2011-2012 Sports Law Year in Review

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Year of the Lockout

1. **NFL**
   A) **NFL filed unfair labor practice against the NFLPA in February 2011**, accusing the union of failing to bargain in good faith while **planning to dissolve their union**
   B) The day before the CBA was set to expire, the **NFLPA disclaimed interest** in representing the players in collective bargaining and **filed an antitrust suit** seeking an **injunction from the lockout** that the owners were about to institute
      (1) Why dissolve before the CBA expired? B/c language in the old CBA that would have **barred them from bringing an antitrust suit for 6 months** if they were still a union upon expiration
   C) Then, NFL **owners locked out the players**
   D) In midst of all this, **Judge Doty** ruled against owners in **tv/lockout insurance case**
   E) Case heard by Judge Susan **Nelson** in Minnesota
      (1) Players argued that the **union was gone, so they had given up their rights under labor law and gained their rights under antitrust law, the lockout was a per se illegal group boycott and should be enjoined**
      (2) Owners argued a number of things
         (a) The disclaimer of interest was a **sham/litigation tactic** and the union still existed
            (i) Disclaimer different than decertification
         (b) And, the question of whether it still existed as a union should be decided by the **NLRB** under the doctrines of **primary and exclusive jurisdiction**
         (c) The **Norris-LaGuardia Act prohibits federal courts from granting injunctions** to block lockouts
         (d) Because the union still exists, **the non-statutory labor exemption still exists**, and the antitrust suit can't be brought, or, not sufficient amount of time has passed for antitrust suit to be brought even if union has dissolved
   F) Judge Nelson granted the injunction, holding **broadly that the disclaimer was valid, so the union was gone, and because the union was gone, labor law no longer**

applied and antitrust law did. Players had traded a labor law regime with collective bargaining for an antitrust regime with free competition

(1) **Validity of disclaimer** was **not** something that falls within exclusive jurisdiction of the **NLRB** because is an antitrust issue

(2) **Don't need any additional guidance from the NLRB** and no need to defer to NLRB

(3) **Disclaimer was valid** and union was gone

(4) **Because union was gone**, Norris-LaGuardia Act no longer applies and an injunction is proper

(a) And, NLGA was intended to protect **employees and strikes from injunctions**, **NOT lockouts**

(5) Because **union is gone, non-statutory labor exemption is gone**

(a) And, in any event non-statutory exemption would not protect a lockout from antitrust attack

(6) So, antitrust suit can go forward, and players have likelihood of success and will suffer irreparable harm

(7) So **injunction was granted and lockout was lifted**

G) Until 8th Circuit granted a **temporary stay a few days later during the NFL draft**, then a full stay pending appeal, then reversed on appeal 2-1 on very limited grounds

H) 8th Circuit held that Norris-LaGuardia Act applies because:

(1) Although original concern was with protecting employees, **broadly written to "take the federal courts out of the labor injunction business"**

(2) Act phrased in an evenhanded way to **protect employer conduct, too**

(3) Prohibits injunctions in any case involving or **growing out of a labor dispute where there has been a refusal to remain in any relation of employment**

(a) **Applies to strikes and lockouts**

(4) Labor dispute for purposes of NLGA ***does not*** **require presence of a union**—sufficient if b**/w one or more employers and one or more employees**

(5) **Clearly grew out of a labor dispute** because union disclaimed status and filed suit the same day they stopped bargaining

(6) But, this **does not prevent court from enjoining lockout with respect to free agents and draftees**, because they are not under contract and thus not in a relation of employment

(a) But, injunction **would have to be determined after a hearing by Judge Nelson**

(7) Did not address any of the other arguments

I) Fun to discuss, but parties had moved on and settled the case and reached a new CBA

J) **132 day lockout**, missed only one preseason game

(1) **Winners and losers discussed later**

K) **Retired Players I**

(1) Carl Eller led class action against the NFL claiming that the lockout was illegal and seeking an injunction
(2) That lawsuit dismissed after the NFL and the PA reached its settlement

L) **Retired Players II**
(1) In September and October 2011, another group of retired NFL players filed a class action suit, this time against the NFLPA
(2) Claimed that the PA no longer had the authority to negotiate on their behalf after the PA dissolved. Seeking greater benefits from the CBA for retired players
(3) Judge Nelson heard motion to dismiss in February

2. **NBA**
A) NBPA **filed an unfair labor practice charge against the NBA** for failure to bargain in good faith
B) NBA **locked the players out in July**
C) In August, **filed for a declaratory judgment in NY that lockout is lawful**, also filed **unfair labor practice charge against the NBPA**
D) NBA eventually cancelled the entire preseason and 16 regular season games
E) **NBPA disclaimed interest in mid-November and 2 lawsuits were filed**—1 in Cal. And 1 in Minnesota, but players **did not seek injunction**
(1) **Went from disclaimer/antitrust litigation very quickly to settlement and new CBA**
F) Resolution reached and games started on Christmas

3. **Strike-- La Liga**
A) Players went **on strike over $70 million in unpaid salaries to more than 200 players**
B) Reached an agreement after the **first round of games was cancelled**

4. **NHL to come**

II Labor Peace

1. MLB
A) Avoided a work stoppage, **guaranteeing more than 20 years of labor peace for the league**
B) A few changes to highlight:
(1) Modification to **revenue sharing** so that by the end of 2016, **teams in the 15 largest markets cannot be revenue sharing recipients**
(2) Change to **amateur draft**—there **will be a tax for the amount** a team signs a player for over a threshold amount. **Lowest level** is a **75% tax**
(3) Astros will move to **the AL West**

(4) A **second wild card** will be added
(5) Players are prohibited from getting **tattoos of corporate logos**
(6) **Drug testing**- will discuss below

III Other NFL Labor: Salary Cap-Gate (will save Bounty Gate for next year)

1. The NFL **docked the Redskins $36 million and the Cowboys $10** million from their salary cap over the next 2 years for **front loading contracts during the 2010 uncapped year**
2. NFL claims that the frontloading gave them a **competitive advantage** and created an **unacceptable risk of future competitive imbalance**
3. The **$46 million will be spread around to the other teams in the league, except the Saints and the Raiders**, who engaged in similar, though less egregious, conduct
4. NFL claims they're trying to **protect the League** while the Cowboys and Redskins argue that they're **being punished for non-existent rules**
5. Redskins and Cowboys **filed a grievance with the system arbitrator** and NFL has moved to dismiss because **NFLPA reportedly signed off on the penalties in** exchange for an agreement by the league not to lower the salary cap for next year
6. **Hearing in front of arbitrator today** on the issue

IV Other NFL Labor: Worker's Comp

1. Issue that has flown under the radar a bit that has led to significant litigation
2. **Broad workers comp law in California--** Under California law, don't have to have played for California teams or be residents of the state; **they only had to participate in just one game in the state to be eligible to receive lifetime medical care for their injuries from the teams and their insurance carriers.**
   A) **Also a potentially much longer statute of limitations**
3. The N.F.L. **unsuccessfully lobbied the California legislature in 1997 to exclude professional athletes** from workers' compensation benefits.
4. Players for the **Saints, Dolphins, Broncos, Bears, Titans, Chiefs and Falcons** lodged workers' comp claims in California
5. Led to battle between **players filing in CA** and teams and the NFL trying to **force them to file in the state where their team is located**
6. League and teams have filed grievances with arbitrators and point to **language in the player contracts which spell out choice of law and choice of forum clauses** (for example, contracts for players for the Chiefs state that jurisdiction for any legal disputes shall "lie exclusively in the state courts of Jackson County, MO")
7. Claim that players are **breaching their contracts by filing in CA** and have filed arbitrations to stop pursuing the claims in CA
8. League has been **successful** in its claims so far and now are **filing cases in federal court seeking to enforce these awards**

9. In **court**, Players **have argued that provisions in their contracts requiring them to file workers' comp claims in their teams home states are unenforceable and violate California public policy** and the US Constitution and that award requires them to **forfeit rights they would otherwise have under CA law**
10. The district courts have undertaken a **de novo review** of these claims to determine whether the award violated California public policy,
11. **NFL continues to win**
    A) **Awards confirmed against players from the Bears and Titans**
    B) Court held among other things that **California's public policy isn't relevant**, because the **contracted for law controls**. So, for example, in the **Bears case, Illinois law governs the formation and construction of the agreements**—the Bears are located in Illinois, the players executed it in Illinois, and substantially performed the agreement in Illinois
12. Some of those are now working their way through the appellate courts and others through the district courts for enforcement
13. Addressed in CBA **ARTICLE 41**
14. **WORKERS' COMPENSATION**
    A) **Parties shall establish joint committee that will work to negotiate a possible California Workers comp ADR program on a trial basis**

V Drug Testing Issues

1. **MLB HGH**
   A) Agreed to **random HGH blood testing to take place during offseason and spring training**
   B) **Can only test during regular season for cause**
   C) Blood tests were taken during spring training games to see what effect they had on player energy levels, and some of the reports indicated that players weren't happy with it
   D) In August, Rockies minor leaguer Mike Jacobs was the **first athlete in north american pro team sports to fail an HGH test and was subsequently released** (rugby player in Australia had tested positive last year)
2. **NFL HGH**
   A) During the CBA negotiations last year, the **NFL and PA agreed to implement blood testing for HGH, subject to agreeing on specifics of the plan**
   B) Haven't been able to agree, but may have made some progress last month when NFL agreed to have **a population study done on NFL players that should** alleviate the PA's concerns that NFL players might have a **higher threshold of naturally occurring HGH than other people**
3. **David Vobora, LB for the Rams at the time**
   A) Tested positive for banned substance methlytestosterone and **suspended for 4 games** during the 2009 regular season; he was **Mr. Irrelevant**
   B) Vobora claimed that he had taken **a contaminated supplement** and sued the manufacturer of the supplement, a company called "S.W.A.T.S, " or **"Sports with Alternatives to Steroids"**
   C) Vobora was awarded over **$5M** in a default judgment in June 2011 in Eastern District of Missouri
   D) **$90,588 for the salary he lost during the suspension**
   E) **$170,000 for lost performance bonuses due to the fact that he lost his starting job after the suspension**
   F) **$100,000 in lost marketing opportunities**
   G) **$3 million for loss of future income**
   H) **$2 million for damage to reputation and pain and suffering from being labeled a steroid user**

4. **Ryan McBean and DJ Williams**
   A) Both suspended **6 games for submitting non-human urine** during a drug test
   B) **Appeal was heard by Harold Henderson**, an NFL employee representing the commish's office
   C) McBean and Williams argued in their appeals that the sample collector had violated the NFL's drug testing policy by failing to observe a number of "**universally accepted specimen safeguarding and chain of custody standards**," which ultimately led the **collector to be terminated by the testing agency**.

D) **McBean and Williams lost their appeal**, despite the NFL's acknowledgment that Williams' case **showed "troubling" gaps** in the chain of custody and an "environment of haste, rushing, confusion and short cuts around the collection process," while McBean's case presented evidence that was "troubling and arguably calls into question the integrity of the validation process."

E) McBean and Williams brought **suit in state court** claiming that:

(1) Mishandled the urine samples and **chain of custody issues**, **arbitrator violated protocol** by speaking to an NFL executive in private outside the hearing process, and an allegation that the arbitrator took more **than a month to issue his ruling** instead of 5 business days as called for under the policy, suggesting that the NFL attempted to delay the issuance of a ruling in order to avoid disrupting the **Broncos' 2011 playoff run, led by Tim Tebow**

F) McBean just settled with the NFL and had suspension reduced to 3 games and then signed new deal with Ravens; Williams suit continues

5. Ryan Braun, reigning NL-MVP was suspended 50 games for a wildly elevated testosterone level,

A) MLB's Joint Drug Prevention and Treatment Program **provides players with the right to appeal positive tests to a three-person Arbitration Panel, including one neutral arbitrator** (in Braun's case, the panel was comprised of MLB executive Vice President Rob Manfred, MLBPA Executive Director Michael Weiner, and the neutral arbitrator, Shyam Dyas). Braun argued in his appeal that the **sample collector had violated MLB's drug testing policy by storing Braun's urine sample in his home over the weekend rather than immediately bringing it to a Fed Ex office for shipping**.

B) **Braun won his appeal** (with the neutral arbitrator casting the deciding vote in a 2-1 decision) and had his 50-game suspension thrown out, which prompted a "livid" MLB to issue a statement that they "vehemently disagree" with the decision.

6. **Barry Bonds**

A) Found **guilty of obstruction of justice in connection with his testimony before a grand jury investigating illegal steroids distribution at BALCO**

B) **Avoided prison sentence** prosecutors were seeking as the jury was **undecided on four counts of perjury.**

7. **Roger Clemens**

A) Judge Walton **declared a mistrial** in the federal government's perjury case against former baseball star Roger Clemens, holding that Clemens was unfairly prejudiced after prosecutors showed jurors evidence that he had specifically ruled inadmissible – videotaped remarks by Andy Petitte stating that he told his wife that Clemens confessed to using performance-enhancing drugs to him.

B) New trial is under way

VI Concussions

1. NFL

a. More than **1,800 plaintiffs, over 70 lawsuits filed against** the NFL and some against the NFL's helmet manufacturer
b. Including yesterday our first **punter, ex-Lion Jim Arnold**
c. NFL concussion litigation.com

- **Plaintiffs' Arguments**
  - NFL was aware of **risks and evidence of repetitive brain injuries and concussions** for decades, but **deliberately ignored and actively concealed the information from players**
  - **Failed to disclose true risks of repeated traumatic brain** and head impacts
  - Failed to take appropriate steps to prevent, minimize and/or mitigate repeated traumatic brain and head impacts
  - **Through the Mild Traumatic Brain Injury Committee**, which was created to research and ameliorate the impact of concussions on NFL players engaged in a disinformation campaign
  - Deliberately **created false scientific studies and spread misinformation** concerning the cause and effect relation between brain trauma in NFL games and practices and latent neurodegenerative disorders and diseases
  - Fraudulent concealment
  - **Negligence**
  - **Argument that the league had a duty to warn and inform the players, duty to protect the players, and a duty to not increate the risks of brain injury**

- NFL's Arguments
  - Motion to dismiss based on **Section 301 of the LMRA preempts** all of the plaintiffs' claims because they either arise under the CBA or are substantially dependent on an interpretation of the terms of the CBAs
    - Player response to that is that any Claim Arising Out Of Conduct Which Occurred Prior to 1968, or Between 1988 and 1993, Not Preempted
  - If the cases proceed, then other arguments will be:
    - Lack of **causation**
    - **Assumption of risk**
    - **Statute of limitations**

2. NCAA

a. Back in **September, a class action was filed against the NCAA in the Northern District of Illinois, followed by 2 others that were eventually consolidated**

i. **Negligence, fraudulent concealment**, and unjust enrichment
ii. **Failure to educate** coaches and students about symptoms
iii. **Failure to teach** correct methods for tackling
iv. **Failure to implement appropriate guidelines** for screening, detection, and treatment or support system

VII Intellectual Property

1. Right of Publicity

A) ***Hart v. Electronic Arts***

(1) **District of New Jersey**, September 2011
(2) **Former college quarterback** brought class action claiming EA Sports violated his right of publicity by using his **likeness and attributes in the NCAA Football video game**
(3) With **intent to sell more games by making the game more realistic**
(4) If it's in the game, it's in the game
(5) EA filed for **summary judgment**, alleging that use of the players likeness was protected by the **first amendment**
(6) Court held that the use of likeness was **sufficiently transformative** to be protected under the First Amendment
(7) Focused on the fact that EA **created a mechanism by which the virtual player could be altered**, with different height, weight, different hairstyles, etc.
(8) Recognized inconsistent with *Keller*, but *Keller* was at motion to dismiss, and *Keller* did not focus on ability to manipulate the images of the players
(9) According to judge, "**the goal of the game is not for the user to *"be"* the player. Instead, the image serves as an art-imitating-life starting point for the game playing experience."**

B) ***Davis v. Electronic Arts***

(1) **Northern District of California**, March 29 2012
(2) Retired NFL players brought suit for violation of right of publicity for use of their images in Madden NFL on "historical teams"
(3) In the most recent versions of the game, players are not identified by name or jersey number, though in older versions it did include jersey numbers
(4) Instead, identified by key attributes—height, weight, etc.— in their avatars
(5) EA filed **motion to dismiss based on first amendment grounds**
(6) Denied, following *Keller*, because the plaintiffs appear in their conventional role as football players, playing football—**relatively literal, though skilled, translation of players' images into the video game**. **Digital equivalent of transferring the 3 Stooges' images onto a t-shirt**
(7) **And, not protected b/c concerns matter of public interests**
(8) **No reporting or recreating of historical games or facts; designed for play**
(9) **Distinguished from fantasy games where 8th circuit held that public interest at stake**

C) **Retired NFL Players v. NFL Films**

(1) Filed in **July 2011**, **right of publicity** and Lanham Act claims
(2) Use names and images on **NFL website, NFL films productions**, etc.
(3) <u>Plea for fairness</u>
(a) These retired players **suffer severe physical disabilities** as a result of the sacrifices they made to make the NFL what it is today.
(b) **Many of them are struggling financially** while the league makes billions

D) **<u>O'Bannon</u>**
(1) **Bill Russell** joined the class
(2) In February, Magistrate Judge **blocked broad discovery attempt by the plaintiffs that included all tv contracts and licensing agreements** related to football and basketball
(3) But, did recently grant the plaintiffs' request to depose NCAA President Mark Emmert.

E) **<u>Grant v. NFLPA</u>**
(1) In September 2011, federal judge in CA **denied motion to dismiss by NFLPA of a class-action suit by 5 retired NFL players** who claim that the union failed to secure licensing agreements on their behalf
(2) Stems from the successful 2007 lawsuit brought by retired players who had signed Group licensing Agreements with the NFLPA
(3) These retired players did not sign the GLA but claim that the PA still owed a fiduciary duty to them

F) **Gilbert Arenas**
(1) Gilbert Arenas tried to block ex-fiancé from going on VH1's Basketball Wives, because "**Arenas suggests that discussion of his family life isn't sufficiently related to his celebrity to render BWLA's use of his identity a matter of public concern. Contention is belied by the thousands of Twitter users who follow Arenas as he tweets about a variety of mundane occurrences**.

2. **Trademark:**
A) **USOC** informed director of the **Redneck Olympics**, that they would file an infringement lawsuit against him if he did not rename his event, alleging that it has the **exclusive right to use the word "Olympic" pursuant to the Ted Stevens Olympic and Amateur Sports Act**.
B) Brooks continues to defend his event, claiming **that it is a parody** of the official Olympics and is protected **as fair use**
C) ***Redneck Olympics Event--*** *Cigarette Flip, Bobbing for Pigs' Feet , Mud Pit Belly Flop, Toilet Seat Throwing, Big Hair Contest, Seed Spitting, Dumpster Diving*

VIII NCAA

1. **Penn State and the Jerry Sandusky** saga
   A) Sandusky trial scheduled for June 5th, though his lawyer is seeking to push that back
2. **Syracuse and the Bernie Fine** scandal and the subsequent defamation suits filed against Jim Boeheim for his strong reaction to the initial allegations
3. **University of Miami and the Nevin Shapiro** saga
4. **UNC and the tweet from Marvin Austin** about getting the "tenant rate" at a club in Miami that launched an NCAA investigation that uncovered multiple major violations, including academic fraud, impermissible benefits from agents, and a failure to monitor
   A) Led to resignation of the AD and the firing of football coach Butch Davis
5. **Rule changes**
   A) **Additional $2,000 towards full cost of attendance—override by schools**
   B) **Multi-year scholarships**
      (1) Part response to Agnew, part response to over-signing
      (2) Nearly overridden but survived by the thinnest of margins
   C) **Raised academic requirements for teams to be able to participate in NCAA-sponsored championships or bowl games**
   D) Likely to continue to see changes in NCAA rules, panel later during this conference

6. **Title IX**

- Case brought by female students at UC-Davis after they were cut from the men's wrestling team
- Argued violations of the Equal Protection Clause and Title IX
- Davis argued that it was in compliance with Title IX under prong 2 of the 3-prong test which looks to see if there is a continuing practice of program expansion for the underrepresented gender
- Determined there had not been, and that in fact opportunities had shrunk
- Case recently settled for $1.3 million

IX Contracts

1. **Rashard Mendenhall**
    a. Mendenhall got a legal victory last month in his case versus Hanesbrands when the court denied Hanes' motion for judgment on the pleadings
    b. You might recall this saga unfolding last year
    c. Mendenhall had signed a deal with Hanesbrands in 2008 to advertise and promote the Champion brand for Hanes
    d. Deal originally ran through 2011 and then was extended through 2015 back in August 2010
    e. In that extension, a more extensive Morals Clause was included, which read:
        i. **If Mendenhall…becomes involved in any situation or occurrence tending to bring Mendenhall into public disrepute, contempt, scandal, or ridicule, or tending to shock, insult, or offend the majority of the consuming public or any protected class or group thereof, then we shall have the right to immediately terminate this Agreement. Hanes' decision on all matters arising under this Section shall be conclusive.**
    f. Mendenhall started using twitter, where he refers to himself as a "**conversationalist and professional athlete"** in January 2011, and from March through May 2011 "candidly expressed his views about Islam, women, parenting, and relationships and made comments in which he compared the NFL to the slave trade"
        i. According to the complaint, Hanes never suggested that these tweets were problematic
    g. On May 2, 2011, Mendenhall sent out a series of tweets regarding Osama Bin Laden, whose death had been announced the day prior. They included:
        i. "**What kind of person celebrates death? It's amazing how people can HATE a man they never even heard speak. We've only heard one side…"**
        ii. "I believe in Gd. I believe we're ALL his children. And I believe HE is the ONE and ONLY judge."
        iii. "We'll never know what really happened. I just have a hard time believing a plane could take a skyscraper down demolition style."
    h. 2 days later, Mendenhall issued an explanation, saying that he is not in support of Bin Laden or against the US but wanted to generate an honest and open discussion and talk about the hypocrisy of celebrating a man's death—"**during 9/11, we watched in horror as parts of the world celebrated death on our soil. Earlier this week, parts of the world watched us in horror celebrating a man's death."**
    i. The next day, Hanes sent a letter terminating Mendenhall pursuant to the morals clause, and then made a statement through ESPN:
        i. The opinions "**were inconsistent with the values of the Champion Brand and with which we strongly disagree."**
    j. Mendenhall filed suit claiming the termination violated covenant of good faith and fair dealing, was unreasonable, and inconsistent with course of conduct of the parties, Hanes moved for judgment on pleadings, and court denied,

i. holding that despite the broad language of termination in the morals clause that gives Hanes discretion to terminate, **must exercise that discretion in good faith**

ii. Public statements by Hanes indicated that it terminated Mendenhall because it strongly disagreed with the comments, but mere disagreement would not trigger Hanes' termination rights

iii. And, question of fact as to the nature of the public's response to the tweets

iv. So, not appropriate for determination at motion for judgment on pleadings stage

2. **Marist v. Brady**
    a. Matt Brady was head basketball coach at Marist College, signed a 4-year contract extension with the school in the summer of 2007, and then within months left to coach James Madison
    b. Some interesting terms on Brady's contract
        i. There was no buyout clause
        ii. But, could not enter into employment discussions with any teams and could not accept a job with another team without Marist's written consent
        iii. If Brady left, he had to **end all contact with all Marist bball recruits and could not offer a scholarship to any current Marist players or to any players he or his staff had recruited to play at Marist**
    c. Marist granted Brady permission to leave for JMU, but insisted he abide by the other terms of the K
    d. Marist alleged that Brady continued to contact Marist recruits and directed them to come to JMY with him and that 4 Marist recruits signed scholarships with JMU
    e. **Marist claimed breach and sued Brady and JMU, but has a tough argument here because this impacts the student-athletes**
        i. **They claim that students should have the unfettered right to attend the school of their choice,** BUT
        ii. Coaches must leave up to the terms of their contract
    f. At the end of the 2008–2009 season, the Dukes were selected for the inaugural CollegeInsider.com Postseason Tournament. JMU made the semifinals before losing to CAA conference rival and eventual CIT champion Old Dominion Monarchs. The men's basketball team has compiled an all-time record of 567–432.
    g. This year, the team finished 12-20 in the Colonial Athletic Conference
    h. Marist finished 14-18 this year
    i. Marist settled with JMU but went to trial against Brady
    j. Verdict came down yesterday-- Jury found that Brady had breached his contract but that Marist suffered no monetary

X Antitrust

1. Ray Agnew lawsuit

- Agnew had scholarship his freshman year, received offers from 3 other schools
- Injured during his sophomore year and told during his junior year that his scholarship would not be renewed
- Successfully appealed to get his scholarship for his junior year even though he wasn't on the team, but received no scholarship for his senior year
- Claim that is price fixing conspiracy for schools not to be able to offer multi-year scholarships to compete for student-athletes
- **Failed to plead a relevant market for antitrust purposes**
- 7th Circuit has already rejected idea **of labor market in college sports** context
  - (rambling opinion in *Banks* that they asked court to ignore)
- **No Market for bachelor's degrees**
  - implausible as a matter of law because people cannot simply purchase bachelor's degrees at Division I colleges and universities. **Notwithstanding pop culture lyrics to the contrary, you can't just "mess around and get [a] college degree." Bruno Mars, "Lazy Song," *Doo–Wops & Hooligans,* Atlantic Records (2011).**
- Dismissed with prejudice

2. <u>Breaking news: EA Sports</u>

A) **Class action lawsuit filed by customers claiming that its exclusive deal with the NFL drove up the price of its Madden NFL game**

B) Reports are that they have reached a settlement in principle

XI Ownership Issues

1. Dodgers Sale

A) The divorce, the horrible incident with the attack on Giants Brian Stow

B) In April 2011, Bud Selig announced he is appointing a trustee to oversee "all business and day to day operations" of the Dodgers after McCourt takes out a $30 million loan to make payroll.

C) In June of 2011, **Frank and Jamie McCourt announced that they settled the ownership issue dispute, but it is contingent on MLB approving a new broadcasting contract with FOX TV**. Selig is reported "likely to veto" the proposed contract. Indeed, on June 20, 2011, **Selig invoked the rarely used "best interests of baseball" clause in rejecting the deal**, two months after appointing Tom Shaffer as a trustee to oversee day to day operations of the team after McCourt takes out a $30 million loan to make payroll. **vetoed the proposed contract on the basis that too much of the upfront cash ($173.5 million) would be used to pay Jamie under the divorce settlement.**

D) With a $30 million payroll coming due on June 30, 2011, the **Dodgers file Chapter 11** in Wilmington Delaware on June 27, 2011.

E) When the bankruptcy was initially filed in late June, McCourt steadfastly took the position he was intending on keeping ownership of the team, and **filed a motion seeking to have the Bankruptcy Court oversee an auction of the media rights**

F) **MLB, conversely, took the position that its decisions to reject the media contract were not reviewable by any Court under the contractual restrictions agreed to by McCourt when he acquired the team in 2004 (**ironically, from News Corp. which owns Fox). This led to a flurry of litigation,

G) MLB filed a motion asking the Bankruptcy Court to allow MLB to file its own plan of reorganization that would provide for a sale of the Dodgers to a buyer acceptable to MLB. MLB takes the position that it is the sole arbiter of who is acceptable as an owner and who is not.

H) The Dodgers countered that MLB (and more specifically, Selig) has breached its agreements with the Dodgers by treating the Dodger's unfairly and differently than the other owners of teams in MLB

I) Fox sued the Dodgers alleging that the Dodgers violated their exclusive television contract by soliciting bids and other efforts to prepare to sell television rights to future Dodgers broadcast rights.

J) On November 1, 2011, MLB and the Dodgers announced they had in fact reached a settlement that would involve a sale of the team and related assets (with the Blackstone Group handling the sale).After a battle in bankruptcy court, the Los Angeles Dodgers were sold to a group led by Magic Johnson and Stan Kasten.

2. Mets

- Owners of the New York Mets agreed to pay $162 million to settle a lawsuit by the trustee seeking money for the victims of Bernard Madoff's fraud,
- The deal was announced in U.S. District Court in New York on Monday just as a trial was about to start over whether they had acted in bad faith in their dealings with Madoff over a 25 year period and ignoring signs that Madoff was a fraud
- The settlement calls for payments over a five-year period and Wilpon and Katz will not have to pay any cash until the fourth year.
- Picard's original complaint was filed in bankruptcy court in December 2010, seeking $1 billion, but it was whittled down to $386 million.

3. **Kevin Costner**
   A) Owners of the Illinois-based Lake County Fielders sued the city of Zion and its mayor alleging that city officials and developers misled them into believing that a permanent stadium would be built for the team. The Lake County Fielders played their inaugural season in 2010 at a temporary stadium in Zion, IL with the impression that a permanent stadium would be built prior to the 2011 season.

4. **Mavs and Mark Cuban**
   A) The Dallas Mavericks and Radical Mavericks Management, the team's management company led by Mark Cuban, filed a motion to dismiss a lawsuit filed by former Mavericks' owner Ross Perot, Jr. for **mismanagement of the franchise**, claiming that they could not legitimately be accused of mismanagement after leading the Mavericks to an NBA championship in 2011. According to Perot's filing, the team has suffered a net loss of $273 million since Cuban and RMM had taken over ownership of the team. The complaint also alleged that the Mavericks had more than $200 million in debt due to what it deemed a "litany of questionable business, financial, and personnel decisions" by Cuban and RMM. Perot claims that these decisions have caused the team to lose "substantial investment value." Cuban and RMM filed a motion to dismiss that repeatedly referred to the team as the "World Champion Dallas Mavericks" and centered almost solely around a large picture of the Maverick's NBA Championship celebration, stating that the team's success shows that "there can be no genuine question that Hillwood's claims of mismanagement lack merit and . . . should be disposed of on summary judgment

XVI Torts

- **Not bounty gate but: ►Indiana's Court of Appeal applied a new rule to its analysis of an injury sustained by a "team mom" when she was hit in the knee by a bat swung by a team member**. The team member at issue was the coach's son, and was **warming up "on deck"** when plaintiff walked by the dugout out as she was **passing out bubble gum**. Plaintiff alleged various theories of tort liability, and defendants moved for summary judgment. The court found that the coach had immunity, and that the other defendants were due summary judgment because Plaintiff was a participant and assumed the risk of the harm she suffered. The Courts of Appeals held that the proper analysis was **to focus on whether the injury was sustained as part of the "ordinary course of the game," not whether the team mom was a "participant,"** and remanded back to the trial court for further proceedings. *See Welch v. Young*, No. 79A02-1012-CT-1407 (Ct. App. Ind. 2011)

- In *Bukowski v. Clarkson University*, __ N.Y.S.2d ___, 2011 WL 2713712 (N.Y.A.D.3 July 14, 2011), a **divided appeals court** held an injured pitcher who was **struck in the face by a baseball during an indoor "live" batting practice had assumed the risk of injury** and was therefore unable to sue his school. Despite being experienced, the player argued the **inherent risk of being struck by an errant baseball was increased** since the defendants did not require **protective screening** for indoor "live" practices and because the **poor lighting conditions** made it difficult to see and react to batted balls. At trial the court rejected the negligence action. The appellate court found the evidence could not defeat an assumption-of-risk defense. **Two dissenting judges held a participant does not assume the risk of injury presented by concealed or unreasonably increased risks beyond those inherent in the sport.**

Bounty Gate

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