

Sports cases to watch in 2019

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After 2018 brought an end to some major long-standing legal disputes in sports, such as a U.S. Supreme Court ruling that opened the door for sports betting, the new year is set to see more developments and potential resolutions to many other significant sports legal cases.

Here, Law360 takes a look at sports law cases attorneys should watch in 2019.

NCAA Grant-In-Aid Litigation

A California federal judge is set to issue a decision in 2019 on a closely watched class action by college football and basketball players challenging the National Collegiate Athletic Association's long-standing amateurism rules, following a bench trial last fall.

"There is going to be a decision [this] year, and that is going to have huge ramifications for college sports," said Mark Conrad, a sports law and business professor at Fordham University's Gabelli School of Business.

Classes representing college football and basketball players alleged that rules that prohibit college athletes from being paid in any form beyond having schools cover their tuition and other costs of going to college are unlawful antitrust restrictions. The NCAA has defended amateurism as the key thing that makes it popular compared to other professional sports and that it is integral to the mix of athletics and education that college sports provide.

U.S. District Judge Claudia Wilken oversaw a 10-day bench trial that began on Sept. 4 with testimony from sports economists, student-athletes and university and NCAA administrators on the impacts of the NCAA compensation rules. The sides have since filed closing arguments via court briefs before a final hearing held in December that set the stage for Judge Wilken to rule.

The highly anticipated decision could change the structure of college sports, but experts say that regardless of which way Judge Wilken rules, the case is destined for a Ninth Circuit appeal and perhaps more. Athletes will continue to seek to change college sports to allow athletes to fight to get more of a share of the revenue generated by college football and basketball and more freedom to cash in on their popularity as college athletes.

The case is *In re: National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litigation*, case number 4:14-md-02541, in the U.S. District Court for the Northern District of California.

US Olympic Committee & USA Gymnastics Face Sexual Abuse Claims

USA Gymnastics and the U.S. Olympic Committee will continue to face the legal fallout from the alleged widespread sexual abuse by former Olympics gymnastics team doctor and former Michigan State University faculty member Larry Nassar, who has been accused by more than 300 women.

The organizations are facing dozens of lawsuits from former gymnasts alleging they mishandled or ignored sexual harassment and assault reports, fostering an atmosphere that allowed Nassar, who has been convicted of sexually abusing at least 10 young girls, to continue a pattern of abuse over years.

More than 100 federal cases against Michigan State University — representing more than 300 plaintiffs — over alleged Nassar abuse have been consolidated in Michigan federal court. Out of those, more than 200 plaintiffs have claims against USA Gymnastics, the national governing body

for the sport, and a training center called Twistars. Claims against the U.S. Olympic Committee have further been added. MSU reached a \$500 million settlement in May 2018.

Another set of cases have been brought against the USOC and others in California state and federal courts, including suits by Olympic gold medal-winning gymnasts Aly Raisman, Jordyn Wieber and McKayla Maroney.

With litigation mounting, USA Gymnastics in December sought Chapter 11 protection in Indianapolis, pulling the claims against the organization into federal bankruptcy court. Experts say the move will not completely shield it from liability, and questions remain as to whether the organization will or should survive.

"There are tactical decisions that these organizations have to make, but again at the end of the day, they are going to be accountable," said Michael Rueda, the head of the U.S. sports and entertainment practice at Withers LLP. "I think the litigation, in general, is going to be very interesting to watch especially as we start to learn who knew what and when and who is ultimately responsible for not taking action."

Nassar pled guilty to 10 criminal sexual abuse charges and was sentenced in early 2018 to 40 to 175 and 40 to 125 years in prison by two Michigan state courts. He is currently serving a 60-year federal sentence for possession of child pornography and obstruction of justice.

The consolidated case is Rachael Denhollander et al. v. Michigan State University et al., case number 1:17-cv-00029, in the U.S. District Court for the Western District of Michigan. The bankruptcy case is In re: USA Gymnastics, case number 1:18-bk-09108, in the U.S. Bankruptcy Court for the Southern District of Indiana. The California cases include Raisman v. U.S. Olympic Committee et al., case number 5:18-cv-02479, in the U.S. District Court for the Northern District of California, and Weiber v. U.S. Olympic Committee et al., case number 2:18-cv-03462, and McKayla Maroney v. Michigan State University et al, case number 2:18-cv-03461, in the U.S. District Court for the Central District of California.

Antitrust Challenge to US Soccer Federation

A lawsuit alleging the U.S. Soccer Federation and Major League Soccer are conspiring to push out rival leagues like the North American Soccer League is set to heat up in 2019 as it heads toward a trial.

The NASL hit the soccer federation, which serves as the governing body for the sport in the U.S., and MLS, the top professional soccer league in the U.S. and Canada, with the antitrust suit in 2017 after the federation declined to renew NASL's status as a Division II league under the U.S. soccer pyramid.

The case is raising questions about the structure of professional soccer in the U.S. and whether the relationship between U.S. Soccer, MLS and USL is too close to pass muster under U.S. antitrust law.

While there is no promotion and relegation in the U.S., a system where teams can move up and down between tiers of leagues depending on how well they perform in the standings, NASL says being forced to operate as a third-tier league makes it impossible to attract fans and investors.

NASL alleges that U.S. Soccer and MLS are pushing it down to promote their favored league, United Soccer League, which is not seeking to compete with MLS. The league has positioned itself as a feeder league for the MLS, similar to the minor league system in baseball and hockey.

After losing a bid for a preliminary injunction asking to be granted Division II status, NASL canceled the 2018 and 2019 seasons, and future seasons are in jeopardy as a potential trial could still be pushed to 2020. NASL was denied a bid for June 2019 trial date it said was essential to saving its 2020 season.

The case is North American Soccer League LLC v. United States Soccer Federation Inc., case number 1:17-cv-05495, in the U.S. District Court for the Eastern District of New York.

NFL Concussion Settlement Claims Disputes

With the National Football League's uncapped class settlement in litigation by former players alleging the league hid the harmful long-term effects of head trauma in the sport and was liable for a range of neurological conditions allegedly tied to playing football, things seemed to be moving forward. But allegations of fraud and mismanagement in the administration of the settlement from both the league and the players have since cropped up and are set to be dealt with over the new year.

Judge Brody approved the uncapped class settlement in April 2015, after rejecting an initial \$765 million deal, paving the way for former NFL players or the families of deceased players who are suffering from or suffered from a range of degenerative brain conditions connected with brain injuries in football, including dementia, Alzheimer's disease and Parkinson's disease.

The settlement put an end to most of the claims that the NFL hid what it knew about the long-term harmful effects of head trauma in football, and it is now expected to pay out more than \$1.5 billion over the course of its 65-year lifespan.

But there are several internal claims appeals, many of which are not on the case docket, alleging that the standards for recovery are being shifted to deny what should be payable claims. Much of the dispute comes from the different standards for players who received a qualifying diagnosis before the effective date of the settlement, after which stricter diagnosis requirements went into effect.

Still, the NFL has alleged that "widespread fraud" is "clogging the system." The league says a handful of unscrupulous firms were trying to game the evaluation process by paying off doctors or coaching players to appear more incapacitated than they really were.

Last month, U.S. District Judge Anita Brody tapped a former chief judge to serve as a special investigator to look allegations of fraud, granting a request by the NFL after having previously rejected earlier in 2018.

The case is In re: National Football League Players' Concussion Injury Litigation, case number 2:12-md-02323, in the U.S. District Court for the

Eastern District of Pennsylvania.

New York Daily Fantasy Sports Constitutional Litigation

After nearly two years of relative peace for daily fantasy sports operators DraftKings and FanDuel in New York following the state attorney general's office's bid to shut them down, the industry's future in the Empire State is once again in question due to a case set to heat up in 2019.

New York lawmakers had essentially put an end to the crusade by former New York Attorney General Eric Schneiderman with a 2016 law that excepted daily fantasy sports, or DFS, from the state's definition of illegal gambling and allowed the New York State Gaming Commission to license and regulate operators.

But a New York state judge ruled in October in a case brought by anti-gambling advocates that while lawmakers could exempt DFS from the state's criminal definition of gambling, they could not so simply avoid the prohibition on gambling expansion in the state constitution, which references "pool-selling" and "bookmaking."

The ruling left DFS contests — in which participants compete for cash prizes by assembling imaginary rosters of athletes from sports leagues in competitions that are scored based on the real-life performances of those athletes — in a legal gray area in New York. The plaintiffs are now seeking to require DFS operators to shut down as the state is now seeking an appeal.

"Lawyers in other states may look to the New York case as supportive of their position depending on how it turns out," said Behnam Dayanim, a gambling industry attorney at Paul Hastings LLP. "Those cases will turn on the wording of the constitutional prohibitions in each state and how gambling has been traditionally defined. In New York, gambling has been very broadly defined, whereas that might not be the case in another state."

"But it is something that the industry is watching," Dayanim said.

The case is *White et al. v. Cuomo and the New York State Gaming Commission*, case number 5861-16, in the Supreme Court of the State of New York, County of Albany.

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