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Sports Cases To Watch In 2nd Half Of 2017

By **Zachary Zagger**

Law360, New York (July 3, 2017, 10:28 AM EDT) -- With college athletes and minor league baseball players continuing their push for greater compensation and the daily fantasy sports industry still in flux, there are several cases sports industry attorneys should be keeping their eyes on heading into the second half of 2017.

Here, Law360 takes a look at some of the big case decisions or developments that sports lawyers should be watching for the rest of this year.

NCAA Grant-in-Aid Antitrust Litigation, or Jenkins v. NCAA

The future of college sports is unclear as some student-athletes push antitrust claims against National Collegiate Athletic Association rules capping what college players can be paid by their schools at no more than the scholarship and aid packages they receive now to play for the college's team.

Last year, the U.S. Supreme Court **declined to take petitions** to review the landmark 2015 Ninth Circuit decision in O'Bannon v. NCAA, a case based on the image and likeness rights of college players in video games. The Ninth Circuit found such restrictions anti-competitive but nonetheless reasonable given the importance of amateurism.

But the consolidated NCAA Grant-In-Aid litigation goes even further, bringing allegations that if successful, would lead to a complete free market for college athletes where schools can offer players whatever compensation is necessary to attract the best players.

In February, players in the consolidated lawsuit seeking damages **settled their claims for $209 million**, positioning the other claimants, who originally brought their claims in Jenkins v. NCAA, to go to trial on the issue of whether the NCAA should be enjoined from placing a cap on what schools can offer players.

The case pits two of the top sports litigators in the country with Jeffrey Kessler of Winston & Strawn LLP representing the Jenkins plaintiffs and Beth Wilkinson of Wilkinson Walsh Eskovitz, whom the NCAA just brought in June to apparently handle the trial.

"I think the Jenkins case could be more ripe for a clear ruling than O'Bannon because O'Bannon was really confined to its own facts as it was based on a student athlete's image and likeness rights in video games, not really whether there should be a free market for student-athletes," said sports attorney Glen Rothstein of Rothstein Law APC.

"This case is really much broader in the issues that it is raising, and in being broader, it is more helpful to try to clear what are very muddy waters right now," Rothstein added. "But, I really don't know which way it is going to go."

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

Christopher J. Christie, Gov. of New Jersey v. National Collegiate Athletic Association

In a surprise decision last month, the U.S. Supreme Court said it will address a federal law banning states from authorizing sports betting, setting up what could be the most significant high court case for the sports industry in years.

The justices accepted two petitions for certiorari from New Jersey and the New Jersey Thoroughbred Horsemen's Association challenging the constitutionality of the Professional and Amateur Sports Protection Act, a federal law that prohibits states from authorizing wagering on sports.

The petitions stemmed from a federal case brought by the NCAA and four major professional sports leagues — the NFL, NBA, National Hockey League and Major League Baseball — seeking to stop New Jersey's attempt to circumvent PASPA's restrictions by merely repealing laws that made sports betting illegal at casinos and horse racetracks in the state.

While there is some conflict between two controlling Third Circuit decisions on whether this type of move still violates PASPA, the Supreme Court review could go to the very heart of whether PASPA's restrictions on states are constitutional. A ruling for New Jersey could result in a massive expansion of legalized sports betting across the U.S.

"This is shaping up to be the sports law case of 2017 and could transform the gaming industry and how we watch and consume sports," said sports law and appellate attorney Daniel Wallach of Becker & Poliakoff PA.

The cases are Christie et al. v. National Collegiate Athletic Association et al., case number 16-476, and New Jersey Thoroughbred Horsemen's Association Inc. v. National Collegiate Athletic Association et al., case number 16-477, in U.S. Supreme Court.

Federal Trade Commission v. DraftKings Inc., FanDuel Inc.

Coming out of a tumultuous 2015 and 2016 in which top daily fantasy sports companies DraftKings Inc. and FanDuel Inc. faced an onslaught of lawsuits and legal issues over whether their pay-to-play contests are illegal gambling, the once-bitter rivals decided to link up to manage costs and tackle the issues together.

But the Federal Trade Commission has other ideas: The regulator, joined by the attorneys general of California and the District of Columbia, **filed suit in June** to block the proposed merger between the two companies, which combined would control over 90 percent of the daily fantasy sports, or DFS, market.

Legal experts **have said** since the tie-up was first rumored last year that the companies faced an uphill battle in getting the deal past antitrust regulators. They say the tie-up would eliminate competition and drive up the price for DFS participants.

However, a lot will depend on exactly how the market is defined, specifically whether the market is limited to just DFS or whether it includes the broader world of traditional seasonlong fantasy sports or other types of online gaming.

"The case is really going to hinge on evidence as to what market they are operating in," Rothstein said. "If the market is not just confined to daily but to season-long as well, they

are going to have a far greater chance of prevailing."

Federal Trade Commission v. DraftKings Inc. et al., case number 1:17-cv-01195, in the U.S. District Court for the District of Columbia.

Aaron Senne v. Kansas City Royals, et al.

A class of Minor League Baseball players were **dealt a curveball** when a California federal judge certified their class action only to then allow Major League Baseball and its member clubs to appeal that decision and halt the case in the meantime. The case will now go before a panel of the Ninth Circuit with briefing to take off later this year.

The lawsuit, filed in February 2014, claims that minor league ballplayers are not paid minimum wage or overtime, with some earning as little as $1,100 per month during the season despite spending more than 50 hours working each week.

The minor league players were eventually granted class certification in March, but U.S. Chief Magistrate Judge Joseph C. Spero then **paused the District Court case** after the MLB appealed, finding there is a risk to class members if the Ninth Circuit overturns or modifies the class certification after notices are sent out.

"Not only could the case have a significant impact on the roughly 4,500 individuals currently employed as minor league baseball players, but MLB has also hinted that a victory by the plaintiffs could result in a reduction to the number of minor league franchises in existence," said Nathaniel Grow, a business law and ethics professor at Indiana University, who writes frequently about the case and other legal issues in baseball. "So it's not inconceivable that the industry could change appreciably depending on the outcome of the case."

The Senne case takes on even greater emphasis for minor leaguers as a similar lawsuit that had alleged MLB and the teams **colluded to restrict minor leaguers' pay** was **tossed by the Ninth Circuit** under baseball's long-held antitrust exemption.

The case is Aaron Senne et al. v. Kansas City Royals Baseball Co. et al., case number 17-80088, in the U.S. Court of Appeals for the Ninth Circuit.

United States v. Juan Ángel Napout, et al.

U.S. federal prosecutors rocked the world of international soccer in May 2015, lodging a sweeping indictment against a range of high-ranking FIFA officials and soccer marketing executives that has since continued to evolve.

In June, prosecutors in Brooklyn **released a new, narrowed indictment** against three of the remaining defendants, Juan Ángel Napout, Jose Maria Marin and Manuel Burga, who have appeared in U.S. but have pled not guilty. The indictment paves the way for their trial, scheduled to begin in November, and effectively severs the defendants who have not appeared from the case.

Napout is the former president of the South American confederation CONMEBOL; Marin is the former president of Brazilian Football; and Burga is the former president of the Peruvian Football Federation.

In February, U.S. District Judge Pamela Chen **denied bids** by Napout and Marin to have some of the charges tossed. Napout has argued prosecutors are improperly trying to apply U.S. law to conduct outside the U.S. while Marin has argued that the prosecutors have not properly shown there was a "enterprise" to support the Racketeer Influenced and Corrupt Organizations Act charges.

The case is United States v. Juan Ángel Napout, et al., case number 1:15-cr-00252, in the U.S. District Court for the Eastern District of New York.

--Editing by Christine Chun and Rebecca Flanagan.

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