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Sports League Rules

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While sports leagues have unique considerations, rules challenges may turn on issues comman to all § 1 Sherman Act claims.

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On Jan. 3, talented Ohio State University running back Maurice Clarett held high college football's national championship trophy, after a thrilling double overtime victory over the favored University of Miami Hurricanes. Seven months later, the National Collegiate Athletics Association (NCAA) initiated an investigation into whether Clarett violated NCAA rules by accepting improper financial and academic assistance while at Ohio State.

Depending on its findings, the NCAA could suspend Clarett for a long period of time or even declare him ineligible to participate in NCAA collegiate athletics. Clarett's dilemma is further complicated by a National Football League (NFL) rule that prohibits a prospective player from entering the NFL player draft until three years have elapsed since his high school class graduation. Depending upon the nature of the NCAA sanction, Clarett may face the choice of accepting sanction, transferring to a lower-level NCAA institution or a non-NCAA institution or joining a team in a less prestigious league unless he challenges the legality of either NCAA or NFL rules. If so, the Clarett case may become the latest collision between sports and antitrust.

Stating a claim under § 1 of the Sherman Act

A successful legal challenge to either the NCAA or the NFL rules regarding player eligibility would likely focus on § 1 of the Sherman Act and seek either damages or an injunction against the rules. To state a claim under § 1, a plaintiff must allege the existence of a contract, combination or conspiracy that unreasonably restrains trade. Assuming no standing or jurisdictional issues, a plaintiff's case hinges on the existence of an agreement and the "reasonableness" of the restraint. Courts categorize competitive restraints as either per se unlawful or subject to the rule of reason. Per se illegal restraints are those that have a "predictable and pernicious anticompetitive effect, without any potential for procompetitive benefit," and have typically been limited to price fixing, bid rigging and allocating markets or customers. But those with potential for procompetitive effect are subject to the rule of reason, which examines the overall competitive effects of the restraint.

The first major obstacle to a § 1 claim against a professional sports league is proving that an agreement exists. Since the U.S. Supreme Court's decision in Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752 (1984), which held that a corporation and its wholly owned subsidiary could not conspire because they constitute a single entity, courts have wrestled with Copperweld's application to sports leagues. In Brown v. Pro Football, Inc., 518 U.S. 231 (1996), the court suggested that, in the context of collective bargaining, professional sports teams are not completely independent competitors because they depend on cooperation with each other for their existence. However, in Sullivan v. NFL, 24 F.3d 1091 (1st Cir. 1994), the 1st U.S. Circuit Court of Appeals held in a suit brought by a team owner against the league that the NFL's members were capable of conspiring because they were not a single entity under Copperweld.

The 7th Circuit split the difference in Chicago Sports Ltd. v. NBA, 95 F.3d 593 (7th Cir. 1996), concluding that Copperweld's reasoning does not dictate a concrete answer to the single entity question, but rather might require an analysis "one league at a time and perhaps one facet of a league at a time."

It does not appear that the NCAA has ever contended that it is a single entity and thus capable of conspiring under § 1. In NCAA v. Board of Regents, 468 U.S. 85 (1984), the high court expressly recognized that the restraint at issue - restrictions on broadcasts of college football games - was the result of "an agreement among competitors on the way in which they will compete with one another."

Once an agreement is established, courts generally evaluate restraints promulgated by sports leagues under the rule of reason. As the Supreme Court explained in NCAA, sports leagues and their members "market competition itself. Of course, this would be completely ineffective if there were no rules to create and define the competition to be marketed." 468 U.S. at 101. While acknowledging that price fixing and output limitations are ordinarily condemned as illegal per se, the court applied the rule-of-reason test, explaining that the per se rule is inappropriate in "an industry in which horizontal restraints on competition are essential if the product is to be available at all." Id. at 100.

Under the rule of reason, courts weigh the anti-competitive effect of the rule against the justification proffered for the rule. Section 1 is violated when a court finds that an anti-competitive effect outweighs the justifications for the rule or that the rule was not a reasonably less restrictive alternative to accomplish a legitimate goal.

In a decision reached earlier this year, the 6th Circuit evaluated an Ontario Hockey League rule that effectively precluded former college hockey players over the age of 19 from joining league rosters. The court ruled that the district court erred in applying the per se rule rather than the rule of reason. Accordingly, it evaluated the rule's competitive effects and reversed the trial court's grant of a preliminary injunction, reasoning that the plaintiff failed to allege that the restraint had an

anticompetitive effect in any relevant market. See NHLPA v. Plymouth Whalers Hockey Club, 325 F.3d 712 (6th Cir. 2003).

The NCAA's mission provides its member schools with unique justifications for the reasonableness of its restraints. In order to preserve the unique character of the product that is intercollegiate athletics, courts have upheld restraints that might raise antitrust concerns in different contexts. The Supreme Court in NCAA concluded that "most regulatory controls of the NCAA [are] justifiable means of fostering competition among the amateur athletic teams and therefore are pro-competitive because they enhance public interest in intercollegiate athletics." The court warned, however, "[I]t is nevertheless well-settled that good motives will not validate an otherwise anticompetitive measure." 468 U.S. at 101, 117.

This standard has been applied in several cases involving the NCAA. In Worldwide Basketball and Sports Tours, Inc. v. NCAA, 2003 WL 21756081 (S.D. Ohio 2003), the plaintiffs .tournament promoters sought to enjoin the NCAA's enforcement of the "Two-in-Four Rule," which, limited Division I college basketball teams to playing no more than two school-scheduled basketball tournaments in any four consecutive years. Applying the rule of reason, the court found that the rule resulted in a significant reduction of Division I games. The court concluded that the NCAA's justifications for the rule competitive balance, the welfare of the student-athlete and the standardization of the playing season were not served by the rule and therefore did not justify the restraint. The court's decision emphasizes that even historically legitimate justifications for a restraint on competition will outweigh anti-competitive effects only when there is a nexus between the rule's purpose and effect and when there is no reasonably less restrictive alternative.

Applying an abbreviated rule-of-reason analysis

In cases involving restraints that have an obvious anti-competitive, courts may apply an abbreviated rule-of- reason analysis. In Law v. NCAA, 134 F.3d 1010 (10th Cir. 1998), the 10th Circuit considered whether NCAA-imposed salary limits for college basketball coaches violated antitrust laws. The court observed, "[W]here a practice has obvious anticompetitive effects as does price-fixing, there is no need to prove that the defendant possesses market power. Rather, the court is justified in proceeding directly to the question of whether the procompetitive justifications advanced for the restraint outweigh the anticompetitive effects under a 'quick look' rule-of-reason." Applying the "quick look" rule-of-reason analysis to a restraint on basketball coaches' salaries, the court concluded that the rule violated § 1 because it did not serve its stated purpose of creating an even playing field among NCAA member schools.

Professional sports league rules and regulations are sometimes the subject of collective bargaining. If a rule negotiated during the collective bargaining process is a proper subject for collective bargaining, that rule is likely immune from antitrust

laws under the National Labor Relations Act. See Wood v. NBA, 809 F.2d 954 (2nd Cir. 1987). Thus, so long as the NFL rule is a proper subject of collective bargaining under the act, §1 claims are unlikely to succeed.

Before mounting an antitrust challenge to a sports league's rules, an athlete like Clarett should carefully weigh the obstacles to successful litigation. Despite the successful challenge to a nearly identical NBA rule in 1971 (see Denver Rockets v. All-Pro Management, Inc., 325 F. Supp. 1049 (C.D. Cal. 1971)), winning a § 1 claim against any sports league is far from a "slam dunk." A challenge to a league's rules may be an expensive endeavor financially and may take years to resolve. Further, challenges to league rules under § 1 must address the unique considerations that apply to sports leagues generally. A prospective plaintiff must determine whether the professional sports league rule was a subject of collective bargaining; assess the likelihood that the league will be considered a single entity under Copperweld and thus unable to conspire; and evaluate the substance of the § 1 claim, i.e., whether the rule's anti-competitive effects of the rule outweigh the procompetitive effects.

In the end, a successful challenge to a sports league's rules may very well turn on issues common to all § 1 claims like market definition and competitive effects. However, prospective plaintiffs must also evaluate the unique considerations resulting from using laws designed to preserve competition against industries that market competition.