The Front Row

Published by the Sports & Entertainment Law Section of the North Carolina Bar Association • Section Vol. 14, No. 2 • December 2013 • *www.ncbar.org*

The Chair's Comments

Matt Efird

This is my first newsletter as section chair, and I'd like to start by thanking Rick Conner for his leadership and service over the past year. Rick put a lot of time and energy into the section, and it resulted in continued growth in our membership and the benefits offered to our section members. Also, thank you to all the section members who are serving as council members, officers and committee chairs.

Below is a summary of our primary goals for this year, and an update on the progress we've made on each so far.

(1) We want to continue to expand the benefits available to section members, including by hosting valuable networking events, organizing substantive, relevant CLE options, and offering enjoyable service opportunities.

We held our first council meeting of the NCBA year on August 15 at the offices of Bell, Davis & Pitt in Winston-Salem, and followed the meeting with a networking event at a Winston-Salem Dash minor league baseball game. We followed that up with a second council meeting, and a well-attended networking event at a Carolina Hurricanes game, at PNC Arena on November 7. We appreciate the Carolina Hurricanes graciously hosting our group for such an entertaining event. We're currently planning our next council meeting for February 2014 in Charlotte in connection with a networking event during a game of the Charlotte Bobcats (soon to be Hornets! #PurpleAndTeal).

On October 24 we hosted our first CLE of the NCBA year at the N.C. Bar Center in Cary. Entitled "Student Athletes, NCAA Rules: What's New?," the event included: (i) Erik Albright, attorney at Smith Moore Leatherwood, speaking about the O'Bannon case and its challenges to amateurism, (ii) Todd Hairston, Associate Athletic Director for Compliance at Wake Forest University, speaking about NCAA deregulation and reform, (iii) Laura Wurtz McNab, NCAA Assistant Director of Enforce-

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Sweepstakes Ban Moves to Overtime

By Donald R. Pocock

On a cold night in December, 2003, Wake Forest and its freshman guard, Chris Paul, traveled to Chapel Hill to play UNC and their brand new coach Roy Williams in his ACC debut. The schools were tied at halftime, tied at the end of regulation, and tied through two more overtimes until finally Wake Forest emerged the victor with a final score of 119-114 in a game that some thought would never end. It was the first time ever UNC lost a game where it scored more than 100 points, and the fifth consecutive time the Deacons had beaten the Heels. To say that the atmosphere was heated would be an understatement. I sat in the stands of that game wearing my Old Gold and Black surrounded by Ram's Club royalty and next to one of my best friends who leaned over at the end of the second overtime and told me, "if we get out of here with a win, don't say anything. I want to get home in one piece."

Just as that game went back and forth without any clear winner for so long, the State of North Carolina has gone back and forth for years in effort after effort to ban video sweepstakes games, yet stores offering the games continue to dot the State. On a different cold December day in 2012, the Supreme Court issued its opinion in **Hest Technologies, Inc. v. State ex rel. Perdue**, 366 N.C. 289, 749 S.E.2d 429, 2012 WL 6218202 (2012) finding that N.C.G.S. § 14-306.4 was constitutional and could be enforced. While some may have assumed that **Hest** was the final nail in the coffin of the sweepstakes software industry, the dispute has moved to overtime with no clear end in sight.

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ment, speaking about NCAA rules enforcement and investigation, and (iv) Justice Bob Orr, counsel at Poyner Spruill, speaking about ethics and conflicts in representing student athletes. Thanks to each of the speakers for contributing to a very interesting CLE, and a special thanks to Richard Farley and Casey DiMeo for all their hard work in organizing the event.

Our second CLE of the year will be the seventh annual The Racing Attorney Conference ("TRAC"), a joint effort of the NCBA and the Indianapolis Bar Association. TRAC will be hosted at the new Hyatt Place Charlotte Downtown on April 8-9, 2014. Be on the lookout for more details regarding TRAC 2014. In the meantime, we'd like to start offering some brief webinars to deliver CLE credit on topics of interest in an efficient, easily accessible format. Please let us know if there are topics you'd like to see discussed or if you'd be interested in conducting a short webinar.

On the topic of service, some of you may be aware of the law school symposiums we hosted last year as a pro bono project. The symposiums were well-attended and well-received by law students, and thanks to the hard work of Allison Purmort, Billy Traurig, Jonathan Fine and Tshneka Tate, we were able to continue that program this year. We held symposiums at PNC Arena in Raleigh on November 4 and Charlotte School of Law in Charlotte on November 15. Each symposium included a career panel and a mock negotiation panel, with a social afterwards. There were dozens of students at each symposium, from law schools around the state, and the symposiums offered them a great opportunity to get some practical guidance and make some meaningful connections with practicing attorneys. Thanks to each of the panelists who participated.

(2) We want to grow the membership of the section. This section can offer its members great opportunities to connect, interact and learn from each other, but the section is only as good as its membership. The council has undertaken a thorough review of existing attorney membership in order to collectively evaluate potential practitioners in the state who should be targeted for membership. We would like to encourage each of the members in our section to get (or stay) involved, and to think about other attorneys who should be members of the section. Attorneys need not be licensed in North Carolina to become members of the section, as long as they are members of the N.C. Bar Association and are actively licensed in another state.

(3) We want to continue to encourage diversity in our section leadership, and thanks to a renewed focus over the past couple years, our leadership continues to become more diverse in terms of gender and ethnicity, and includes a broad array of attorneys, including a talent agent, a sports agent, in-house counsel to both professional teams and sanctioning bodies, attorneys in private practice, and law school students.

This year is off to a great start, and we're enthusiastic about what's still to come. We've got some excellent veteran leadership, and we've added a number of fresh faces as well. We think we've got some exciting projects in the works, but we'd love to hear more about what our section can be doing to provide value to its members. If you have ideas for the section, or are interested in getting involved, I hope you'll reach out to me or another member of the section council. Best wishes for a happy holiday season and a successful start to 2014!

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Wouldn't you like to see your name in print? The Front Row is always seeking articles. Have you written something recently that you think would be a good addition to our newsletter? Is there something happening that you'd like to write about?

How can we serve you better? Are there things you'd like to know more about? Topics you'd like to see covered? Let us know! Email editors Artie Kalos (arthur.kalos@img.com) and Ryan Beadle (ryan@dalejr.com) with articles/suggestions/ideas and feedback.

Sweepstakes Ban Moves to Overtime, from page 1

Efforts to ban these video games have been the subject of laws passed by the General Assembly in 2000, 2006, 2008, and 2010 with each successive attempt focusing in more narrowly than the last. *See* N.C.G.S. §§ 14-306, 14-306.1A, 14-306.3, 14-306.4. Each time the State enacts a law to selectively ban the use of sweepstakes, the industry adapts, reformulates its software, and finds ways to remain in business. How one interprets this back and forth largely depends on one's point of view. Those aligned with enforcement efforts believe these software changes are nothing more than a shell game intended to conceal an illegal gambling operation. Those aligned with the industry see these software changes as efforts to be in compliance with the law as it is written.

The weakness in each of the statutes passed by the General Assembly is that in being tailored narrowly to ban a specific form of conduct, they fail to encapsulate the entire field. Sweepstakes, as a promotional tool, are used widely and by a variety of industries all across the United States. Section 14-306.4 does not ban any and all sweepstakes, and intentionally so. Otherwise, the law would ban the promotions used by fast food chains, soft drink manufacturers, and magazine sellers that are well known and widely available. The statute does not even ban any and all sweepstakes that are displayed by computer or other visual means. By banning some activity but not all, the law leaves open a wide array of legal sweepstakes, which only encourages businesses to look for ways to comply with the law while staying open.

The Plaintiffs in **Hest** challenged the constitutionality of § 14-306.4 on the basis that the statute violated the First Amendment to the United States Constitution and Article I, Section 14 of the North Carolina Constitution. *See* 2012 WL 6218202 at *3. In its decision, the Supreme Court held that § 14-306.4 regulated conduct and only incidentally burdened speech, therefore the statute was constitutional. *See id.* at *11. **Hest** did not construe whether the function of any specific software violated § 14-306.4, in fact, it specifically left the application of the statute open to subsequent actions. *See id.* at *5.

Following the **Hest** decision, enforcement of § 14-306.4 varied widely across the state. Some jurisdictions aggressively sought out any business using computer-based sweepstakes, regardless of its design or function, and threatened prosecution, seized property, or brought charges against store owners and employees. In other jurisdictions, law enforcement appear to be taking a "wait and see" approach possibly because success in prosecutions under § 14-306.4 has been mixed, with some attempted prosecutions resulting in dismissal or acquittal. *See* e.g. Durham Deputies Raid Illegal Sweepstakes Cafe, News and Observer (April 5, 2013), ***http://www.newsobserver.com/2013/04/05/2804801/durham-deputies-raid-illegal-sweepstakes.html***; Another Ruling Goes In Favor Of Sweepstakes Industry, News and Observer (April 21, 2013), ***http://projects.newsobserver.com/under_the_dome/another_ruling_goes_in_favor_of_ sweepstakes_industry.***

Section 14-306.4(b) makes it unlawful, "for any person to operate, or place into operation, an electronic machine or device to do either of the following: (1) Conduct a sweepstakes through the use of an entertaining display, including the entry process or the reveal of a prize [or] (2) Promote a sweepstakes that is conducted through the use of an entertaining display, including the entry process or the reveal of a prize." N.C.G.S. § 14-306.4(b) (emphasis added). The prohibited activity is the operation or the placing into operation an electronic machine or device that conducts or promotes a sweepstakes through the use of an "entertaining display."

Section 14-306.4(a)(3) specifically defines "entertaining display" as "visual information, capable of being seen by a sweepstakes entrant, that takes the form of actual game play, or simulated game play…" N.C.G.S. § 14-306.4(a)(3) (emphasis added). This definition is the crux of any dispute arising from the application of the law. When construing a statute, courts usually give words their "common and ordinary meaning," however, when a statute specifically defines a term or phrase, courts "must construe the statute as if that definition had been used in lieu of the word in question." **Appeal of Clayton-Marcus Co., Inc.**, 286 N.C. 215, 219-20, 210 S.E.2d 199, 202-03 (1974). The issue is not, therefore, whether a display used in sweepstakes software is "entertaining." The activity banned by § 14-306.4 is conducting a sweepstakes "through the use of visual information" that "takes the form of actual game play, or simulated game play." If the sweepstakes is not conducted in such a manner then it is not prohibited by the language of the statute regardless of how "entertaining" the software's display may be.

The required connection between game play and the reveal of a sweepstakes entry is reinforced by other parts of the law. Section 14-306.4 includes a non-exclusive, illustrative list of game types that are specifically prohibited for use in conducting a sweepstakes. Included in this list is a "catch-all" that prohibits "any other video game not dependent on skill or dexterity that is played while revealing a prize as the result of an entry into a sweepstakes." N.C.G.S. § 14-306.4(a)(3)(i) (emphasis added). If the game is not played while revealing a prize or if the game is dependent on skill or dexterity, it is not within the language of the ban.

Sweepstakes games available in North Carolina may take a variety of formats, but the most prevalent model currently in use is known generically as "pre-reveal." The name derives itself from the function of the software, which separates the "reveal" of a sweepstakes entry with the display of any video game. In a "pre-reveal" system, the sweepstakes participant knows whether they have won or lost before they see any video games on a computer screen, which creates separation between the conduct of the sweepstakes and any video game. Other game formats incorporate a "skill-based" component, requiring a participant to perform a task to play the game, eliminating the role of chance in determining whether a participant wins a prize or not.

Store owners using sweepstakes software have initiated civil cases statewide challenging the application of § 14-304.6 based on longstanding North Carolina cases permitting declaratory and injunctive relief "to enjoin a criminal prosecution, actual or threatened, where the accused is about to be deprived of the right to conduct a lawful business or when necessary to protect property rights from irreparable injury." **McCormick v. Proctor**, 217 N.C. 23, 31, 6 S.E.2d 870, 875 (1940) (Stacy, C.J., concurring) (internal citations omitted). This has been described as an "exception to the general rule" that prohibits the use of the equitable powers of a court to interfere with criminal prosecutions, because "equity will interfere,

even to prevent criminal prosecutions, when this is necessary to protect effectually property rights and to prevent irremediable injuries to the rights of persons." *Id.* at 29, 6 S.E.2d at 874. "The right to conduct a lawful business, or to earn a livelihood, is regarded as fundamental." *Id.*, at 31, 6 S.E.2d at 876.

In **McCormick**, the owner of slot machines sued the Sheriff of Pitt County and the Chief of Police of the City of Greenville, NC to prevent them from seizing his equipment. The Defendants in **McCormick** took the position that "all of the machines owned, sold, rented, or distributed by said plaintiff are illegal . . . ." *Id.* at 23, 6 S.E.2d at 871. The trial court refused to hear evidence regarding the design and function of the machine, and the Supreme Court held that doing so was in error, thereby apparently establishing the right of a business owner to seek declaratory relief when threatened with criminal prosecution. *Id.* at 23, 6 S.E.2d at 872.

This right to seek declaratory relief was reiterated in **American Treasures, Inc. v. State of North Carolina**, 173 N.C. App. 170, 617 S.E.2d 346 (2005), where a business that sold pre-paid phone cards with scratch-off game pieces attached to them sued after being threatened by the Alcohol Law Enforcement Division ("ALE") with revocation of the store's license to sell alcoholic beverages. ALE threatened to revoke the licenses on the grounds that ALE believed the phone card promotions violated the gambling laws of the State. The vendor of the pre-paid phone cards was faced with either not selling the phone cards and losing the associated revenue or facing revocation of its license and losing revenue from alcohol sales. The Court of Appeals held that "the declaratory judgment procedure is the only way plaintiff can protect its property rights and prevent ALE from foreclosing the sale of its product in convenience stores." 173 N.C. App. at 176, 617 S.E.2d at 350 (emphasis added).

Civil suits seeking declaratory relief under **McCormick** or **American Treasures** are predictably met with motions to dismiss. The defense often argues that the court lacks subject matter jurisdiction to issue an advisory opinion on the application of a criminal statute within a civil action regardless of the holding in **McCormick**. In the absence of an actual threat of prosecution, the argument that a civil case seeks an advisory opinion may have some weight, since a court can only issue a declaratory judgment where there is an actual, existing controversy. On the other end of the spectrum, when a store operator is faced with an existing criminal case (i.e. formal charges have been filed), a subsequent civil case seeking declaratory relief is arguably barred by the doctrine of "prior pending action." Consequently, establishing subject matter jurisdiction in a way recognized by **McCormick** and **American Treasures** requires skillful pleading and just the right factual background—a narrow window that Superior Court Judges might find uncomfortable to navigate, but that exists nevertheless.

It may be that disputes involving the enforceability of § 14-306.4 are nearing a conclusion, but like a hard-fought, closely matched basketball game that continues through extended periods, the final state of the law regulating these software programs is still uncertain, and neither side appears willing to concede any open shots.

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Section members attend a Dash game following the August 15 SEL council meeting in Winston-Salem.

Workers' Compensation and the Professional Athlete

By Richard M. Thigpen and Stephanie Fox

Workers' compensation is a creature of state statute, which initially was a result of the proliferation of injuries from booming industry and commerce during the nineteenth and early twentieth centuries.[1] The original purpose of workers' compensation was to hold employers strictly liable for their failure to exercise reasonable care[2] and to provide wage earners with access to medical care and a quick and sure source of income to enable them to pay their bills until they were able to return to work. Today, workers' compensation has undergone lengthy reform and reaches beyond the factory workers of the nineteenth and early twentieth centuries to include all different types of employees, including professional athletes. Although the majority of states recognize professional athletes as workers under their workers' compensation statutes, not all states recognize the same types of workers' compensation claims.[3]

Specific injury claims are the most common type of worker's compensation claim, where the worker is claiming the inability to work due to a specific event at work that injured the worker.[4] Another type of worker's compensation claim is cumulative trauma.[5] Under a cumulative trauma claim, the worker claims to suffer chronic injuries due to frequent repetitive activities or repeated injury.[6] An important distinction between the two claims is when the clock for the statute of limitations begins to run. For a specific injury claim, the statute of limitations clock begins on the date of injury. For cumulative trauma, the clock begins when the worker is diagnosed. Cumulative trauma claims are particularly attractive to professional athletes because their injuries may not manifest until after their career. With that said, only a handful of states recognize cumulative trauma claims, including California.[7]

Under California's "single-game clause," professional athletes were able to file cumulative trauma claims in California even if they played for an out-of-state team and only stepped foot on California turf once during their career.[8] Players' ability to file these claims caused a surge in the number of claims filed in California. More than two-thirds of all cumulative trauma claims filed by athletes in California are from players on out-of-state teams.[9] On average, 34 new claims were filed each month and the California Insurance Guarantee Association has "paid nearly $42 million in claims to professional athletes since 2002."[10]

In addition to filing a claim in California, many players also file in the state where the team for which they played is located. Although there is some offset in benefits, the team often pays twice for the injuries. The expense that professional sports teams and leagues endure for these claims is not an insignificant drop in the bucket, in part because the lost wage benefit is the maximum available due to the high salaries players receive. The average cost to settle an NFL players' workers' compensation claim is $215,000.[11] The cost, coupled with the high volume of claims (nearly 4,500 filed against NFL teams in California alone since 2006) has resulted in an estimated $1 billion dollar expense for NFL teams.[12]

California Assembly Bill 1309 ("AB1309"), enacted earlier this year, provides some relief to professional sports teams by limiting the eligibility of who can file a cumulative trauma claim in California. Although AB1309 still allows players to file cumulative trauma claims, only those players that spend "more than twenty percent of their professional time in California or worked for a California-based team for part of their professional or semi-professional career" can file a cumulative trauma claim in California.[13] On October 8, 2013 the California Senate passed AB1309 by a landslide and it was signed into law by California Governor Jerry Brown.[14]

The bill caused outrage by players and their union. The players argued that they "were filing in California because they were prevented from making [cumulative trauma claims] in the states where they played, either due to a more restrictive statute of limitations or because the state doesn't recognize cumulative trauma."[15] Nonetheless, the bill effectively ended California as the forum of choice by retired athletes with minimum contacts with the state who attempted to file claims years or even decades after their careers ended.[16]

But the purpose of the bill was to correct an abuse of the system, not prevent players from filing workers' compensation claims altogether.[17] In fact, passing the bill is consistent with Governor Brown's tendency to sign "into law workers' compensation reform that curbs the exploitation of businesses, employers, and insurers."[18]

North Carolina's Workers' Compensation Act aims to achieve the same goal. Its overall purpose is to "not only provide a swift and certain remedy to an injured worker, but also to ensure a limited and determinate liability for employers."[19] Thus, workers' compensation is the sole and exclusive remedy to the employee when both employer and employee comply with the Act.[20]

In the context of the NFL, the Carolina Panthers are contractually bound, like many other employers in the state of North Carolina, to provide workers' compensation benefits for their employees — including the players. Different from the majority of employers, however, are the high salaries that are calculated into the players' workers' compensation benefits resulting in almost every player qualifying for the maximum benefits allowed. As one plaintiff's attorney noted at mediation, "[m]y client has neither the education nor the intelligence to earn as much outside of football as he did playing football." Since 2005, the Panthers have incurred several million dollars in workers' compensation related expenses.

Most of the claims filed by Panthers players have been specific injury claims, as every player can point to some injury incurred in close proximity to the end of his "career" whether the career lasted one week, one season, or fifteen seasons. Although the law provides benefits for an "injury by accident," the mandated liberal interpretation of the law in favor of employees has resulted in a

determination that essentially every injury is accidental, even in a profession where violent contact with others is a daily occurrence. In addition, most injuries, however minor, seem to qualify as career ending injuries. Thus, for example, the Panthers have paid six years of benefits to two players who sprained their thumbs shortly before being released.

A new trend among professional athletes filing in North Carolina is to deviate from specific injury claims and instead file occupational disease claims. An occupational disease, under N.C. Gen. Stat. § 97-53 includes any disease or condition that is characteristic of or caused by the job where the employee is at higher risk, however slight, than the general public to the disease or condition.[21] If the disease is something that the general public is equally exposed to, the claim fails.[22] These claims are generally filed by players who missed the time for filing claims for specific injuries. The two year statute of limitations for an occupational disease does not begin to run until a physician tells the individual that he has an occupational disease. Another trend is for players to file claims while still under contract. Although such players receive all compensation to which they are entitled by their contract, they seek lost wage benefits for periods when no compensation is paid during the offseason and/or compensation for disability ratings. It is unclear how the Industrial Commission will view these claims.

Workers' compensation claims for athletes are being filed with increasing creativity in how the claims are framed and the trend is expected to continue. California's passage of AB1309 mitigated teams' exposure to some degree, but the threat of workers' compensation claims still remains an ominous cloud that hangs over professional teams and leagues.

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[1] The University of Toledo Law Review, Fall 2012, 44 U. Tol. L. Rev. 245, 247-48, The California Workers' Compensation Act: The Death Knell of NFL Players' "Concussion" Case?, Robert Thomas Gust IV.

[2] *Id.*

[3] North Carolina Central Law Journal, Spring 2006, 28 N.C. Cent. L.J. 241, 252 Nickel and Dimed: North Carolina Court Blocks Carolina Panthers' Attempt To Avoid Payment of Workers' Compensation Benefits to Injured Athletes, Casey N. Harding

[4] Rondeau Law Group, Workers' Compensation Specific and Continuous Trauma Injuries, ***http://www.laworkinjury.com/library.php?category=educational_content&page=workers_comp_injuries***

[5] *Id.*

[6] *Id.*

[7] Los Angeles Times: Business, California limits workers' comp sports injury claims, Ken Bensinger and Marc Lifsher, October 8, 2013, ***http://www.latimes.com/business/***

[8] The University of Toledo Law Review, Fall 2012, 44 U. Tol. L. Rev. 245, 251, The California Workers' Compensation Act: The Death Knell of NFL Players' "Concussion" Case?, Robert Thomas Gust IV.

[9] Los Angeles Times: Business, California limits workers' comp sports injury claims.

[10] The Associated Press via Ventra Country Star, New Calif. Law limits worker comp for pro athletes, October 8, 2013, ***http://www.vcstar.com/news/2013/oct/08/new-calif-law-limits-worker-comp-for-pro/***

[11] Luzuriaga Mims, LLP, Rising Worker's Compensation Claims Cost In The NFL, September 9, 2013, ***http://www.lmlawllp.com/blog.php?d=103***

[12] *Id.*

[13] The Associated Press via Ventra Country Star, New Calif. Law limits worker comp for pro athletes

[14] WCDefenseCA: California Workers' Compensation Defense: Law Office of Gregory Grinberg, Assembly Bill 1309 (Non-CA Sports Injuries) Passes Assembly; On to Senate, Gregory Grinberg, May 8, 2013, ***http://wcdefenseca.com/?p=2146***

[15] Los Angeles Times: Business, Gov. Jerry Brown signs athlete workers' comp bill, Ken Bensinger, October 8, 2013, ***http://www.latimes.com/business/money/la-fi-mo-governor-athlete-workers-comp-20131008,0,7152629.story#axzz2jh59kqen***

[16] Luzuriaga Mims, LLP, Rising Worker's Compensation Claims Cost In The NFL

[17] Ogletree Deakins: Sports & Entertainment, Out-Of-State Injured Athletes Strike Out In California

[18] WCDefenseCA: California Workers' Compensation Defense: Law Office of Gregory Grinberg, Assembly Bill 1309 (Non-CA Sports Injuries) Passes Assembly; On to Senate

[19] North Carolina Central Law Journal, Spring 2006, 28 N.C. Cent. L.J. 241, 249 Nickel and Dimed: North Carolina Court Blocks Carolina Panthers' Attempt To Avoid Payment of Workers' Compensation Benefits to Injured Athletes, Casey N. Harding

[20] *Id.*

[21] N.C. Gen. Stat. § 97-53, ***http://www.ic.nc.gov/ncic/pages/statute/97-53.htm***

[22] Avvo, occupational Disease Under the North Carolina Workers Compensation Act, Josepg Aaron Miller, ***http://www.avvo.com/legal-guides/ugc/occupational-disease-under-the-north-carolina-workers-compensation-act***

Emerging Trends In NCAA Coaches' Contracts

By Matthew S. Kelly

As the NCAA football season moves into bowl season and basketball begins, December is one of the most exciting times of the year for intercollegiate athletics. From sold out stadiums and arenas to crowded sports bars, the enormous popularity of collegiate athletics is undeniable. Due to this commercial popularity, the once "amateur" world of college sports has seen tremendous growth and evolved into big business. Overall annual revenue for college athletic programs is estimated to be over $10 billion annually and this does not even factor in the revenues that media companies like ESPN and CBS generate from college sports.[1] But these economics have also generated heightened expectations, resulting in unprecedented pressure on both universities and their coaches to succeed. Consequently, coaching salaries have reached all-time highs and the sophistication of their employment contracts has followed suit.[2] This article will review some recent cases on this topic, examine trends in coaches' employment contracts, and provide suggestions for schools and coaches to consider.

With college sports becoming such a big business, the scenario of a head coach leaving a job with one university to take the same role at another university has become relatively commonplace. A coach's early departure typically results in the breaking of an existing employment agreement with his current employer. Following the 2012 football season, 11 bowl subdivision public schools hired head football coaches away from the same position at another public school. While this hiring practice, which leads to a nomadic type of atmosphere for coaches, is common, it is uncommon for a university to sue a former coach for breach of contract.

That's not to say it never happens. In April 2011, Kent State University filed a lawsuit against both its former men's basketball coach (Geno Ford) and Bradley University after Ford left Kent State in March 2011 to take the same position at Bradley.[3] Kent State's lawsuit alleged a breach of contract claim against Ford for breaching his contract with Kent State (which had four years remaining) by accepting the Bradley position without their consent, and Kent State sought $1.2 million in damages pursuant to the liquidated damages clause in Ford's contract ($300,000/year). Kent State also pursued a tortious interference claim against Bradley University, claiming Bradley wrongfully induced Ford to breach his contract. Ford responded by arguing that the liquidated damages provision in the contract was unconscionable, while Bradley asserted in its response that Kent State consented to the interviewing of Ford, thereby precluding any tortious interference claim. In September 2013, an Ohio court awarded Kent State $1.2 million in damages from Ford (upholding the liquidated damages provision) and specifically held that, although Kent State gave permission to speak to Bradley regarding the opening, Ford signed without being released from his contract with Kent State.[4]

Kent State is certainly not the first university to sue to enforce a former coach's contract. The Ohio court's ruling to uphold the contract follows the precedent set forth in **Marist v. Brady** and **James Madison University**[5], **W. Virginia Univ. v. Rodriguez**[6], and the seminal case of **Vanderbilt University v. Dinardo**.[7] Similar to the Kent State case, in **Marist**, Marist University head basketball coach, Matt Brady, left to become head coach at James Madison University ("JMU"). A New York Supreme Court ruled in favor of Marist.[8] The court entered into a default judgment against JMU; however, JMU settled the case before a jury was selected for a reported $100,000. Marist's case against Brady proceeded to trial where a jury again found in favor of Marist, but due to the lack of a liquidated damages provision in Brady's contract, no damages were awarded. From a legal perspective, the precedential value of these recent cases may be limited because schools will likely continue to be willing participants in the "free agent" system that exists for collegiate coaches. However, at a minimum, these cases provide valuable lessons for schools, coaches and their attorneys regarding the drafting of their contracts, and how they may be enforced.

School Takeaways | Schools must be aware of the current landscape of college athletics. They should be more careful than ever about their hiring procedures and be certain to review a potential coach's existing contract so the school can make an informed decision and follow the appropriate steps, including possibly having to get permission as well as determining if there is a liquidated damages provision (often referred to as "buyout"). Many schools now utilize executive search firms to assist with this due diligence, which has the added benefit of providing a layer of confidentiality to the process. When it comes to actually signing a coach, one common way for schools to protect themselves financially is to include a liquidated damages provision in the employment agreement. As we have seen in the cases discussed above, courts have held liquidated damage provisions to be enforceable and have also found in other cases that without such a clause damages may be difficult if not impossible to determine. For schools hiring coaches currently under contract with another institution, the new school is often faced with the responsibility of paying the buyout and also agreeing to bear any income taxes that result from such payment.[9]

Coach Takeaways | Considering the transient nature of the coaching profession, coaches, their agents and attorneys must ensure that coaching contracts are detailed and sophisticated enough to protect their value, while providing them with the flexibility needed to take advantage of new and better opportunities. While liquidated damages provisions have become somewhat common for schools to insert, it is prudent for coaches (and their attorneys) to negotiate termination terms that provide the coach with no less favorable treatment than the school enjoys.

In addition to negotiating the term length, base salary and termination provisions of their contract, coaches should also look to include academic and performance based incentives, retirement benefits, medical and other ancillary university benefits, family travel, as well as a salary pool for their assistants. Deferred compensation is often becoming a material feature of a coach's compensation arrangement. Generally, it is advisable from both a per-

sonal tax and financial perspective for a coach to seek to have a portion of his compensation (and thus tax impact) deferred to later years.

Recently, some coaches have even moved to secure their rights by trademarking their name and likeness and protect the value associated with them. This allows the coach to have more control over how the school may utilize his name or image in the school's promotional and merchandising efforts.[10]

Finally, negotiating an arbitration clause may be helpful as a dispute resolution tool. Specifically, if parties can agree to confidential arbitration they may be able to keep the details of any disputes (and details of the employment agreement) out of the public eye.

As shown in the cases discussed, it is more important than ever for both coaches and schools to have sophisticated counsel that demonstrate a thorough understanding of the emerging trends in the drafting and enforcement of coaches' contracts. So as this year's NCAA Bowl Championship Series (BCS) or Final Four brings an end to your alma mater's season, the coaching carousel has already begun.

Matthew S. Kelly is a member of Shumaker Loop & Kendrick's Sports Law Practice Group. His practice includes representing individual coaches and broadcasters, athletic directors, teams, agencies, conferences/leagues, venues and sponsors regarding contract negotiations, endorsements and other corporate matters.

[1] ***http://www.ncaa.org/wps/wcm/connect/public/NCAA/Finances/***.

[2] * The average compensation package for major-college coaches is $1.81 million, a rise of about $170,000, or 10%, since 2012 and more than 90% since 2006 (***http://www.usatoday.com/sports/college/salaries/ncaaf/coach/***).

[3] **Kent State University v. Ford and Bradley University**, 2011 WL 1761255 (Ohio Com.Pl.).

[4] *Id.*

[5] **Marist Coll. v. Brady and James Madison University**, 84 A.D.3d 1322, 924 N.Y.S.2d 529, 530 (2011).

[6] **W. Virginia Univ. Bd. of Governors ex rel. W. Virginia Univ. v. Rodriguez**, 543 F. Supp. 2d 526 (N.D.W. Va. 2008); Rodriguez settled out of court for $4 million in liquidated damages.

[7] **Vanderbilt Univ. v. DiNardo**, 174 F.3d 751 (6th Cir. 1999).

[8] **Marist Coll. v. Brady and James Madison University**, 84 A.D.3d 1322, 924 N.Y.S.2d 529, 530 (2011).

[9] "Tax-free buyouts? Coaches take a chance with the IRS" USA Today 11/6/13 (***http://www.usatoday.com/story/sports/ncaaf/2013/11/06/college-football-coach-pay-buyouts-taxes-irs/3449639/***)

[10] "Latest trend for college football coaches: Trademarked names" USA Today 11/6/13 (***http://www.usatoday.com/story/sports/ncaaf/2013/11/06/college-football-coaches-pay-name-likeness-trademarks/3449829/***)

Would you like to see your name in print?

The Front Row is always seeking articles. Have you written something recently that you think would be a good addition to our newsletter? Is there something happening that you'd like to write about? Let us know! Email editors Artie Kalos and Ryan Beadle with articles/suggestions/ideas and feedback.

Facebook Eases its Guidelines for Promotions

In late August, Facebook made it easier for companies to administer sweepstakes, contests, and other promotions on its platform. Previously, Facebook required that all promotions on the platform be administered through apps. Now, promotions may also be administered on Page Timelines. For example, companies can now:

- Collect entries by having users post on the Page or comment/like a Page post
- Collect entries by having users message the Page
- Utilize likes as a voting mechanism

As before, however, companies cannot administer promotions on personal Timelines. And companies must include Facebook in their release language and acknowledge that the promotion is in no way sponsored, endorsed or administered by, or associated with, Facebook.

There may be cases in which using an app makes more sense, but at least companies now have more options.

Pinterest Adds Promotions Guidelines to Acceptable Use Policy

In late October, Pinterest added promotions guidelines to their Acceptable Use Policy. According to a post announcing the change, Pinterest will no longer allow promotions that:

- Suggest that Pinterest sponsors or endorses them or the promotion
- Require people to Pin from a selection (like a website or list of Pins)
- Make people Pin the contest rules
- Run a sweepstakes where each Pin, board, like or follow represents an entry
- Encourage spammy behavior, such as asking particpants to comment
- Ask to vote with Pins, boards or likes
- Require a minimum number of Pins

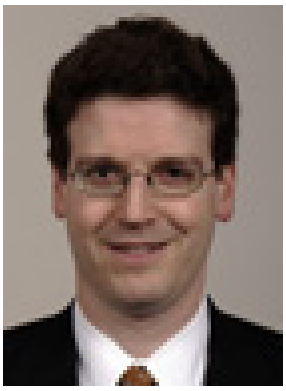
Some of these tactics are currently very common in Pinterest promotions. If you're doing any of these things, now's the time to rethink your approach. Pinterest has already indicated that if they see companies doing these things, they will shut down the offending promotions.

Gonzalo E. Mon is a partner in the Washington, D.C. office of Kelley Drye & Warren LLP, and regularly contributes to the firm's Ad Law Access blog, where these articles were first published. Named 2012 D.C. Advertising "Lawyer of the Year" by Best Lawyers, his practice focuses on advertising and promotions law.

Member Spotlight: *Jonathan Fine*

By Anna Simpkins, JD Candidate May 2014 — Charlotte School of Law

From baseball . . . to hockey . . . to basketball . . . It is no secret that Jonathan Fine has extensive legal expertise in the world of sports. With all of this experience, I couldn't help but to wonder why he chose to give up practicing in this field. What I learned coming out of my interview with Jonathan was an important life lesson—career goals can change.



Fine

After obtaining his B.A. in history from the University of Virginia, Jonathan went overseas to work for a Japanese baseball team for two years. That experience inspired his ambition of becoming general counsel for a MLB team. Once he obtained his J.D. from Emory University, Jonathan realized what every law student dreads learning upon graduation—The "American Dream" doesn't come over night. Thus, he ventured out into the legal field to gain some experience. Jonathan landed his first job with McGuireWoods, where he primarily focused on commercial litigation and products liability defense. While at the McGuireWoods, his former Japanese employer requested his help in drafting contracts for American baseball players headed to Japan to play professional baseball. A partner at the firm caught wind of Jonathan's work in the baseball realm and asked for his assistance in a matter with a client who was looking to buy a minority interest in a minor league baseball team. Jonathan agreed to help on one condition . . . that he would be able to handle matters pertaining to the deal if the firm received the assignment. Around this time, Jonathan sensed an opportunity to transition away from a litigation practice and toward more of a corporate and sports-business-related practice. It was also around this time that he married, and he and his wife were seeking to put down roots and start a family.

They narrowed their choices down to Charlotte and Raleigh. Jonathan interviewed for an associate position in the Raleigh office of Kilpatrick Stockton, and what began as a one-year commitment resulted in his election to the partnership a few years later. During his time with Kilpatrick, Jonathan worked on the transition of the NHL team from Hartford, Connecticut to Raleigh, where the team was re-christened as the Carolina Hurricanes. He participated in the negotiation and drafting of many of the primary infrastructure agreements which established the team's presence in North Carolina and the development of the arena which the Hurricanes now share with NC State University. These efforts included legal work on the arena agreements, food and beverage agreements, naming rights agreement with RBC Bank, various other sponsorship agreements for the team and arena, and television broadcast rights agreements. His role in assisting the NHL organization led to the rapid expansion of Jonathan's sports law practice. He began to represent several minor league baseball teams with issues pertaining to sponsorship, stadium leases, and ownership transactions.

Jonathan transition into the world of basketball came when a partner in Kilpatrick's Charlotte office requested his help in representing the NBA in its efforts to set up the initial incarnation of the NBA's Developmental League. These dealings allowed Jonathan to develop a relationship with the NBA. In 2002, Jonathan was engaged by the NBA in connection with its attempts to locate an expansion team in Charlotte—now known as the Charlotte Bobcats. His initial role was serving as local counsel for the NBA's lawyers in their negotiations with the City of Charlotte regarding the development of an Uptown arena. This ultimately led to a permanent position as the initial general counsel of the Charlotte Bobcats. After four years, Jonathan left the Bobcats and desiring to keep his family in his adopted hometown of Charlotte, he started a consulting business, aligning himself with sports facility venue developers around the country to provide specialized legal support to many baseball stadium and other sports venue development efforts.

While running his consulting business, in 2009 Jonathan was presented with the opportunity to teach Sports Law as an adjunct professor at the Charlotte School of Law. During his fourth year of teaching, he was asked to consider coming on as a full-time professor—a possibility that he had not given much thought to prior to becoming an adjunct. During those first three years as an adjunct professor, Jonathan realized his passion for teaching and did not hesitate to accept the full-time position. Today, Jonathan has expanded the Sports Law program at Charlotte Law by implementing a new skills-based class in accordance with Charlotte Law's practice-ready core mission. When discussing the class with Jonathan, he expressed that while learning the substantive material of Sports Law such as antitrust and trademark infringement are vital, that alone will not teach a student how to be an "everyday" sports law practitioner. Thus, he has designed a skills-based class to supplement the substantive course so that students will be afforded the opportunity to gain experience in real life practices such as the drafting and negotiating of contracts. In addition, Jonathan has agreed to author a textbook geared toward the skills-based class. When designing the class, he realized that there are few textbooks currently available which teach the "how" and the "why" of drafting practical sports-related agreements. After talking it over with a publisher, Jonathan is now in the process of drafting a new practice-ready sports law publication.

Anna Simpkins is a rising 3L at Charlotte School of Law. She can be reached at ***simpkinsa@students.charlottelaw.edu***.

CLE Review: Student Athletes, NCAA Rules: What's New?

By Brittni Cortright, J.D. Candidate May 2014 — Charlotte School of Law

The SEL section organized a CLE program entitled "Student Athletes, NCAA Rules: What's New," which was held October 24, 2013, at the NC Bar Center in Cary.

D. ERIK ALBRIGHT, a partner with Smith Moore Leatherwood LLP in Greensboro, kicked off the program with a presentation entitled "O'Bannon and its Challenge to Amateurism." Albright's presentation provided an overview and update on the O'Bannon case, which is also known as the Student Athlete Name/Image/Likeness litigation. The case involves former collegiate athletes, the NCAA, EA Sports, and The Collegiate Licensing Company (CLC). The presentation gave an organized, calculated summary of the litigation history, the legal claims asserted by plaintiffs — including the most recent amendments to those claims, the defenses raised, and the current procedural status of the case. Two cases gave rise to the litigation: **O'Bannon v. NCAA, et al.** and **Keller v. Electronic Arts/CLC, et al.** — both filed in 2009. Keller was a "Right of Publicity" case that claimed the "avatars" in the NCAA-branded videogames produced by Electronic Arts are actually real student-athletes' images and infringe on rights of publicity that student-athletes may have. O'Bannon was an antitrust case, which claimed that NCAA bylaws and forms enabled the NCAA and its members to use the names, images, and likenesses of former student-athletes in products such as DVDs, trading cards and video games without compensation. In addition, the lead plaintiff claimed the NCAA improperly permitted use of former student-athletes' names, images, and likenesses in televised "re-broadcasts" of old games. The NCAA initially responded by arguing that its rules only govern eligibility and have no impact on former student-athletes' rights. Regarding the specific allegations, the NCAA responded to both as follows: 1) As for re-broadcasts of games, copyright laws address rights of copyright holders to broadcast (and re-broadcast) games in perpetuity, and do not limit those rights only to the initial live broadcast. 2) Concerning EA's videogames, the NCAA only licenses trademarks to EA, and it does not license or authorize EA to use any names or images of student-athletes.

The Keller case was appealed to the 9th Circuit where EA presented a 1st Amendment defense. The 9th Circuit recently ruled against EA, affirming the District Court. As of 2013, the O'Bannon case is on its 3rd Consolidated Amended Complaint and is currently awaiting a ruling by the court on a class certification hearing. Albright shared a quote from the 3rd Consolidated Amended Complaint:

> "The conspiracy to deny compensation to current and former student-athletes for the use of their names, images, and likeness emanates from a [sic] commercial bylaws, regulations, rules, and policies, both written and unwritten, developed and interpreted by the NCAA…"

Harriston

Albright went on to share an important and relevant overview of the 1984 **NCAA v. Board of Regents** case, which found that the NCAA's policies restricting the number of televised games and frequency of appearances constituted antitrust violations. While numerous lower courts have cited Board of Regents with favor during the past 30 years, the Supreme Court has not addressed the issue since 1984. Albright wrapped up his "O'Bannon Plaintiffs vs. NCAA/Board of Regents" discussion by posing an interesting question to the conference attendees: "Was Justice White's dissent prescient of the future? Was the Board of Regents' discussion of amateur rules merely non-binding dicta?"

Albright ended his presentation with an interactive discussion with conference participants about the philosophical and legal reasons that amateurism should or should not survive. Conference attendees shared their opinions on "pay for play" theories and the idea that some athletes are being exploited. Overall, this was a presentation that provided the audience with a lot of knowledge, food for thought, and an anxious feeling as the O'Bannon litigation continues to unfold.

The second topic covered was "NCAA Deregulation and Reform," presented by **C. TODD HARRISTON (seen above)**, Associate Athletic Director for Compliance at Wake Forest University

in Winston-Salem, NC. He has held this position for six years and is responsible for the interpretation and enforcement of all NCAA rules and legislation in the Wake Forest Athletic Department. This presentation discussed the efforts being made by the NCAA over the past three years to deregulate, and the philosophical ideas that precipitated these changes. Importantly, Harriston discussed the practical implications that these deregulation efforts have on student-athletes and NCAA member institutions.

In order to justify the deregulations, the NCAA is relying on a philosophical shift from "competitive equity" to "fairness of competition." Due to the inherent differences in these two models, legislation must change. This change will help to streamline the legislative process and help to eliminate unnecessary, unenforceable rules from the NCAA's rulebook. Harriston shared the structure of five working groups established in 2011 to help effectuate the change towards deregulation:

- Rules Working Group
- Enforcement Working Group
- Student-Athlete Well-Being Working Group
- Resource Allocation Working Group
- Committee on Academic Performance

Harriston also discussed proposals in the areas of recruiting, student-athlete well-being, and academic reforms.

Recruiting: examples included modes of communication, printed recruiting materials, and the personnel permitted to interact with recruits.

Student-athlete well-being: the majority of the discussion was spent analyzing this particular area. Topics included stipends, multi-year scholarships, over-signing, revocation of scholarships, need-based financial aid, medical services, academic services, and travel restrictions.

Academic Reforms: topics in this area included initial eligibility — sliding scales and academic redshirt issues, transfer regulations — including residence and junior college requirements, and academic progress rates — including the major concern about low resource institutions.

Harriston did a great job revealing the implications that these efforts can have on students. For example, the minimum GPA requirement increased from 2.0 to a 2.3, multi-year scholarships that give students more protection, or need-based financial aid counting against the school's allotted monies for athletic scholarships. To review and give his thoughts on deregulation efforts and the "fairness of competition" philosophy, Harriston discussed the importance of trust. Due to the highly competitive nature of collegiate athletics, trust is a vital component to any proposal's success.

LAURA WURTZ McNAB (seen above) opened the second half of the one-day CLE program, with her presentation on "NCAA Rules Enforcement and Investigation." McNab is an Assistant Director of Enforcement for the NCAA, based out of Indianapolis, IN. She transitioned to the NCAA enforcement staff in 2007 and is responsible for the investigation and processing of major infractions cases in Divisions I, II, and III. This presentation specifically reviewed how a typical NCAA infractions case is investigated and

McNab

processed by the NCAA enforcement staff, the Committee on Infractions, and the Infractions Appeals Committee.

There are 1,066 active member schools in the NCAA membership. The overall membership (including schools, conferences, and related associations) is 1,273. McNab corrected the typical presumption that the NCAA rules collegiate athletics by stating that it is actually a bottom-up organization where the members rule the Association. Members appoint volunteer representatives that serve on committees to introduce and vote on legislation and bylaws. The NCAA's Enforcement Program has a four-part mission:

- Uphold integrity and fair play among NCAA membership, and to prescribe appropriate and fair penalties if violations occur.
- Ensure that those institutions and student-athletes abiding by the NCAA constitution and bylaws are not disadvantaged by their commitment to compliance.
- Committed to fairness of procedures and timely resolution of infractions cases.
- Ability to investigate allegations and penalize infractions critical to the common interests of the membership and the preservation of its enduring values.

All representatives of member institutions have an affirmative obligation to report instances of noncompliance to the Association in a timely manner and to assist in developing full information to determine whether a possible violation has occurred, and the details thereof (Bylaw 19.2.3). Refusal to cooperate may result in an unethical conduct violation, which even applies to former institutional employees and student-athletes. McNab shared a list of unethical conduct exam-

ples: refusal to furnish information to NCAA or institution, academic fraud, knowingly providing improper inducements or extra benefits, false or misleading information about a possible violation, or assisting in providing false information to the Eligibility Center. If the enforcement staff determines after investigation that there is sufficient information to conclude that a violation occurred, it issues an NOA (Notice of Allegations) to the institution and involved individuals. The institution and/or involved individuals are given notice of: the alleged violation(s), details of the allegations, possible level of each violation, available hearing procedures, opportunity to answer the allegations, and factual information and aggravating and/or mitigation factors on which the enforcement staff may rely in presenting the case.

McNab took some time during her presentation to educate the conference attendees on the changes in the violation structure for Division I schools. The old structure separated violations into two groups: "Major Violation" and "Secondary Violation." The new structure outlines four categories of violations:

- Level IV: Incidental Infractions
- Level III: Breach of Conduct
- Level II: Significant Breach of Conduct
- Level I: Severe Breach of Conduct

After the NOA, the parties will explore options for Hearings, Appeal of Hearing Panels, and/or the Summary Disposition Process. Examples of the penalty range for a "Level I Standard Case" may include:

- Competition Postseason Ban of 1-2 years
- Fine of $5,000 + 1-3% of total budget for specific sport program
- Show-Cause Order for 2-5 years
- Recruiting visit restrictions
- Head Coach restrictions
- Probation for 2-6 years

McNab provided a presentation full of facts, numbers, bylaws, and reasons to appreciate the work of the NCAA Enforcement Teams.

The final presentation of the day, entitled "Ethical Conflicts When Representing NCAA-Controlled College Athletes" was presented by **JUSTICE ROBERT F. ORR (seen above)**, now Of Counsel with Poyner Spruill LLP in Raleigh, NC. Justice Orr has developed a national reputation in the collegiate sports field through his representation of student-athletes in controversies arising from eligibility rulings by the NCAA. This portion of the CLE event doubled as the Ethics/Professionalism credit for conference participants. The presentation discussed a range of conflicts that university general counsel face in NCAA investigations involving students from their institutions. It also explored the ethical challenges that private counsel face when asked to represent students who are being investigated by the NCAA, and the interaction with the university, NCAA, and potentially the criminal justice system.

Justice Orr approached his presentation with a written fact pattern that attorneys and law students in the audience recognized as similar to that of a Bar Exam hypothetical. He set the scene with a scenario all too familiar to those who followed the investigation at the University of North Carolina at Chapel Hill — really emphasizing the realistic nature of his presentation. The subject of Justice

Orr

Orr's hypothetical was a student-athlete who was assigned a tutor by the school to help him academically. Unfortunately, the tutor was selling illegal drugs on the side and was recently arrested by the local police and charged with sale and distribution of a controlled substance. During the interrogation, the tutor indicated that the student-athlete had been paid substantial sums of money in exchange for his assistance in providing contacts for her to sell and distribute the illegal drugs. In addition, she wrote papers for the student-athlete as part of this same deal.

Justice Orr spent time discussing the conflicts that in-house counsel at universities and private counsel face in being involved in this NCAA investigation. Specifically, he covered relevant NC State Bar rules such as Rule 1.6 Confidentiality of Information, Rule 1.7 Conflict of Interest: Current Clients, Rule 1.8 Conflict of Interest: Current Clients: Specific Rules, Rule 4.1 Truthfulness in Statements to Others, and Rule 3.6 Trial Publicity. He paired this discussion with an overview of relevant NCAA Bylaws such as 2.1.1 Responsibility for Control, 2.1.2 Scope of Responsibility, 16.11.1.1 General Rule. Receipt of a Benefit — including otherwise prohibited extra benefits, and 19.6.4 Committee on Infractions Review.

A heartfelt thanks to all of the presenters for their time and efforts, as well as to the planners of this CLE program — Casey DiMeo and Richard Farley. Not only was the event a success enjoyed by all attendees, but the knowledge shared was greatly appreciated and sparked great discussion!

Brittni Cortright is a May 2014 JD candidate at Charlotte School of Law. She is president of the Sports & Entertainment Law Society, and serves as a student attorney at the school's Entrepreneurship Clinic.

Around the World of Sports and Entertainment

By Artie C. Kalos Esq. Associate Counsel, IMG College

Goodell says Goodbye to Riddell

After a long-standing partnership and exclusive brand relationship dating back to 1989, Riddell will cease to be the "official helmet" of the NFL after the 2013 season. For the past 24 years, Riddell has enjoyed the luxury (for a price) of being the only company whose name can appear on a football helmet's "nose bumper" in the NFL (players are allowed to wear any helmet they choose as long as it complies with the NFL's prescribed technical specifications, but the nose bumper cannot display a Riddell competitor's brand name or logo). As the NFL has become more conscious of concussion issues (no pun intended... well... maybe a little...), the step to renegotiate and end what was structured as a perpetual deal with Riddell is a clear move by the NFL to distance itself from officially endorsing one particular brand of helmet. Riddell continues to be embroiled in thousands of lawsuits from former football players, who generally contend that Riddell, among other things, overpromised its helmets' ability to prevent brain injuries.

Not So Incognito Anymore

Contrary to his surname, Pro Bowl offensive lineman Richie Incognito of the Miami Dolphins made headlines in November for being accused by follow Dolphins offensive lineman Jonathan Martin of bullying Martin and other harassing conduct, causing Martin to leave the team. Recent statements by Martin claim that he was the victim of a "malicious physical attack" and "daily vulgar comments" by Incognito, among other harassing activities. This, on top of voicemails by Incognito to Martin released to the public that contain death threats and racial slurs, have created much strife within the Dolphins organization — particularly since some Dolphins players have come to the defence of Incognito, not Martin. The NFL has stepped in and hired an independent investigator, attorney Ted Wells, to find the full truth of the situation and all parties' involvement. Most recently, the Miami Herald has alleged that Incognito paid $30,000 to quietly settle a golf course harassment claim in 2012, adding to his history of questionable behaviour. I guess some lineman can be just downright offensive (okay, that pun was totally intended... and not that funny now that I read it again).

Quarterback Controversy

Florida State quarterback and Heisman Trophy hopeful Jameis Winston has been recently implicated in a December 2012 sexual assault case in Tallahassee, FL by DNA evidence tying Winston to the victim. The woman's family released a statement on Nov. 20, 2013, identifying Winston as the suspect. The family's statement further alleged that the Tallahassee police warned the victim early on in the investigation that her "life would be made miserable" if she chose to proceed with the case against Winston, and that the police refused to collect DNA samples from Winston after Winston was first identified as the suspect back in early January of 2013. If these allegations prove true, then problems arise for not only Winston but also the Tallahassee Police Department.

The fact that the victim immediately sought medical attention will factor heavily into this case, as there will be a full medical report on the victim from shortly after the alleged sexual assault took place. These cases typically hinge on the issue of consent — was the sexual encounter consented to by both individuals, or was it illegally forced? In either situation, DNA samples like the one found in the Winston case are universally present; therefore, these types of cases tend to hinge on the other medical evidence available, such as whether or not other injuries have occurred (i.e. bruising and other signs of struggle consistent with a forced encounter). It is that kind of evidence that can indicate whether or not it was consensual (Mark Chmura, 2008) or forced (Mike Tyson, 1992).

Hockey Has Arrived, Eh?

On Nov. 26, 2013, the NHL announced its biggest ever media rights deal and Canada's largest-ever sports rights agreement. Rogers Sportsnet outbid long-time network partner TSN on a Canadian TV rights deal worth CDN $5.2 billion (US $4.94 billion) over 12 years, beginning with the 2014-2015 season. Coupled with the 10-year, CDN $2 billion (US $1.9 billion) deal between the NHL and NBC Sports Group for the US TV market signed back in 2011, the NHL's total TV package is worth almost as much as the NBA's deal with ABC/ESPN and TNT (US $7.4 billion). A major windfall of this agreement hits the 30 NHL franchises — each team's share of the deal is approximately $173 million per team over the life of the deal, and the word on the street is that the salary cap may rise by another $3 million based on the TV deal alone. While TSN still maintains regional broadcast rights to the Maple Leafs, Canadiens and Jets, its mainstay as hockey's premier broadcast partner in Canada since 2002 has come to an end. And even more importantly, what of the fate of controversial commentator Don Cherry — will this be the end of his colourful commentary and even more colourful suits?

Lights... Camera... CBA!!!

In late November, the Directors Guild of America ("DGA") and the Alliance of Motion Picture and Television Producers ("AMPTP") reached agreement on a new three (3) year collective bargaining agreement. The new deal includes a 3% wage increase and new media terms applicable to programs such as Netflix's House of Cards and Amazon's Betas. Among other items, the new CBA also includes increases to employer contributions to pension plans, residual increases, ad-supported streaming and cable AVOD residuals, and new wages, residuals and terms relating to subscription video on demand (SVOD) productions, both original and derivative in nature.

Update: As of the printing of this newsletter, state attorney Willie Meggs announced that the state attorney's office in the second judicial district would not press charges against Jameis Winston. Mr. Meggs further stated that the evidence collected by his office was insufficient to meet the burden of proof required to obtain a conviction.

SEL Calendar of Events

(Section-Sponsored Events are marked with an asterisk.)

Now — December 2013
Carolina Panthers-Football Games
Charlotte, NC | ***www.panthers.com***

Now — April 2014
Charlotte Bobcats-Basketball Games
Charlotte, NC | ***www.nba.com/bobcats***

Now — April 2014
Carolina Hurricanes-Hockey Games
Raleigh, NC | ***hurricanes.nhl.com***

Now — March 23, 2014
Appalachian Ski Mountain 2013-14 Scheduled Season
Blowing Rock, NC | ***www.appskimtn.com***

December 7, 2013 | **Dr Pepper ACC Championship Game**
Bank of America Stadium | Charlotte, NC
www.accfootballcharlotte.com

December 13-15, 2013 | **SugarFest**
Sugar Mountain | Avery County, NC
www.skisugar.com/sugarfest

*February 2014, exact date TBD | **SEL Council meeting in Charlotte, followed by a networking event at a Charlotte Bobcats game**
Charlotte, NC

February 21-23, 2014 | **Nevermore Film Festival, Presented by Carolina Theatre**
Durham, NC | ***festivals.carolinatheatre.org/nevermore***

February 26, 2014 — March 1, 2014 | **Carolina Film & Video Festival**
Presented by UNC Greensboro | Greensboro, NC
www.carolinafilmandvideofestival.org/

March 13-16, 2014 | **NC Black Film Festival (formally Cine Noir)**
Wilmington, NC
www.blackartsalliance.org/2010_ncbff_application.html

March 20-23, 2014 | **Carolina International CIC**
Carolina Horse Park | Raeford, NC | ***www.carolinahorsepark.com***

April 3-6, 2014 | **Full Frame Documentary Film Festival**
Durham, NC | ***www.fullframefest.org***

*April 8, 2014 | **SEL Council meeting in Charlotte**
Hyatt Place |Charlotte, NC (at TRAC)

*April 8-9, 2014 | **The Racing Attorney Conference (TRAC),**
Hyatt Place | Charlotte, NC | ***www.racingattorneys.com***

April 11-13, 2014 | **NHRA 4Wide Nationals**
zMAX Dragway | Concord, NC
www.charlottemotorspeedway.com/dragway/

April 19, 2014 | **Tar Heel 10 Miler**
Kenan Stadium | Chapel Hill, NC | ***tarheel10miler.com***

April 28 — May 4, 2014 | **Wells Fargo Championship**
Quail Hollow Club | Charlotte, NC
www.wellsfargochampionship.com

May 1-4, 2014 | **Cape Fear Independent Film Festival**
Wilmington, NC | ***www.cfifn.org/2014-film-festival/***

May 17, 2014 | **NASCAR Sprint All-Star Race**
Charlotte Motor Speedway | Concord, NC
www.charlottemotorspeedway.com

May 23, 2014 | **World of Outlaws May Showdown**
The Dirt Track at Charlotte Motor Speedway | Concord, NC
www.charlottemotorspeedway.com

May 25, 2014 | **NASCAR Sprint Cup Series Coca-Cola 600**
Charlotte Motor Speedway | Concord, NC
www.charlottemotorspeedway.com

June 12-14, 2014 | **Strange Beauty Film Festival**
Durham, NC | ***www.strangebeauty.org***

June 12-15, 2014 | **2014 U.S. Open**
Pinehurst Resort & Country Club — Pinehurst No. 2
www.pinehurst.com/2014-us-opens.php

June 19-22, 2014 | **2014 U.S. Women's Open**
Pinehurst Resort & Country Club — Pinehurst No. 2
www.pinehurst.com/2014-us-opens.php

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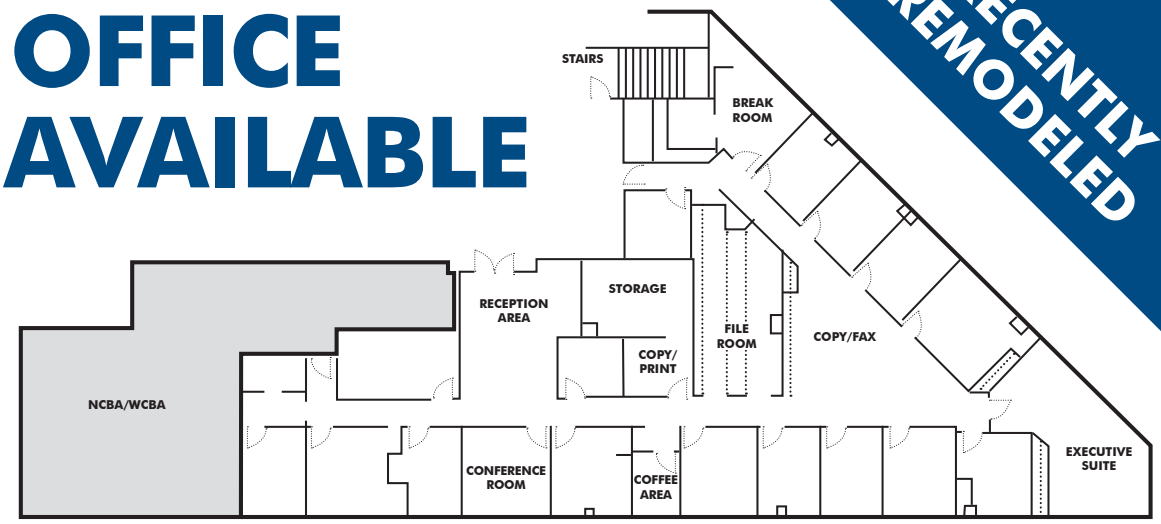

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