continued to provide resources to VSC, and VSC continued to return payments to Intralot. By the time they said they reformed their arrangement in 2021, Intralot and VSC had submitted over 100 fraudulent invoices—invoices that sought payment under a contract induced by deception and that falsely implied compliance with District law.

Under the terms of the settlements:

- Intralot will pay $5 million to the District.
- VSC will pay $1.5 million to the District.
- Both companies agree to accurately report contract and subcontract information in any future bids, contracts, or subcontracting plans with the District.

In any current or future District contracts, Intralot agrees not to use any entity to provide resources to a District business with which it has a subcontracting relationship, and VSC likewise agrees not to use any undisclosed resources provided to it by any other entity.

A copy of the settlement with Intralot is available here and with VSC here.

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Attorney Chris Termini Named NCAA Vice President of Championships Business Affairs

Termini will serve as Association's primary leader for revenue generation efforts

The NCAA has named Chris Termini as vice president of championships business affairs. With more than 15 years of experience in sports business and law, Termini has played a pivotal role in driving the NCAA's external operations and strategic partnerships.

In his new role, he will continue leading external operations while serving as the department's primary leader for revenue generation efforts.

"I'm excited to step into this role and continue serving the NCAA, our student-athletes and member institutions," said Termini, who graduated from University of Virginia School of Law in 2006. "Championships are at the heart of what we do, and I look forward to building on our success by driving new opportunities for growth, creating value for the Association and delivering marquee experiences for student-athletes."

Since 2018, Termini has served as managing director of championships and alliances within external operations. In that role, he has overseen the strategic and operational aspects of NCAA championships business affairs, including digital and social media, marketing and ticketing, media coordination, statistics and data, and licensing and merchandise.

"Chris has been an integral part of our championships team for years, and his leadership in external operations has elevated our business strategy in meaningful ways," said Lynda Tealer, NCAA senior vice president of championships. "His ability to drive growth, foster key partnerships and enhance the championship experience makes him an ideal fit for this role. I look forward to his continued impact as we expand our efforts in revenue generation and external engagement.

"Chris has been a driving force behind the growth of our championships, and his expertise in revenue generation and business operations makes him the perfect fit for this role," NCAA President Charlie Baker added. "We're excited for him to take on this new challenge and continue shaping the future of NCAA championships."

Before transitioning to external operations, Termini spent five years as the NCAA's director of legal affairs and associate general counsel, providing legal, strategic and business counseling across key areas such as media rights, partnerships, regulatory affairs and championship operations.

Termini will begin in his new role immediately, continuing to report to Tealer.

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Uncovering the Secret to Helping Sports GCs Better Manage Their Legal Matters

David Lancelot

As one of the legal industry's most popular speakers, David Lancelot, the CLO and EVP of Advocacy at LawVu, has interacted with countless GCs about the challenges they encounter when managing their workload.

And that workload is increasing.

"Amid ongoing economic and industry pressures, businesses are increasingly more likely to retain work in-house than outsource to outside counsel," Lancelot said. "As a result, in-house legal workloads are on the rise. At the same time, businesses are expecting more value from a strategic perspective from their GCs."

It's a quandary.

But there is a solution.

"For in-house legal teams to deliver tangible value and meet the growing demands of their businesses, it's imperative that GCs embrace technology," he said.

Despite the compelling need for a tech-driven solution, only 36 percent of in-house legal teams currently use dedicated matter management software. With the rest still dependent on email and spreadsheets, or on software which is not built for the specific demands of in-house work, teams remain bogged down by manual tasks and struggle to access the data they need to work strategically and demonstrate business value, according to Lancelot.

"Legal teams deserve better – and so do their businesses," he said. "More than ever, in-house legal is a pivotal function for the wider business. Investing in the right matter management solution helps the legal team and the business get important work done with more efficiency, while reducing risk and freeing up valuable time for legal to focus on more strategic work."

Lancelot expanded on this, noting that "in-house legal matter management is the way to measure everything that matters.

"While it's increasingly common for larger organizations to implement e-billing and contract management solutions, teams of all sizes often operate with very limited transparency into the majority of work they do. Picture a pie chart image that represents the work a legal team does: some percentage is contracts, some percentage is with law firms, and some percentage is administrative tasks, and everything else is matters.

"So, while an e-billing tool or CLM can give you some good data, it's a partial picture; without matter management you don't have transparency into the majority of the work that your team is doing, so you are clearly not making effective, accurate decisions."

The painful reality of trying to be data-driven without matter management technology

"When I led a large corporate legal department without internal matter management technology, I relied on surveys of my team to understand their workloads," said Lancelot. "We were doing our best to provide data so that we could manage the function in a way that was effective. But it was not accurate, and it was time consuming for everyone.

"Another pitfall of not having technology is that you struggle to maintain a process, which impacts workflow efficiency AND gets in the way of gathering data reliably. You might have a manual process to fill in an intake form, for example… .but in an in-house team, things are happening too quickly to rely on human processes that require much data entry or context switching. Without a system, processes are ad hoc - and from a data perspective, that means it's impossible to capture the data you need in a reliable way."

Creating scale and using data is critical for leaders, and can't be achieved without people, process and technology

Lancelot added that "if you want to be a business leader with legal skills who operates at the same level of sophistication in leadership management and operations as your peers, you need to create a

scalable, data driven and cost-effective department. In my experience, the right combination of matter management technology, people and process allows you do that. And, when implemented well, the software gives consistency and shape to your ways of working, which gets repeated - generating high value data and transparency as a natural outcome of standardizing and streamlining your workflows.

"If you choose a matter management solution wisely, and implement it well, you'll build the backbone of an efficient, scalable and forward-thinking in-house legal function and the data you need to be an effective, modern legal leader."

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News Briefs

Herrick Bolsters Its Intellectual Property and Technology Practice with the Addition of Two Attorneys

Herrick has announced that Milton Springut, an intellectual property practitioner widely regarded for his work on disputes involving computers and electrical systems as well as luxury fashion brands, has joined the firm as partner from Moses & Singer LLP. Springut's longtime colleague Caroline Boehm, a trademark and copyright lawyer, has also joined Herrick as counsel. In his nearly 30 years of practice, Springut has litigated many patent, trade secret and other IP disputes, drawing on his background developing computer hardware and software systems for Bell Telephone Laboratories. His clients range from startups to Fortune 500 companies, on matters involving technologies such as computer processors, mobile payments, e-commerce, telephony, video systems and medical devices. Springut is also known as one of the nation's leading litigators of trademark, counterfeiting and "gray goods" cases for luxury brands and fashion houses. His results in this area include securing the first award of statutory damages for counterfeit goods under the Anti-Counterfeiting Act of 1996. Boehm brings deep experience in trademark and copyright matters, the focus of her work. Practicing frequently in front of the United States Patent and Trademark Office and the Trademark Trial and Appeal Board, Boehm regularly advises clients on trademark searching and clearance, registration, maintenance and general strategy. Before Boehm worked together with Springut at Moses & Singer, they practiced alongside each other at Springut Law P.C.

Excel Sports Management Rebrands Nolan Partners as Excel Search & Advisory

Excel Sports Management has announced Excel Search & Advisory, an executive search and leadership consulting practice that formerly operated as Nolan Partners. Excel Search & Advisory combines Excel's industry relationships with the specialized sports and entertainment executive search legacy of Nolan Partners. Acquired by Excel in 2022, Nolan Partners advises owners, investors, and boards in finding leadership talent and building leadership teams. Chad Biagini, who has been with Nolan Partners for nearly 10 years and led the practice in the US, will now lead all global business as President, Excel Search & Advisory. Stewart King, who has been with Nolan Partners for nearly eight years, will lead the international business out of the UK as Manager Director, International, Excel Search & Advisory. Paul Nolan, who founded Nolan Partners and shaped the firm's industry reputation, will continue with Excel Search & Advisory as Executive Chair.