

# THE SPORTS LAWYER

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## January 2015

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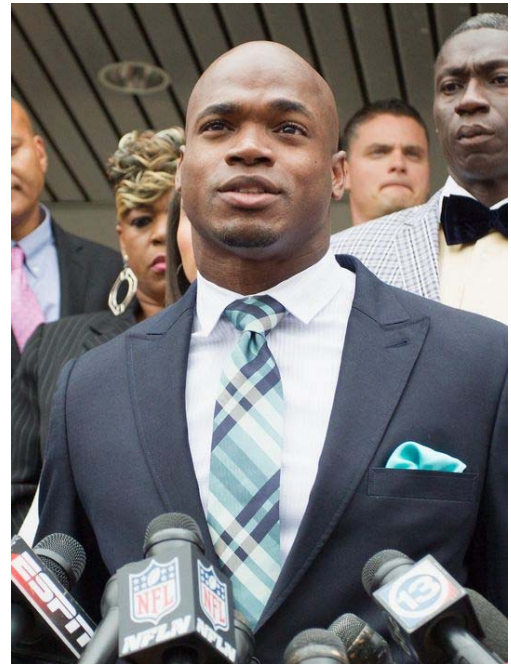
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# National Football League

## Adrian Peterson Appeals Arbitration Award

On December 15, 2014 the National Football League Players Association (NFLPA), on its own behalf and on behalf of Adrian Peterson, filed a suit against the National Football League (NFL) and the National Football League Management Council in the United States District Court for the District of Minnesota. The NFLPA and Peterson are petitioning to vacate, pursuant to section 301 of the Labor Management Relations Act and Section 10 of the Federal Arbitration Act, the arbitration award issued by an NFL appointed arbitrator.

Peterson was suspended on November 18, for assaulting his four year-old son by disciplining the child with a wooden switch. A league-appointed arbitrator, Harold Henderson, upheld Peterson's suspension in early December preventing Peterson from applying for reinstatement until April 15, 2015. While he had effectively been on paid leave through the process, the arbitrator's decision turns Peterson's suspension into a fine of roughly \$4.147 million, representing the loss of six game checks from this season. The NFLPA claims that Henderson, who worked in the league office for about two decades, was a "partial arbitrator who exceeded the scope of his authority." The complaint further claims that Peterson was punished retroactively under the newly updated personal conduct policy, arguing that the new conduct policy was instituted unilaterally by NFL Commissioner Roger Goodell and was not collectively bargained. The plaintiffs are seeking a court order to vacate the arbitration award as well as such other relief as the court may see fit, including Peterson's immediate reinstatement into the NFL.



"I love my son. I love my kids, my family," said Peterson. "I take full responsibility for my actions. I regret the situation. I love my son more than any one of you could even imagine." The petition was submitted by Barbara Podlucky Bernes of Burns & Miller, P.A.; Jeffery L. Kessler, David L. Greenspan, Johnathan J. Amoona, and Angela A. Smedley of Winston & Strawn LLP; and DeMaurice F. Smith of the NFLPA. In his ruling, Henderson called the case "arguably one of the most egregious cases of domestic violence" to occur during Commissioner Goodell's tenure. The NFL general counsel is Jeff Pash.

-- Breard Snellings

## California Judge Dismisses Former Players' Painkiller Lawsuit Against NFL

On December 17, 2014, U.S. District Judge William Alsup of the Northern District of California dismissed a class-action suit filed by more than 1,300 former National Football League (NFL) players against the NFL. Judge Alsup held that the plaintiffs must bring their grievances under the collective bargaining agreement between the league and the NFL Players Association.



In recent years, former players and observers have lambasted what they characterize as the NFL's sordid history of neglecting their players' long-term health. To target this criticism specifically at the NFL's negligent administration of painkillers, several hundred former players—headlined by Hall of Fame defensive end Richard Dent and former Super Bowl-winning quarterback Jim McMahon—filed this lawsuit on May 20, 2014, in the U.S. District Court for the Northern District of California in San Francisco. The class eventually expanded to more than 1,300 former players. Since 1969, according to the complaint, NFL teams have violated a duty of reasonable care by administering painkillers to players without proper proscriptions—in some cases even falsifying players' names on prescriptions—in order to mask injuries and curb lost playing time. Teams undertook these practices, the complaint alleges, without warning players about the perils of relying on addictive pain medications, and in violation of the federal Controlled Substances Act. As a direct result, thousands of players developed debilitating addictions and suffered physical maladies, psychological trauma, and economic loss. The suit's causes of action include negligence claims, fraud claims, and derivative claims for declaratory relief, medical monitoring and loss of consortium. In response, the league filed a motion to dismiss asserting that Section 301 of the Labor Management Relations Act preempts the suit's claims. Since the claims involved allegations against independent franchises and franchise personnel, the NFL argued, the former players were compelled to grieve their claims under the Collective Bargaining Agreement's provisions.

In a 22-page opinion, Judge Alsup endorsed the NFL's reasoning and held that Section 301 Labor Management Relations Act preempted the plaintiffs' claims. In evaluating the negligence claims, Alsup highlighted the “affirmative steps the NFL has taken to protect the health and safety of its players, including the administration of medicine.” Alsup cited the gradual expansion of players' medical rights and imposition of guidelines on clubs' medical personnel over the course of several collective bargaining agreements (CBAs), including the implementation of uniform duties on all clubs in the 2011 CBA. Because the negligence claims against the league derived from the league's alleged lack of care in policing individual franchises, investigating such negligence necessitated “consulting the specific CBA provisions that cover the individual clubs' duties to the players.” Thus, Alsup concluded, the collective bargaining duties imposed by the league on its clubs supplanted the “vagaries of common law” that would otherwise govern the suit's negligence and fraud claims. Consequently, those claims and the suit's other derivative claims were dismissed.

“We were surprised and disappointed by this judge's ruling and plan to file an amended complaint or appeal,” said Steven D. Silverman, an attorney for the plaintiffs. “Our clients were courageous for bringing this case, proud of the changes they've already made for current and future players, we will continue to avail ourselves of the judicial process to further those goals.” The players were represented by Silverman, William N. Sinclair, Andrew G. Slutkin, Stephen G. Grygiel, and Joseph F. Murphy, Jr. of Silverman, Thompson, Slutkin & White LLC in Baltimore, Maryland, as well as Thomas J. Byrne and Mel T. Owens of Namanny Burne & Owens, P.C. in Lake Forest, California.

-- Fritz Metzinger

# **National Collegiate Athletic Association**

## **Michigan Legislature Passes Bill Banning College Athlete Unions**

On December 16, 2014, the Michigan Legislature passed a bill that states students athletes are not public employees and thus not eligible for representation or collective bargaining rights. Bill No. 6074 passed in the Michigan House of Representatives on December 9 and was later approved by the Michigan Senate and Michigan Governor Rick Snyder .



The bill is a response to attempts by football players at Northwestern University in Illinois to unionize. In March 2014, the National Labor Relations Board ruled that Northwestern players could be considered employees and were eligible to form a union; the university appealed that ruling, and the result is pending. Although no university in the state of Michigan has seen a similar move by collegiate athletes, the bill's sponsor Al Pscholka described it as a "proactive" step towards ensuring that athletes at the state's many universities remain students. The Republican-controlled House passed the bill 59-50 while the Senate passed it 27-11 with no discussions. Both votes were mostly along party lines.

"We should be sending the message to our student athletes that we want you to be students first," said Pscholka. Nick Ciaramitaro, legislative director for Michigan American Federation of State, County and Municipal Employees (AFSCME) which represents thousands of the state's public employees, stated that the issue deserves discussion but questioned whether that debate should be held during a lame duck session. "The concern always is the lame duck takes up these large issues without adequate study and consideration," said Ciaramitaro. Governor Snyder signed the bill into law on December 30, and affirmed the state's legislatures belief that college athletes are students "first and foremost."

*-- Spencer Low*

## University of Iowa Reassigns Associate Athletic Director

On December 8, 2014, the University of Iowa reassigned Jane Meyer, its senior associate athletic director since 2001, to facilities management to supervise the university's ongoing reconstruction. The reassignment comes amidst the university's belief that it will soon be involved in litigation with Meyer's current partner, former women's field hockey coach Tracey Griesbaum, over a wrongful termination lawsuit.

The university's athletic director Gary Barta announced that the reassignment would last until the issue with Griesbaum is fully resolved. The move was made in response to legal counsel the university received as it braces for a likely lawsuit that will claim that it has a bias against gay, female coaches. Barta said that the advice it received was the best solution for all the parties because it removed Meyer from the decision-making process that the university's athletic department will face given the impending suit. Griesbaum's attorney, Tom Newkirk, says that the reassignment is unconstitutional and retaliatory. "It is very concerning that they are removing what was the No. 1 female in the athletics department simply because her partner is challenging discrimination toward females at the University of Iowa." The University of Iowa has stated that Meyer's salary will remain unchanged.



"Leaving Dr. Meyer in her leadership position of senior associate director of athletics has presented many challenges for the athletics department and the university's defense of Ms. Griesbaum's imminent litigation," Barta said. President Sally Mason did not comment on the reassignment but re-affirmed the university's decision to fire Griesbaum. Meyer did not comment on the issue, and any possible action she might take will likely depend on how and when Griesbaum's suit goes forward.

*-- Ruben Garcia*



# Major League Baseball

## Discrimination Suit Filed Against MLB

On December 11, 2014, former employee Sylvia Lind sued the Major League Baseball (MLB) Office of the Commissioner, Commissioner Bud Selig, and Executive Director of Baseball Development Frank Robinson in the United States District Court Southern District of New York for discrimination. Lind claims that the MLB had discriminatory practices based on gender, age, and national origin when hiring and promoting within the organization. Lind further claims that these discriminatory practices are evidenced by the fact that no Hispanic female holds the position of vice president and that she has been passed over for positions given to men with lesser qualifications.

On November 21, 1995, Sylvia Lind was hired by the MLB as a legal supervisor for MLB Properties, Inc. Lind was hired by the MLB after completing her Juris Doctorate degree from Fordham University School of Law. This educational background made Lind overqualified for the position of legal supervisor. Therefore, during her time as a legal supervisor, Lind was given similar work as a staff attorney, which was a position that received a much higher salary. However, when Lind sought a promotion, Lind was told that she was not “acting as an attorney” and was denied the promotion. In June 1997, Sylvia Lind moved into the position of Supervisor of Minor League Operations in the Baseball Office of the Commissioner and worked under former Executive Vice President of Baseball Operations Jimmie Lee Solomon. With the job change, Lind sought an increase in salary to at least \$50,000, but was denied because her salary was based on a salary increase percentage table. In 1998, Solomon and Lind developed the “All-Star Futures Game,” which was a showcase of Minor League talent. After developing this event, Solomon was promoted to Senior Vice President and ultimately Executive Vice President of Baseball Operations in 2005. Sylvia Lind was placed in charge of Minor League Operations. In 2009, Solomon hired Ben Baroody, a white male in his twenties, to the position of coordinator in Minor League Operations. In 2010, Solomon became the Executive Vice President of Baseball Development, but Sylvia Lind was never considered for this position or the position of Executive Vice President of Baseball Operations. Ultimately in 2012, Solomon was terminated from his position as the Executive Vice President of Baseball Development and was ultimately replaced by baseball Hall of Famer Frank Robinson.



Although Lind had reported to Solomon and helped develop the majority of programs, she was never considered for the position. On the other hand, Robinson did not have the skills or experiences for the position and only had a high school diploma. While working for Robinson, Sylvia Lind only received negative feedback and had her responsibilities reduced drastically. On the other hand, Ben Baroody saw his role in the organization expand under Robinson and was promoted at least five times in two years. Lind believed that the difference in treatment between Baroody and herself was due to age, race, and gender because she had 19 years of experience and was much more qualified. Lind seeks a suit for employment discrimination in federal court under 28 U.S.C. Section 1332 (a)(1) and (c)(1). Sylvia Lind seeks

injunctive relief, declaratory relief, compensatory damages, and punitive damages for the discriminatory practices of the MLB and their executives.

“While plaintiff has always maintained a professional demeanor to the public and endeavored to do what is in the best interest for MLB, it has been extremely disheartening, utterly demoralizing and extraordinarily taxing on her, both emotionally and psychologically, to almost singlehandedly perpetuate what she has known to be the diversity and equal employment opportunity falsehood,” Lind’s lawsuit read. Lind is represented by Ricardo A. Aguirre of the Law Office of Ricardo A. Aguirre in New York. According to MLB spokesman Joe Blundell, the allegations of discriminatory practices are “absolutely without merit.”

-- Alex Heath

## Other News

### **Oklahoma Judge Declines to Hear Lawsuit on High School Football Refereeing Errors**



On December 11, 2014, District Judge Bernard M. Jones II denied a request to replay part of an Oklahoma high school football playoff game. Due to an incorrect call by a referee in the final minute of a quarterfinal game, which ultimately cost Frederick A. Douglass High School (“Douglass”) the game, Oklahoma City Public Schools (OKCPS) sought an injunction against the Oklahoma Secondary School Activities Association (OSSAA) to prevent the winning team, Locust Grove High School (“Locust Grove”), from playing its semifinal game. Judge Jones said there was no precedent for replaying the game and that a replay would be unfair since there was no way of replicating the conditions of the original game.

The lawsuit arose after a controversial ending in a game between Douglass and Locust Grove in the 3A state quarterfinals. With one minute, four seconds remaining, Douglass scored a touchdown that would have given them a 25-20 lead. However, due to inadvertent contact between a Douglass coach and a referee, the touchdown was called back, and the team lost 20-19. The OSSAA has admitted that the penalty was incorrectly assessed. The proper decision would have been a five-yard penalty on either the extra point or the ensuing kickoff, instead of negating the touchdown. After the OSSAA refused to give Douglass credit for the touchdown and replay the final minute or to replay the game in its entirety, OKCPS filed a lawsuit in Oklahoma’s Seventh Judicial District, seeking an injunction against Locust Grove from proceeding onto its next game. It also sought the implementation of either alternative to the game’s final outcome.

Judge Jones initially issued a temporary restraining order. However, a week later Judge Jones denied additional changes requested by OKCPS, citing worries that a replay could create a “slippery slope of solving athletic contests in court instead of on campus.” While he acknowledged the negative impact of the referee’s decision, he noted that both schools agreed to be bound to the final decision of the OSSAA. As a result, the 3A playoffs resumed. In their semifinal game, Locust Grove lost to Heritage Hall by a score of 53-42.

“Unfortunately, the outcome of the hearing did not produce the results we hoped for,” said OKCPS District Athletic Director Keith Sinor following the decision. OKCPS was represented in this case by their general counsel Brandon Carey. “It would be a travesty for high school athletics — maybe all of athletics — if we’re going to let the courts get involved every time there’s a bad call,” said Locust Grove’s head coach Matt Hennesy. OSSAA was represented by Mark S. Grossman of Crowe & Dunlevy in Oklahoma City. Oklahoma City public school officials said they would not appeal the judge’s decision.

*-- Deniz Koray*



## Nikes Sues Former Employees for Misappropriation of Trade Secrets

On December 8, 2014, athletic apparel designer Nike, Inc. sued former employees Denis Dekovic, Marc Dolce, and Mark Miner in the Circuit Court of the State of Oregon for the County of Multnomah for misappropriation of trade secrets, breach of contract, and conspiracy. Nike alleges that the former employees contracted to build a design studio with the company's competitor Adidas, using confidential information stolen from Nike during their employment.

Nike employed all three defendants for multiple years before they achieved their high-level positions. After nine years at Nike, Dekovic was the Senior Design Director for Nike's Global Football department in 2014. He oversaw new shoe designs for specific players and events, including the World Cup, and accessed information on the materials, designs, and manufacturing secrets about shoes produced by Nike. Similarly, Dolce worked at Nike for nine years was the Design Director of Nike's Sportswear by the time he departed in 2014. He managed a team of designers for basketball, football, and cross-training shoes. He collaborated with high profile basketball stars such as Kobe Bryant, Kevin Durant, and LeBron James; he oversaw the update of vintage football, basketball, and cross training shoes scheduled to be released over the following years. Moreover, Miner worked six years at Nike, and when he left the company he was Senior Footwear Designer of Nike Running. He contributed to multiple major products including NIKE Free and AirMax and was involved in shoes designs that are not yet released.



The employees each signed a Covenant Not to Compete Agreement barring the disclosure or copying of Nike's proprietary information and soliciting competitors for consulting and employment opportunities. However, in April 2014, the three employees devised a plan for a design studio and contacted Adidas about funding while still employed at Nike; upon successfully negotiating financial backing for the studio with Adidas, they resigned from Nike. They informed Adidas of their Covenants Not to Compete, and Adidas assured them legal aid if Nike brought suit. In addition, before departing, the employees allegedly copied information from their Nike computers about current product designs, plans for future products and their release dates, and star athletes Nike sought to sponsor. In its complaint, Nike alleges the defendants breached their Covenant Not to Compete Agreements and violated Oregon's laws governing misappropriation of trade secrets. Nike seeks \$10 million in compensatory and punitive damages.



Nike said, "Nike is an innovation company and we will continue to vigorously protect our intellectual property." Nike is represented by Jeffrey H. Reeves, Jeffrey T. Thomas, Joseph A. Gorman, and Sean S. Twomey of Gibson, Dunn & Crutcher LLP in Irvine, California and Amy Joseph Pedersen, Laura A. Rosenbaum, and Ryan S. Gibson of Stoel Rives LLP in Portland, Oregon.

-- *Caroline Carmer*

## Former and Current UFC Fighters File Antitrust Suit against UFC

On December 16, 2014, current Ultimate Fighting Championship (UFC) fighter Cung Le and former fighters Jon Fitch and Nate Quarry filed an antitrust suit in the United States District Court for the Northern District of California against Zuffa, the parent company of the UFC. The fighters are alleging that UFC unlawfully stifles competition from other mixed martial arts (MMA) leagues by not allowing the fighters to bargain with the other leagues for their services. The fighters say that because they are not allowed to bargain with other leagues, UFC is able to impose strict employment restrictions and severely underpay their fighters.



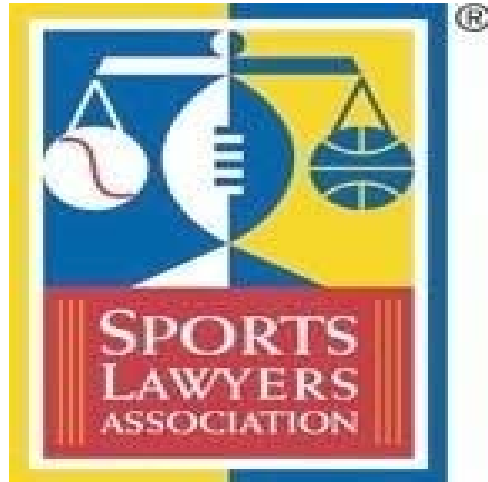
The fighters claim that UFC has established a monopoly or monopsony in the MMA fighting market through the use of such clauses such as the “champions clause” present in most fighter contracts which automatically extends a fighter’s contract when he becomes a champion, effectively removing his leverage to negotiate a new deal when he is at the top of his division. They also require that venues which can support MMA bouts supply their services to the UFC exclusively. These claims allegedly violate

Section 2 of the Sherman Antitrust Act which bans monopolies. Also, were UFC not owned by Zuffa, there would be a potential violation of Section 1 of the Act, which prohibits corporations or entities from imposing unreasonable restrictions on a person’s earnings. Because there is no union for UFC fighters, they cannot collectively bargain for their contracts and would fall under the category outlined in Section 1. However, because UFC is owned by Zuffa, it is structured as a single-entity sports league and is wholly owned by the company, along with any subsidiaries of the company (the fighters). Single entities are not subjected to Section 1 of the Sherman Antitrust Act because it only regulates competitors.

UFC said in a statement about the suit, “The UFC is aware of the action filed today but has not been served, nor has it had the opportunity to review the document. The UFC will vigorously defend itself and its business practices.” Cung Le, Nathan Quarry, and Jon Fitch will be represented by the Joseph Saveri Law Firm, Cohen Milstein Sellers & Toll, and Berger & Montague respectively. The case will be heard in the U.S. District Court of the Northern District of California, San Jose Division.

-- *Tate Martin*

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