

Legal Issues in

COLLEGIATE ATHLETICS

A Report of Court Decisions, Legislation and Regulations Affecting Collegiate Athletics

Presented by Ice Miller LLP

IN THIS ISSUE

2 Ohio State Wins Permanent Injunctions against Trademark Infringers

The Ohio State University has had back-to-back victories in federal court concerning two trademark infringement disputes occurring in late 2010.

3 Strict Penalties for Violators? Do NCAA Policies Work?

The media and fans all across the country have not been shy in their disgust for the NCAA's decision to levy penalties on violating institutions.

3 Federal Judge Sides with School Sued for Discrimination

A federal judge from the Western District of Pennsylvania has granted a request from Waynesburg University to dismiss a racial discrimination claim brought against the school by a part-time wrestling coach, who sued after he was fired.

4 Does Free Ink Justify an NCAA Suspension of OSU's Pryor?

In the cold of December, Ohioans got some more bad news to add to the states 10 percent unemployment and loss of two Congressional seats. For a short time, it appeared that some of "the" Ohio State University's star football players, including last year's Rose Bowl MVP Terrelle Pryor, may miss this year's bowl showdown with Arkansas.

5 NCAA Hot Topics: Recruiting and Scouting Services

During the recent NCAA Convention, and the annual meeting of the Collegiate Commissioners Association Compliance Administrators, the Ice Miller Collegiate Sports Practice team discussed many of the current hot topic issues related to NCAA compliance.

6 Ex-Compliance Officer-turned Professor Talks Compliance

Earlier this year, Ohio University student Bart Logan conducted an interview with Dr. B. David Ridpath, an assistant professor at



the Ohio University School of Recreation and Sports Sciences where he teaches courses in sports law, marketing and issues in intercollegiate athletics.

8 USF Settles Suit with Former Football Coach Leavitt

The University of South Florida has ended its legal battle with former football coach Jim Leavitt, following his termination for cause a little over a year ago.

9 Winthrop Responds to Former Coach's Complaint

Winthrop University has responded to a lawsuit brought by Melissa Heinz, the former women's soccer coach, who filed sexual harassment and discrimination claims against the school and members of its athletic department.

10 News Briefs

12 Ex-USC Tailback Sues University, Trainer for Lifting Injuries

Student-athlete Stafon Johnson, a senior member of the USC football team during the 2009 season, recently filed a personal injury lawsuit against USC, its former strength and conditioning coach Jamie Yanchar, alleging negligence in connection with a serious injury he sustained in 2009 while training with the team.

Legal Issues in Collegiate Athletics is a publication of Hackney Publications. Copyright © 2011.

The Ice Miller Collegiate Sports Practice offers a full complement of NCAA compliance, legislative and infractions related services that include preventative initiatives, education and training programs, and guidance and representation regarding potential NCAA rules violations. For information, contact mark.jones@icemiller.com

lica

HOLT HACKNEY
Editor and Publisher

THE ROBERTS GROUP
Design Editor

This special version of Legal Issues in Collegiate Athletics has been created in cooperation with Ice Miller LLP. The firm's lawyers and professionals have more than 30 years of cumulative NCAA experience, recently served as NCAA staff members, have firsthand student-athlete and coaching backgrounds, and are well-versed on NCAA rules, regulations and procedures. The Collegiate Sports Practice also has extensive experience with and detailed knowledge of the NCAA infractions and waivers processes, and the operation of the NCAA governance structure.

Please direct editorial or subscription inquiries to Hackney Publications at:

P.O. Box 684611
Austin, TX 78768
(512) 632-0854
info@hackneypublications.com

Legal Issues in Collegiate Athletics is published monthly by Hackney Publications, P.O. Box 684611, Austin, TX 78768. Postmaster send changes to Legal Issues in Collegiate Athletics Report. Hackney Publications, P.O. Box 684611, Austin, TX 78768.

Copyright © 2011 Hackney Publications. Please Respect our copyright. Reproduction of this material is prohibited without prior permission. All rights reserved in all countries.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional services. If legal advice or other expert assistance is required, the service of a competent professional should be sought" — from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

ISSN: 1527-4551

**Legal Issues in
COLLEGIATE ATHLETICS**



Ohio State Wins Permanent Injunctions against Trademark Infringers

The Ohio State University has had back-to-back victories in federal court concerning two trademark infringement disputes occurring in late 2010. The US District Court for the Southern District of Ohio affirmed on November 8 a previous ruling granting The Ohio State University a permanent injunction against defendants Keith Antonio Thomas and GDS Marketing, LLC. Additionally, a settlement was reached in the same court between the University and Maple Street Press, LLC, where the parties agreed to a permanent injunction against the publisher, filed on November 16.

As reported in an earlier edition of *Sports Litigation Alert*, the defendants in the first case, Keith Antonio Thomas and GDS Marketing, LLC, publish a website at www.buckeyeillustrated.com and publish two electronic magazines: "Buckeye Gameday" and "Ohio State Buckeyes E-Book." They also publish numerous print publications in which they sell advertising. These publications "are each replete with infringing uses of Ohio State's exclusive trademarks," according to the court's previous ruling. *The Ohio State University v. Keith Antonio Thomas, et al.*; S.D. Ohio; Case No. 2:10-CV-753, 2010 U.S. Dist. LEXIS 96478; 8/27/10.

The federal court found that Thomas' and GDS Marketing, LLC,'s "unauthorized use of the Ohio of the Ohio State Trademarks is commercial in nature and is intended to, and will, directly compete with the lawful publication, distribution and advertising commercial activities of Ohio State and its licensees to the detriment of Ohio State."

In finding for the University and granting the permanent injunction, the court decreed that "[the defendants] are permanently enjoined from infringing or falsely designating the origin of the Ohio State Trademarks, from using the Ohio State Trademarks in commerce in any way, and

from injuring Ohio State's reputation..." The court ordered the defendants to assign and transfer its domain name www.buckeyeillustrated.com to the University, as well as disclose to the Court and the University the names of all persons and entities "to whom Defendants has[sic] supplied copies of any print publication that includes any of the Ohio State Trademarks... and that Defendants are further ordered to take all legal and equitable measures to regain possession of all copies of any publications containing any of the Ohio State Trademarks..."

Turning to the second case, Maple Street Press, LLC publishes a magazine devoted to Ohio State football, called "Buckeye Battle Cry," which uses many of the Ohio State trademarks without the University's permission. The settlement between the publisher and the university requires Maple Street Press to no longer use the Ohio State trademarks, "to permanently refrain from producing, advertising, selling or giving away the publication 'Buckeye Battle Cry' whether print or electronic", and to make a diligent effort to recover all copies of "Buckeye Battle Cry" previously distributed. ■

The Ohio State University v. Keith Antonio Thomas and GDS Marketing, LLC; S.D. Ohio, Case No. 2:10cv-753, Nov. 8, 2010.

The Ohio State University v. Maple Street Press, LLC; S.D. Ohio, Case No. 2:10-CV-00890, Nov. 16, 2010.

Texas Southern Investigated

Texas Southern University Athletic Director Charles McClelland has confirmed that the NCAA is investigating the program, though he didn't provide details.

"Texas Southern Athletics was selected for a random review of our academic performance program data for the years of 2004-05, 2005-06, 2006-07 and the institution and the NCAA discovered inconsistencies," McClelland said in the statement. "

Strict Penalties for Violators? Do NCAA Policies Work?

By Christian Dennie

The media and fans all across the country have not been shy in their disgust for the NCAA's decision to levy penalties on violating institutions. The common response is something to the effect of "why me?" or "Everyone is doing it." Although everyone may be doing it, the NCAA enforcement staff is charged with eliminating the membership of rampant violations of NCAA rules, which leads to an abundance questions and concerns. Simply put, the question is: do the NCAA's enforcement policies work? These questions are not uncommon in the legal field and often revolve around jail time and capital punishment. Is jail really a deterrent? Is the death penalty really a deterrent? These questions are debated at length in about every forum imaginable, as are those related to NCAA enforcement and penalties. Some would argue the fear of facing the NCAA Committee on Infractions is a deterrent that keeps bad actors at bay. However, Illinois State University professor Chad McEvoy's

research data indicates institutions that have been sanctioned by the NCAA are actually more successful than the institutions that have not been sanctioned.

Espn.com recently reported that the Subcommittee of the Division I Committee on Infractions ("Subcommittee") offered recommendations in October 2008 to the Division I Board of Directors proposing more stringent penalties for violators. The sum of the Subcommittee's reported recommendations are 1) to require all institutions guilty of a major infraction to lose scholarships; 2) impose more television bans; and 3) clarify penalties for repeat offenders. Although these penalties are step in the right direction, are they really deterrents? Does anyone really think the University of Southern California ("USC") or the University of Alabama ("Alabama") will have any trouble finding blue chip recruits willing to suit up for their football teams? The posed question requires a one word answer, doubtful. The only proven penalty that has

value is the "death penalty." As chronicled by Pony Excess and many other articles and books, the decision to impose the "death penalty" decimated Southern Methodist University's ("SMU") football program. In fact, it has taken the program over twenty (20) years to become respectable again. I am not advocating for the imposition of the "death penalty," but that is the only known deterrent that is clearly punitive in nature.

New NCAA vice president of enforcement, Julie Roe Lach, has indicated in multiple interviews and media reports that she and her colleagues are addressing and reviewing the entire enforcement process. Although many agree the enforcement process needs revision, the question is how much and how far? One such area of concern is why student-athletes are punished more stringently than violating coaches. Recently, at a speaking engagement at SMU, I was asked why Dez Bryant was withheld from competition for one season for misinforming

See STRICT PENALTIES on Page 11

Federal Judge Sides with School Sued for Discrimination

A federal judge from the Western District of Pennsylvania has granted a request from Waynesburg University to dismiss a racial discrimination claim brought against the school by a part-time wrestling coach, who sued after he was fired.

In so ruling, the court found, among other things, that plaintiff Charlie T. Heard failed to demonstrate that the school's stated reasons for firing him – assaulting a student athlete — were pretext for a discriminatory reason.

The aforementioned assault occurred on January 28, 2008, when he was overseeing the wrestling team's practice. After an 18-year old freshman performed a wrestling move during live drills, the plaintiff suggest that the move was "comical," stating "make sure you don't do that in a match, because it ain't going to work." The wrestler, Z.B., jumped

up from the mat and walked quickly toward him "in a raging manner, swearing and a mean look on his face." Heard defended himself, striking the wrestler.

The plaintiff was fired, and subsequently sued, alleging claims of racial discrimination. Count I alleged that Defendant discriminated against him because of his race and because of his attempts to recruit African American students, and that it fired or constructively discharged him in retaliation for his opposition to racial discrimination, in violation of § 1981. Count II alleged that Defendant discriminated against him on the basis of his race and treated him differently than other coaches with respect to the amount of pay he received, and that it fired or constructively discharged him because of his race, in violation of Title VII. Count III alleged that Defendant discriminated against

him based on his race and created a racially hostile work environment, in violation of the Pennsylvania Human Rights Act (PHRA).

Reviewing the Title VII/§ 1981/PHRA racial discrimination claims first, the court turned to *McDonnell Douglas v. Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973) and the shifting burden analysis it set forth.

The latter case provides that if the employee presents a prima facie case of discrimination, the employer must "articulate some legitimate, nondiscriminatory reason for the [adverse employment action]." Further, "if the employer specifies a reason for its action, the employee must have an opportunity to prove the employer's reason for the adverse employment action was a pretext for unlawful discrimination."

See FEDERAL JUDGE on Page 11

Does Free Ink Justify an NCAA Suspension of OSU's Pryor?

By Geoffrey Rapp, Professor,
University of Toledo College of Law.

In the cold of December, Ohioans got some more bad news to add to the states 10 percent unemployment and loss of two Congressional seats. For a short time, it appeared that some of “the” Ohio State University’s star football players, including last year’s Rose Bowl MVP Terrelle Pryor, may miss this year’s bowl showdown with Arkansas. According to the Columbus Dispatch, a number of players, including Pryor¹, became the subject of NCAA investigation for receiving free tattoos.² Later, the athletes were also accused of having sold various items of memorabilia.

Ultimately, things may have worked out *better* for Ohio State fans. The NCAA announced a stiff suspension of Pryor and other football players, and a harsh one at that – five games (Ohio State is appealing). But since the suspension was set to take effect at the beginning of the fall 2011 season, Pryor was eligible to participate in the Sugar Bowl. However, in order to let him take the field, Coach Jim Tressel extracted a promise that Pryor would return for his senior season – something that he might not otherwise have been inspired to do. Surprising some, perhaps, Pryor and his fellow players kept their promise.³

NCAA Bylaw 16.02.3 prohibits student-athletes from receiving “extra benefits” not offered to the general public from university employees and boosters:

An extra benefit is any special arrangement by an institutional employee or a representative of the institution’s athletic interests to provide a student-athlete...a benefit not expressly authorized by NCAA legislation. Receipt of a benefit by student-athletes...is not a violation of NCAA legislation if it is demonstrated that the same benefit is generally available to the institution’s students...on a basis unrelated to athletics ability.

Here, the athletes’ tattoos were supposedly provided by Columbus parlor “Fine Line Ink.”⁴ Presumably, the expansive definition of booster would sweep in the shop in question.

Although it seems these players will get to watch the game from the hotel, there are two possible lines of defense. First, is getting a tattoo, which one will surely regret years from now, really a benefit?

According to the American Academy of Dermatology, “tattoo regret is common in the United States.”⁵ Nearly one fifth of 18-50 year-olds with a tattoo have considered getting it removed. And removal is a painful and expensive process – many more tattoo victims likely regret their ink without being interested in going through removal. Estimates of “tattoo regret”⁶ range from one in four to 50 percent⁷ to as high as a whopping

75 percent.⁸ The NCAA “extra benefit” is typically cash under the table, free use of a car or a phone, that sort of thing. A player may regret taking cash if it leads to a suspension, but the cash itself has lasting value. A tattoo – if regretted – may or may not.

But true “value” isn’t the same as market value. Even a worthless tattoo costs money. Getting a tattoo probably counts as a “benefit,” in the sense that it is a service that a person would otherwise, in our market economy, be willing to pay for.

The second line of defense would question whether the free tattoos received were not in fact also available to the general public. According to Fine Line Ink’s myspace page, free tattoos are available to anyone willing to host a tattoo party:

Call and ask us how you can get a free tattoo for hosting a party at our place or yours! Invite all your friends, for food, drinks, and Tattoos & Piercings! Some restrictions apply call shop for details.⁹

So maybe these tattoos – and the offending autographs – were given at a “party”? In that case, the benefit might be one generally available to the public, and thus, not a violation of the NCAA rules.

Coach Jim Tressel no doubt regrets being so sanguine the last time Terrelle’s ink made the news. Then, asked if he liked the new “Buckeye O” tattoo sported by Pryor (a native Pennsylvanian), Tressel commented, “I’m from a different generation I guess.”¹⁰ ■

1 *Ohio State May be Without Terrelle Pryor and Others Because of Alleged Free Tattoos*, BIG LEAD SPORTS, Dec. 22, 2010, available at <http://thebiglead.com/index.php/2010/12/22/ohio-state-may-be-without-terrelle-pryor-and-others-because-of-alleged-free-tattoos/> (last visited Jan. 31, 2011).

2 Tim May & Ken Gorden, *Ohio State looks into claims of tattoos for autographs; Football players could be facing suspensions*, THE COLUMBUS DISPATCH, Dec. 23, 2010, available at <http://www.dispatch.com/live/content/sports/stories/2010/12/23/osu-looks-into-claim-of-tattoos-for-autographs.html?sid=101> (last visited Jan. 31, 2011).

3 Zack Meisel, *Buckeyes bypass draft, hold true to pledge*, THE LANTERN, Jan. 20, 2011, available at <http://www.thelantern.com/sports/buckeyes-bypass-draft-hold-true-to-pledge-1.1903440> (last visited Jan. 31, 2011).

4 Julie Kent, *Terrelle Pryor & Other Key Ohio State Players May Sit Out Sugar Bowl Due to Free Tattoos*, CLEVELAND LEADER, Dec. 22, 2010, available at <http://www.clevelandleader.com/node/15518> (last visited Jan. 31, 2011).

5 Judy Fortin, *Tattoo remorse fuels boom for dermatologists*, CNN.COM, Sept. 10, 2007, available at http://articles.cnn.com/2007-09-10/health/hm.tattoo.removal_1_tattoo-ink-skin-topical-anesthetic?_s=PM:HEALTH (last visited Jan. 31, 2011).

6 Nadine Linge, *Ink-Credible; We get under skin of craze that’s...*, DAILY STAR (UK), July 22, 2010, available at 2010 WL 14583953.

7 Beverly Hadgraft, *Ink Gone Wrong*, SUNDAY

HERALD SUN (AUS.), June 20, 2010, at 16. This estimate relies on the Victorian Cosmetic Institute, which specializes in tattoo removal, which seems hardly an unbiased source.

8 Miriam Stoppard, *Will you live to regret that tattoo?*, MIRROR (UK), May 22, 2010, at 44.

9 See <http://www.myspace.com/finelineinktattoos> (last visited Jan. 31, 2011).

10 Todd Porter, *Tattooed – Pryor puts his OSU loyalty on his arm*, CANTONREP.COM, available at <http://www.cantonrep.com/sports/x772300964/Tattooed-Pryor-puts-his-OSU-loyalty-on-his-arm> (last visited Jan. 31, 2011).

NCAA Hot Topics: Recruiting and Scouting Services

By Carrie R. McCaw, Ice Miller, Collegiate Sports Practice Group Specialist, and Mark P. Jones, Ice Miller, Collegiate Sports Practice Chair

During the recent NCAA Convention, and the annual meeting of the Collegiate Commissioners Association Compliance Administrators, the Ice Miller Collegiate Sports Practice team discussed many of the current hot topic issues related to NCAA compliance. The topics for discussion, which were mentioned during the “State of the Association” by NCAA President, Mark Emmert, addressed the resolution of high profile reinstatement decisions involving student-athletes at prominent Division I institutions. Based on the President’s statement, new legislation may be introduced to fill what he has described as a “loophole” in certain areas of the rules. It will be interesting to see what changes to the rules may be contemplated. We should know soon, as President Emmert has promised prompt action. Another hot topic of conversation was the area of recruiting and scouting services for prospective student-athletes. One year ago, in January 2010, new legislation (NCAA Bylaw 13.14.3) was passed, with an immediate effective date, enhancing criteria that a recruiting or scouting service must satisfy before an institution may subscribe to the recruiting or scouting service concerning prospective student-athletes.

Previously, Bylaw 13.14.3 focused primarily on the general use of recruiting services, in that the service must be available to all institutions and any video service utilized must be taken at regularly scheduled high schools or two-year college games in order for an NCAA school to subscribe. However, there was a concern that under the provisions of the rule as written, it permitted some individuals (with close ties or heavy influence with premier prospects) to create a recruiting “service” that some schools felt obligated to subscribe to (and pay high fees) in order to recruit and

have access to the prospects these services (i.e., individual owners) had relationships with. Technically, these companies satisfied the requirements of the old Bylaw 13.14.3, even though it is questionable whether they intended to provide a service that merely provided information, instead of influencing the recruiting process. Thus, in January 2010, NCAA Bylaw 13.14.3 was revised by the enactment of NCAA Proposal 2009-59. It was noted in the proposal’s rationale statement that because some services actually provided little if any information related to the evaluation of talent, minimal requirements for scouting services were necessary. The Proposal 2009-59, also acknowledged the value of recruiting and scouting services and the need to protect the “integrity of the recruiting process.” NCAA Bylaw 13.14.3 – Recruiting or Scouting Services now reads as follows:

An institution may subscribe to a recruiting or scouting service involving prospective student-athletes, provided the institution does not purchase more than one annual subscription to a particular service and the service:

- (a) Is made available to all institutions desiring to subscribe and at the same fee rate for all subscribers;
- (b) Publicly identifies all applicable rates;
- (c) Disseminates information (e.g., reports, profiles) about prospective student-athletes at least four times per calendar year;
- (d) Publicly identifies the geographical scope of the service (e.g., local, regional, national) and reflects broad-based coverage of the geographical area in the information it disseminates;
- (e) Provides individual analysis beyond demographic information or rankings for each prospective student-athlete in the information it disseminates; (*Revised: 4/13/10*)
- (f) Provides access to samples or previews of the information it disseminates before purchase of a subscription; and
- (g) Provides video that is restricted to

regularly scheduled (regular-season) high school, preparatory school or two-year college contests and for which the institution made no prior arrangements for recording. (Note: This provision is applicable only if the subscription includes video services.)

The provisions in the bylaw regarding new criteria were a great step toward reducing the types of abuses identified above. However, despite the inclusion of numerous factors that must be present in order for an institution to subscribe to an entity that describes itself as a recruiting or scouting service, it stops short of providing an actual definition of a recruiting or scouting service. Unfortunately, the absence of a definition has resulted in many companies that do not meet the criteria of the new bylaw, but do provide information regarding prospects to institutions on a subscription basis, to be deemed a recruiting or scouting service, even though they have no intent to provide recruiting information. The only thing the NCAA has published regarding whether a company should be considered a recruiting or scouting service has been archived. The archived interpretation basically says an entity would be considered a recruiting service if the entity (or a part of the entity) is primarily focused on providing information or evaluation about prospective student-athletes to college coaches. This interpretation is a bit vague and leaves room for interpretation by both the companies and the colleges coaches they work with and whether the NCAA criteria would apply.

Recently, one company, University Athlete, was deemed by the NCAA to be a recruiting service, even though the company’s Web site stated that it is “NOT” a recruiting service in that University Athlete does not, “sell athletes to colleges nor promote them in any way.” Its focus, according to its Web site, www.universityathlete.com, is to connect college coaches to prospective student-athletes. Accordingly, University Athlete, must adhere to the criteria outlined See NCAA HOT TOPICS on Page 8

Ex-Compliance Officer-turned Professor Talks Compliance

Earlier this year, Ohio University student Bart Logan, who operates a blog at <http://bartlogan.wordpress.com/>, conducted an interview with Dr. B. David Ridpath, an assistant professor at the Ohio University School of Recreation and Sports Sciences where he teaches courses in sports law, marketing and issues in intercollegiate athletics. Prior to coming to Ohio, he worked as an NCAA compliance officer and spent time teaching at the Mississippi State and Marshall University sports administration programs among other institutions. Ridpath has been interviewed on ESPN's SportsCenter and in The Sporting News concerning these subjects. He is also a regular guest on ESPN's Outside The Lines. What follows is an edited transcript of his interview.

Bart Logan: You used to work as an NCAA compliance officer. What were your duties?

David Ridpath: Actually, I worked for Marshall University as the assistant athletic director for compliance and student services. Before that I had worked at Weber State University, which is a school in Utah, and also coached here, and then worked a Division II school in Georgia. So, I've never really worked, per se, for the national office. Compliance is essentially – assuring to the best of your ability – having systems in place to NCAA conference and institutional rules and regulations with regards to athletics. That's essentially what it is.

When you have a far-reaching athletic department, like here, where you have 300 athletes, 400 athletes, and a huge department, and other people who are very interested in athletics, it can be a very difficult job.

Logan: Were you the person who would run the athletes through during the year and outline what would be a violation?

Ridpath: Absolutely. You have several meetings with teams – sometimes with individual athletes, obviously with coaches – just saying, “This is what can be done. This is

There's a lot of grey area in NCAA rules, and that's where the national office yields a lot of authority.

what can't be done. This is what you need to do.” You really tell the athletes; sadly it almost got to the point of just “don't do anything until you ask.”

You feel bad about that, because you want to give them a little bit of freedom, but it almost became that way. You try to have layers of protection and certainly the first-line person is the coach. But, if you have a coach who's a little more desperate to win than to follow the rules, it can become a little more problematic. Everybody has to be pulling on the same rope, and that doesn't happen very often.

Logan: Do you think that there's a double standard for the “big sport” athletes – the football players, the basketball players – than other smaller athletics in terms of revenue production?

Ridpath: Yes. And I know that for a fact. How it works: the NCAA national office exists for the membership. The membership makes the rules in that very big, thick rulebook, and the national office wields a tremendous amount of authority in interpreting what those rules mean.

There's a lot of grey area in NCAA rules, and that's where the national office yields a lot of authority. But, I'll tell you who wields more authority – conference commissioners, big time schools, TV networks, and bowl committees.

You just look at the Ohio State situation. Paul Hoolahan of the New Orleans Bowl basically admitted to everybody, “Yeah, I

called the NCAA. I called Ohio State. I called the Big Ten. I told them we need to protect the integrity of this game.” OK? I know that Jim Delany of the Big Ten and Mike Slive of the SEC don't sit and twiddle their thumbs and wait for this national office to make a decision. They're on the phone. They're talking to people and they're putting an immense pressure. Not so much like, “Hey, I hope you can really find something that works.” It's more like: “Here's what we need. Make it work.”

The interpretation for the Ohio State situation is in no way related. I've actually been working on this for the past few days and there's going to be more to come, but let me just show you an example. This took weeks for somebody to finally say this. You figure that if it was an interpretation the NCAA would say, “Here's why we did not suspend the Ohio State players.” Here's the wording of why those five athletes at Ohio State were eligible: The NCAA interpreted that they were ‘Innocently involved.’

Would you agree that they were innocently involved? There's been a mountain of evidence. They knew what they were doing was wrong.

Then it says, “No competitive advantage was gained.” Now, typically that could mean no competitive advantage was gained by selling the stuff. I would say that's true. But the other thing is the fact that they were kept on the team. Those five had a significant effect on that game. If those five didn't play, Ohio State loses by three touchdowns, even though Arkansas couldn't catch a pass.

In this case, a lot of people got involved who are very, very powerful and basically the bowl director – the Sugar Bowl – let the cat out of the bag. There were a lot of things going on behind the scenes. So that's the fundamental problem. It's arbitrary, capricious and not enforced equitably across the board. The standards are nebulous.

See EX-COMPLIANCE on Page 7

Ex-Compliance Officer-turned Professor Talks Compliance

Continued from Page 6

Logan: *Is there a way that the NCAA governing board is and I don't want to say 'regulated,' but someone who can sit back and say "if you're doing a poor job or something, you're out of here. We'll replace you with someone else." Do people vote on that position?*

Ridpath: There's essentially a presidential board of directors, but you're really getting down to the fundamental, core issue. People who make money off college athletics don't want it to change. So, they really don't want somebody who's going to rock the boat.

Most presidents aren't really – I don't want to say concerned – but really don't have the political will. Because, if a president truly takes on athletics – if Gordon Gee really took on athletics at Ohio State like he did at Vanderbilt – he'd be gone. He knows that.

I don't know, obviously it's a different scenario here at Ohio University. President McDavis hasn't really shown the willingness – I think – to take on some things in athletics. And, he probably feels that if he did, he'd lose his job, so you've got a lot of fundamental conflicts here.

But, I do think that there's a lot of mythology about athletics. We can have a very fun, exciting, robust athletic department here that stays within its budget. We do not have to get into the arms race. We do not have to spend, spend, spend to try to reach something that we're never going to reach.

The fact that Boise State and George Mason and even Butler have had some success is an anomaly. And, a hundred other schools chasing that isn't going to make it happen. What it is going to do is really damage the institution. Having a successful athletic program does not bring in better applicants. It does not bring in more fundraising. It does not bring in better marketing. All of that has been proven by research. At best, it's a short-term spike

that fades away.

Do you remember Doug Flutie? Remember the pass he threw? There's a phenomenon called the "Flutie Effect." Because, what Boston College said after Doug Flutie threw that pass against Miami was that they were flooded with applications. And that might even be true. But typically, as it did at Boise State and other places, that flat-line after a year. We're saying university budgets are increasing 10 percent. Does it justify increasing an athletic budget by 21 percent to meet this rate of return that's never going to come back there?

You're never going to get access to the money – the TV money – and all those other things that very few schools have access to. For instance, we can put \$50 more million in the athletic department today and we're essentially Ohio University athletics with \$50 million more.

My thing is that college athletics are supposed to be an extracurricular activity and provide entertainment for the student body. Personally, if we went down to 1-AA football, which I loved when I worked in it – they actually have a playoff system – we could be very competitive in that.

There's ways we can cut costs. We shouldn't think that by spending more we're going to get more. Because, if we spend more it's frankly going to be on the backs of students and other subsidized money. We're not going to sell out the stadium or have somebody donate \$100 million.

Logan: *Touching on the myths, especially with student athletes, I've heard they can't work in outside jobs. Is it only during the season?*

Ridpath: There are rules governing so much of that. It has changed since I was involved. I think they've really loosened up the restrictions on working. Looking at it from a practical sense, there are some restrictions on it. It used to be hard and fast. If you were on scholarship, you couldn't work. Then it became you could work if

you were not in your first year, but you could only earn up to \$2,000. I think a lot of that has been taken away

In a practical sense, they can't work even if they wanted to. They're way too busy doing too many things. If we're expecting them to do all of the things they're required to athletically, and let's not forget that they're students. They've got a lot of things going on. To think they can actually go out and get a job is ludicrous, even in the off-season. It's ludicrous.

Logan: *Do you think that athletes should find work? And, it's kind of a slippery slope, but is just having a scholarship enough for them to function on a campus? Do you think they need to be able to make some extra money?*

Ridpath: Let's call a spade a spade here. They're already being paid. The scholarship is the payment. It's not an academic award because it's not guaranteed for their whole time here in college. You hear people say, 'I got a four-year scholarship!' It doesn't exist. The scholarship is a one-year renewable award at the behest of the coach. A lot of times new coaches come in or a coach gets mad at somebody, and they're cutting those scholarships left and right.

Those kids are essentially on a one-year pay-for-play contract, and there's been a lot of research out there that legally that's what it is. So, I look at them already as professional athletes. They're being paid if they're on scholarship, but they're being poorly paid. I do think that there's some merit. There are lots of scholarships that provide stipends. The NCAA used to allow a stipend – believe it or not – for full scholarships of \$15 a month. That's of course back in the '50s and '60s.

There are lots of scholarships where you get pocket money. I see no reason why they couldn't get that. The NCAA got \$10 billion for their television contract for the NCAA men's basketball tournament so the money's there to do that. ■

USF Settles Suit with Former Football Coach Leavitt

The University of South Florida has ended its legal battle with former football coach Jim Leavitt, following his termination for cause a little over a year ago. The suit was settled for \$2.75 million after Leavitt attempted to sue the school for wrongful termination, seeking over \$7 million in damages from the school.

Leavitt was fired in January 2010 after an incident two months earlier during a game against Louisville in which Leavitt allegedly choked and slapped walk-on student-athlete Joel Miller during halftime, and then denied it during a subsequent investigation of the incident. The USF investigation determined that the coach committed “serious violations” of the school’s conduct policy and was fired “with cause.” Initially, Coach Leavitt received \$66,000 from the university, which amounted to roughly one-twelfth of his annual base salary, as a result of being terminated with cause. With \$9.5 million left on his contract, which he

would be entitled to 75 percent of if he was terminated without cause, Leavitt sued for wrongful termination.

The settlement includes provisions forbidding either party from discussing the legal action further than the prepared statements made by Leavitt and USF following the agreement. The \$2.75 million figure breaks down to about \$2 million for “salary and benefits,” with \$750,000 attributed to USF’s “acknowledging Coach Leavitt’s contributions to building USF’s nationally respected football program.” The university assured the public in a statement that “non-state resources” will be used to pay for the settlement. Another stipulation in the settlement provides that Leavitt may never apply for another position with USF, and if he chooses to do so, the university “is free to reject and disregard it.” Finally, the settlement states that it should not be construed as an admission by the university or Leavitt

of “any liability, wrongdoing or unlawful conduct whatsoever.”

The USF football program was built from the ground up by Leavitt and Director of Athletics Paul Griffin and current Associate Director of Athletics Lee Roy Selmon. Together, they took the program from operating out of trailers to the Big East and bowl games, ranking as high as number two in the national polls during the 2007 season. In a prepared statement following the settlement, Leavitt fondly reminisced about his career with the Bulls: “I’m grateful for the love and support of my family and all of the great people of Tampa Bay. I will always cherish my time at USF and what we built here together.” When Leavitt was let go, the Bulls hired Skip Holtz, former East Carolina coach.

Holtz took the Bulls to an 8-5 record season, winning a bowl against Clemson and defeating rival Miami for the first time in school history. ■

NCAA Hot Topics: Recruiting and Scouting Services

Continued from Page 5

in NCAA Bylaw 13.14.3, as described above in order for institutions to subscribe to it. The confusion regarding University Athlete’s characterization led to NCAA institutions, specifically Division I volleyball coaches, to obtain a waiver from the NCAA Subcommittee for Legislative Relief because they had contracted with University Athlete in good faith believing that they were not a recruiting service.

On January 26, 2011, the Subcommittee granted a blanket waiver to allow NCAA Division I volleyball programs to continue using University Athlete until May 1, 2011; “after that date (it) would become impermissible unless changes are made to universityathlete.com to make the service permissible under NCAA legislation.”

As noted in a May 4, 2010 NCAA Edu-

cational Column, it is up to each institution’s compliance staff to determine if a particular service is a recruiting or scouting service, and if such services operate within the criteria established in NCAA Bylaw 13.14.3. As many recruiting services have made the necessary adjustments to meet the criteria set out above, there are other companies working to not cross the line into being recognized as a recruiting or scouting service. Compliance staffs should do a regular assessment of all the services coaches utilize for recruiting and the collection of information on prospective student-athletes to determine (1) whether the service is a recruiting service as defined by the NCAA, and (2) if the service is considered a recruiting service, that the company meets the guidelines established by NCAA Bylaw 13.14.3. Given the fact that a year has gone by since the new criteria has been

established and companies may disagree with their designation as a recruiting service, additional NCAA interpretations or educational columns to help clarify what constitutes a service could be on the horizon.

In the event recruiting violations develop or if you have any questions related to this article please contact Ice Miller Collegiate Sports Practice members, Mark P. Jones at mark.jones@icemiller.com or (317) 236-2488, or Carrie R. McCaw at carrie.mccaw@icemiller.com or (317) 236-5944. ■

Neither Mark Jones nor Carrie McCaw is licensed to practice law in any jurisdiction. For their biographies, please visit www.icemiller.com.

This publication is intended for general information purposes only and does not and is not intended to constitute legal advice. The reader must consult with legal counsel to determine how laws or decisions discussed herein apply to the reader’s specific circumstances.

Winthrop Responds to Former Coach's Complaint

Winthrop University has responded to a lawsuit brought by Melissa Heinz, the former women's soccer coach, who filed sexual harassment and discrimination claims against the school and members of its athletic department.

In its answer to Heinz' complaint, Winthrop University attorneys filed 11 separate defenses to Heinz' claims of sexual harassment and discrimination both by the university and its individual employees.

While some defenses were a FRCP 12(b)(6) motion to dismiss, others are less common, including asserting that some of Heinz' claims were barred under the Eleventh Amendment. Additionally, the University stated that the "differential in pay between what Winthrop University paid Plaintiff and what Winthrop University paid any alleged similarly situated male coach was based on reasonable factors other than sex," which would be a valid defense to a claim of discrimination.

The Eleventh Amendment reads: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." In layman's terms, Winthrop University argued that it is shielded from suit by sovereign immunity.

Turning to the University's other defenses, it argued that Heinz waived her right to procedural due process when she resigned from her employment and accepted other employment, and:

"Any liberty interest claim that Plaintiff may have had in connection with her separation from employment with Winthrop University is foreclosed by her failure to request a post-termination name-clearing hearing."

Additionally, Winthrop states that it "exercised reasonable care to prevent and promptly correct alleged harassment in

the workplace based on sex, and [Heinz] unreasonably failed to take advantage of these preventive or corrective measures or to avoid harm otherwise."

Concerning Heinz' disparate pay from other coaches (namely Winthrop men's soccer coach Posipanko), the University explained that "coaching salaries are established based upon experience, success, achievement and market. The salary disparity (\$59,137 - \$47,644) between Coach Posipanko and Plaintiff was in direct relation to Coach Posipanko's 21 years as head coach at Winthrop compared to Plaintiff's 7 years, and his success in leading the men's soccer team during his tenure as head coach, including winning the Big South Conference Championship five times and participating in the NCAA Championships four times. Plaintiff's teams won one Big South Conference championship and never participated in the NCAA championships. Further, Coach Posipanko's 2009 camp-related income was \$15,000 whereas Plaintiff's camp income was \$7,000." Winthrop further explains, "[Heinz] was paid more than some male head coaches (*e.g.*, men's golf) and less

than some male head coaches (*e.g.*, men's soccer) and that she was paid more than some female head coaches (*e.g.*, women's golf) and less than some female head coaches (*e.g.*, volleyball)."

Regarding Heinz' claims that the women's soccer team was treated unfairly and discriminated against in favor of the men's team, the University noted that "the women's soccer program has received more scholarship funding than the men's program for the last four years. In 2009-10, the women's soccer program received 11.62 scholarships (\$338,290.00) while the men's soccer program received 9.67 scholarships (\$289,244.00)."

In response to Heinz' claim that she was precluded from obtaining another coaching job in NCAA Division I athletics, the University pointed out that "Defendant Hickman received no inquiries about Plaintiff from any Division I school and he helped her get her current job at Valdosta State University." ■

Melissa Heinz v. Winthrop University, Anthony DiGiorgio, Thomas Hickman, Richard Posipanko. U.S. Dist. S.C. (Rock Hill), C.A. No. 0:10-cv-02870-CMC.

AD Questions Whether Today's Female Athletes Have an Appreciation for Title IX

In a recent interview, University of North Carolina at Charlotte Athletic Director Judy Rose credited Title IX for helping achieve success in a male-dominated profession. She also wondered if today's female athlete had enough appreciation for the law.

"It's been so far removed from them, I'm not sure they hear enough about it," she said. "We try to emphasize it here. We have a fundraising luncheon here to raise money for women's sports, and we raised more than \$90 thousand that day. When our student-athletes are there, we make sure they understand and know what

Title IX has done for women's sports. It wasn't always this way. You know, these kids weren't born when I was coaching. They can't understand what it was like when I played college basketball. There were no scholarships and you didn't fly; you went in a bus or a van. That's so far removed from them that they have no point of comparison, so I think they lack appreciation. And maybe that's a good thing. I was asked the other day about how far I think Title IX has come. People don't even think about it anymore. They just expect women to be treated equally in athletics."

News Briefs

Oscar Robertson Joins Others in Suing NCAA

NBA Hall of Famer Oscar Robertson has filed suit in the Northern District of California against the NCAA and others for the alleged commercial exploitation of his image, likeness and name without his consent. Robertson said he first became aware of the issue when fans sent him trading cards for signing that had pictures of him in his University of Cincinnati playing days, cards that Robertson had not authorized or even known about, according to his attorneys at the Cincinnati, Ohio-based firm of Waite, Schneider, Bayless & Chesley Co., L.P.A. Lead counsel on the case, Stanley M. Chesley said in a statement: "Oscar, who for decades has fought for players' rights, has joined this suit to protect the interests of former, current and future college athletes. The NCAA and others have conspired to cash in on former athletes' names and likenesses, while denying them any payment. That is fundamentally unfair; it is reprehensible; and it is, in fact, the definition of a major antitrust violation."

School Bans Use of Its Redskin Logo

Miami University has told merchandising companies to stop printing its Redskin logo on their products. The school has incorporated an Indian head in a "heritage logo" in recognition of its history. Several years ago, the university began limiting the use of the logo to collared shirts and caps, with a plan to ultimately phase out the logo entirely. Stores may not sell merchandise with the logo on it once their current stock is gone. The university is also considering removing renderings of the Indian head at athletic venues and other facilities on campus, according to Athletic Director Brad Bates.

USC 'Booster' Sues NCAA for Defamation

Rodney Guillory, an associate of O.J. Mayo (current NBA player and former University of Southern California men's basketball player), has filed a defamation law suit against the NCAA, seeking \$25 million in damages. Guillory, who met Mayo when they were both in 7th grade in West Virginia, was implicated in a June 2010 NCAA Committee on Infractions report, which he claims falsely referred to him as a USC "booster" and a "handler" and indicated he gave Mayo improper benefits while he was enrolled at USC. Guillory alleged his complaint that he was accused of "giving Mayo automobile transportation, basketball skills instruction, dinner at no cost, free clothing and other inducements." In disputing that passage, Guillory noted that the Committee "failed to mention the 'automobile transportation' was a ride in Guillory's car, the meals at no cost were home-cooked meals, the basketball instruction was not pre-arranged nor paid for by anyone, and the clothing provided

to Mayo was leftover 'freebies' from various basketball camps."

North Dakota Lawmakers Looks to Limit Booze in Stadiums

Alcohol use at sporting events would be prohibited if some North Dakota lawmakers get their way. One of the sponsors of the bill, Rep. Chuck Damschen, R-Hampden, told the media that the reason for the bill is to help curb underage drinking. He pointed specifically to past testimony on addiction, which suggested that use of alcohol by adults in the presence of minors was "one of the biggest" contributing factors to underage drinking. "If we want to solve this problem and address the problem, it's going to take some sacrifice on the part of people who claim to be responsible adults," he told the media. NDSU Athletic Director Gene Taylor warned against a knee-jerk reaction. "Let's see what kind of plays out before we overreact or act at this point. ... (I)t is so early in the process."

Former Golf Coach Sues University of Minnesota for Discrimination

The former golf coach at the University of Minnesota has alleged that the school discriminated against her because of her sexual preference. Katie Brenny, who resigned last winter after two months on the job, alleged specifically that Director of Golf John Harris kept her from her coaching duties after discovering she was gay. As reported in the student newspaper, the complaint charges the University with counts of discrimination, retaliation and sexual harassment based on sexual orientation. It also charges Harris individually with interfering with the plaintiffs' contract. In a statement, UM General Counsel Mark Rotenberg said in a statement that "the University of Minnesota strongly contests both the factual foundation and legal basis of the claims asserted in this lawsuit."

Georgia Reports 14 Secondary Violations to NCAA

The University of Georgia has self-reported 14 secondary violation to the NCAA, one of which involved the impermissible contact with a recruit by Head Football Coach Mark Richt. "We continue to be diligent in our rules education, monitoring and self-reporting of rules violations," Georgia Compliance Director Eric Baumgartner said in a statement. "Secondary violations are going to happen and we are fortunate that our staff understands that when a mistake happens, they can report the issue to the compliance office and correct the mistake in the future." Georgia Athletic Director Greg McGarity described Richt's violation as "inadvertent."

Strict Penalties for Violators? Do NCAA Policies Work?

Continued from Page 3

NCAA investigators during an investigation, yet Bruce Pearl was appropriated only a few game withholding penalty for similar conduct? That is a great question and one that has been repeatedly posed to new NCAA president, Mark Emmert. Mr. Emmert has often given statements reflecting that the penalties for student-athletes and coaches should be similar. At present, penalties simply are not apportioned equally.

At this point, who could blame a coach for making a few twists and turns during the recruiting process to land the next hot talent? If that talent leads to glory on the gridiron or hardwood, then a large payday follows and often substantial glory and recognition. Nonetheless, coaches and student-athletes have to be held to some equivalent standard. John Infante of the Bylaw Blog recommended a reinstatement procedure for coaches similar to the one in which student-athletes are submitted. This appears to be an interesting argument and one that may have some weight. This process would

allow the NCAA to provide penalties to a coach during the season without having to wait for a lengthy investigation to conclude. Ultimately, the institution would have to admit infractions occurred and submit the coach for reinstatement. However, I have not reviewed a single coaching contract that allows for such a review. In fact, many coaching contracts call for outside arbitrators to review such questions. In light of the findings in *O'Brien v. Ohio State University*, many institutions will likely be reluctant to move quickly if such a process is implemented, unless such a mandate from the NCAA requires action. Of course, legal action will follow from coaches that feel they have been aggrieved and submitted to review that is not called for within the four (4) corners of their contract.

In sum, there are plenty of opinions, questions, and desires, but no simple answers. If I was writing the book on NCAA enforcement, I would start from scratch and develop a new procedure incorporating the decisions of an outside committee

comprised of NCAA officials, representatives from member institutions, fine legal minds, and former judges. I would request that these individuals review the entire NCAA system relating to punishment, reinstatement, and waivers as a whole and make a recommendation for a system that reduces the risk of lawsuits and also provides for a workable system that enforces NCAA rules and levies punishment properly, which may include a system officiated by individuals outside of the current NCAA system (i.e., retired judges or others with no relation to the NCAA). ■

Christian Dennie is a partner at Barlow Garsek & Simon, LLP, with offices in Dallas and Fort Worth, Texas, and is an adjunct professor of law at Texas Wesleyan University School of Law in Fort Worth, Texas. Christian focuses his practice on commercial and sports-related disputes with a particular emphasis on areas relating to intercollegiate athletics. He represents institutions, conferences, student-athletes, coaches, and administrators in a variety of disputes and contractual negotiations. Christian also operates the College Sports Law Blog, which can be found at <http://www.bgsfirm.com/college-sports-law-blog>.

Federal Judge Sides with School Sued for Discrimination

Continued from Page 3

In the instant case, the plaintiff “has stated a prima facie case of racial discrimination. Nevertheless, Defendant has pointed to a legitimate, non-discriminatory reason for the plaintiff’s termination, namely the incident in which he struck Z.B.. Waynesburg explains that it investigated this incident and concluded that it presented sufficient cause for the plaintiff’s dismissal. It has thus satisfied its relatively light burden of production. *Krouse v. American Sterilizer Co.*, 126 F.3d 494, 500-01 (3d Cir. 1997).

“The burden then shifts back to the plaintiff to proffer evidence from which the trier of fact could conclude that the defendant’s reason is a pretext for unlawful racial discrimination.”

The court continued that the plaintiff

“has failed to point to such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer’s proffered legitimate reasons for its action that a reasonable factfinder could rationally find them ‘unworthy of credence,’ and hence infer ‘that the employer did not act for [the asserted] non-discriminatory reasons.’”

Turning to the hostile work environment claim, the court wrote that the plaintiff “has cited no specific incidents of discrimination, other than his termination,” leading the court to grant that part of the defendant’s motion for summary as well.

As for the retaliation claim, the court found that the plaintiff “has not even cited any protected activity that he engaged in. Therefore, he has not stated a prima facie case of retaliation discrimination. Moreover,

as discussed above, the defendant has pointed to a legitimate, non-discriminatory reason for terminating his employment, namely the incident in which he struck Z.B., and Plaintiff has not presented evidence that this reason is a pretext for unlawful retaliation discrimination. Therefore, with respect to this claim, Defendant’s motion for summary judgment will be granted.” ■

Charlie T. Heard v. The Waynesburg University; W.D. Pa.; Civil Action No. 09-1315, 2010 U.S. Dist. LEXIS 112034; 10/21/10

Attorneys of Record: (for plaintiff) Richard C. Angino, LEAD ATTORNEY, Daryl E. Christopher, Angino & Rovner, P.C., Harrisburg, PA. (for defendant) W. Scott Hardy, LEAD ATTORNEY, Mariah L. Passarelli, Philip K. Kontul, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Pittsburgh, PA. This publication is intended for general information purposes only and does

Ex-USC Tailback Sues University, Trainer for Lifting Injuries

Student-athlete Stafon Johnson, a senior member of the USC football team during the 2009 season, recently filed a personal injury lawsuit against USC, its former strength and conditioning coach Jamie Yanchar, and numerous unnamed “Doe” defendants, alleging negligence in connection with a serious injury he sustained in 2009 while training with the team.

Johnson was injured on September 28, 2009 at approximately 11:00am in the university’s weight room, as he participated in mandatory strength and conditioning training as part of his membership on the team. At the time, defendant Yanchar allegedly agreed to “spot” Johnson as he attempted a 275-pound benchpress, the usual amount of weight he lifted. However, Johnson alleges the scenario in which Yanchar’s negligence caused his injuries: (1) Yanchar was not “paying attention to Mr. Johnson at the time that the bar was being lifted from the weight rack” and paying attention to the other occupants of the room; and/or (2) Yanchar was distracted and was not paying attention to Johnson, “he failed to take notice that, as the bar was being lifted from the rack, Mr. Johnson was not then ready to take hold of and lift the bar”; and/or (3) as the bar was being placed into Johnson’s hands, “Yanchar hit the bar with his own body before Mr. Johnson had a grip on the bar with both of his hands” (as a result of his inattention); and/or (4) “because Yanchar struck the bar, while Johnson was attempting to get the bar settled into both hands and thus was not ready to safely grasp the bar on his own, the bar was knocked off balance...and fell directly onto Mr. Johnson’s neck.”

In a news conference following the filing of the suit, Johnson’s attorney, Carl Douglas, cleared up the allegations by stating that, “What we say occurred is that the bar was basically knocked out of his hand, causing it to fall on Stafon’s neck, almost causing him to die,” Douglas said. “We think for

that, those that are responsible should be held responsible for their actions.”

In his complaint filed with the Superior Court of California at Los Angeles, Johnson alleges that his injuries, which include “a laryngeal fracture and an acute airway obstruction secondary to blunt neck trauma, resulting in his voice box being crushed with the upper portion being separated from the lower portion, and the majority of the lining of the larynx being degloved, all of which required micro-surgical reconstruction and repair,” were the result of Yanchar’s negligent supervision, and also holds USC responsible because Yanchar was acting within the scope of his employment at the time.

Johnson is seeking an unspecified amount in damages, covering general damages including compensation for pain and suffering, and special damages including past and future medical expenses and surgeries and loss of past and future earnings. As a result of his injury, Johnson initially underwent seven hours of surgery to repair his larynx.

It has been inferred that Johnson and his attorney had tried to reach a private settlement with the university prior to filing suit, but to no avail. Douglas told the press, “As you could imagine, there have been efforts in the past to resolve this matter

quietly and informally. Regrettably, they were not successful, so we were left with no other option but to file this lawsuit.”

USC responded publicly to the suit in a statement on January 24. “USC firmly believes it was not at fault in Stafon Johnson’s unfortunate weightlifting accident,” the university said. “We are sorry that Stafon was injured. USC and the entire Trojan Family have been exceptionally supportive of Stafon from the minute the accident occurred. We are disappointed to learn that Stafon has decided to file a lawsuit against USC.”

Johnson still thinks fondly of USC, despite his injuries. “This lawsuit does not in any way reduce my love for the cardinal and gold,” Johnson said at the news conference on January 24. “I was injured, and I feel that if others had been careful, this injury would have been avoided.” The neck injury ended Johnson’s college career, but he was able to participate in the NFL draft, whereupon the Titans signed him as an undrafted free agent. However, Johnson sustained a severe leg injury in the preseason, dislocating his right ankle.

Jamie Yanchar is now with former USC coach Pete Carroll at the NFL’s Seattle Seahawks. He declined comment when contacted by ESPN this week. ■

VIP Treatment Gets University of Tennessee in Trouble

The University of Tennessee has self-reported a secondary violation to the NCAA involving 36 male student-athletes was treated as VIPs from May to July at a Knoxville bar.

The athletes, 26 of which were football players, were not required to pay cover charges at the bar. The internal investigation, which was led by Assistant Athletic Director Todd Dooley, found that the policy at the bar constituted a violation of NCAA bylaw 12.1.2.1.6 because “the benefit was not advertised or provided

to all UT students.” That bylaw specifies that student-athletes are not permitted to receive preferential treatment, benefits or services “because of the individual’s athletic reputation or skill or pay-back potential as a professional athlete, unless such treatment, benefits or services are specifically permitted under NCAA legislation.”

In a proactive step, a member of UT’s compliance office has started attending the Cumberland Avenue Merchants Association meetings to “provide NCAA rules education.”