

THE SPORTS LAW REVIEW

Second Edition

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EDITOR'S PREFACE

This second edition of *The Sports Law Review* is intended as a practical, business-focused legal guide for all relevant stakeholder groups in the area of sports, including sports business entities, sports federations, sports clubs and athletes. Its goal is to provide an analysis of recent developments and their effects on the sports law sector in 20 jurisdictions. It will serve as a guidebook for practitioners as to how a selected range of legal topics is dealt with under various national laws. The guidance given herein will, of course, not substitute for any particular local law advice that a party may have to seek in connection with sports-related operations and activities. It puts specific emphasis on the most significant developments and decisions of the past year in the relevant jurisdictions that may be of interest for an international audience.

The *Sports Law Review* recognises that sports law is not a single legal topic, but rather a field of law that is related to a wide variety of legal areas, such as contract, corporate, intellectual property, civil procedure, arbitration and criminal law. In addition, it covers the local legal frameworks that allows sports federations and sports governing bodies to set-up their own internal statutes and regulations as well as to enforce these regulations in relation to their members and other affiliated persons. While the statutory laws of a particular jurisdiction apply, as a rule, only within the borders of that jurisdiction, such statutes and regulations, if enacted by international sports governing bodies, such as FIFA, UEFA, FIS, IIHF, IAAF and WADA have a worldwide reach. Sports lawyers who intend to act internationally or globally must, therefore, be familiar with these international private norms if and to the extent that they intend to advise federations, clubs and athletes that are affiliated with such sports governing bodies. In addition, they should also be familiar with relevant practice of the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, as far as it acts as the supreme legal body in sport-related disputes. Likewise, these practitioners should have at least a basic understanding of the Swiss rules on domestic and international arbitration as Swiss law is the *lex arbitri* in CAS arbitration.

While sports law has an important international dimension, local laws remain relevant in respect of all matters not covered by the statutes and regulations of the sports governing bodies, as well as in respect of local mandatory provisions that may prevail over or invalidate certain provisions of regulations enacted by sports governing bodies.

Each chapter of this second edition will start by discussing the legal framework of the relevant jurisdiction permitting sports organisations, such as sports clubs and sports governing bodies (e.g., national and international sports federations), to establish themselves and determine their organisational structure, as well as their disciplinary and other internal proceedings. The section detailing the competence and organisation of sports governing bodies will explain the degree of autonomy that sports governing bodies enjoy in the jurisdiction, particularly in terms of organisational freedoms and the right to establish an internal judiciary system to regulate a particular sport in the relevant country. The purpose of the dispute resolution system section is to outline the judiciary system for sports matters in general, including those that have been dealt with at first instance by sports governing bodies. An overview of the most relevant issues in the context of the organisation of a sports event is provided in the next section and, subsequent to that, a discussion on the commercialisation of such events and sports rights will cover the kinds of event- or sports-related rights that can be exploited, including rights relating to sponsorship, broadcasting and merchandising. This section will further analyse ownership of the relevant rights and how these rights can be transferred.

Our authors then provide sections detailing the relationships between professional sports and labour law, antitrust law and taxation in their own countries. The section devoted to specific sports issues will discuss certain acts that may qualify not only as breaches of the rules and regulations of the sports governing bodies, but also as criminal offences under local law, such as doping, betting and match-fixing.

In the final sections of each chapter the authors provide a review of the year, outlining recent decisions of courts or arbitral tribunals in their respective jurisdictions that are of interest and relevance to practitioners and sports organisations in an international context, before they summarise their conclusions and the outlook for the coming period.

This second edition of *The Sports Law Review* covers 20 jurisdictions. Each chapter has been provided by renowned sports law practitioners in the relevant jurisdiction and as editor of this publication I would like to express my greatest respect for the skilful contributions of my esteemed colleagues. I trust also that each reader will find the work of these authors informative and will avail themselves at every opportunity of the valuable insights contained in these chapters.

András Gurovits

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Chapter 20

UNITED STATES

*Steve Silton and James Minor*¹

I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i Organisational form

In the United States, sports clubs typically organise themselves in one of three ways: either a sole proprietorship, a partnership or a corporation. The form a sports club decides on is dependent on factors such as potential liability, federal tax laws, flexibility of the form and ease of ownership transfer.²

A sole proprietorship is the simplest form of ownership as it is controlled by only one person.³ In light of the financial and legal complexity of modern professional sports, this is a rare form of ownership. The largest drawback to a sole proprietorship is the liability. All legal and financial liability associated with the sports club is attributed directly to the owner personally. An additional drawback is a sole proprietorship's limited ability to borrow funds. The sports club can only borrow as much as the owner can personally receive approval for.

The most prevalent type of sports club ownership is the partnership.⁴ The laws regarding partnerships are very straightforward. Each partner makes a measured contribution to the partnership and, in turn, each partner receives a share of the profits and losses of the business, unless a different arrangement has been made.⁵ Partnerships do not require any formal documentation or legal paperwork in order to come into existence; though a designation can be made to protect partners from personal liability. This lack of legal work can substantially reduce the sports club's start-up costs. Partnerships can further reduce their

1 Steve Silton is a partner and James Minor is an associate at Cozen O'Connor.

2 Glenn M. Wong, *Essentials of Sports Law* 746 (4th ed. 2010).

3 *Id.* at 747.

4 *Id.*

5 *Id.*

costs by taking advantage of pass-through taxation, which allows the partnership to file a general tax return while the partners themselves file personal returns accounting for all the profits and losses.⁶

Similar to a sole proprietorship, a partnership's drawback can be the lack of liability protection. Partners are held to be joint and severally liable for the acts of the other partners and the partnership as a whole. Furthermore, partners have a fiduciary duty to the other partners and the partnership as a whole. Partnerships have other unique limiting factors. Since a partnership is created by contract, a given partner cannot sell or transfer his or her interest to a party outside of the partnership.⁷ This means if one partner wants out of the partnership or if a partner should die, the partnership is dissolved.⁸

There is a common subset of partnerships often used to govern sports clubs. 'Limited partnerships' can be thought of as a hybrid of a partnership and a corporation. In a limited partnership one or more partners control the sports club, while other 'limited' partners supply investment money for the partnership. The limited partners have no control over the sports club; they only share in the profits and losses. Limited partnerships have the same advantages and disadvantages as general partnerships, the only difference being that a limited partner is only as liable as his or her investment into the partnership.⁹ Should a limited partner become a managing partner, only then will he or she be held joint and severally liable for the partnership, just as in a general partnership. Becoming a 'limited partner' is a common way individuals become owners in professional sports teams in the United States. While limited partners have no operational control, they are able to view 'up close' the manner in which a professional sports team is operated. Many majority owners of sports teams in the United States started as limited partners.

Corporations are also used to govern sports clubs. Corporations are different from both sole proprietorships and partnerships in that they are legal entities separate and apart from both the owners and shareholders.¹⁰ The creation of a corporation is governed by the local laws of the state in which it is incorporated. In many ways, a corporation is treated as an individual in the eyes of the law. Just like an individual, a corporation has rights, can be sued and must pay its own taxes. If a sports club is created as a corporation, its shareholders elect a board of directors to oversee the business and that board elects officers to manage the sports club. One advantage of using a corporation as a business model is the limited liability of its shareholders; a shareholder is only as liable as their investment.¹¹ Corporations also have an easier time raising capital. If a corporation needs more funding it can simply sell more stock. This diverse ownership means a corporation's life span is not tied to a single person or a partnership; a corporation can well outlast a single lifespan.¹² Still, using a corporation as an ownership vehicle for a sports club has serious disadvantages.¹³ A corporation's profits are taxed twice: first when they are earned at a corporate tax rate and again when they are

6 *Id.*

7 *Id.* at 748.

8 *Id.*

9 *Id.* at 749.

10 *Id.*

11 *Id.* at 750.

12 *Id.*

13 *Id.*

distributed to shareholders as dividends. Although a corporation's limited liability is attractive, its tax disadvantages will be taken into account by a team's owner when choosing the right business structure.¹⁴

II THE DISPUTE RESOLUTION SYSTEM

i Sports arbitration

Professional players consent to punishment handed out by their respective clubs and leagues through their collective bargaining agreements (CBAs) as well as personal contracts.¹⁵ Those contracts are kept very broad and simply secure the player's agreement to follow the rules set by the individual team or league. The standard player's contract (SPC) will typically state that the club may create rules governing the player's conduct, and in return, the player promises to follow those rules. Penalties for infractions come in various forms. The contracts typically explain the procedural rights the player will receive; usually in the form of notice and review by the respective league's Commissioner.¹⁶ The SPCs also provide a given league's Commissioner with independent disciplinary authority.¹⁷

The National Football League (NFL) has a personal conduct policy that pertains to all persons associated with the league and not just the players.¹⁸ The policy specifically reserves the option to punish regardless of whether there is a legal conviction for a crime, stating the NFL holds its employees and club members to a higher standard.¹⁹ The policy forbids behaviour that undermines or risks the NFL's integrity or reputation and if a violation is found, the Commissioner is given wide latitude to discipline as he or she sees fit.²⁰ The policy states the punishment is to be proportional to the infraction and take into consideration the nature of the conduct, the risk entailed in the conduct, the existence of any prior or additional misconduct and any other relevant factors.²¹

The NFL Commissioner's disciplinary authority is governed by three documents: the Constitution and Bylaws of the National Football League (League Constitution), the CBA and the NFL's SPC.²² The League Constitution is a contract that defines the authority of the league and its member clubs.²³ In addition to empowering the Commissioner, the Constitution also provides the Commissioner with authority to recommend punishment matters to an Executive Committee. A Commissioner might do so, should he or she find the punishment he or she is authorised to administer is inadequate or insufficient.²⁴

14 *Id.*

15 Walter T. Champion, Jr., *Fundamentals of Sports Law*, § 14:4, (2d ed. 2014).

16 *Id.*

17 *Id.*

18 Michael A. Mahone, Jr., Note, Sentencing Guidelines for the Court of Public Opinion: An Analysis of the National Football League's Revised Personal Conduct Policy, 11 *V and. J. Ent. & Tech. L.* 181, 181 (2008).

19 *Id.*

20 *Id.*

21 *Id.* at 186.

22 *Id.* at 190.

23 *Id.* at 191.

24 *Id.*

The NFL's SPC allows for the Commissioner to punish for two types of conduct: conduct on the field and conduct that is harmful to the integrity of, and the public confidence in, the NFL.²⁵ The CBA limits the player's ability to appeal the Commissioner's decision by allowing a player to only appeal to the Commissioner or his or her designee directly.²⁶ Although the League Constitution provides the Commissioner with guidance, it is the CBA that is the real authority concerning the employment relationship between the players and the Commissioner and it is the CBA that determines how much authority for punishment the players will accept.²⁷

Similar to the NFL, the Major League Baseball (MLB) Commissioner is provided with a wide scope of authority to punish for matters that affect the integrity of baseball and the public confidence in it.²⁸ However, unlike the NFL, in the MLB there are more actors with punishment authority.²⁹ In addition to the Commissioner, the league's executive vice president and the senior vice president also have the authority with regards to fines and suspensions for conduct on the field. In the MLB, an appeal can be made to the Commissioner, the executive vice president or an independent arbitrator or arbitration panel. Although technically the MLB has significant discretion and authority, many find the use of arbitration, which is provided for in the CBA, has undermined that authority.³⁰ Historically, arbitrators have overturned Commissioners' decisions, including the reinstatement of players the Commissioner has banned for life.³¹

In professional baseball, conduct violations are punished in two ways: by the player's team or by the league.³² Team sponsored punishments are regulated by the player's contract. Although an individual's contract might be negotiated so it reads differently, generally teams have the authority to terminate the player's employment. The player's contract holds him to the highest level of sportsmanship and personal conduct, and infractions stemming from chemical abuse, gambling, domestic violence, fighting or illegal weapons possessions are seen as falling under the 'personal conduct' clause.³³ Further, the MLB's Commissioner is given the responsibility for investigating incidents, deciding guilt or innocence and handing out the punishment. The Commissioner's biases are supposedly only toward the protection

25 *Id.* at 192.

26 *Id.*

27 *Id.*

28 Bethany P. Withers, *The Integrity of the Game: Professional Athletes and Domestic Violence*, 1 *Harv. J. Sports & Ent. L.* 145, 152 (2010).

29 Adriano Pacifici, *Scope and Authority of Sports League Commissioner Disciplinary Power: Bounty and Beyond*, 3 *Berkeley J. Ent. & Sports L.*, 93, 101 (2014).

30 Withers, *supra* note 28, at 153-154.

31 *Id.* at 153.

32 Matthew A. Foote, *Three Strikes and You're (Not Necessarily) Out: How Baseball's Erratic Approach to Conduct Violations Is Not in the Best Interest of the Game*, 27 *WTR Ent. & Sports Law.* 3, *4 (2010).

33 *Id.*

of the game, where the individual owners of the teams have a financial stake in a player's punishment. In fact, even the Supreme Court of the United States has upheld the MLB Commissioner's broad powers and discretion.³⁴

In basketball, under the CBA, punishment by the National Basketball Association's (NBA) Commissioner can be generally divided into two categories: suspensions of fewer than 12 games or suspensions of more than 12 games.³⁵ In a suspension of fewer than 12 games, where the reason for the suspension was due to concern over preserving the integrity of, or the public confidence in, the NBA, the Commissioner has the final word and no arbitration is allowed. Any appeal of a suspension for fewer than 12 games must be made to the Commissioner. One caveat to that rule is a player may appeal to the player discipline arbitrator if the player is seeking a review as a result of the financial impact of the Commissioner's decision.³⁶ However, in such a case the arbitrator may only lower the financial penalty. For suspensions over 12 games the player or the player's union may file a grievance and have an arbitrator review the discipline given.³⁷

III ORGANISATION OF SPORTS EVENTS

i Relationship between organiser and spectator

Venue owners in the United States are open to a certain level of liability. However, using the affirmative defence of 'assumption of the risk' can limit that liability.³⁸ Courts typically deny recovery for injuries resulting from hazards inherent to the sport under the presumption that spectators have sufficient knowledge of the sport and assume the risk of being injured; even if it is the first sporting event ever attended by the patron.³⁹ To succeed in an assumption of the risk defense, venue owners must show that (1) the plaintiff had personal knowledge of the risk (claims of ignorance of the risk have generally failed), (2) the risk was obvious and apparent to a reasonable and prudent person under the circumstances, or (3) there was seating provided behind a protected screen that the spectator chose not to sit in.⁴⁰ Venue owners have also tried using liability releases to limited effectiveness.⁴¹ Some courts have held that a liability release may be void if it is against public policy. Liability releases are also considered to be void if the court finds it is counter to a state statute or if the release was not brought to the attention of the patron.⁴² Regardless, professional sports leagues have put protections in place to mitigate any future liability.

After a 13-year-old girl was killed by a puck at a National Hockey League (NHL) game, the NHL made Plexiglas along the boards mandatory. The NHL further required each

34 *Flood v. Kuhn*, 407 U.S. 258 (1972); See also *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 538 (7th Cir. 1978) (upholding Commissioner Bowie Kuhn's right to determine the best interests of baseball); Foote, *supra* note 32, at *5.

35 *Pacifici*, *supra* note 29, at 102.

36 *Pacifici*, *supra* note 29, at 102.

37 *Id.*

38 20 COA2d § 361 (2010).

39 *Sciarrotta v. Global Spectrum*, 944 A.2d 630, 641 (N.J. 2008).

40 20 COA2d § 361 (2010).

41 *Id.*

42 *Id.*

rink to put protective netting above the Plexiglas behind the goal nets in order to protect fans from flying pucks.⁴³ Further still, the NHL has mandated that rink operators must provide a protective area for spectators who prefer to be wholly protected from the risks of flying pucks.⁴⁴

In MLB, courts have held there is no duty to warn spectators of the possibility that a ball or bat may enter the stands.⁴⁵ Baseball stadiums are only required to provide screening behind home plate. Spectators who voluntarily choose to sit in an area unprotected by a screen, even if there are no seats available behind the screen, accept the 'obvious danger' of being hit by a ball or other potential hazards that the average person would perceive in attending a baseball game.⁴⁶

In professional football, a fan is considered to be aware that a ball may enter the stands. Given the dimensions of a football, along with the nature of the game, courts have seen the risks to patrons as being low.⁴⁷

Alcohol consumption is also an area of concern for venue owners. In order to protect players and coaches from fans running onto the field during a game, some teams employ security guards armed with Tasers.⁴⁸ The concern does not end with the game's final score. Approximately 10 per cent of fans leave a sporting event intoxicated.⁴⁹ The risk of these fans driving after the game has prompted stadium owners to hire extra security, which in turn has led to fans complaining about overzealous security enforcement outside the stadiums.⁵⁰ Stadium owners take this liability seriously. The Minnesota Twins suspended a local legend, Wally the Beer Man, for allegedly selling beer to a minor at a home game. Even though selling alcohol to a minor is considered a serious offence, local fans were still outraged.⁵¹

IV COMMERCIALISATION OF SPORT EVENTS

Athletes are celebrities. The general public admires their fame and fortune.⁵² It is virtually impossible to avoid an advertisement that harnesses a professional athlete's celebrity status. Whereas athletes used to be 'pitchmen' for sports-related products, these days athletes endorse everything from Rolex watches to breakfast cereal.⁵³ This rise in celebrity status has allowed

43 Brett Celedonia, *Flying Objects: Arena Liability for Fan Injuries in Hockey and Other Sports*, 15 *Sports Law J.* 115, 117 (2008).

44 *Sciarrotta v. Global Spectrum*, 944 A.2d 630, 641 (N.J. 2008).

45 *Benejam v. Detroit Tigers*, 635 N.W.2d 219, 220 (Mich. Ct. App. 2001).

46 *Benejam v. Detroit Tigers*, 635 N.W.2d 219, 220 (Mich. Ct. App. 2001).

47 Celedonia, *supra* note 43, at 131.

48 Troy Graham, *Phils Security Puts Police on Sideline*, *Phila. Inquirer*, 6 May 2010, available at 2010 WLNR 9346261.

49 Peter Funt, *Limit Alcohol in Stadiums*, *Monterey Cnty. Herald*, 25 May 2011, available at 2011 WLNR 10428563.

50 *Id.*

51 Wally 'The Beer Man' Found Not Guilty of Selling to Minors, *Kare 11.com* (22 March 2011), available at http://archive.kare11.com/news/news_article.aspx?storyid=915542.

52 James T. Gray, *Sports Law Practice* § 7.01 (Matthew Bender, 3rd ed. 2014).

53 *Id.*

professional athletes to increase their earnings off the field.⁵⁴ A 1990 *Sports Magazine* issue estimated US companies spent more than \$580 million to have professional athletes promote their products.⁵⁵ During 2014, *Forbes Magazine* estimated that Cristiano Ronaldo, LeBron James, Lionel Messi, Kobe Bryant, Tiger Woods, Roger Federer, Phil Mickelson and Rafael Nadal earned a combined \$320 million in endorsement revenues.⁵⁶

i Types of and ownership in rights

Each major sports league maintains the rights to market the names and logos of the individual teams in their respective leagues.⁵⁷ A player's contract will typically contain provisions regarding publicity for the sports club and restrictions on a player's ability to engage in endorsements.⁵⁸ In fact, often, a player's contract will require a certain number of appearances in connection with licensing agreements made by the league.⁵⁹ Restrictions on a player's endorsement of a given product include what the player wears during a game or even during a preseason or warm-up game.⁶⁰

ii Contractual provisions for exploitation of rights

The Federal Trade Commission (FTC) has established guidelines concerning the use of endorsements and testimonials in advertising.⁶¹ The guidelines require that the endorsement must always reflect the honest opinions, findings, beliefs or experience of the endorser.⁶² Furthermore, the endorsement may not contain any representations that would be deceptive, or could not be substantiated and made directly by the advertiser.⁶³ Celebrity endorsements may only be used if the advertiser has good reason to believe that the endorser continues to subscribe to the views presented in the advertisement.⁶⁴ An advertiser may only run the advertisement as long as it has good reason to believe the endorser remains a user of the product.⁶⁵

Companies often contract with professional athletes to wear or display the company's products.⁶⁶ Typically, such contracts require the athlete to use the endorsed product exclusively while participating in all athletic activities.⁶⁷ For instance, if the endorsed product were shoes, the company will prohibit the athlete from wearing athletic shoes manufactured

54 *Id.*

55 *Id.*; Complete, Corporate America's Team, *Sport Magazine*, June 1990, at 80.

56 *Id.*

57 James T. Gray, *Sports Law Practice* § 7.03 (Matthew Bender, 3rd ed. 2014).

58 *Id.*

59 *Id.*

60 *Id.*

61 *Id.* at § 7.05.

62 *Id.*

63 16 C.F.R. Ch. I, Subch. B, Pt. 255.1(a).

64 16 C.F.R. Ch. I, Subch. B, Pt. 255.1(b).

65 16 C.F.R. Ch. I, Subch. B, Pt. 255.1(c).

66 James T. Gray, *Sports Law Practice* § 7.08 (Matthew Bender, 3rd ed. 2014).

67 *Id.*

by another company.⁶⁸ Given the FTC guidelines and the legal exposure an athlete might endure, athletes try to make sure the promoted materials are in good taste and do not harm the public image of the athlete.⁶⁹

Although the terms of an endorsement contract are negotiable between the company and the athlete, certain provisions are commonplace.⁷⁰ Endorsement agreements should identify with specificity the products or services the athlete will endorse during the term of the contract.⁷¹ An overly broad or loose definition of the products to be endorsed may result in an agreement that precludes competitive endorsements with other companies even though the first company does not presently manufacture those products.⁷² Thus, if an athlete is endorsing a certain type of basketball, the endorsed product should not be referred to in terms of a 'basketball product' because this term is too broad.⁷³

V STADIUM DEVELOPMENT

In the United States, stadiums are a large part of professional sports. Cities and states compete with one another to become home to a professional sports stadium because of the profitable benefits of increased revenue and spending the stadiums generate.⁷⁴ Aside from the increased revenue, having a stadium allows locals to follow their home team as well as draw people into a city's downtown area.⁷⁵

2016 saw the opening of the latest professional football stadium, the US Bank Stadium, home to the Minnesota Vikings. The project began in 2014 and had its ribbon-cutting ceremony in July 2016. The overall budget for the stadium was \$1.061 billion. The new stadium is widely anticipated to bring revenue to the surrounding area. Super Bowl LII is already scheduled to be played in the new US Bank Stadium in 2018. Many estimate this event alone will bring \$400 million to the area.⁷⁶ Stadiums often have secondary benefits.⁷⁷ Wells Fargo recently relocated 5,000 employees to a new regional headquarters built next to the US Bank Stadium.⁷⁸ Apartments, restaurants and shops have also opened up near the

68 *Id.*

69 *Id.*

70 *Id.*

71 *Id.*

72 *Id.*

73 *Id.*

74 John Holler, Fifth Vikings Stadium Option Emerges, FoxSports.com (23 February 2011), www.scout.com/nfl/vikings/story/1050421-fifth-vikings-stadium-option-emerges?s=63.

75 Martin J. Greenberg, Sports Facility Financing and Development Trends in the United States, 15 *Marq. Sports L. Rev.* 93, 112 (2004).

76 Tim Yotter, U.S. Bank Stadium Officials Boast Economic Development, Scout.com (19 July 2016), www.scout.com/nfl/vikings/story/1687663-stadium-officials-boast-economic-development.

77 Yotter, *supra* note 80.

78 Sam Black, Wells Fargo Opens \$300M Downtown Minneapolis Office Towers, *Minneapolis/St. Paul Business Journal* (25 July 2016 2:33pm), www.bizjournals.com/twincities/news/2016/07/21/wells-fargo-opens-minneapolis-twin-towers-offices.html.

stadium, resulting in more than \$1 billion worth of additional investments in the area.⁷⁹ Furthermore, the 2019 NCAA Final Four is scheduled to be held at the US Bank Stadium, bringing in an estimated \$200 million alone.⁸⁰

Along with the new stadium, the Minnesota Vikings also recently received formal approval from a neighbouring city for a new headquarters and training facility. The complex is to make an expanding use of a 40-acre parcel of land and be complete by the spring of 2018. The facility is expected to cost \$500 million, all of which will be privately funded.⁸¹

There is currently a trend of building high-profile training facilities. The Dallas Cowboys recently opened their new training facility in mid-2016, naming it The Ford Center at The Star.⁸² The Star is located 25 miles north of Dallas in Frisco, Texas, and will serve as the Cowboys' new headquarters. The facility includes two outdoor practice fields and a 12,000-seat indoor stadium. Football teams from the local school districts will also have access to the training facility. The area surrounding The Star also includes a retail area, an up-scale hotel, a sports medicine facility and a fitness centre.⁸³

The Green Bay Packers have begun construction on what is to be known as Title Town District, a 34-acre complex adjacent to Lambeau Field, home to the NFL team. The Title Town District will provide a large park dedicated to fitness-related activities, cultural happenings and game-day celebrations. The complex will also provide an up-scale hotel, a restaurant, town homes and a sports medicine clinic.⁸⁴

The NBA's Minnesota Timberwolves and the Minnesota Lynx of the Women's National Basketball Association (WNBA) recently opened a new practice facility and corporate headquarters at the Mayo Clinic Square, adjacent to their home stadium the Target Center in Minneapolis, Minnesota. Aside from being a completely privately funded state-of-the-art project, this 107,000 square foot development is noteworthy due to its repurposing of an existing urban structure into a full-sized arena. Before it was a training facility the real estate housed a movie theatre.⁸⁵ Today, it provides a training area complete with two basketball

79 Robert Gray, Here Are 5 Amazing Things About the Minnesota Vikings' New Stadium, *Fortune* (27 August 2016 9:00am), <http://fortune.com/2016/08/27/nfl-minnesota-vikings-stadium/>.

80 Yotter, *supra* note 80.

81 William Bornhoft, Vikings release Video of Progress on New Facility in Eagan, *Egan Patch* (14 October 2016, 6:22pm), <http://patch.com/minnesota/eagan/vikings-release-video-progress-new-facility-eagan>.

82 Gil Brandt, The Star is Born: Cowboys' New \$1.5B Facility Lives Up to Hype, *NFL: The Brand Report* (11 October 2016, 1:48pm), www.nfl.com/news/story/0ap3000000719290/article/the-star-is-born-cowboys-new-15b-facility-lives-up-to-hype.

83 Jean-Jacques Taylor, How Jerry Jones is Changing Game with Cowboys' New Training Facility, *ESPN* (3 March 2016), www.espn.com/nfl/story/_/id/14878969/how-jerry-jones-dallas-cowboys-changing-game-new-training-facility.

84 Todd Bragstad, See the Construction Progress on the Title District Near Lambeau Field: Slide Show, *Milwaukee Business Journal* (3 May 2016, 6:00am), www.bizjournals.com/milwaukee/news/2016/05/03/see-the-construction-progress-on-the-titletown.html.

85 Grand Opening Held Today for Timberwolves and Lynx Courts at Mayo Clinic Square, *NBA.Com*, www.nba.com/timberwolves/grand-opening-held-today-timberwolves-and-lynx-courts-mayo-clinic-square (last visited 27 October 2016).

courts, one for each team. The Minnesota Lynx are now the first WNBA team to have their own court and training area.⁸⁶ The facility will also be used by the area's youth and local athletes.⁸⁷ *Finance & Commerce* declared the facility as one of the Top Projects of 2015.⁸⁸

VI PROFESSIONAL SPORTS AND LABOUR LAW

The SPC is an outgrowth of the respective league's CBA.⁸⁹ The SPC is written by the individual team the player is signing with; as such, any ambiguity is interpreted against the team.⁹⁰ The SPC specifies the player's obligations, including his or her performance outside of the sport, and explains the employer or team's control over the player.⁹¹ The SPC provides for penalties in cases of prohibited conduct.⁹² In addressing the penalties, the SPC explains all of the elements of a given infraction.⁹³ It spells out the amounts of possible fines, expected lengths of suspensions, as well as the process of instituting the punishment and the process of any subsequent appeals.⁹⁴

i Mandatory provisions

Generally speaking, players have very little control over non-monetary terms of their contract.⁹⁵ The exception to the rule is a player like LeBron James who has an exceptional talent or skill so rare that accommodating the player's stipulations is still a bargain.⁹⁶ This sort of clout allows a player to negotiate several provisions of his or her contract.⁹⁷

An average professional player still might be able to negotiate some parts of his or her contract.⁹⁸ For instance, a player might be able to negotiate his or her signing bonus, the timing of payment of any bonuses, length of the contract and guarantees in case of injuries.⁹⁹

86 *Id.*

87 Mark Remme, *Wolves, Lynx and Mayo Clinic Unveil New Practice Facility and Offices*, Minneapolis Downtown Council (17 June 2015), www.downtownmpls.com/news_article/show/526312-wolves-lynx-and-mayo-clinic-unveil-new-practice-facility-and-offices.

88 Julie Kendrick, *Top Projects of 2015 Series: Mayo Clinic Square*, Finance & Commerce (12 August 2016 6:50am), <http://finance-commerce.com/2016/08/top-projects-of-2015-series-mayo-clinic-square/>.

89 John O. Spengler, et al., *Introduction to Sport Law* 111 (Myles Schrag et al. eds., 2009).

90 Walter T. Champion Jr, *Fundamentals of Sports Law* § 16:2 (4th ed. 2014).

91 *Id.*

92 *Id.* at § 16:3.

93 *Id.*

94 *Id.*

95 *Id.*

96 *Id.*

97 *Id.*

98 *Id.* at § 16:2.

99 *Id.*

The SPC also incorporates collateral agreements.¹⁰⁰ For example, an SPC will contain a clause incorporating the league's constitution and by-laws.¹⁰¹ This means that when a player signs the 10-page SPC he or she is also binding him or herself to the 300 pages of other material usually from the league's CBA.¹⁰² Better known collateral agreements include the signing bonus and the no-cut clause.¹⁰³ The signing bonus is payment simply for signing the contract and the player will get the payment once he or she shows up for the first day of training. Once the player receives the bonus he or she is not obligated to give it back, even if he or she is cut later on. A no-cut clause prevents a team from cutting a player during the life of the contract. These types of clauses are difficult to obtain given the nature of sports.¹⁰⁴ They typically protect a player from being terminated due to poor performance or poor physical condition. A no-cut clause is interpreted very strictly, it will only protect a player from termination of the type specified.¹⁰⁵

ii Free movement of athletes

It is possible for a player to negotiate a no-trade clause in their contract. A no-trade clause gives a player the right to refuse a trade. Because a no-trade clause is so powerful, they are typically only given to senior players or players with a large amount of clout.¹⁰⁶ In baseball, a player with five years on one team and 10 years of experience can veto a proposed trade.¹⁰⁷ A player might want a no-trade clause if he or she has substantial business ties with the location of the signing team.¹⁰⁸

VII SPORTS AND ANTITRUST LAW

Antitrust is a major component of sports in the United States. There are four legislative acts that govern the majority of antitrust action in professional sports: (1) the Sherman Act; (2) the Clayton Act; (3) the Norris-LaGuardia Act; and (4) the National Labor Relations Act (NLRA). Each is noteworthy.

The Sherman Act was enacted to regulate business practices among competitors so as to promote economic competition by deterring monopolies. The US Supreme Court has held the Act is to be analysed in two manners: the *per se* rule and the 'rule of reason'.¹⁰⁹ *Per se* analysis is used when a particular labour practice has been presumed to have a negative effect on competition and is therefore illegal. For instance, price-fixing is a *per se* violation of antitrust laws because of its negative effects on competition and consumers. Rule of reason

100 *Id.* at § 16:4.

101 *Id.*

102 *Id.*

103 *Id.*

104 *Id.*

105 *Id.*

106 *Id.*

107 *Id.*

108 *Id.*

109 Adam Epstein, *Sports Law* 220, (2003).

analysis looks at a particular practice and asks whether it is reasonable or unreasonable. However, if a particular labour practice is found to be a *per se* violation it is unnecessary to further examine it under the rule of reason.¹¹⁰

The Clayton Act allows labour unions and labour activities to be exempted from the Sherman Act. Section 6 of the Act mandates labour should not be treated as commerce. This is known as the 'statutory labor exemption'.¹¹¹ The statutory labour exemption allows labour unions to enter into agreements between themselves, which might result in the elimination of competition from other unions, essentially allowing for monopolies by unions.¹¹²

The Norris-LaGuardia Act allows employees to bargain as a collective unit, this is referred to as a CBA. Bargaining collectively allows an employer to negotiate a contract that is binding on all parties within the collective unit. The Act, along with §17 of the Clayton Act, makes labour union activities exempt from antitrust laws. The Act also limits the power of the federal courts to grant injunctions in labour disputes.¹¹³

The NRLA promotes collective bargaining between employees and employers. It requires parties to a labour negotiation to act in good faith regarding wages, hours and terms and conditions of employment. The NLRA is bilateral in that it protects both unions and employers. The NLRA does not require either party to concede on a point, or agree to a certain proposal, in the name of coming to an agreement.¹¹⁴ Under the NRLA, workers reserve the right to strike if an agreement cannot be reached. The Act requires a vote in which a majority of the union votes for the strike before a strike is allowed. The union must then give the employer a 60-day notice period before the strike starts. For the league's side of the process, the NLRA allows league management to conduct a lockout, which prevents the players from playing, if a collective bargaining agreement cannot be reached.¹¹⁵

Today the most restrictive of antitrust infractions have been placated by players' collective bargaining. CBAs are effective once a players' union and league management confer and agree on labour issues. Agreements reached might breach antitrust laws in other settings; however, when they come about through the collective bargaining process they are considered 'non-statutory' labour exemptions and are immune to antitrust laws. The non-statutory exemption is applied where the restriction on trade affects only the parties to the CBA; where the restraint concerns a mandatory subject of the collective bargaining; and where the agreement that is sought to be exempted is a product of a true arm's-length bargaining process.¹¹⁶

The non-statutory labour exemption is at the heart of virtually all antitrust action in sports labour law. For years the NFL followed what was known as the Rozelle Rule, named after an early NFL Commissioner. The rule stated that when a player's contract ended he became a free agent and could be signed by a different team than the one he was previously on.¹¹⁷ If a player did switch teams, the new team was required to compensate the old team

110 *Id.* at 222.

111 *Id.* at 220.

112 Walter T. Champion, Jr., *Sports Law in a Nutshell* 93–94 (4th ed. 2009).

113 Adam Epstein, *Sports Law* 221, (2003).

114 *Id.*

115 *Id.* at 223.

116 See *Mackey v. NFL*, 543 F.2d 606 (8th Cir. 1976).

117 *Id.* at 610-611.

for its loss.¹¹⁸ Compensation was determined by the Commissioner and was in the form of money, additional players and future draft picks.¹¹⁹ In 1976, a court determined the Rozelle Rule restricted players' movement between teams, thereby constricting salaries. Therefore, the court held that the Rozelle Rule constituted a mandatory subject of collective bargaining. By not addressing the rule in the league's CBA it was not protected as a non-statutory exemption to antitrust laws.

Conversely, in *Wood v. NBA*, the court examined a salary cap limiting the amount a team can pay its players.¹²⁰ Although the cap hampered a player's ability to maximise his salary, the court determined the cap was exempt from antitrust laws because it had been bargained over by the players' union in the CBA; it was therefore a non-statutory labour exemption.¹²¹ The cap only affected the parties to the CBA, it involved mandatory subjects of the CBA, and was the result of good faith negotiations.¹²²

There is a large exception to the interplay between professional baseball and antitrust laws in the United States, an exception that no other professional sport enjoys. In 1922 the United States Supreme Court decided professional baseball was not a business that involved interstate commerce and therefore issues that related to the business of baseball were immune from antitrust laws.¹²³ Proliferation of players' unions and CBAs have made this immunity essentially meaningless for professional players. However, for minor league players and for team owners the exemption is still meaningful. Minor league players are still bound to the original team they signed with.¹²⁴ League management can block a team's attempt to relocate to a more lucrative city. There are several examples of states' attorney generals being blocked from even investigating antitrust activity by the MLB or team owners owing to this immunity from antitrust laws.¹²⁵

Antitrust laws do not only apply to professional sports. In March 2015, the Ninth Circuit Court of Appeals found the NCAA rules forbidding compensation to college athletes for using their image or likeness were subject to antitrust laws.¹²⁶ The case began when Ed O'Bannon, who played basketball at UCLA from 1991–1995, noticed his image was being used in a video game.¹²⁷ His original claim argued student athletes should be paid for the use of their likeness by the NCAA upon graduation from college. The NCAA responded by arguing that paying a student athlete would contradict the amateur nature of college sports. The Court ruled that the NCAA is a business and requiring student athletes to sign over

118 *Id.* at 611.

119 *Id.*

120 See *Wood v. NBA*, 602 F.Supp. 525 (S.D.N.Y. 1984).

121 *Id.*

122 *Id.*

123 See *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922).

124 David Greenberg, *Baseball's Con Game*, Slate (19 July 2002, 10:36am), www.slate.com/articles/news_and_politics/history_lesson/2002/07/baseballs_con_game.html.

125 *Minnesota Twins Partnership v. State ex rel. Hatch*, 592 N.W.2d 847 (Minn. 1999); *Major League Baseball v. Butterworth*, 181 F. Supp. 2d 1316 (N.D.Fla. 2001).

126 See *O'Bannon v. NCAA*, 802 F.3d 1049 (9th Cir. 2015).

127 Edén Laase, *O'Bannon vs. NCAA Results Explored*, *The Gonzaga Bulletin* (26 October 2016), www.gonzagabulletin.com/sports/article_2bcaddee-9bd7-11e6-b3dd-e7ca37a83d69.html.

rights to their likeness in order to be eligible to play violated antitrust laws.¹²⁸ As a result, students no longer have to sign away the rights to their likeness in order to be eligible to play. Donald Remy, the chief legal officer for the NCAA, noted disappointment in the US Supreme Court's refusal to review the case, but applauded the Ninth Circuit's decision recognising amateurism's essential nature of collegiate sports.¹²⁹

VIII SPORTS AND TAXATION

In the United States one of the most fundamental aspects of taxation is determining a person's domicile or legal residence (actual physical residence and the intent of making it one's permanent home). Domicile is important because it establishes whether a state has the ability to tax a player's worldwide income. Even if a player is domiciled in one state, that player may still be taxed as a non-resident in another state. This requires a complicated process of apportioning income to different states based on where games are played.¹³⁰ To further complicate the domicile issue, in many instances players live in a given team's state or country only during the season and live elsewhere during the off season.¹³¹

In the United States, state tax rates vary from state to state. The majority of states use a bracket system to determine a player's income tax. In California, for example, a person who earns over \$1 million per year is taxed at a rate of 13.3 per cent, whereas a person who earns less than \$17,500 is taxed at 2 per cent.¹³² Colorado, Illinois, Indiana, Massachusetts, Michigan, Pennsylvania and Utah apply a flat tax rate, meaning that every individual, regardless of income, is taxed at the same percentage.¹³³ In contrast, Texas, Alaska, Florida, Nevada, South Dakota, Washington and Wyoming do not have any individual income tax.¹³⁴ State taxes are generally deductible on federal income tax returns.¹³⁵ However, even after state tax deductions, athletes who live in states with no state income tax can maintain up to 10 per cent more of their salary than athletes who play for teams in other states with an income tax.¹³⁶

128 Laase, *supra* note 132.

129 Associated Press, Supreme Court rejects NCAA appeal of Ed O'Bannon Case, *LA Times* (3 October 2016 10:50am), www.latimes.com/sports/sportsnow/la-sp-supreme-court-ed-obannon-20161003-snap-story.html.

130 Alan Pogroszewski, When is a CPA as Important as your ERA? A Comprehensive Evaluation and Examination of State Tax Issues on Professional Athletes, 19 *Marq. Sports L. Rev.* 395, 396 (2009).

131 William H. Baker, The Tax Significance of Place of Residence for Professional Athletes, 1 *Marq. Sports L.J.* 1, 4 (1990).

132 Tax Foundation, <http://taxfoundation.org/state-tax-climate/california> (last visited 27 October 2016).

133 *Id.*

134 *Id.*

135 I.R.C. § 164(a)(3) (2010).

136 Pogroszewski, *supra* note 135, at 414.

Generally, the US government uses a bracket system similar to that of many states like California. Similar to state taxes, US tax law allows the taxation of a US citizen regardless of where they live in the world.¹³⁷ However, under some circumstances, a US citizen may qualify for exclusion of certain types of foreign earnings.¹³⁸

IX SPECIFIC SPORTS ISSUES

i Doping

In the United States, professional baseball and football are most heavily scrutinised when it comes to performance enhancing drugs (PEDs).

In December 2007, a government report was released detailing the history of PEDs in the MLB. It specifically named several players who allegedly used such drugs, which in turn brought the attention of the media and fans to the epidemic. The MLB's response was to create harsh punishments for PED users.¹³⁹ The MLB now mandates that every player will be subject to a minimum of two drug tests a year, with no cap on how many additional random tests a suspected PED user can be given.¹⁴⁰ The policy dictates that a first-time offending player must sit out 50 games, second-time offenders must sit out 100 games and third-time offenders are banned from baseball for a minimum of two years.¹⁴¹

Similar to baseball, the NFL began testing and enforcing its penalties more intensely in recent years. The NFL maintains the right to randomly test players during pre-employment (free agents and rookies), annually during the preseason, randomly during the regular season, during the postseason, during the off season or anytime the NFL believes it has 'reasonable cause'.¹⁴² Like baseball, a player may be tested as many times as the league feels necessary.¹⁴³ In the NFL first-time offenders are suspended for four games without pay, second-time offenders are suspended for a minimum of six games and third-time offenders are suspended

137 IRS, U.S. Citizens and Resident Aliens Abroad (August 15, 2015) www.irs.gov/Individuals/International-Taxpayers/U.S.-Citizens-and-Resident-Aliens-Abroad.

138 IRS, Limit on Excludable Amount (15 August 2015) www.irs.gov/publications/p54/ch04.html#en_US_2014_publink100047499.

139 Andrew L.T. Green, Spreading the Blame: Examining the Relationship Between Dshea and the Baseball Steroid Scandal, 90 *B. U. L. Rev.* 399, 424 (2010).

140 Tiffany D. Lipscomb, Can Congress Squeeze the 'Juice' Out of Professional Sports? The Constitutionality of Congressional Intervention into Professional Sports' Steroid Controversy, 69 *Ohio St. L.J.* 303, 314 (2008).

141 Joshua M. Kimura, The Return of the Natural: How the Federal Government Can Ensure that Roy Hobbs Outlasts Barry Bonds in Major League Baseball, 16 *Sports Law. J.* Ill, 133 (2009).

142 Benjamin B. Hanson, Defend the Williams Wall, Leave Professional Sports Drug Testing Policies in Shambles: The Decision and Consequences of Williams v. NFL, 33 *Hamline L. Rev.* 327, 341 (2010).

143 *Id.*

for 12 months.¹⁴⁴ After the third offence, the NFL must reinstate an athlete before the athlete can play again. In addition to the prescribed suspension, offenders are not allowed to be around the team or any team facilities while on suspension.¹⁴⁵

Although the NHL and NBA have experienced less pressure from the media to regulate PED use, both leagues have established drug-testing policies and repercussions for failed tests.¹⁴⁶

The NHL bans the same substances that are banned by the World Anti-Doping Agency. However, unlike the NFL and MLB, the NHL does not perform tests during the offseason, and the league can only require up to two random tests during a given season.¹⁴⁷ Punishment for PED users varies. All players who fail a drug test are automatically referred to the league's substance abuse programme. The length of the punishment begins at 20 games without pay for the first violation, extends to 60 games without pay for a second violation and results in a permanent suspension from the league for a third violation.¹⁴⁸

The NBA's CBA establishes that players may not be tested more than four times per season. Like the NHL, upon a failed test, the NBA requires automatic entrance into the league's substance abuse programme.¹⁴⁹ Punishment in the NBA for PED use ranges from a multiple game suspension for first-time offenders to a ban from the league after a fourth failed test. The NBA does not test its players during the off season.

ii Betting

In the United States, there is a long history between gambling and sports. Unfortunately players, coaches and other officials have periodically been implicit in illegal sports betting. One of the most famous instances occurred in professional baseball and is referred to as the 'Black Sox' scandal. In the 1919 World Series, the Chicago White Sox lost to the Cincinnati Reds. Eight White Sox players were later accused of intentionally throwing the game in return for bribery money. Although the players were exonerated, they were still banned from baseball for life. Since then there have been other occasions in US sports where players have helped gamblers by intentionally missing free throws, fumbling the football or throwing a 'phantom' punch.¹⁵⁰

Professional coaches have also been caught up in gambling scandals.¹⁵¹ Former NHL assistant hockey coach, Rick Tocchet, was found to be financing a nationwide gambling ring.

144 Paul A. Fortenberry, *Illegal Muscle: A Comparative Analysis of Proposed Steroid Legislation and the Policies in Professional Sports' CBAs that Led to the Steroid Controversy*, 5 *Va. Sports & Ent. L.J.* 121, 127 (2006).

145 Lipscomb, *supra* note 145, at 311.

146 Brent D. Showalter, *Steroid Testing Policies in Professional Sports: Regulated by Congress or the Responsibility of the Leagues?*, 17 *Marq. Sports L. Rev.* 651, 656 (2007).

147 Shayna M. Sigman, *Are we all Dopes? A Behavioral Law & Economics Approach to Legal Regulation of Doping in Sports*, 19 *Marq. Sports L. Rev.* 125, 167 (2008).

148 Steve R. Heisler, *Steroid Regulation in Professional Sports: Sarbanes-Oxley as a Guide*, 27 *Cardozo Arts & Ent. L.J.* 199, 218 (2009).

149 *Id.* at 217.

150 Brent J. Goodfellow, *Betting on the Future of Sports: Why Gambling Should be Left Off the Field of Play*, 2 *Williamette Sports L.J.* 21 (2005).

151 Goodfellow, *supra* note 150, at 21.

In baseball, Pete Rose was betting daily on MLB games while managing a team. The reason for the concern is that when managers and athletes bet on the game, their decisions are made based on the chance to win money, which may be counter to the team's best interest. To this day, Pete Rose has not been inducted into the Hall of Fame (even though many argue he should be) and is banned from baseball.¹⁵²

iii Manipulation

Analytics are a major part of baseball and sports. The 'Moneyball' era has made statistics king and analysed information a premium in baseball and sports generally. Today, professional sports view every action in a game as a bit of data to be used for a more successful analysis and prediction.

Some forms of manipulation receive criminal attention from government authorities. In 2015, members of the St. Louis Cardinals were investigated by the FBI for possibly hacking a data base owned by the Houston Astros.¹⁵³ The Astros had reported cyber security breaches going back to 2014. The FBI investigation focused on persons employed by the Cardinals management who had gained access to passcodes owned by the Astros.¹⁵⁴

iv Grey markets sales

In the United States, the resale of tickets for sporting events is referred to as 'scalping', and is controlled by individual states' laws. Some states, such as Minnesota, allow for the unregulated resale of tickets.¹⁵⁵ Other states have laws against reselling tickets but a closer examination of the law shows that the prohibitions are very nuanced. For instance, in Arizona reselling tickets is only illegal within 200 feet of the venue.¹⁵⁶ Other states, such as Georgia, New Jersey and New York, require a licence to sell or resell tickets.¹⁵⁷

Regardless of the state jurisdiction, anti-scalping legislation is directed at the seller of the tickets and not the buyer. Patrons who buy tickets should be alerted to the fact that the tickets themselves might be forgeries. It is not uncommon for scalpers to sell tickets to seats that don't even exist in a given venue.¹⁵⁸ Patrons who purchase their tickets on the grey market also need to consider whether the tickets were originally bought with a stolen credit card. In 2006, Ticketmaster invalidated 1,000 Barbra Streisand concert tickets because they were bought with stolen credit card information.¹⁵⁹

152 *Id.*

153 Derrick Goold, Baseball Waits to Act on Cardinals' Hacking Case, St. Louis Post-Dispatch, (15 July 2015), www.stltoday.com/sports/baseball/professional/baseball-waits-to-act-on-cardinals-hacking-case/article_1b11cf4d-2311-5618-9213-b73cff32a367.html.

154 *Id.*

155 Myles Kaufman, The Curious Case of US Ticket Resale Laws, Seatgeek (28 September 2014), <https://seatgeek.com/tba/articles/ticket-resale-laws/>.

156 Michelle Fabio, Esq., Who Needs Tickets? Is Ticket Scalping Legal?, Legal Zoom (December 2009), <https://www.legalzoom.com/articles/who-needs-tickets-is-ticket-scalping-legal>.

157 *Id.*

158 *Id.*

159 Christine Paluf, Streisand Tickets Cancelled Due to Credit Card Fraud, Ticket News (29 August 2006), www.ticketnews.com/streisand-tickets-cancelled-due-to-credit-card-fraud/.

X THE YEAR IN REVIEW

i Concussion suits

More than 4,500 former NFL players sued the NFL (beginning in 2011) alleging the league concealed the long-term dangers of concussions.¹⁶⁰ Before the start of the 2013 season, a settlement was reached providing any former NFL player showing symptoms consistent with long-term damage caused by concussion would be eligible for awards up to \$5 million.¹⁶¹ The presiding US District Judge Anita B Brody would not approve the settlement. Her concern was over the amount of money, \$765 million, not being enough to cover all the possible claims.¹⁶² Eventually a settlement was reached in April of 2015.¹⁶³ The most notable change included uncapping the amount of the settlement, which ensures damages for affected retired NFL players and their families.

However, many former players opted out of the 2015 settlement and instead sued the NFL separately, alleging the earlier settlement did not adequately include all former players with varying concussion-related symptoms.¹⁶⁴ Those players challenged the 2015 settlement based on the fact that the settlement only covers former players diagnosed with Alzheimer's or Parkinson's disease and players who have already died from chronic traumatic encephalopathy (CTE), a degenerative brain disease that can only be diagnosed posthumously.¹⁶⁵ The settlement did not address former players currently exhibiting possible symptoms of CTE. The Third Circuit Court of Appeals denied those players' challenge to the settlement.¹⁶⁶ It is estimated the uncapped deal will provide more than \$1 billion to a class of over 20,000 retired players.

The NFL has implemented new protocols to address concussion concerns. In July 2016, the NFL and the NFL Players Association agreed to enforce new concussion protocols to include disciplining clubs with fines and future draft picks.¹⁶⁷

In May 2016, the NCAA revised a settlement first proposed in 2013 with a number of student athletes creating an opportunity for students suffering from concussion-related

160 Associated Press, NFL, Ex-Players Agree to \$765M Settlement in Concussions Suit, NFL.com (29 August 2013, 2:52pm), www.nfl.com/news/story/0ap1000000235494/article/nfl-explayers-agree-to-765m-settlement-in-concussions-suit.

161 *Id.*

162 Maryclaire Dale, Judge: \$765M Might Not Cover NFL Concussion Claims, *Seattle Times* (15 January 2014), www.seattletimes.com/sports/seahawks/judge-765m-might-not-cover-nfl-concussion-claims/.

163 Joe Van Acker, Correction: NFL Concussion Settlement Gets Final OK, *Law360* (22 April 2016, 4:20pm), <https://www.law360.com/articles/646700>.

164 Zachary Zagger, NFL Concussion Deal Affirmed By 3rd Circ., *Law360* (18 April 2016 11:36am), <https://www.law360.com/articles/785651/nfl-concussion-deal-affirmed-by-3rd-circ->.

165 *Id.*

166 Joyce Hanson, NFL, Union Launch Concussion Enforcement Protocol, *Law360* (26 July 2016, 9:56pm), <https://www.law360.com/articles/821298/nfl-union-launch-concussion-enforcement-protocol>.

167 *Id.*

injuries to sue their colleges.¹⁶⁸ The previous \$75 million settlement raised concerns it might do away with otherwise-valid injury claims. The new agreement would allow students to sue their school directly, but only on behalf of fellow players in a given sport.¹⁶⁹

Federal courts are also addressing claims by former NHL players. In October 2016, a federal judge allowed former hockey players to amend a previously filed class action suit adding the estate of player Lazarus Zeidel, who was posthumously diagnosed with CTE.¹⁷⁰ The suit alleges the NHL hid the harmful effects of head injuries.

ii Media rights

In 2016, Disney and Time Warner signed extensions of their 2014 rights to televise NBA games.¹⁷¹ Under the new nine-year contract Disney outlets (ABC and ESPN) will pay up to \$1.4 billion for the rights to show 100 games a season, more than double what the company was paying under the previous contract.¹⁷² Time Warner, who will be playing 64 NBA games a season, will pay up to \$885 million, which is over a 90 per cent increase. These increases in contract price make NBA games the most expensive in regard to per-viewer costs.

iii Premier League soccer

In 2015, the NBC Sports Network acquired the TV rights for the English Premier League from the 2016/2017 season to the 2021/2022 season. The deal cost the NBC Sports Network \$1 billion and provided NBC with the rights to broadcast 380 live matches every year.¹⁷³ Although the network admitted the deal itself is not profitable, the NBC Sports Network stated it adds to its profitability overall.¹⁷⁴

iv Daily Fantasy Sports

In 2015 the Minnesota Wild of the NHL and Emil Interactive Games LLC, parent of DraftOps a daily fantasy sports (DFS) operator, entered into a sponsorship agreement. In

168 Jessica Corso, NCAA takes Another Swing at \$75M Concussion Settlement, *Law360* (23 May 2016, 8:41pm), <https://www.law360.com/articles/799348>.

169 *Id.*

170 Zachary Zagger, CTE Sufferer Allowed as Class Rep in NHL Concussion MDL, *Law360* (14 October 2016, 6:30pm), www.law360.com/articles/851649/cte-sufferer-allowed-as-class-rep-in-nhl-concussion-mdl.

171 Ronald Grover, Disney, Time Warner Get LeBron, Steph Curry and Skyrocketing Costs Under New NBA TV Deal, *TheStreet* (19 October 2016, 1:11 PM), <https://www.thestreet.com/story/13858154/1/disney-time-warner-get-lebron-steph-curry-and-skyrocketing-costs-under-new-nba-tv-deal.html>.

172 *Id.*

173 Jack Gaughan, Premier League just Keeps Getting Richer: Another Whopping Payday as NBC Agree \$1 Billion Deal to Retain US Rights, *Mail Online* (11 August 2015 8:02 EST), www.dailymail.co.uk/sport/sportsnews/article-3193629/Premier-League-set-1billion-windfall-new-NBC-live-TV-rights-deal.html.

174 Richard Sandomir, NBC Retains Rights to Premier League In Six-Year Deal, *N.Y. Times* (10 August 2015), www.nytimes.com/2015/08/11/sports/soccer/nbc-retains-rights-to-premier-league-in-six-year-deal.html?_r=0.

May 2016, the Wild filed a suit alleging breach of contract and unjust enrichment, seeking \$1.1 million, plus 1.5 per cent interest per month, along with \$50,000 in damages.¹⁷⁵ Emil proffered an unexpected response claiming the contract is void because the state of Minnesota has not legalised the relevant type of gaming. Although a piece of state legislation aimed directly at DFS gaming did not pass earlier this year, it is not clear that the state of Minnesota considers the practice illegal. Federal regulation leaves such a determination up to the states. Currently Minnesota has not rendered an opinion on the topic. Still, Emil contends that to enforce the contract would mean DraftOps would have to operate illegally.¹⁷⁶

XI OUTLOOK AND CONCLUSIONS

i Concussions

The NFL is approximately a \$12 billion-a-year industry.¹⁷⁷ Fallout from concussion litigation will continue to impact the NFL decisions going forward. One issue on the horizon is related to insurance policies. The known risks related to concussions threaten how players will be able to protect themselves in the future.¹⁷⁸ Haruki Nakamura, a five-season veteran of the NFL, filed a lawsuit in July 2016 after Lloyd's of London denied his attempt to collect on a \$1 million policy.¹⁷⁹ According to the complaint, Nakamura received a career-ending concussion in 2013. Medical specialists have since determined that Nakamura is permanently disabled. According to the claim, the insurance company has called into question whether his injuries are concussion-related. The resolution of this case could have serious implications for how players can protect themselves in the future.¹⁸⁰

NFL Commissioner Roger Goodell has stated that making the game safer is the NFL's number one priority.¹⁸¹ In an open letter, Goodell outlined the NFL's new initiative 'Play Smart. Play Safe.', which is composed of several new steps the League intends to take to

175 Fola Akinnibi, NHL Team Sponsorship Deal Void, Daily Fantasy Co. Says, *Law360* (2 June 2016, 3:47pm), www.law360.com/sports/articles/802995/nhl-team-sponsorship-deal-void-daily-fantasy-co-says.

176 Dustin Gouker, Say What? Daily Fantasy Sports Site Claims DFS is Illegal in Lawsuit, *Legal Sports Report* (3 June 2016, 10:32am), www.legalsportsreport.com/10314/dfs-is-illegal-in-minnesota-draftops-says/.

177 Chris Isidore, NFL Revenue: Here Comes Another Record Season, CNN Money (10 September 2015, 7:25pm), <http://money.cnn.com/2015/09/10/news/companies/nfl-revenue-profits/>.

178 Mark Maske, Concussion-Related Lawsuits Could Influence Future Insurance Policies for NFL Players, *The Washington Post* (23 July 2016), <https://www.washingtonpost.com/news/sports/wp/2016/07/23/concussion-related-lawsuit-could-influence-future-insurance-policies-for-nfl-players/>.

179 *Id.*

180 *Id.*

181 Jay Cohen, Even Superfans See Concussions as a Threat to Pro Football's Future, Associated Press (28 April 2016 7:55pm), www.theglobeandmail.com/sports/football/even-superfans-see-concussions-as-a-threat-to-pro-footballs-future/article29794935/.

address concussion related injuries and their long-term effects.¹⁸² The initiatives include an additional \$100 million for medical research, engineering advancements and the creation of an independent, scientific advisory board to advise and steer scientific research regarding concussions. Furthermore, in the next League labour negotiation, Goodell intends to address what the League can do to better serve retired players.

ii Soccer

Globally, soccer is considered to be a \$28 billion-a-year industry.¹⁸³ It is estimated the Premier League alone contributes \$4.14 billion to the United Kingdom's GDP.¹⁸⁴ The top 10 soccer clubs in the world earned \$2.07 billion in commercial revenue (this includes sponsorships, merchandising and other commercial operations) during the 2013/2014 season.¹⁸⁵ NBC Sports Network's purchase of the Premier broadcasting rights is a significant sign of what is to come for soccer in the United States. In 2014, Major League Soccer (MLS) sold its 2015 media rights package for \$90 million per year for seven years. That is over three times what the media rights were sold for the previous year.¹⁸⁶ In September 2015, some 36,000 fans attended the US Women's Soccer v Haiti match in Birmingham, Alabama. The Greater Birmingham Convention and Visitors Bureau estimated the economic impact of that single game was \$10 million.¹⁸⁷ Soccer's popularity is rising in the United States. In 2015, the average MLS team was worth \$157 million, up 52 per cent from 2013 estimates.¹⁸⁸ In 2013, the MLS averaged 18,600 attending fans per match; in 2015 that number increased to 21,100 fans per game.¹⁸⁹ Those numbers put MLS attendance ahead of both the NBA and the NHL.¹⁹⁰

182 Roger Goodell, NFL Commitment to Player Health and Safety: A Letter from Commissioner Roger Goodell, NFL (14 September 2016), https://www.playsmartplaysafe.com/wp-content/uploads/2016/09/nfl_goodell_letter_091316-xfinalx.pdf.

183 AT Kearney, *The Sports Market* (2011), <https://www.atkearney.com/documents/10192/6f46b880-f8d1-4909-9960-cc605bb1ff34>.

184 Premier League and Clubs Add 3.4 billion to UK Economy, Consultancy.uk (23 November 2015), www.consultancy.uk/news/2946/premier-league-and-clubs-add-34-billion-to-uk-economy.

185 Alex Bosshardt et al., *Football Money League* (Deloitte) 8, (Dan Jones et al. eds., 18th ed. 2015), <https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/sports-business-group/deloitte-football-money-league-2015.PDF>.

186 John Ourand & Chris Botta, MLS's Big Play, *Sports Business Journal* (12 May 2014), www.sportsbusinessdaily.com/Journal/Issues/2014/05/12/Media/MLS-TV.aspx.

187 Ryan Phillips, U.S. Women's Soccer Match Brings More Than Economic Impact to Magic City, *Birmingham Business Journal* (24 September 2015, 2:37pm), www.bizjournals.com/birmingham/news/2015/09/24/u-s-womens-soccer-match-brings-more-than-economic.html.

188 Chris Smith, Major League Soccer's Most Valuable Teams 2015, *Forbes* (19 August 2016), www.forbes.com/sites/chris-smith/2015/08/19/major-league-soccer-s-most-valuable-teams-2015-2/#5a1cc8593ba4.

189 *Id.*

190 *Id.*

Appendix 1

ABOUT THE AUTHORS

STEVE SILTON

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Steve focuses his practice on sales and professional athletes and sports franchises, financing, securities placements and related work for medium-sized corporations, banks, credit unions, financial groups and purchases of businesses. Steve also applies his corporate experience in the representation of professional athletes, agents and franchises, documenting everything from endorsement contracts to secured financing deals. He also works with distressed businesses in their reorganisation efforts. Steve serves on the firm's board of directors.

Steve is a frequent author and lecturer and most recently taught a class at the University of Miami Law School entitled 'Representing a Professional Sports Franchise'. His co-instructors included Danna Haydar, associate general counsel at Tampa Bay Lightning and Kevin Warren, COO of the NFL's Minnesota Vikings. Additionally, Steve serves as an advisory board member of the University of Miami School Sports and Entertainment Law LLM. The firm is nationally recognised for its work in sports law and was recently recognised by Holt Hackney Publications as one of the Top 20 Law Firms in the Professional Sports Team Industry.

The firm held its third Sports Law CLE and Players Panel with representatives from professional and amateur sports, owners and executives, agents and agencies, athletes, venues and arena management companies, corporate sponsors and sporting equipment manufacturers attending. Steve led the programming for this day-long CLE event featuring speakers from all facets of pro and amateur sports including the Olympics, college and university programmes and the major leagues.

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