

Sports & Betting Cases To Watch In 2020

By Zachary Zagger

Law360 (January 1, 2020, 12:04 PM EST) -- With college athletes continuing their legal challenge to the NCAA's amateur system and the U.S. women's soccer team fighting for pay equality, 2020 is set to be another busy one for the world of sports law.

Here, Law360 takes a look at cases attorneys should watch this year.

College Athletes Press On in NCAA Antitrust Fight

The legal fight over the National Collegiate Athletic Association's rules capping athlete compensation rages on into another year as both the NCAA and a group of college athletes appealed a March ruling that had sought to thread the needle on what the organization could do without running afoul of federal antitrust law.

In a 104-page decision, U.S. District Judge Claudia Wilken agreed with the athletes that the NCAA had violated antitrust law by restricting how much education-related aid schools can give their athletes, freeing the players up to receive additional aid such as reimbursements for computers and musical instruments, free tutoring and internship stipends.

But that additional trickle of benefits was a far cry from what the athletes were seeking: a total lift of NCAA pay caps for colleges. That could have opened the door for schools to pay players tens or even hundreds of thousands of dollars directly to recruit and retain them.

Instead, Judge Wilken came down in the middle, seeming to mostly agree with the players in spirit while also acknowledging that the NCAA has a legitimate interest in protecting "amateurism," the nebulous concept that the organization argues distinguishes it from professional sports leagues.

The issue now lands at the Ninth Circuit, just years after the appeals court issued a landmark ruling in a similar case, *O'Bannon v. NCAA*, finding that the NCAA's rules limiting athletes' compensation to scholarships were anti-competitive. However, in that case, the court kept most of the system intact, finding reasonable justifications for the rules based on the facts presented.

"This is a big case to watch," said Mark Conrad, a law and ethics professor at Fordham University. "Will the Ninth Circuit affirm Judge Wilkins' ruling regarding the cost of attendance, or will it change it? I thought that the district court made a limited remedy in a case that was clearly anti-competitive."

While the legal fight proceeds, lawmakers are taking the issue into their own hands. In September, California enacted a bill that prohibits colleges from blocking athletes from being paid for the use of their name, image or likeness, spawning a wave of similar bills across the country. The NCAA in October even said it would take a look at relaxing its restrictions to allow athletes to benefit from the use of their names, images and likenesses.

"Moving into 2020, it is likely these types of cases will become more frequent as public opinion and numerous state legislators appear to be leaning in favor of paying college athletes," said Joseph M. Hanna, chair of the sports and entertainment practice group at Goldberg Segalla. "What will be interesting to see is where the line is finally drawn, how much the athletes will share in the profits, and whether or not we have seen the end of NCAA amateurism as we know it."

The case is *In re: John Bohannon et al. v. NCAA et al.* and *In re: Shawne Alston et al. v. NCAA et al.*, case numbers 19-15662 and 19-15566, in the U.S. Court of Appeals for the Ninth Circuit.

DOJ Defends Broad View of Wire Act

The U.S. Department of Justice is appealing a federal court decision rejecting its new opinion that the Wire Act prohibits interstate gambling beyond sports betting, prolonging a closely watched fight over a DOJ stance that opponents say could hamper the growing online lottery and gambling industries.

"It is a relatively important case from the perspective of the interpretation of the Wire Act and whether the Wire Act prohibits all interstate gaming as opposed to whether the Wire Act just prohibits interstate sports gaming," said Morgan Lewis & Bockius LLP partner David McManus. "That could create an important precedent for the gaming industry generally. For companies that have gaming apps or casinos that have online gaming, that is an important case to watch."

The DOJ made waves in January when it unveiled its new interpretation that the Wire Act's prohibitions on interstate wagering communications apply beyond sports betting.

The New Hampshire Lottery Commission and lottery vendors NeoPollard Interactive LLC and Pollard Banknote Ltd. immediately filed suit alleging the new opinion improperly expands the scope of the law and opens lotteries and online gambling service providers to the threat of prosecution.

In June, U.S. District Judge Paul J. Barbadoro found the new opinion was "flawed," led to "incongruous results" and suffered from a "serious coherence problem." Instead, Judge Barbadoro said the 2011 Obama-era opinion that found the act only applied to sports betting was "the better reading" of the law.

The issue will now go to the First Circuit, with briefing set to continue in 2020.

"Even if the district court's ruling is upheld, it remains open to interpretation regarding scope," Hanna said. "The general consensus currently is, while this may serve as a victory for the small groups of states with regulated online gambling, it falls short of serving as a nationwide injunction of the 2018 opinion from the [DOJ] Office of Legal Counsel which expanded the Wire Act, which opens the door for similar challenges in the future."

The case is *NH Lottery Commission et al. v. Barr et al.*, case number 19-1835, in the U.S. Court of Appeals

for the First Circuit.

St. Louis Wants Rams to Pay Up for Leaving Town

The city of St. Louis is pursuing a lawsuit against the Los Angeles Rams and billionaire team owner Stan Kroenke over the NFL team's move from St. Louis to Southern California in 2016, a case that could lift the curtain on the NFL's process for team relocations amid a slew of team moves recently.

The Rams were the first in a series of teams approved for moves by NFL owners in recent years, with the San Diego Chargers joining the Rams in suburban LA and the Oakland Raiders set to decamp to Las Vegas as early as this year.

But the city and county of St. Louis and the local stadium authority allege the Rams and Kroenke didn't follow NFL rules requiring teams to make a good-faith effort to stay, seeking to recoup at least the \$17 million the entities shelled out trying to develop a new stadium to entice the team.

The Rams and Kroenke have repeatedly argued that the claims belong in arbitration under the team's stadium lease and agreements with the city from when the Rams moved to St. Louis from Southern California in 1995, seeking to avoid the spotlight of open court.

But their arguments in the present case have been rejected multiple times by the Missouri courts, and the city is demanding the Rams and the NFL hand over information about the league's decision-making process. Meanwhile, Kroenke and the Rams are continuing a longshot push to the U.S. Supreme Court.

"This case will be especially interesting to follow considering its widespread implications," Hanna said. "With the Rams, Chargers and Raiders recently moving, along with numerous teams across the NFL, NHL, NBA and MLB rumored to soon be on the move, the outcome of this case could have teams and owners second-guessing any relocation."

The case is St. Louis Regional Convention and Sports Complex Authority et al. v. National Football League et al., case number 1722-CC00976, in the Circuit Court of the City of St. Louis for the State of Missouri. The U.S. Supreme Court petition is The Rams Football Co. LLC et al. v. St. Louis Regional Convention and Sports Complex Authority et al., case number 19A335.

Ohio State Faces Sex Assault Litigation

Ohio State University is facing consolidated claims from hundreds of former athletes and others who say now-deceased university sports doctor Richard Strauss sexually abused them, the latest massive sexual assault scandal involving amateur athletes and one that draws stark comparisons to the similar claims against former Michigan State University doctor Larry Nassar.

In May, OSU released a 232-page report by Perkins Coie LLP based on a 12-month investigation that concluded Strauss, who died in 2005 after a nearly 20-year tenure at the school, sexually abused at least 177 men during his nearly two decades at the university and that staff knew about the allegations but failed to act.

But some attorneys for the victims say that number could be much higher. They are demanding the university hand over more information from the Perkins Coie report as their cases move forward. U.S. District Judge Michael H. Watson ordered the sides in August to focus on ongoing mediation.

The litigation comes as Michigan State is still dealing with the fallout out from similar consolidated litigation after it agreed to settle claims with more than 300 plaintiffs in May 2018 for \$500 million. But many other Nassar claims continue against other entities, including gymnastics training centers, the U.S. Olympic and Paralympic Committee and USA Gymnastics, for which Nassar also served as a sports doctor.

Experts point out that sexual assault and abuse allegations have become widespread across sports, particularly Olympic sports. The wave of scandals has led to a leadership change at the USOPC and the formation of the U.S. Center for Safe Sport, an organization tasked with investigating sexual harassment and abuse allegations in sports.

"I think the law is really continuing to evolve," said Matthew Mitten, a sports law professor at Marquette University Law School. "Courts are right now in the midst of trying to sort out what are the procedural rights of the accused and what sort of processes universities can provide to ensure a safe campus and take disciplinary action against those who sexually assault or abuse other students."

The cases are Garrett et al. v. The Ohio State University, case number 2:18-cv-00692; Snyder-Hill et al. v. The Ohio State University, case number 2:18-cv-00736; Doe 37-66 v. The Ohio State University, case number 2:19-cv-03165; Nutter et al. v. The Ohio State University, case number 2:19-cv-02462; Doe M.B. et al. v. The Ohio State University, case number 2:19-cv-01911; Disabato et al. v. The Ohio State University, case number 2:19-cv-02237; Heifferon v. The Ohio State University, case number 2:19-cv-02429; Chrystal et al. v. The Ohio State University, case number 2:19-cv-05272; and Doe v. The Ohio State University et al., case number 2:18-cv-00712, all in the U.S. District Court for the Southern District of Ohio.

U.S. Women's Soccer Team Fights for Pay Equality

Just months before the 2019 FIFA Women's World Cup in France kicked off, members of the eventual champion U.S. Women's National Team hit the U.S. Soccer Federation with a lawsuit alleging they're unlawfully paid less than the men's team despite their much greater success.

After mediation talks broke down, U.S. District Judge R. Gary Klausner certified two classes of women's soccer players in November — an injunctive relief class seeking equal pay and equal working conditions and a damages class seeking back pay and punitive damages, teeing up the case for a trial scheduled for May.

The USWNT players allege that between 2013 and 2016, they could earn only 38% of what the men could make in a season, in violation of the Equal Pay Act and Title VII of the Civil Rights Act. U.S. Soccer has countered that the men's and women's teams are functionally different, with separate collective bargaining agreements and differences in the level of competition.

The suit, combined with a similar one by former U.S. women's team goalkeeper Hope Solo, is raising broader questions about pay inequality for women in sports

The cases are Solo v. U.S. Soccer Federation, case number 3:18-cv-05215, in the U.S. District Court for the Northern District of California and Morgan et al. v. U.S. Soccer Federation Inc., case number 2:19-cv-01717, in the U.S. District Court for the Central District of California.

Runner Challenges Testosterone Limits for Women

This year should see a ruling on whether the international governing body for track and field can enforce testosterone limits for female competitors in certain middle-distance running competitions, in a legal challenge mounted by South African Olympic gold medalist runner Caster Semenya.

Semenya, who won the 800-meter event at the 2016 Olympics, has been blocked from competition under the rules and has appealed a decision by the Switzerland-based Court of Arbitration for Sport to Switzerland's high court.

The May decision by a three-member CAS panel found that World Athletics, formerly known as the International Association of Athletics Federations, may enforce rules that block female athletes with high testosterone levels from race events of 400 meters to a mile unless they reduce their testosterone for a continuous period of at least six months with medication. The panel said such discrimination "is a necessary, reasonable and proportionate means" of achieving the goal of preserving the integrity of female sports.

But the decision has sparked a heated human rights and ethics debate and raised questions about what it means to have separate male and female sports. Eyes are on the Swiss high court to weigh in, though it has limited jurisdiction to review CAS decisions.

"One of the grounds on which that is being appealed is that it violates the public policy of Switzerland to require a healthy woman to take hormones to drop her testosterone levels," Mitten said. "It will be interesting to see whether the Swiss Federal Tribunal, when it issues its decision, either just confirms the award or sees some deficiencies with the decision and decides to vacate it. That will be decided at some point in 2020."

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