Summer September 1, 2017

Philadelphia and Sports Law

Adam Epstein, *Central Michigan University*
Brian Halsey, *West Chester University of Pennsylvania*

Philadelphia and Sports Law

By

Adam Epstein*

Brian J. Halsey **

I. Introduction

From birth[1] to death[2] and from race[3] to *Rocky*,[4] one would be hard-pressed to demonstrate that a city has had more of a cultural and legal impact on sports generally and sports law specifically than the city of Philadelphia. The purpose of this article is to introduce Philadelphia-based cases and incidents that have influenced sports law, sometimes at a national level. After reading the article, we hope that professors, students and practitioners will agree that the *City of Brotherly Love*[5] has earned a unique position within the sports law landscape.

This piece serves historical, legal and pedagogical purposes, and we hope it will also serve as a springboard to further research. Tort law and the criminal law are the most prevalent cases within this jurisdiction, so to speak, but Philadelphia has an array of other influential cases in a variety of contexts and subjects, especially those that impact contract law and issues related to gender and harassment.[6] We will include excerpts from a variety of commentary and news reports as well where we feel it is appropriate to add flavor and perspective. First, however, we address how Philadelphia fits into the geographical, legal, and societal landscape.

II. The City

*Professor, Department of Finance and Law, Central Michigan University.
**Associate Professor of Business Law, West Chester University of Pennsylvania.

[1] *See* Amy Hatch, *Parents Get Phillies Fever, Name Babies After Baseball Champs*, PARENT DISH (Oct. 22, 2009), http://www.parentdish.com/2009/10/22/parents-get-phillies-fever-name-babies-after-baseball-champs/ (noting that when the Philadelphia Phillies advanced into the World Series for the second straight year, the fans of the 2008 World Series champs were having a mini baby boom and naming their kids after Philadelphia players).

[2] NESN Staff, *Minor League Team to 'Celebrate Life' by Offering Fans Free Funeral in Ballpark Giveaway* (JUNE 26, 2013), http://nesn.com/2013/06/minor-league-team-to-celebrate-life-by-offering-fans-free-funeral-in-ballpark-giveaway/ (noting that the Philadelphia Phillies Triple-A affiliate Lehigh Valley IronPigs offered a free funeral to one "lucky" fan who submitted an essay about what their "dream funeral" would include).

[3] MSNBC.com News Services, *Pool Denies Turning Away Minority Kids*, (JULY 7, 2009), http://www.nbcnews.com/id/31833602/ns/us_news-life/t/pool-denies-turning-away-minority-kids/#.UfFerm03fYQ (reporting that a suburban Philadelphia swim club said that safety, not racism, was the reason for the cancellation of the memberships of minority kids).

[4] ROCKY (Metro-Goldwyn-Mayer Studios Inc. 1976)

[5] For a general history of the city and state at its founding as an English colony, *see* Jean R. SODERLUND, ED., WILLIAM PENN AND THE FOUNDING OF PENNSYLVANIA, A DOCUMENTARY HISTORY (1983). Philadelphia means *brotherly love* from the Greek φιλεω (phileo) "to love" and αδελφος (adelphos) "brother." CASSELL, PETTER AND GALPIN, ED. THE POPULAR EDUCATOR 262 (YEAR UNKNOWN).

[6] *See, e.g.*, ADAM EPSTEIN, SPORTS LAW 412 (2013) (discussing the notable arbitration case involving former Philadelphia Eagles wide-receiver Terrell Owens who was suspended for four games in 2005 and arbitrator Richard Bloch's 38-page decision which upheld the suspension on account of "unparalleled detrimental misconduct" by Owens involving both public and private disputes with the team).

Philadelphia is the largest city in the Commonwealth of Pennsylvania[7] and the seventh most populous metropolitan area in the U.S.,[8] as well as a former Federal capital.[9] The city is the place where the Declaration of Independence was signed (1776) as well as the U.S. Constitution (1787).[10] It is a diverse metropolis located minutes from some of the wealthiest and some of the poorest areas in the country.[11] The city is also the home to U.S. District Court for the Eastern District of Pennsylvania[12] and the U.S. Court of Appeals for the Third Circuit.[13] In Philadelphia, as in the Commonwealth of Pennsylvania, trial courts (other than municipal or traffic courts) are known as Courts of Common Pleas.[14] Numerous law schools in the area provide ample opportunity to pursue a law degree and subsequent employment in the legal profession.[15]

Philadelphia is also only one of twelve U.S. Cities to have all *Big Four* major sports teams.[16] Philadelphia's teams include the Philadelphia Eagles (NFL, Lincoln Financial Field),[17]

---

[7] PHILADELPHIA COUNTY, PENNSYLVANIA, http://quickfacts.census.gov/qfd/states/42/42101.html (last visited July 25, 2013).

[8] METROPOLITAN AREAS: ASSESSING COMPETITIVE POSITION AND CHANGE, http://proximityone.com/metros2013.htm (last visited July 25, 2013).

[9] THE INTERIM FEDERAL CAPITAL IN PHILADELPHIA , http://history.house.gov/HistoricalHighlight/Detail/37153 (last visited July 25, 2013) (Philadelphia served as the U.S. capital from 1790 to 1800. "[M]embers chose Philadelphia as an interim capital, largely because the city served as the social, financial, cultural, and geographic center of the young nation then clustered along the eastern seaboard.").

[10] INDEPENDENCE HALL, http://www.ushistory.org/tour/independence-hall.htm (last visited July 25, 2013).

[11] *See* Mike Armstrong, *Chester County is No. 21 on List of Wealthiest U.S. Counties* (Mar. 31, 2009), http://www.philly.com/philly/blogs/phillyinc/Chester_County_is_No_21_on_list_of_wealthiest_US_counties.html#bgfroJgBVUyG6t5E.99 (offering that Chester County, which is in Philadelphia suburbs, is one of the wealthiest areas in the country); *see also* Matthew DeLuca, *What's the Matter with Camden?* (Mar. 7, 2013), http://inplainsight.nbcnews.com/_news/2013/03/07/17226041-whats-the-matter-with-camden?lite (noting that Camden, New Jersey, just across the Delaware River from Philadelphia, holds the distinction of being either first (2005 and 2011) or second (2008) most dangerous city in the country).

[12] UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA, http://www.paed.uscourts.gov/ (last visited July 25, 2013).

[13] UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, http://www.ca3.uscourts.gov/(last visited July 25, 2013).

[14] PENNSYLVANIA COURTS OF COMMON PLEAS, http://www.pacourts.us/courts/courts-of-common-pleas/ (last visited July 25, 2013); *see also* THE AMERICAN LAW INSTITUTE, http://www.ali.org/index.cfm?fuseaction=contact.generalinformation (last visited July 25, 2013) (noting that the headquarters of the American Law Institute (ALI) is based in Philadelphia).

[15] *See, e.g.*, Rutgers School of Law-Camden, *Career Services Job Fairs and Law School Consortia*, http://camlaw.rutgers.edu/career-services-job-fairs-and-law-school-consortia (last visited Aug. 18, 2013) (recognizing that law schools in or near Philadelphia include The University of Pennsylvania (Penn), Drexel, Temple, Rutgers-Camden, Villanova, Widener and Penn State-Dickinson).

[16] The "Big Four" is an expression usually relating to the National Football League (NFL), National Hockey League (NHL), Major League Baseball (MLB), and the National Basketball Association (NBA). *See* THE U.S. PROFESSIONAL SPORTS MARKET AND FRANCHISE VALUE REPORT (2012), http://www.wrhambrecht.com/pdf/SportsMarketReport_2012.pdf (last visited July 25, 2013). In addition, in 2010 the *Philadelphia Union* became a member of Major League Soccer (MLS) and plays their games at (PPL Park in Chester, Pennsylvania.). *See* CLUB HISTORY, http://www.philadelphiaunion.com/club/history (last visited July 25, 2013).

[17] *See generally* PHILADELPHIA EAGLES, http://www.philadelphiaeagles.com/ (last visited July 25, 2013).

Philadelphia Flyers (NHL, Wells Fargo Center),[18] Philadelphia Phillies (MLB, Citizens Bank Park),[19] and the Philadelphia 76ers (NBA, Wells Fargo Center).[20] Philadelphia sports venues have been named re-named and rebuilt over the years and are now all world-class venues.[21] Ironically, Philadelphia is also one of the only cities to have one of its own *Big Four* teams file for bankruptcy.[22] The city boasts several influential and competitive colleges and universities among the National Collegiate Athletic Association (NCAA) membership including the Philadelphia *Big 5*: St. Joseph's University, The University of Pennsylvania, La Salle University, Temple University, and Villanova University.[23]

Sports, in general, have imbedded themselves into the nation's perception of Philadelphia. Readers of a certain age will recall the influence on pop culture that the 1976 movie *Rocky* and its sequels have had on the American landscape.[24] In fact, so many movies have been filmed in the city of Philadelphia that some have coined the term *Phillywood* to describe this phenomena.[25] There are numerous other Philadelphia-based sport-related films that one should recognize including *Invincible*,[26] *The Mighty Macs*,[27] and *Silver Linings Playbook*.[28] All of these films both reflect and demonstrate the influence that Philadelphia has had in American sports culture.

---

[18] *See generally* PHILADELPHIA FLYERS, http://flyers.nhl.com/ (last visited July 25, 2013) (The Flyers played at the venue named the Spectrum originally, then played at First Union Center. The Flyers won Stanley Cup in 1974 and 1975).

[19] *See generally* PHILADELPHIA PHILLIES, http://philadelphia.phillies.mlb.com/index.jsp?c_id=phi 2008 (last visited July 25, 2013) (recognizing that the Phillies won the World Series in 2008); *see also* THE OAKLAND ATHLETICS, http://oakland.athletics.mlb.com/oak/history/timeline.jsp (last visited July 25, 2013) (noting that today's Oakland Athletics (A's) were at one time Philadelphia-based but moved in 1954 to Kansas City and then 1968 to Oakland).

[20] PHILADELPHIA 76ERS, http://www.nba.com/sixers/ (last visited July 25, 2013). In 1983 the76ers won the NBA Championship. The Golden State Warriors were Philadelphia based but moved to San Francisco in 1962). PHILADELPHIA WARRIORS, http://www.sportsecyclopedia.com/nba/pwar/phlwarriors.html (Last visited July 25, 2013).

[21] *See generally* PHILADELPHIA'S PRO FOOTBALL STADIUMS, http://home.comcast.net/~ghostsofthegridiron/stadiums.htm (last visited July 25, 2013).

[22] *See* Edwin Shrake, *If You Know a Good Joke, Tell It to Philadelphia* (Sept. 23, 1968), *available at* http://sportsillustrated.cnn.com/vault/article/magazine/MAG1081610/index.htm (offering, "With an owner who is in bankruptcy court, a coach who is ridiculed by the press and the fans and a quarterback who broke his leg in the first exhibition game, the poor Eagles are in need of a few laughs.").

[23] *See* THE PHILADELPHIA BIG FIVE, http://www.philadelphiabig5.org/about/index.html (last visited July 25, 2013).

[24] *See* ROCKY, *supra* note 4; *see also* ROCKY II (United Artists 1979); ROCKY III (MGM/UA Entertainment Company 1982); ROCKY IV (MGM/UA Entertainment Company 1985); ROCKY V (MGM/UA Entertainment Company 1990); ROCKY BALBOA (Metro-Goldwyn-Mayer 2006).

[25] *See* NBC 10 Philadelphia, *'Phillywood' -- The New Hollywood* (Feb., 2009), http://www.nbcphiladelphia.com/entertainment/celebrity/Phillywood----The-New-Hollywood.html; Other non-sports related Philadelphia based movies include THE PHILADELPHIA STORY (Metro-Goldwyn-Mayer 2006); THE PHILADELPHIA EXPERIMENT (Cintel Films 2012); THE PHILADELPHIA EXPERIMENT (New World Pictures 1984); THE PHILADELPHIA EXPERIMENT II (Trimark Pictures 1993); PHILADELPHIA (Tristar Pictures 1993); THIS IS 40 (Apatow Prods. 2012); *see also* BROAD STREET BULLIES (HBO Sports 2010) (chronicling the nickname given to the pugilistic Philadelphia Flyers and the notable and downtown street, from their birth as an expansion team in 1967, to three straight championship finals appearances (1974–76), winning the Stanley Cup in 1974 and 1975).

[26] INVINCIBLE (Walt Disney Pictures 2006); *see also* IMDB.COM, *Invincible*, http://www.imdb.com/title/tt0445990/ (last visited July 25, 2013) ("Based on the story of Vince Papale, a 30-year-old bartender from South Philadelphia who overcame long odds to play for the NFL's Philadelphia Eagles in 1976.").

[27] THE MIGHTY MACS (Quaker Media 2009); *see also* IMDB.COM, *The Mighty Macs*, http://www.imdb.com/title/tt1034324/?ref_=sr_5 (last visited July 25, 2013) (referencing Immaculata College, "In the early 70s, Cathy Rush becomes the head basketball coach at a tiny, all-girls Catholic college. Though her team

III. Philadelphia Fandom

A. Misbehavior

This unique sports culture of Philadelphia (and the attendant legal ramifications) can be understood as an outgrowth of the region's fanbase. In short, Philadelphians care about their sports teams to the point that *"*Philly fans have become more notorious for their senseless behavior, than for their major sports accomplishments."[29] For instance, in 2008 "[f]ormer Vice Presidential candidate Sarah Palin was booed, as she was introduced to drop the first puck at the Philadelphia Flyers' home opener against the New York Rangers."[30] Booing, however, is nothing compared to earlier (and subsequent) incidents of misbehavior.

For example, in 1989 at the venerable Veterans Stadium the "…[c]rew failed to remove the snow that had piled up for several days leading Eagles fans, including future governor Ed Rendell, no choice but to pelt the Dallas Cowboys' players and coach Jimmy Johnson with massive amounts of snowballs."[31] In 1997, Major League Baseball draftee J.D. Drew was drafted by, but refused to sign with the Philadelphia Phillies in Major League Baseball.[32] As a result, on his next return to the city while playing for the St. Louis Cardinals, "Philly fans welcomed Drew back home by throwing "D" batteries at him. The game was delayed for roughly ten minutes after debris landed near Drew in center field. Philly fans could've injured Drew, and they still wouldn't have felt any remorse."[33]

Further, in 1999, the Philadelphia Eagles selected Syracuse University quarterback Donovan McNabb in the NFL draft.[34] Instead of jubilation, "McNabb was greeted with a chorus of boos because the Philadelphia fans who were in attendance were pushing for the Eagles to draft Texas running back Ricky Williams."[35] And then there is the *pièce de résistance* that is detailed under the *criminal law* section, *infra,* at Citizen's Bank Park in 2010 when a 21 year old Phillies fan vomited intentionally on the 11-year-old daughter of an off-duty police officer.[36]

---

has no gym and no uniforms-and the school itself is in danger of being sold-Coach Rush looks to steer her girls to their first national championship.")

[28] SILVER LININGS PLAYBOOK (The Weinstein Company 2012); *see also* IMDB.COM, *Silver Linings Playbook,* http://www.imdb.com/title/tt1045658/plotsummary?ref_=tt_stry_pl (last visited July 25, 2013) ("[The main character] finds there are certain instances where he doesn't cope well, however no less so than some others who have never been institutionalized, such as his Philadelphia Eagles obsessed OCD father who has resorted to being a bookie to earn a living.")

[29] *See* Adam Rosen, *10 Worst Philadelphia Sports Fans Moments*, BLEACHER REPORT (May 5, 2010), http://bleacherreport.com/articles/388192-10-worst-philadelphia-sports-fans-moments.

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] PHILLIES FAN CHARGED WITH INTENTIONALLY VOMITING ON COP'S KID (Apr. 16, 2010), http://content.usatoday.com/communities/gameon/post/2010/04/phillies-fan-charged-with-intentionally-vomiting-on-cops-kid/1#.UfLNRW03fYQ.

B. The Curse of Billy Penn

In short, Philadelphia fans take their sports seriously, and have little compunction about sharing their feelings with the players, owners, other fans, and the world. Fans have even blamed forces beyond the earth for the performance of the city's teams, including the curse of Billy Penn named after William Penn who founded the city in 1682.[37] Philadelphia's City Hall mounts a statue of Penn at its highest point, which for years was also the highest point within the city limits.[38] There was a tremendous outcry from the fans as the city's buildings went higher and higher above Penn's head and there was a commensurate decline in championship wins from the city's teams.[39] The outcry was enough that in 2007, as the new Comcast Center building became the city's highest point, the builder placed a 25-inch statute of Penn at the highest point of the structure, thus again restoring Penn at the pinnacle of the city.[40] The Phillies won the World Series in 2008[41] in seeming vindication of the fans' beliefs and in confirmation that the "curse" was lifted.

IV. Philadelphia-Related Sports Law Cases

What follows are summaries of significant sports law cases (or incidents) that have emanated from, occurred or passed through Philadelphia. We have divided cases by major legal category. We recognize that many cases do not fit nicely within one legal theory alone. However, we have attempted to place the cases under the most appropriate category for simplicity. Some cases are yet undecided or in the process of settlement while others can be traced back to the 19th Century.

A. Torts

Concussion Effects and Lawsuits

Those familiar with former Philadelphia Flyers hockey player Eric Lindros are cognizant of how head injuries can adversely affect and end a participant's career.[42] Those familiar with Owen

---

[37] *See* note 5, s*upra; see also,* PENNSYLVANIA HISTORICAL & MUSEUM COMMISSION, *THE QUAKER PROVINCE: 1681-1776*, http://www.portal.state.pa.us/portal/server.pt/community/overview_of_pennsylvania_history/4281/1681-1776__the_quaker_province/478727 (last visited July 29, 2013).

[38] *See* Kevin Horan, *William Penn Atop Philly Once Again*, MLB.COM (Oct. 30, 2008), http://mlb.mlb.com/news/article.jsp?ymd=20081027&content_id=3648489&fext=.jsp&c_id=mlb ("Superstitious sports fans here have long believed that Philadelphia irreparably angered the sports gods over an architectural snafu more than two decades ago. It all started in 1987, when the Liberty Place skyscraper rose higher than the statue of William Penn that sits atop City Hall. Prior to that, a gentleman's agreement had been in place, mandating that no building could exceed the height of the city's founding father. Ever since then, a troubling distinction had grown more and more clear: The city experienced a golden age of sports success before the skyscraper, with the Flyers winning the Stanley Cup in 1974 and '75, the 1980 Eagles reaching the Super Bowl and the Phillies of the same year winning their only World Series.").

[39] *Id.* The authors are aware, however, of the statistics' maxim that *correlation is not causation*. *See, e.g.*, Nathan Green, *Correlation is Not Causation*, GUARDIAN (Jan. 6, 2012), http://www.theguardian.com/science/blog/2012/jan/06/correlation-causation.

[40] Horan, *supra* note 38.

[41] 2008 WORLD SERIES (4-1): PHILADELPHIA PHILLIES (92-70) OVER TAMPA BAY RAYS (97-65), http://www.baseball-reference.com/postseason/2008_WS.shtml (last visited July 29, 2013).

[42] *See* David Fleming, *"Not So Crazy Now, am I?"* ESPN.COM (May 1, 2013), http://espn.go.com/nhl/story/_/page/Mag15notsocrazynowami/former-hockey-player-eric-lindros-redefined-nhl-

Thomas, a former student-athlete and football player for the University of Pennsylvania who committed suicide in 2010, are cognizant of how brain injuries might adversely affect and end a participant's life.[43] An autopsy showed evidence of a repetitive brain trauma known as CTE (Chronic Traumatic Encephalopathy).[44] The issue of whether teams, leagues, coaches, trainers, or the manufacturers of football helmets could be held responsible remains unresolved at this point, however it is at the forefront of a national debate regarding the risks involved in professional and amateur team sports.[45]

Philadelphia became the hub of a lawsuit related to sports concussions and alleged medical malpractice, and in 2013, a federal judge heard oral arguments as to whether lawsuits by thousands of former NFL players alleging concussion injuries should survive in the courts in *In Re: Nat'l Football League Players' Concussion Injury Litigation*.[46] Reaction to the Philadelphia-based lawsuit has already began to ripple through the sports community, with the NFL enacting changes to the rules of the game already in order to mitigate the chances of future head injury to players.[47]

On August 29, 2013 the NFL concussion lawsuits were resolved with the aid of a court appointed mediator.[48] The agreement was approved by U.S. Eastern District Judge Anita Brody in Philadelphia.[49] The NFL has agreed to remit $765 million in medical benefits and injury compensation to retired NFL players, to finance research related to medical and safety

---

culture-playing-injuries-espn-magazine (writing that Lindros sat out 18 games following the first concussion, and he suffered at least five more over the next two seasons, resulting in his retirement out of concern for the repeated injuries and the potential long term impact on his health).

[43] *See* Matt Flegenheimer, *A Year after Suicide of Penn Football Player, Many Questions Remain*, SI.COM (MAY 10, 2011), http://sportsillustrated.cnn.com/2011/writers/the_bonus/05/10/owen.thomas/index.html#ixzz2aBN6aU5Q (discussing that Thomas hanged himself in an apartment, had depression and evidence of CTE).

[44] *See* ESPN.com News Services, *Penn's Owen Thomas had CTE*, ESPN.COM (Sept. 10, 2010), http://sports.espn.go.com/ncf/news/story?id=5569329 (writing that "A detailed examination of his brain … showed he had the same disease caused by hard hits that has been associated with NFL players.").

[45] *See, e.g.*, Alan Schwarz, *As Injuries Rise, Scant Oversight of Helmet Safety*, N.Y. TIMES (Oct. 21, 2010), http://www.nytimes.com/2010/10/21/sports/football/21helmets.html?pagewanted=all&_r=0 (discussing the evolution (or lack thereof) of football helmet safety standards primarily since 1973).

[46] *See* Gary Mihoces, *Judge Breaks Down Arguments in Concussion-related Suit*, USA TODAY (Apr. 9, 2013), http://www.usatoday.com/story/sports/nfl/2013/04/09/nfl-concussion-lawsuit-federal-judge-anita-brody/2066933/ (offering that U.S. Eastern District Judge Anita Brody in Philadelphia addressed more than 100 lawsuits against the NFL that have been consolidated, with more than 3,500 former players suing the NFL alleging that not enough was done to inform the players about the dangers of concussions and not enough is being done today to take care of them either.); In Re: Nat'l Football League Players' Concussion Injury Litigation, MDL No. 2323, (E.D. Pa. Aug. 29, 2013) *available at* http://www.paed.uscourts.gov/documents/opinions/13D0728P.pdf (last visited Sept. 4, 2013).

[47] *See* Mike Wobschall, *Helmet Use, Illegal Challenge Procedure Highlight Rules Changes*, MINNESOTA VIKINGS (Mar. 21, 2013), http://blog.vikings.com/2013/03/21/helmet-use-illegal-challenge-procedure-highlight-rules-changes/ (offering that the rule change "has been adopted in the name of player health and safety, and the passage of this rule represents a significant victory for the NFL in its effort to promote and enhance player safety.").

[48] Judge Layn Phillips, *NFL, Retired Players Resolve Concussion Litigation; Court Appointed Mediator Hails "Historic" Agreement*, NFL LABOR FILES (Aug. 29, 2013), http://nfllabor.files.wordpress.com/2013/08/press-release-2.pdf; In Re: Nat'l Football League Players' Concussion Injury Litigation, MDL No. 2323, (E.D. Pa. Aug. 29, 2013) *available at* http://www.paed.uscourts.gov/documents/opinions/13D0728P.pdf (last visited Sept. 4, 2013).

[49] *Id.*

improvements, and to pay litigation costs.[50] Attorneys' fees are in addition to the $765 million settlement amount.[51]

We now begin a more detailed discussion of Philadelphia sports law cases. The following three cases represent specific examples of how Philadelphia has played a part in the sports torts discussion in the context of negligence. Interestingly, these three examples all involve the Philadelphia Phillies baseball team.

Schentzel

In *Schentzel v. Philadelphia Nat'l League Club*, a husband sued on behalf of his wife after she was hit by a foul ball at a Phillies baseball game on June 5, 1949.[52] The plaintiffs, residents of Allentown, traveled to see a doubleheader between the Philadelphia Phillies and the Chicago Cubs at Shibe Park in Philadelphia.[53] Their seats were located in the upper deck on the first base side, but they were not protected by any screening.[54] About ten minutes after the husband and wife sat down, she was hit by the foul ball.[55] She testified that she had never seen a baseball game before and even though had seen televised games she had seen no balls go into the stands.[56] The case was one of first impression for the court.[57]

The court analyzed whether the defendant baseball team owed the spectators a duty of care. In order to recover in a negligence action, the court acknowledged the classic negligence formulation that a plaintiff must prove: (1) a legal duty owing to him by defendant; (2) an unintentional breach of that duty by careless conduct; (3) a causal connection between defendant's conduct and plaintiff's injury.[58] Furthermore, the court noted the classic defense that the plaintiff's case must not disclose that he voluntarily assumed the risk or was guilty of contributory negligence.[59]

---

[50] *Id.*
[51] *Id.*
[52] Schentzel v. Philadelphia Nat'l League Club, 96 A.2d 181 (Pa. Super. 1953). One of the original legal theories was loss of consortium.
[53] *Id.;* Shibe Park (also known as Connie Mack Stadium) was razed in 1976. *See, e.g.*, Connie Mack Stadium, http://www.conniemackstadium.com/ (last visited Aug. 18, 2013).
[54] *Schentzel* at 182 ("The seats, it developed, were located in the upper stand, on the first base side of the diamond, but not behind the protective screen, being removed therefrom by about 15 or 20 feet.").
[55] *Id.*
[56] *Id.* at 183 ("Plaintiff testified that she had never seen a baseball game prior to the one at which she was injured, that she knew nothing about it, that she had seen televised games but had seen no balls go into the stands on television." However, the husband was familiar with foul balls, stating, "There is a million foul balls, maybe three or four or five in an inning, goes into the stand."). *Id*.
[57] *Id.* at 188.
[58] *Id*. at 183-184.
[59] *Id.* at 184 (noting that just because there is an accident does not mean there is negligence, citing Thompson v. Gorman, 366 Pa. 242, 246, 77 A.2d 413 (1951). The court then stated, "One who maintains a 'place of amusement for which admission is charged, is not an insurer, but must use reasonable care in the construction, maintenance and management of it, having regard to the character of the exhibitions given and the customary conduct of patrons invited:' *Haugh v. Harris Bros. Am. Co.*, 172 A. 145 (Pa. 1934)." Kallish v. American Base Ball Club of Philadelphia, 10 A. 2d 831 (Pa. Super. 1940)."). Consider that the Kallish case was a directed verdict in favor of the defendant and did not involve a foul ball but rather a spectator who fell on the four-year old plaintiff during an overcrowded game.

The plaintiff made arguments that a special duty of sports teams to female patrons should be recognized and that *exceptional precautions* should have been taken toward them especially – the 1953 argument went – because many women were "[i]gnorant of the hazards involved in the game."[60] The argument did not persuade the court.[61] The court acknowledged that there was screening at the game, but the court pointed out that there was enough screening behind home plate and that even if there was a wider screening area that there was no proof that she would not have been hit.[62] In fact, there was no proof of deviation from the sections of grandstands at other baseball parks.[63] The court stated that, "[i]n our opinion [the defendants] exercise the required care if they provide screen for the most dangerous part of the grand stand and for those who may be reasonably anticipated to desire protected seats, and that they need not provide such seats for an unusual crowd, such as the one in attendance at the game here involved."[64] Additionally, there was no claim that the screen was defective either.[65]

Thus, the court sided with the appellant baseball club.[66] Key to the decision was the theory that as a spectator at the Philadelphia game the wife voluntarily assumed the risk of being struck by batted or thrown balls.[67] The court recognized that there was no *express consent*, but there was *implied consent*, citing PROSSER ON TORTS and providing numerous examples from other jurisdictions.[68] The court also recognized that at 47 years old Mrs. Schentzel had significant life experience.[69] It concluded that she was presumed to have the "neighborhood knowledge with

---

[60] *Id.* at 185-188.
[61] *Id.* at 191.
[62] *Id.* at 185.
[63] *Id.*
[64] *Id.* (stating, "In general accord with this view are these cases from other jurisdictions" and citing *Quinn v. Recreation Park Ass'n*, 3 Cal. 2d 725, 46 P. 2d 144 (1935); *Brown v. San Francisco Ball Club, Inc.*, 99 Cal. App. 2d 484, 222 P. 2d 19 (1950); *Keys v. Alamo City Baseball Co.*, Tex. Civ. App. 150 S. W. 2d 368 (1941); *Williams v. Houston Baseball Ass'n*, Tex. Civ. App. 154 S.W. 2d 874 (1941); *Ratcliff v. San Diego Baseball Club*, 27 Cal. App. 2d 733, 81 P. 2d 625 (1938); *Blackhall v. Capitol District Baseball Ass'n,* 154 Misc. 640, 278 N.Y.S. 649, City Ct., 154 Misc. 640, 278 N.Y.S. 649, *affirmed*, 157 Misc. 801, 285 N.Y.S. 695 (1936); *Wells v. Minneapolis Baseball & Athletic Ass'n,* 122 Minn. 327, 142 N.W. 706 (1913).).
[65] *Id.* at 185.
[66] *Id.* at 191.
[67] *Id.* at 186-187.
[68] *Id.* The court cited PROSSER ON TORTS, 383-384, "By entering freely and voluntarily into any relation or situation which presents obvious danger, the plaintiff may be taken to accept it, and to agree that he will look out for himself, and relieve the defendant of responsibility. *Those who* participate or *sit as spectators at sports* and amusements *assume all the obvious risks of being hurt by* roller coasters, *flying balls* [Kavafian v. Seattle Baseball Club Ass'n, 105 Wash. 215, 177 P. 776, 181 P. 679; Brisson v. Minneapolis Baseball & Athletic Ass'n, 185 Minn. 507, 240 N.W. 903 (baseball); Schlenger v. Weinberg, 107 N.J.L. 130, 150 A. 434, 69 A.L.R. 738 (golf); Douglas v. Converse, 248 Pa. 232, 93 A. 955 (polo); Ingersoll v. Onondaga Hockey Club, 245 App. Div. 137, 281 N.Y.S. 505 (hockey)], fireworks, explosions, or the struggles of contestants. 'The timorous may stay at home.' [Chief Justice Cardozo in Murphy v. Steeplechase Amusement Co., 250 N.Y. 479, 166 N.E. 173.]…One who enters upon the premises of another, even as a business visitor, assumes the danger of all known or obvious conditions which he finds there. The consent is found in going ahead with full knowledge of the risk.' (Italics ours.)."
[69] *Id.* at 188. (stating that "[p]laintiff was a woman 47 years of age. There is nothing whatever in the record to support an inference that she was of inferior intelligence, that she had subnormal perception, or that she had led a cloistered life.").

which individuals living in organized society are normally equipped."[70] More specifically, the court noted that "all" should know that foul balls go astray during a baseball game and that such matters are so common every day at baseball games that it should be the "subject of judicial notice."[71]

Ultimately, the court ruled as a matter of law the plaintiff had failed to prove negligence on the part of defendant, and that she had impliedly assumed the risks of the normal and ordinary risks incident to attendance at a baseball game.[72] The 1953 *Schentzel* decision has served as precedent and has been cited by many other sport-related flying object cases including baseball, golf and soccer, becoming one of the classic foul-ball cases in sports law.[73]

Loughran

Over half a century later in *Loughran v. Phillies*,[74] the *Schentzel* decision impacted a case involving a spectator who claimed that the Philadelphia Phillies owed fans a duty of care during the period in between innings when outfielders routinely tossed the baseball into the stands after making a catch.[75] The Philadelphia Phillies were down 5-1 to the Florida Marlins at Veterans Stadium on the night of July 5, 2003.[76] Marlins third baseman Mike Lowell hit a fly ball to center field, and Phillies centerfielder Marlon Byrd caught it to end the seventh inning.[77] On his way back to the dugout, Byrd threw the ball into the center-field seats and allegedly hit spectator Jeremy Loughran in the face.[78] Loughran sued for negligence.[79] Loughran claimed in the suit that as of a result of being hit by the baseball he was treated for "severe headaches, vomiting,

[70] *Id*. For example, such language is directly cited in Loughran v. Phillies, 888 A.2d 872, 876 (Pa. Super. 2005), discussed *infra*.
[71] *Schentzel*, 96 A.2d at 188 (stating that "[i]t strains our collective imagination to visualize the situation of the wife of a man obviously interested in the game, whose children view the games on the home television set, and who lives in a metropolitan community, so far removed from that knowledge as not to be chargeable with it.").
[72] *Id.*
[73] We Shepardized via the Lexis.com database the decision and discovered that among the 90 total cites the following popular sports law cases referenced *Schentzel* including, but not limited to, Jones v. Three Rivers Mgmt. Corp., 483 Pa. 75, 394 A.2d 546, 1978 Pa. LEXIS 1133 (1978), Benejam v. Detroit Tigers, Inc., 246 Mich. App. 645, 635 N.W.2d 219, 2001 Mich. App. LEXIS 146 (2001), and Loughran v. Phillies, 2005 PA Super 396, 888 A.2d 872, 2005 Pa. Super. LEXIS 4093 (Pa. Super. Ct. 2005).
[74] 888 A.2d 872 (Pa. 2005).
[75] *See, e.g.*, Jeff Elliott, *Suns Players will Still Toss Balls to Fans, but One Promotion will Change*, JAX AIR NEWS (July 9, 2011), http://jaxairnews.jacksonville.com/sports/baseball/2011-07-09/story/suns-players-will-still-toss-balls-fans-one-promotion-will-change#ixzz2aSvQDRzN (expressing concern over using the eighth-inning promotion of using an oversized slingshot to fling T-shirts into the stands following the days-before death of fan Shannon Stone, at Rangers Ballpark in Arlington, Texas, who fell 20 feet onto concrete while reaching for a ball tossed by Texas Rangers outfielder Josh Hamilton and stating, "Jacksonville Suns players Suns players routinely throw balls into the stands if they've made the catch for the third out of the inning. Most will carry the ball all the way to the Jacksonville dugout before throwing an underhand toss into the stands. Some of the outfielders will turn and throw the ball into the center-field or right-field bleachers.").
[76] *Loughran*, 888 A.2d at 872; *See also* BASEBALL-REFERENCE.COM, *Saturday, July 5, 2003, 7:05PM, Veterans Stadium*, http://www.baseball-reference.com/boxes/PHI/PHI200307050.shtml (last visited July 29, 2013) (providing the box score of the game).
[77] *Id.*
[78] *Id.* at 874.
[79] *Id.*

confusion, incoherence, hallucinations, loss of balance, head and neck pain, photophobia, eye spasms, sleep disruption, and depression."[80]

In a parallel to the *Schentzel* decision,[81] the court was asked to address whether or not spectators know that the tossing of a ball by an outfielder into the stands in between innings is a common occurrence, for "[o]nly when the plaintiff introduces adequate evidence that the amusement facility in which he was injured *deviated in some relevant respect from established custom* will it be proper for an 'inherent-risk' case to go to the jury."[82]

The court found that experiences that have become a part of the game but lie outside the official rulebook can still be considered to be "established custom."[83] The court explained that fans often clamor for souvenir baseballs, and like "[h]ot dogs, cracker jack, and seventh inning stretches," some activities have become a part of the game of baseball even though not found in the Major League Baseball rulebook.[84] It stated, "Although not technically part of the game of baseball, those activities have become inextricably intertwined with a fan's baseball experience, and must be considered a customary part of the game. Similarly, both outfielders and infielders routinely toss caught balls to fans at the end of an inning."[85]

The Phillies organization and Marlon Byrd were granted summary judgment by the trial court which held that "[t]he applicable law clearly states that recovery is not granted to those who voluntarily expose themselves to risks by participating in or viewing an activity."[86] Thus, the court affirmed that "[c]ountless Pennsylvania court cases have held that a spectator at a baseball game assumes the risk of being hit by batted balls, wildly thrown balls, foul balls, and in some cases bats [and all the other flying debris that have become part of the Philadelphia baseball experience]."[87] Thus, in the *Schentzel* and *Loughran* cases, the Phillies were vindicated by the courts.

The Phillie Phanatic

It might be considered *negligence per se*,[88] so to speak, if we did not address the Phillie Phanatic.[89] The Phanatic is the large, green, and mildly annoying mascot of the Philadelphia

---

[80] *Id.*
[81] *Schentzel*, 96 A.2d at 188.
[82] *Loughran*, 888 A.2d at 875 (quoting Jones v. Three Rivers Mgmt. Corp., 394 A.2d 546, 550 (Pa. 1978).
[83] *Id.*
[84] *Id.* at 875.
[85] *Id.* at 876.
[86] *Id.*
[87] *Id.*
[88] *See, e.g.*, McCloud v. McLaughlin, 837 A.2d 541, 545 (Pa. Super. 2003) (discussing negligence per se in Pennsylvania in the context of a dog-related injuries to a passerby and noting that this legal theory recognizes that ordinances and statutes regulate conduct and impose legal obligations and conformities to the states and that, "… through an individual's violation of a statute or ordinance, it is possible to show that the individual breached his duty to behave as a reasonable person: in other words, that the individual is 'negligent per se.'").
[89] *See* MLB.COM, *The Phillie Phanatic*, http://philadelphia.phillies.mlb.com/phi/community/phi_community_phanatic.jsp (last visited Aug. 18, 2013) (discussing the debut of the Phillie Phanatic in 1978 and exploring the profile generally of the character).

Phillies.[90] It is one of the most notable mascots at any level in any sport and has been characterized as the "most-sued mascot in the majors."[91] The fuzzy green creature started in 1978 and was played by Dave Raymond.[92] It was created with the help of Jim Henson, founder of the Muppets.[93] The Phanatic quickly developed a national reputation, exemplified by a prominent confrontation with Manager Tommy Lasorda of the Los Angeles Dodgers in 1988.[94]

That trouble-maker, lawsuit-magnet reputation was maintained in 2010 by a lawsuit filed by a 70-year-old woman who claimed that the Phanatic injured her knees climbing through the stands in a 2008 minor league game in Reading, Pennsylvania.[95] The plaintiff sued the man who played the Phanatic, the Philadelphia Phillies, and the minor league Reading (Pennsylvania) Phillies.[96]

More litigation continued in 2012 when the Phanatic was sued again by a woman who claimed that in 2010, at her sister's wedding, the Phillies' mascot lifted the Plaintiff and her lounge chair and tossed both into a nearby pool. Her lawsuit maintains that she suffered "[s]evere and permanent injuries to her head, neck, back, body, arms and legs, bones, muscles, tendons, ligaments, nerves and tissues ... [and] although the pool had water [the plaintiff] was tossed into the shallow end."[97]

It does not appear that the Phillie Phanatic, at least at the time of this writing, has an interest in modifying its behavior to avoid litigation.

B. Philly Misconduct and the Criminal Law

We believe that no city in the United States has become more infamous with regard to spectator misbehavior and criminal activity than Philadelphia.[98] Examples misconduct in sport-related

---

[90] *Id.*

[91] *See* Robert M. Jarvis & Phyllis Coleman, *Hi-Jinks at the Ballpark: Costumed Mascots in the Major Leagues*, 23 CARDOZO L. REV. 1635, 1661 (2002) (providing that jury awards against the Phanatics' misdeeds include $2.5 million to an individual who suffered back injuries from being hugged too hard at the May 1994 opening of a paint store; $25,000 to a pregnant woman who was accidentally kicked in the stomach at an August 1993 game between the Phillies and the Cincinnati Reds; and $128,000 to a retired bus driver who was knocked over at a May 1991 church carnival).

[92] *See* MLB.COM, *supra* note 89.

[93] *Id.*

[94] *See* Tommy Lasorda, *I Hate the Phillie Phanatic*, TOMMY LASORDA'S WORLD (July 20, 2005), http://tommy.mlblogs.com/2005/07/20/i-hate-the-phillie-phanatic/ (blogging by Lasorda about the incident).

[95] Associated Press, *Phillies' Furry Phanatic Mascot Facing Civil Suit*, DAILY TIMES (June 30, 2010), http://www.delcotimes.com/articles/2010/06/30/news/doc4c2b5745be101881300576.txt (stating that the plaintiff claimed that "the bumbling bird exacerbated her arthritis, ultimately forcing her into knee replacement surgery" and sought at least $50,000 for the incident). According to the article, the man who played the Phanatic on that day was Tom Burgoyne.

[96] *Id.*

[97] *See* Jason Nark, *Phanatic Sued by Abington Woman over Alleged Pool Horseplay*, PHILLY.COM (June 13, 2012), http://mobile.philly.com/news/?wss=/philly/news/breaking/&id=158591835#YAVFDQ7QoZSTT5VU.99.

[98] *See* discussion under the sections examples of Philadelphia Fandom, Misbehavior & the Curse of Billy Penn, *supra.*

activities involving Philadelphians are simply too numerous to list.[99] As we outline in chronological order, some of this behavior is criminal legend within the sports community.[100]

In a few instances, "criminal" misconduct never resulted in criminal charges or even a lawsuit, including the *Goon-Gate* incident in 2005 in which Temple University head basketball coach John Chaney sent in backup player Nehemiah Ingram into the game against St. Joseph's University resulting in an intentional foul against St. Joe's John Bryant, breaking Bryant's arm and ending Bryant's senior season.[101] Chaney's actions resulted only in his apology, along with a three-game suspension, and Bryant never filed a lawsuit against Ingram, Chaney or Temple.[102] Some commentators have stated that "[i]n a just world, Chaney would face both criminal and civil charges, spend at least a few nights in jail, and be removed from the Basketball Hall of Fame."[103] However, the incident quickly disappeared.[104]

Santa Claus Incident (1968)

Still, almost forty years earlier, on December, 1968, Philadelphia sports fans etched their name into permanent, national ignominy after throwing snow balls at Santa Claus at an Eagles game.[105] "Frank Olivo, the Santa in question, was not drunk, nor was his red suit in tatters that December day in 1968, when he walked onto the field for the [Eagles] halftime show, only to be met by a chorus of jeers and a snowball fusillade from Eagles fans."[106] The incident was covered by an ESPN special video documentary in 2011 covering the incident which occurred at Franklin

---

[99] *Id.* A Google search of "Philadelphia Sports Fan Behavior" on July 31, 2013 yielded roughly 3,750,000 results. One of the most unfortunate included an event on national television on Nov. 10, 1997, in which a spectator shot a flare across Veteran's Stadium field into the stands during a nationally televised Monday night game against the San Francisco 49ers. *See* Marisol Bello and Nicole Weisensee, *Police Pursuing Flare-ups at Vet*, PHILLY.COM (Nov. 15, 1997), http://articles.philly.com/1997-11-15/news/25541800_1_flare-eagles-owner-jeffrey-lurie-fan-behavior.; *see also* Mark McDonald and Julie Knipe Brown, *Brew-haha over Brawl Pols Deman Answers for Vet Melee on Opening Day*, PHILLY.COM (Apr. 16, 1999), http://articles.philly.com/1999-04-16/news/25520901_1_prep-students-beer-sales-school-administrator (discussing the April 13, 1999 high school brawl in the stands between local students from St. Joe's Prep and Bonner High at the Phillies' home opener which was actually broadcast on ESPN national television.; *see also* Leah Goldman, *Philly Sportswriters Get Into Fistfight after Explosive Twitter Fight*, BUS. INSIDER (Sept. 28, 2011), http://www.businessinsider.com/les-bowen-jeff-mclane-fight-2011-9#ixzz2cLS9l5KL (discussing the punch thrown by Philadelphia sports writer Les Bowen at the face of sports writer Jeff McLane after a Twitter debate and subsequent Eagles press conference).

[100] *See, e.g.*, EJ Dickson, *The New York Times Can't Stop Trolling Philadelphia*, SALON.COM (Jun. 13, 2013), http://www.salon.com/2013/06/13/the_new_york_times_cant_stop_trolling_philadelphia/ (detailing 16 different "bad Philly fan" articles in the New York Times and how the newspaper cannot stop writing about such Philadelphia-based misdeeds).

[101] *See* Joshua D. Winneker, Esq., *Re-living "Goon-Gate" and its Potential Legal Consequences for Universities and Colleges*, COLLEGE SPORTS BUS. NEWS (Feb. 1, 2011), http://collegesportsbusinessnews.com/issue/february-2011/article/re-living-goon-gate-and-its-potential-legal-consequences-for-universities-and-colleges.

[102] *Id.*

[103] *See* Willisms, "*Goon-Gate" Strikes College Basketball: The Downfall of John Chaney,* WILLISMS.COM (Feb. 27, 2005), http://www.willisms.com/archives/2005/02/goongate_strike.html.

[104] *See* Mike Jensen, *St. Joe's? So what for Chaney with "Goon-gate"in the past, the Temple Coach Put No Special Emphasis on Tonight's Matchup*, PHILLY.COM (FEB. 14, 2006), http://articles.philly.com/2006-02-14/sports/25409608_1_owls-coach-john-chaney-temple-owls-senior-guard.

[105] *See* Dickson, *supra*; *see also* Associated Press, *Philadelphia's Boos Still Ringing for Santa* (Jan. 30, 2005), http://www.nytimes.com/2005/01/30/sports/football/30nfl.html?_r=0 (discussing the Santa Claus incident).

[106] *Id.*

Field.[107] The crowd was whipped up and with that day's loss ended a sad 2-12 season.[108] Interestingly, apparently there were no criminal charges from the most infamous Philadelphia sport-related incident.[109]

Eagles Court (1997)

Though the Santa Claus incident has its place in shaping Philadelphia's negative (or passionate) reputation, other incidents involving misbehavior at Eagles' games became out-of-control. As a result, in 1997 the Philadelphia Eagles established a courtroom at Veterans Stadium where the Eagles played at that time.[110] It was established due to the extremely unruly behavior of Eagles fans against fans of visiting teams, combined with struggles related to managing acts of public drunkenness,[111] prompting Philadelphia municipal judge Seamus McCaffrey (and the Philadelphia Police Department) to establish a small, in-stadium courtroom known as *Eagles Court*.[112] This subterranean courtroom handled unruly fans with quick judgment and swift sentencing.[113] Cases usually included disorderly conduct, public intoxication, and like offenses.[114] The court commonly levied sentences that forced offenders to give up season tickets, or forced fans to pay up to a $400 fine and sit in jail for the remainder of the game.[115]

Technology superseded Eagles Court in later years and *Eagles Court* no longer exists.[116] Still, after having moved to Lincoln Financial Field in 2003, the Eagles then became the first NFL team to encourage fans to use text messaging to report misbehaving fans to security personnel beginning in 2007.[117] One wonders how the Santa Claus and Goon-Gate incidents might have been resolved and played-out today given the ubiquitous nature of YouTube, Facebook, Twitter and other social media websites that provide instant access and commentary regarding public behavior and events.

---

[107] *See* Elizabeth Merrill, *Philly Booed Santa, but Santa Still Smiles*, ESPN.COM (Dec. 22, 2011), http://espn.go.com/nfl/story/_/id/7377416/philadelphia-eagles-fans-once-booed-santa-santa-jovial-63-year-old-frank-olivo-loves-philly-teams https://www.youtube.com/watch?v=AWvza6en5Rg. Merrill states, "The snowstorm prevented the Eagles' regular Santa, who was based in Atlantic City, N.J., from coming to the game. So an Eagles employee asked Olivo to fill in. The instructions were simple: When the song "Here Comes Santa Claus" started, that was his cue to walk through a column of cheerleaders and the Eagles' orchestra from one end zone to the other, then head back along the track."

[108] *Id*.

[109] *See* GLEN MACNOW AND ANTHONY L. GARGANO, THE GREAT PHILADELPHIA FAN BOOK 34-38 (2003) (Discussing the Santa Claus Incident generally. In this, and in all other accounts of the incident that were reviewed by the authors, there has never been a mention of criminal charges filed in connection thereto.)

[110] *See* Rosland Briggs, *20 Fans Go Before 'Eagles Court' Most Were Fined for Disorderly Conduct. The Legal Debut Was Judged a Success by Officials*, PHILLY.COM (Nov. 27, 1997), http://articles.philly.com/1997-11-24/news/25542778_1_steelers-fans-eagles-court-disruptive-conduct. The Eagles moved their home field to Lincoln Financial Field in 2003. *See* Philadelphia Eagles, *Lincoln Financial Field*, ESPN.COM, http://espn.go.com/travel/stadium/_/s/nfl/id/21/lincoln-financial-field (last visited Aug. 18, 2013).

[111] *Id*.

[112] *Id*; *see also*, EPSTEIN, SPORTS LAW at 171.

[113] EPSTEIN, at 171.

[114] *Id*.

[115] *Id*.

[116] *Id*.

[117] *Id*.

The following examples demonstrate more recent ways in which Philadelphians have generated national discussion as to the extent that the criminal law is involved in sport-related incidents. The three involve spectators or fans both inside and outside of stadium venues.

Attack on David Sale, Jr. (2009)

In 2009, three people were charged in an attack on David Sale, Jr.[118] Sale was beaten and kicked to death near Citizens Bank Park during a Philadelphia Phillies baseball game.[119] The three perpetrators plead guilty to manslaughter and conspiracy charges.[120] The incident was not the only one that weekend, but it seemed to confirm the city's reputation.[121] Sale was attacked over a spilled beer at the game.[122] He was beaten so badly that in one hearing the medical examiner spent almost an hour listing Sale's injuries.[123]

"Vomit Man"(2010)

The aforementioned *pièce de résistance*[124] occurred when a 21-year-old New Jersey man intentionally vomited on another fan and his 11-year-old daughter in the stands at a Philadelphia Phillies game in April 2010.[125] Matthew Clemmens, ostensibly the very model of a modern Major-General,[126] attended the game in Citizen's Bank Park. Clemmens and his friend were cursing and heckling other spectators, and after a spilled beer and some spitting, Clemmens put

---

[118] *See* Michael Newall, *Three to Face Trial in Beating Death at Phillies Game*, PHILADELPHIA WEEKLY (Aug. 5, 2009), http://www.philadelphiaweekly.com/news-and-opinion/phillynow/Three-To-Face-Trial-in-Beating-Death-at-Phillies-Game-52557192.html#ixzz2b8cOaeWp.

[119] *See Three Men Sentenced in Fatal Phillies Ballpark Attack*, FOXNEWS.COM (DEC. 20, 2011), http://www.foxnews.com/us/2011/12/20/three-men-sentenced-in-fatal-phillies-ballpark-attack/#ixzz2b8bfgEga (noting that Francis Kirchner, Charles Bowers and James Groves each pleaded guilty to voluntary manslaughter and criminal conspiracy, and Kirchner, 30, was sentenced to consecutive terms totaling nine to 18 years, Bowers got consecutive terms totaling five to 10 years, and Groves was sentenced to concurrent terms of two to four years).

[120] *See* Associated Press, *Men Plead Guilty in 2009 Fatal Beating*, ESPN.COM (Oct. 18, 2011), http://espn.go.com/mlb/story/_/id/7119750/three-men-plead-guilty-fatal-philadelphia-phillies-ballpark-beating.

[121] *See* St. John Barned-Smith, *Phils Fans: The New Broad Street Bullies?*, PHILLY.COM (July 27, 2009) ("David Sale Jr., 22, of Lansdale, was beaten to death in a parking lot near the stadium following a dispute in McFadden's restaurant in the Citizens Bank Park complex."… "It was a new chapter in Philadelphia sports fans' bad behavior over the years - overhyped, in the eyes of many locals - highlighted by the batteries thrown at J.D. Drew in 1999 and the infamous booing of Santa Claus in 1968.").

[122] *Id*.; *see also* Mike Newall, *Judge Sentences 3 in Beating Death after Phillies Game*, PHILLY.COM (Dec. 20, 2011), http://articles.philly.com/2011-12-20/news/30538470_1_judge-sentences-plea-bargain-phillies-game.

[123] *Id.* ("They included severe brain trauma and lacerations to the spleen, liver, left kidney, and bowels. His left ear was partially torn off, and he suffered a tear in his left vertebral neck artery that was so deep it caused blood to pour into his spinal column . . .").

[124] *See* note 36, *supra*.

[125] ESPN.com News Services, *Man Accused of Vomiting on Girl at Game*, ESPN.COM (Apr. 26, 2010), http://sports.espn.go.com/mlb/news/story?id=5098407.

[126] The reference is to a musical satire of an educated 19th century British Army officer from Gilbert & Sullivan's 1879 *The Pirates of Penzance*. "[T]he song is replete with historical and cultural references, in which the Major-General describes his impressive and well-rounded education." MAJOR-GENERAL'S SONG, https://en.wikipedia.org/wiki/Major-General''s_Song (last visited Aug. 6, 2013).

his fingers down his throat and vomited on a father and daughter sitting below him, and punched the father and was eventually tackled by other spectators and arrested.[127]

There was tremendous concern throughout the Phillies fan community regarding if the park was a safe place for families, and questioning how and why a fan could behave as Clemmens did here.[128] The story made national news and did nothing to help the perception of the Philadelphia sports community within the rest of the sporting world.[129]

Geno's Brawl (2012)

Unfortunately, the violent reputation of Phillies fans crosses sports, and it crops up around hockey games too.[130] One infamous 2012 hockey incident had both tort and criminal law elements. Dennis Veteri, the main perpetrator in this incident, was sentenced to house arrest and probation after pleading guilty to aggravated and simple assault and conspiracy after attacking a fan of a rival team.[131]

After drinking during the hockey game, Veteri attacked a decorated Marine veteran, Neal Auricchio, Jr., who had previously been wounded in Iraq.[132] Veteri inflicted head and face injuries in the attack on Auricchio that it required a titanium plate in order to fix.[133] In January 2013, a six count civil complaint was filed against Veteri and the South Philly Bar and Grill, the place where he watched the NHL's New York Rangers beat the Philadelphia Flyers 3-2 leading to the confrontation outside Geno's Steaks, the popular landmark in South Philadelphia.[134]

C. Contract Law

After reading the above discussion, one might think that Philadelphia is the center of all things tortious or criminal within sports, but the city also has been a bastion of sports contract law and related issues throughout its history (or at least since 1890).[135] Consider from a contract drafting

---

[127] *See* Associated Press, *Jersey Man Gets up to 3 Months in Jail*, ESPN.COM (July 30, 2010), http://sports.espn.go.com/mlb/news/story?id=5423356.
[128] *Id.*
[129] *Id.*; *see also* Crimesider Staff, *Matthew Clemmens, Phillies Fan, "Vomit Man"; Admits He Threw up on Cop, Kid at the Ol' Ballgame*, CBS NEWS (May 25, 2010), http://www.cbsnews.com/8301-504083_162-20005950-504083.html; *see also* Vince Lattanzio, *Police: Phillies Fan Assaults, Vomits on Cop and Family*, NBC 10 PHILADELPHIA (Apr. 16, 2010), http://www.nbcphiladelphia.com/news/local/Off-Duty-Officer-Daughters-Assaulted-at-Phillies-Game-90983739.html.
[130] *See* Kyle Scott, *Oh Boy… Flyers and Rangers Fans Fight Outside Geno's*, CROSSING BROAD (Jan. 3, 2012), http://www.crossingbroad.com/2012/01/oh-boy-flyers-and-rangers-fans-fight-outside-genos.html; *see also* Travis Hughes, *Wanted: 'Flyers fans' who beat up Rangers fans at Geno's Steaks*, (Jan. 4, 2012), http://www.broadstreethockey.com/2012/1/4/2682057/philadelphia-flyers-fan-fight-rangers-winter-classic-genos-steaks.
[131] *See* Ryan Hutchins, *Woodbridge Cop Beaten after Flyers-Rangers Hockey Game Files Suit*, NJ.COM (Jan. 24, 2013), http://www.nj.com/news/index.ssf/2013/01/neal_auricchio_jr_beating_pres.html.
[132] *Id.*
[133] *Id.*
[134] *Id.; see also* Ray Rossi, *Woodbridge Cop Beaten after Flyers-Rangers Winter Classic Game Files Suit. Should the Bar be Held Liable?* NJ1015.COM (Jan. 24, 2013), http://nj1015.com/woodbridge-cop-beaten-after-flyers-rangers-winter-classic-game-files-suit-should-the-bar-be-held-liable-pollgraphic-video-nsfw/.
[135] *See* Hallman discussion, *infra.*

perspective (such as a *force majeure* clause)[136] the *Snowmageddon* incident on December 26, 2010.[137] In that incident a Sunday Night Football game between the Minnesota Vikings and Eagles in Philadelphia was postponed to Tuesday, December 28, due to a snow emergency.[138] It resulted in the first Tuesday NFL game in 64 years.[139] The snow emergency and the impact on the game's schedule could serve as an excellent pedagogical inquiry in a legal course as to how to draft contracts with an eye on what can go wrong during the contract's performance. But beyond *Snowmageddon,* we now focus on six of the most influential Philadelphia-based contract law sports cases.

Darko Milicic (2004): Minors and Contracts

Milicic v. Basketball Marketing Co.,[140] a Pennsylvania Superior Court case, dealt with an injunction that permitted Darko Milicic, a professional basketball player in the National Basketball Association (NBA), to disaffirm an endorsement deal signed as a minor at age 16 with The Basketball Marketing Co.[141] The contract contained a choice of law clause requiring the agreement to be governed by Pennsylvania law.[142] Milicic was not well-known in the United States, but his draft status and potential for fame skyrocketed by the time he turned 18 years old and was eligible for the NBA draft."[143] Upon turning 18, Milicic disaffirmed the agreement.[144] Within ten days of his birthday he started to return all monies and products from the marketing company (or their equivalent value) that he had received per the contract.[145] However, the sponsor refused to accept this disaffirmance and communicated with other companies about its intent to hold Milicic to the agreement.[146] Milicic lost a potential Adidas sponsorship as a result.[147]

Milicic received a temporary restraining order and injunction.[148] On appeal, the court upheld the order[149] and held that Milicic had timely disaffirmed the contract.[150] It also noted the very real

---

[136] "The term force majeure relates to the law of insurance and is frequently used in construction contracts to protect the parties in the event that a segment of the contract cannot be performed due to causes that are outside the control of the parties, such as natural disasters, that could not be evaded through the exercise of due care." WEST'S ENCYCLOPEDIA OF AMERICAN LAW, 2.ed (2008), *available at* http://legal-dictionary.thefreedictionary.com/Force+majeure+clause (last visited Aug. 6, 2013).
[137] *See* Rob Gloster, *Philadelphia Eagles-Minnesota Vikings Game Postponed to Tomorrow by Storm*, BLOOMBERG (December 27, 2010), http://www.bloomberg.com/news/2010-12-27/philadelphia-eagles-minnesota-vikings-game-postponed-to-dec-28-by-storm.html.
[138] *Id.*
[139] *See* Tim Molloy, *'Nation of Wussies' Gets First Tuesday Night NFL in 64 Years*, THE WRAP (Dec. 27, 2010), http://www.thewrap.com/tv/column-post/nation-wussies-get-first-tuesday-night-nfl-64-years-23489.
[140] 857 A.2d 689 (Pa. Super. 2004).
[141] *Id.*; *see also generally* Jenna Merten, *2004 Annual Survey: Recent Developments in Sports Law*, 15 MARQ. SPORTS L. REV. 531, 552 (2005)
[142] *Milicic* at 691.
[143] *Id.* at 691-92.
[144] *Id.*
[145] *Id.*
[146] *Id.*
[147] *Id.*
[148] Merten, *supra* note 141 at 552; *Milicic* at 692.
[149] *Milicic* at 697.
[150] *Id.* at 696.

harm (for example the lost Adidas endorsement contract) to Milicic's negotiation position vis-à-vis sponsors.[151] The court also found that Basketball Marketing's letters to potential sponsors were *prima facie* evidence of a plausible claim of intentional interference with prospective contractual relations.[152]

Allen Iverson (2003): Past Consideration

Allen Iverson joined the Philadelphia 76ers basketball team in 1996.[153] As a rising star at the time, Iverson had the usual opportunities for endorsement deals, marketing contracts, and unfortunately, human leaches. A family friend sued Iverson for breach of an oral contract in *Blackmon v. Iverson*.[154] The plaintiff brought a breach of contract claim stemming from Iverson's reference to himself as "The Answer" and marketing himself accordingly.[155] The record showed that the plaintiff had suggested that Iverson use "The Answer" as a nickname in 1994, before Iverson went professional.[156]

The issue centered on the fact that the idea was shared with Iverson willingly, without compensation.[157] However, later on same night that the idea was willingly revealed Iverson orally promised to give the plaintiff a share (25%) of the royalties stemming from the "The Answer" moniker.[158] The plaintiff worked on the promotion and marketing of the nickname and he was reassured multiple times that he would be paid his share.[159] "The parties also discussed using "The Answer" as a logo."[160] The court focused on the timing of when "The Answer" nickname was attributed to Iverson by the plaintiff.[161] The court found that because disclosure of the nickname by plaintiff occurred *before* Iverson made any promises to the plaintiff, and *before* Iverson decided to use "The Answer" in his 1996 shoe contract and *before* sales of products bearing "The Answer" began in 1997, the disclosure was past consideration insufficient to create a new and binding contract.[162] The complaint was dismissed.[163]

Bill Hallman: The Reserve Clause I (1890)

One of the first sports law cases in the United States involved Bill Hallman, a utility infielder, who signed an agreement in October 1888 with the Philadelphia Ball Club of the National League to play for the 1889 season.[164] At that time, the existence of a reserve clause or the

---

[151] *Id.* at 694.
[152] *Id*. at 697.
[153] *See* ALLEN IVERSON | GUARD, ROTOWORLD (Jan. 29, 2013), http://www.rotoworld.com/player/nba/409/allen-iverson (last visited Aug. 8, 2013).
[154] 324 F. Supp.2d 602 (E.D. Pa. 2003); *see also* Brent C. Moberg, *2003 Annual Survey: Recent Developments in Sports Law*, 14 MARQ. SPORTS L. REV. 603, 615-616 (2004).
[155] *Iverson*, 324 F. Supp.2d at 605-606.
[156] *Id*.
[157] *Id*.
[158] *Id*.
[159] *Id*.
[160] *Id*.
[161] *Id*.
[162] *Id*. at 612; *see also* Moberg, *supra* note 154, at 615-616.
[163] *Id*.
[164] *Phila. Ball Club v. Hallman*, 8 Pa. C. C. 57, 61 (Pa. Ct. C.P. 1890).

reserve rule, essentially held players hostage to the team they signed with in that league.[165] Hallman later signed a contract with the Philadelphia Athletics of the rival Players' League for the following season.[166] His old team sued, asserting that Hillman must renew the old contract for the following year "'[o]f similar tenor, form and terms' as the old contract."[167]

Judge M. Russell Thayer delivered the opinion of the Philadelphia County Court on March 15, 1890, expressing his discontent, stating that under this rule Hallman would be "[a]bsolutely at [the owner's] mercy, and may be sent adrift at the beginning or in the middle of a season, at home or two thousand miles from it, sick or well, at the mere arbitrary discretion of the plaintiffs," and, thus "[s]uch a contract is so wanting in mutuality that no court of equity would lend its aid to compel compliance with it."[168] In short, the court found that a player cannot be forced to renew a contract that could bind effectively him for life to a particular team.

Napoleon Lajoie: The Reserve Clause II (1902)

The Player's League was a briefly active (one year) baseball league that attempted to change the owner-player dynamic that was exemplified by the *Hallman* case.[169] Unfortunately, the league ceased operation at the conclusion of the 1890 season.[170] Professional baseball was legally uneventful from 1890 to 1900.[171] However after the expansion and reorganization of what used to be known as the Western League,[172] its successor American League literally joined the major leagues.[173] There were now *two* major leagues, the "junior" American League and the "senior" National League.[174] As competitors providing fans with the same product, using the same raw materials (players) the two leagues were ripe for a collision. It happened in Philadelphia, in the name of a player called Napoleon Lajoie.[175]

After the 1900 season, Philadelphia American League owner Clark Griffith, "under cover of darkness . . . stole into Philadelphia" and signed Lajoie away from Philadelphia of the National League to Philadelphia of the American League.[176] The National League

---

[165] *See* Reserve Clause, BASEBALL-REFERENCE.COM, http://www.baseball-reference.com/bullpen/Reserve_clause (last visited Aug. 18, 2013) ("[P]layers were forced to accept a system built around the reserve clause. [O]nce signed to a professional contract, players could be re-assigned, traded, sold, or released at the team's whim. The only negotiating leverage that most players had was to *hold out* at contract time, refusing to play unless their conditions were met.").
[166] *Phila. Ball Club*, 8 Pa. C. C. at 57.
[167] *Id*. at 63.
[168] *Id.* at 62. Judge Thayer further asserted that equity courts would not require performance of "hard and unconscionable bargains, or where the decree would produce injustice." *Id.* at 63.
[169] James R. Devine, *Curt Flood a Triumph of The Show Me Spirit*, 77 MO. L. REV. 9, 27-28 (2012); For a discussion of the history of the Player's League *see also* ED KOSZAREK, THE PLAYERS LEAGUE: HISTORY, CLUBS, BALLPLAYERS AND STATISTICS 9 (2006).
[170] *See* Devine, *supra* note 169, at 27-28.
[171] *Id*.
[172] *Id.; See* TED TAYLOR, THE ULTIMATE PHILADELPHIA ATHLETICS REFERENCE BOOK 1901-1954, 359 (2010).
[173] Devine, *supra* note 169, at 27-28.
[174] *Id*.
[175] Philadelphia Ball Club, Ltd. v. Lajoie, 51 A. 973 (PA. 1902).
[176] *See* Devine, *supra* note 169, at 28 (citations omitted).

Phillies tried to prevent Lajoie from playing for the American League A's.[177] However, the trial court did not grant an injunction before the 1901 season.[178]

The court noted that Lajoie's National League contract was negotiated for three years and provided for renewal on six month intervals.[179] This was different than player contracts in earlier cases because the contract was nonstandard in that it gave the Philadelphia club an option to renew for the 1901, 1902, and 1903 seasons, instead of the regular one year renewal;[180] Also, the *reserve clause* itself was different than those at issue in earlier cases because under paragraph 18, the right to reserve was a part of Lajoie's consideration, for which Philadelphia in turn agreed "[t]o pay him for his services ... the sum of twenty-four hundred dollars."[181] As a result, the Pennsylvania Supreme Court found all the contract provisions to have been bargained for by the parties and therefore enforceable.[182]

The court further found that the injunction remedy was the only appropriate one because Lajoie's services were *unique*, stating:

> He may not be the sun in the baseball firmament, but he is certainly a bright particular star. We feel, therefore, that the evidence in this case justifies the conclusion that the services of the defendant are of such a unique character, and display such a special knowledge, skill, and ability, as renders them of peculiar value to the plaintiff, and so difficult of substitution that their loss will produce 'irreparable injury,' in the legal significance of that term, to the plaintiff.[183]

Therefore, the *Lajoie* court enjoined the player from working for any other club within the court's jurisdiction during the term of his contract.[184] As a result, the court prevented him from playing for the American League A's during the remaining term of his National League Phillies' contract.[185] Interestingly, the injunction did not force Lajoie to return to his National League team as it only prevented him from playing games for another team *within Pennsylvania*.[186] So, when he was traded to Cleveland by the American League A's he did not accompany his new Ohio team to games played in Pennsylvania.[187]

As a result of this Philadelphia case, the standard for the granting of injunctions prohibiting athletes and others under contract from performing elsewhere was whether the services to be performed are *unique*.[188] Notwithstanding the National League's win in *Lajoie*, the decision

---

[177] *Id*.
[178] *Id*.
[179] *Id.* at 29; 51 A. at 974-975.
[180] *Id*. at 29.
[181] 51 A. at 974.
[182] *See* Devine, *supra* note 169, at 28 (citations omitted); 51 A. at 974-975.
[183] 51 A. at 974.
[184] *See* Devine, *supra* note 169, at 29 (citations omitted). ("The National League described the Pennsylvania Supreme Court decision as a "great legal victory" and predicted that Lajoie would land in jail if he played for the rival A's.").
[185] *Id.*; 51 A. at 976.
[186] *See* Devine, *supra* note 169, at 29-30 (citations omitted).
[187] *Id*.
[188] *See* Devine, *supra* note 169, at 29-30 (citations omitted); 51 A. at 974-975.

represented a major success for both owners on a broader level; subsequent courts adopted the rationale that professional athletes possessed sufficiently *unique* talents to fit within the category of impossible to replace.[189]

Curt Flood: The Reserve Clause III (1972)

In *Flood v. Kuhn,*[190] Major League Baseball player Curt Flood challenged the reserve system in a landmark case that went all the way to the Supreme Court of the United States.[191] Though the *Flood* case involved Philadelphia only from the aspect that Flood was traded to the Phillies, as the *Hallman*[192] and *Lajoie*[193] cases *supra* demonstrate, this was not the first time that Philadelphia sports impacted professional baseball.[194] The *Flood* case arose when Curt Flood filed a $4.1 million lawsuit after sitting out a season because he did not want to play for the Philadelphia Phillies.[195] Flood was specifically challenging the placement of "[p]rofessional baseball's reserve system . . . within the reach of the federal antitrust laws."[196]

In 1922, the Supreme Court of the United States had held that antitrust laws do not apply to professional baseball as the game was merely an exhibition did not affect interstate commerce.[197] In a unanimous decision, known as the *Federal Baseball* decision, Justice Oliver Wendell Holmes noted that even though teams and players traveled across state lines, such activity was perceived as only incidental to the game and that baseball was merely a form of entertainment and not subject to commerce.[198] The unique *Federal Baseball* decision has caused legal controversy and criticism for almost 100 years regarding baseball's antitrust exemption under federal law.[199] This decision was affirmed by the unsuccessful legal challenge by George Toolson, a minor league pitcher in the New York Yankees' organization.[200]

---

[189] *Id.; see also* Adam Epstein, *An Exploration of Interesting Clauses in Sports*, 21 J. LEGAL ASPECTS OF SPORT 5, 6-12 (2011) (discussing a history of the reserve clause in professional baseball and other professional sport leagues).
[190] 407 U.S. 258 (1972).
[191] *See* Epstein, *supra* note 189 at 9-10.
[192] *Phila. Ball Club*, 8 Pa. C. C. 57 (Hallman)
[193] *Phila. Ball Club*, 51 A. 973 (Lajoie)
[194] *See generally* Brett J. Butz, *Grounding into a Double Standard: Understanding and Repealing the Curt Flood Act,* 8 U. MASS. L. REV. 302 (2013) (providing in part a detailed history of professional baseball cases between the Philadelphia cases and *Flood*).
[195] 407 U.S. at 265.
[196] *Id.* at 259 (also stating that it was the third time in 50 years for the same challenge for the courts to decide).
[197] Federal Baseball Club of Baltimore, Inc., 259 U.S. 200, 208-09. Justice Oliver Wendell Holmes stated that baseball was "purely state affairs."
[198] *Id*.
[199] *See, e.g*., Jonathan D. Gillerman, *Calling Their Shots: Miffed Minor Leaguers, the Steroid Scandal, and Examining the Use of Section 1 of the Sherman Act to Hold MLB Accountable*, 73 ALB. L. REV. 541, 565-570 (2010); *see also* Toolson v. New York Yankees, 346 U.S. 356 (1953) (holding by the majority that Congress did not intend it to include baseball under the federal antitrust laws); Gardella v. Chandler, 172 F.2d 402, 408-09 (2d Cir. 1949) (discussing violation of reserve clause by player who commenced employment in the Mexican League); *see also* Craig F. Arcella, *Major League Baseball's Disempowered Commissioner: Judicial Ramifications of the 1994 Restructuring*, 97 COLUM. L. REV. 2420, 2440-1 (1997) (noting that though ultimately settled out of court, Danny Gardella demonstrated MLB violated antitrust laws and that he was blacklisted due to his breach of a contract with New York Giants in order to play professional baseball in Mexico); *but see* U.S. v. Int'l Boxing Club of New York, 348 U.S. 236 (1955) (denying antitrust exemption to professional boxing).
[200] *Toolson*, 346 U.S. at 356. In a 7-2 decision, the Supreme Court reaffirmed the *Federal Baseball* decision with a one-paragraph majority opinion.

Despite the history of decisions exempting professional baseball from antitrust laws, Flood continued his legal battle. In sum, the Supreme Court of the United States in Flood's case again upheld baseball's antitrust exemption in general, and found the reserve system within the reach of the federal grasp, stating "[a]nd what the Court said in *Federal Baseball* in 1922 and what it said in *Toolson* in 1953, we say again here in 1972: the remedy, if any is indicated, is for congressional, and not judicial, action."[201] Thus, the Supreme Court did not protect Flood from service in Philadelphia.

Though he lost his legal battle, his persistent refusal to accept the trade to Philadelphia resulted in free agency starting in 1976.[202] Flood passed away in 1997, and the next year The Curt Flood Act of 1998 was, at least, an attempt by Congress to legislatively override the antitrust ruling in *Federal Baseball*.[203] Signed into law by President Clinton, the Curt Flood Act of 1998 gave MLB players, like their counterparts in other leagues, the right to sue the league under antitrust laws provided they first decertify as a union.[204] Many feel that the Act, however, is not as special as it could be.[205]

Philadelphia World Hockey Club: The Reserve Clause IV (1972)

The reserve clause was not limited to professional baseball.[206] In professional hockey, for example, a reserve clause was in effect for some decades prior to 1972.[207] In the same year as the *Flood* decision, another case, in Philadelphia, *Philadelphia World Hockey Club v. Philadelphia Hockey Club, Inc*. was decided by the United States District Court for the Eastern District of Pennsylvania and barred the National Hockey League from enforcing its commonly used reserve clause.[208] The case centered on a suit involving the National Hockey League (NHL) by a competing new league, the now defunct World Hockey Association (WHA). The WHA was seeking to enjoin the NHL from continuing to enforce its reserve system.[209]

---

[201] *Flood*, 407 U.S. at 285.
[202] *See* Philip R. Bautista, *Congress Says, "Yooou're Out!!!" to the Antitrust Exemption of Professional Baseball: A Discussion of the Current State of Player-Owner Collective Bargaining and the Impact of the Curt Flood Act of 1998*, 15 OHIO ST. J. ON DISP. RESOL. 445, 458 (2000).
[203] *Id*. at 472; *see also* Curt Flood Act of 1998, 15 U.S.C. § 26b (effective Nov. 2, 2002).
[204] *See generally* Joshua P. Jones, *A Congressional Swing and Miss: The Curt Flood Act, Player Control, and the National Pastime*, 33 GA. L. REV. 639 (1999).
[205] *Id*.; *see also generally* Lacie L. Kaiser, *Revisiting the Impact of the Curt Flood Act of 1998 on the Bargaining Relationship between Players and Management in Major League Baseball*, 2 DEPAUL J. SPORTS L. CONTEMP. PROBS. 230 (2004).
[206] *See* EPSTEIN, *supra* note 189, at 11-12.
[207] *See generally* Ian Craig Pulver, *A Face Off Between the National Hockey League and the National Hockey League Players' Association: The Goal a More Competitively Balanced League*, 2 MARQ. SPORTS L. J. 39 (1991)
[208] 351 F. Supp. 462 (E.D. Pa. 1972).
[209] *Id*.; In 1971 the WHA announced Miami as the home ice for one of its teams, but the team never played there and was moved to Philadelphia, as the Blazers who competed unsuccessfully for fans against the more established Flyers. The team was moved to Vancouver. *See* Philadelphia Blazers, WHA HOCKEY.COM, http://www.whahockey.com/blazers_phil.html (last visited Aug. 20, 2013).

There was a natural competition between the NHL and WHA for the limited supply of professional quality players. The reserve system grated on players and the WHA.[210] The reserve system prevented NHL players from freely contracting with the WHA teams, thus restricting the WHA's ability to compete in the market for staging professional sporting events. The court found that there existed "[a] clear and substantial likelihood that at trial, the interlocking agreements among the NHL teams, the reserve clause in the Standard Player's Contract, and the agreements between the NHL and the minor and amateur hockey organizations will be found to have given the NHL the power of a monopoly in violation of § 2 of the Sherman Act."[211] This was especially so because "[t]here was never really any bargaining over the restraint."[212] Thus, the WHA won a fleeting victory and by 1979 the league had folded and the remaining teams were absorbed into the NHL.[213]

D. Gender Discrimination

Philadelphia has had its share of sports-related gender discrimination lawsuits and sexual harassment cases as well. We have selected two federal, gender-related cases to illustrate the point.

Haffer v. Temple Univ. (1987)

In *Haffer v. Temple Univ.*, [214] female athletes at Philadelphia's Temple University brought a class action that alleged sex discrimination by the University in violation of Title IX, the Equal Protection Clause of the U.S. Constitution, and Pennsylvania Constitution, claiming that the school did not provide equal opportunities in athletics.[215] In its defense, Temple claimed "[t]hat its athletic programs were exempt from Title IX requirements because it received no federal funds earmarked for athletics."[216]

The *Haffer* court held, consistent with subsequent decisions and interpretations of the federal law, that federal funds given to one program constitute indirect funding to all programs, thus mandating institutional wide scrutiny under the law.[217] The court stated, "[I]t is clear that the only result we can reach in this appeal is to affirm: if Temple University as a whole is to be considered the "program or activity" for Title IX purposes, it follows that because the University

---

[210] *See* Associated Press, *World Hockey League Spurns Reserve Clause*, MONTREAL GAZETTE (October 21, 1971 at 19, *available at* http://news.google.com/newspapers?nid=1946&dat=19711021&id=7YY1AAAAIBAJ&sjid=5qEFAAAAIBAJ&pg=7183,2881100 (last visited Aug. 20, 2013).

[211] *Philadelphia World Hockey Club*, 351 F. Supp. at 518.

[212] John C. Weistart, *Judicial Review of Labor Agreements: Lessons Form the Sports Industry*, 44 L. & CONTEMP. PROBS. 110, 115 (1982).

[213] *See* ED WILLES, THE REBEL LEAGUE: THE SHORT AND UNRULY LIFE OF THE WORLD HOCKEY ASSOCIATION 262-265(2005).

[214] 678 F. Supp. 517 (E.D. Pa. 1987).

[215] *Id.* at 521.

[216] A. Jerome Dees, *Do The Right Thing: A Search For An Equitable Application Of Title Ix In Historically Black Colleges and University Athletics*, 33 CAP. U. L. REV. 219, 251 (2004).

[217] *See, e.g.*, Andrew A. Ingrum, *Civil Rights: Title IX and College Athletics: Is There a Viable Compromise?*, 48 OKLA. L. REV. 755, 759-60 (1995).

as a whole receives federal monies, its intercollegiate athletic department is governed by Title IX."[218]

Haffer's ultimate legal significance was that it added to the clarification that college and university athletic departments were required to comply with Title IX if the university received *any* federal funding, as that received federal funding freed funds for the athletic program.[219] Interestingly, just a few years earlier in another Pennsylvania case *Grove City College v. Bell*,[220] which also weaved its way through the Third Circuit Court of Appeals in Philadelphia, the Supreme Court held that only the specific program that receives federal financial aid is subjected to the regulations imposed by Title IX.[221] Congress reacted to this decision, and over a presidential veto passed a statutory institution-wide approach under the Civil Rights Restoration Act of 1987 four years later.[222]

Medcalf v. Trustees of Univ. of Pa. (2003)

In *Medcalf v. Trs. of Univ. of Pa*.,[223] after the filing an E.E.O.C. complaint alleging reverse gender discrimination, the Third Circuit Court of Appeals upheld a jury verdict in federal court that had awarded the male-plaintiff $71,996 in lost wages and medical benefits, $18,130 for compensatory damages, and $ 25,170 in punitive damages.[224]

Andrew Medcalf was an Assistant Men's Crew Coach at the University of Pennsylvania ("Penn") for six years in the 1990s, and he worked with the men's heavyweight crew (rowing) team.[225] In the spring of 1997, Penn sought to fill the position of full-time Women's Rowing Coach.[226] Penn hired a female coach, and in the course of litigation the Medcalf proved fundamental elements of discrimination: (1) that he was a male; (2) who applied for and was qualified to perform the job of Women's Crew Coach at Penn; (3) that he was rejected; and (4) that Penn selected a woman for the position."[227]

At that point the burden shifted to Penn to show a legitimate non-discriminatory reason why someone other than the plaintiff was hired.[228] Penn did so by showing that the female coach offered the job "[w]as more qualified with respect to (1) knowledge of NCAA and Ivy League rules, (2) recruiting, (3) fundraising, (4) administering budgets, and (5) knowledge of Ivy League student financial aid requirements and constraints."[229]

---

[218] Haffer v. Temple Univ., 688 F.2d 14, 17 (3rd Cir. 1982) (per curiam).
[219] *Id*.
[220] 465 U.S. 555 (1984).
[221] *Id*; *see also* Epstein, *supra* note 6 at 215.
[222] *Id*. at 215; *see also* Christopher Paul Reuscher, *Giving the Bat Back to Casey: Suggestions to Reform Title IX's Inequitable Application to Intercollegiate Athletics*, 35 AKRON L. REV. 117, 128-129 (2001).
[223] 71 Fed. Appx. 924, 2003 (3d Cir. 2003).
[224] *Id*. at 925-26.
[225] *Id*. at 926.
[226] *Id*.
[227] *Id*. at 927.
[228] *Id*. at 927-928.
[229] *Id*.

In response, however, Medcalf was able to show that sufficient evidence existed to persuade a rational jury that the proffered reasons for the hire were pretext.[230] His successful argument centered on the fact that "[th]e Position Announcement placed a high importance on actual coaching ability,…"[231] yet Penn hired the female coach inconsistent with that premise.[232] The court found that "Penn's sudden de-emphasis of the value of actual coaching skills is at the least a "weakness" which tends to indicate that Penn's proffered reasons were not credible."[233] Medcalf also showed that other female candidates with less administrative experience than he received interviews.[234] Medcalf never received one.[235]

E. Race Discrimination

Philadelphia has not been free of race-related issues with regard to its sports teams and facilities either.[236] Most recently, Eagles wide-receiver Riley Cooper did not help matters in June 2013 by utilizing racial slurs in a video posted on YouTube stating, "I will fight every n***** here, bro!" at a Kenny Chesney concert."[237] He returned after just four days away from the team[238] and fan reaction in the stadium to his first pre-season game was mixed.[239] To illustrate our point we have chosen to explore four cases to that address sport-related litigation involving race and Philadelphia.

Swim Club I: Lansdowne Swim Club (1990)

In *United States v. Lansdowne Swim Club*,[240] the Lansdowne Swim Club (LSC) was sued by the government alleging racial discrimination in violation of Title II of the Civil Rights Act of 1964. Lansdowne, Pennsylvania is just southwest of Philadelphia in the inner suburbs.[241] The federal case was brought in Philadelphia-based United States District Court for the Eastern District of

---

[230] *Id*.; *See* McDonnell Douglas v. Green, 411 U.S. 792, 804 (1973).
[231] 71 Fed. Appx. at 928.
[232] *Id*. at 929.
[233] *Id*.
[234] *Id*. at 930.
[235] *Id*.
[236] *See*, *e.g.*, Robert Moran, *Nutter Goes after Philadelphia Magazine over Race Article* , PHILLY.COM (Mar. 17, 2013), http://articles.philly.com/2013-03-17/news/37789817_1_philadelphia-magazine-race-relations-mayor-nutter; *see also generally* Shaun R. Harper, Collin D. Williams Jr. & Horatio W. Blackman , *Black Male Student-Athletes and Racial Inequities in NCAA Division I College Sports*, CENTER FOR THE STUDY OF RACE AND EQUITY IN EDUCATION, *available at* www.gse.upenn.edu/equity/sports (last visited Aug. 20, 2013).
[237] *See* Gamedayr, *New Video of Riley Cooper Drunk on Stage at Kenny Chesney Concert Emerges*, GAMEDAYR.COM (Aug. 2, 2013), http://gamedayr.com/gamedayr/video-riley-cooper-drunk-on-stage-kenny-chesney-concert/.
[238] *See* Will Brinson, *Remorseful Riley Cooper Appears to Understand 'Severity' of Incident*, CBS SPORTS (Aug. 6, 2013), http://www.cbssports.com/nfl/blog/eye-on-football/23040891/remorseful-riley-cooper-back-with-eagles-understands-severity-of-incident.
[239] *See* Michael David Smith, *Riley Cooper: I Didn't Pay Attention to the Fans*, NBC SPORTS (Aug. 10, 2013), http://profootballtalk.nbcsports.com/2013/08/10/riley-cooper-i-didnt-pay-attention-to-the-fans/.
[240] 894 F.2d 83 (3rd Cir. 1990).
[241] *See* THE BOROUGH OF LANSDOWNE, PENNSYLVANIA, http://lansdowneborough.com/ (last visited Aug. 11, 2013).

Pennsylvania.[242] The District Court found for the government that the swim club violated Title II of the Civil Rights Act of 1964[243] by engaging in racial discrimination.[244]

On appeal LSC attempted to demonstrate that the district court erred on three grounds: "that it is an exempted private club, that it is not a place of public accommodation, and that the United States failed to prove a pattern or practice of racial discrimination."[245] However, as the appellate court showed, in order to be considered to be a private club a club must have a genuinely selective membership process, the court must consider the origins of the club, and it must limit the use of the facility by non-members.[246] The appellate court found that Lansdowne had a perfunctory membership process that required a deposit, an application, recommendations and an interview that was not selective.[247] The court also found that "[t]he origins of [the club] suggest that it was intended to serve as a 'community pool' for families in the area and not as a private club."[248]

The court further identified the swim club engaged in interstate commerce as a "place of ... entertainment" covered by the statute, and then it established that the club's snack bar was a "[f]acility principally engaged in selling food for consumption on the premises," another category of covered establishments under Title II. [249] Therefore, Lansdowne was subject to Title II of the Civil Rights Act of 1964.[250] The court noted that "[r]epeated rejections of three qualified black applicants [were] highly probative of a pattern or practice of discrimination . . ." and that up until 1989 "[e]very non-black applicant—even [a previous rejected white family] has obtained membership at some time."[251] These findings indicated that the swim club engaged in a regular pattern of racial discrimination, that there were no, legitimate, nondiscriminatory reasons for its rejection of black applicants, and that its offered reasons for applying discriminatory standards were pretexts to mask the discrimination.[252]

Swim Club II: Echoes of Lansdowne at Valley Club of Huntingdon Valley (2009-2010)

Almost twenty years later, Justice Department brought a claim under Title II of the Civil Rights Act of 1964[253] alleging that in 2010 another Philadelphia-area swim club engaged in a pattern or practice of discrimination on the basis of race or color.[254] From the Department of Justice Press Release,

---

[242] U.S. v. Lansdowne Swim Club, 713 F. Supp. 785 (E.D. Pa 1989).
[243] 42 U.S.C.S. §§ 2000a - 2000a-6.
[244] 713 F. Supp. at 823.
[245] 894 F.2d at 84.
[246] *Id*. at 85-86.
[247] *Id*.
[248] *Id*. at 86.
[249] *Id*. at 87.
[250] *Id*.
[251] *Id*. at 88-89.
[252] *Id*. at 89.
[253] 42 U.S.C. § 2000a (e).
[254] Press Release, *Justice Department Files Lawsuit Against Huntingdon Valley, Pennsylvania, Country Club Alleging Discrimination* (Jan. 13, 2010), http://www.justice.gov/opa/pr/2010/January/10-crt-033.html.

> The [government alleged] that on June 30, 2009, one day after a group of 56 school children from Creative Steps Inc., a Philadelphia-area summer camp program, visited Valley Club, the club's president and board of directors adopted a policy to bar all summer camps from using its facilities. The complaint further alleges that the Valley Club adopted this policy in response to racially-motivated opposition from the Valley Club's members to the children of Creative Steps, which had contracted with the club to permit elementary school-aged campers to swim there for 90 minutes once per week during the summer. Immediately after Valley Club adopted the policy, it informed Creative Steps that the children could not return to the club and refunded the camp's money.[255]

The club claimed it was a safety issue because of a lack of lifeguards, but some witnesses claimed that they heard members of the club ask about the presence of African-American children at the pool.[256] The claims devastated the club, and "Valley Club filed for Chapter 7 Bankruptcy protection in November 2009. The club property was sold in June 2010 for $1,460,000."[257] The settlement agreement ended all claims by the individual plaintiffs, the federal suit, and discrimination claims filed with the Pennsylvania Human Relations Commission (PHRC) under the Pennsylvania Human Relations Act.[258] "The settlement agreement stipulates that once the administration of the estate and the bankruptcy case is closed and after paying allowed costs and fees, the remaining assets will be paid to more than 50 children, their camp counselors and to [the children's camp]."[259]

Cureton v. NCAA (1999)

In *Cureton v. NCAA*,[260] plaintiffs Tai Kwan Cureton and Leatrice Shaw were African-Americans who graduated from Simon Gratz High School in Philadelphia.[261] Cureton was a member of the track team and earned both academic and athletic honors as a high school student.[262] He had met National Collegiate Athletic Association (NCAA) high school grade thresholds, but he did not meet the required SAT score.[263] He alleged that he was recruited by Division I schools until his SAT score became known, and he eventually enrolled in a Division III school.[264] Shaw was a

---

[255] *Id.*
[256] *See* Rob Chakler, *Valley Swim Club Racial Discrimination Case Settled*, LOWER MORELAND PATCH (Aug. 17, 2012), http://lowermoreland.patch.com/groups/politics-and-elections/p/valley-swim-club-racial-case-settled-by-justice-department.
[257] Press Release, *Justice Department Settles Race Discrimination Case Against Pennsylvania Country Club* (Aug. 16, 2012), http://www.justice.gov/opa/pr/2012/August/12-crt-1017.html.
[258] *Id.*
[259] *Id.*
[260] Cureton v. Nat'l Collegiate Athletic Ass'n, 198 F.3d 107 (3d Cir. 1999) (Cureton I); Cureton v. Nat'l Collegiate Athletic Ass'n, 252 F.3d 267 (3d Cir. 2001) (Cureton II).
[261] *Id.* at 109. There were actually four lead plaintiffs in the case.
[262] *Id.*
[263] *Id.*
[264] *Id.; see also* Thomas A. Baker III, & Daniel P. Connaughton, *Cureton v. NCAA: A Blow-by-Blow Account of the Landmark Title VI Challenges to the NCAA and Their Recent Implications*, 13 J. LEGAL ASPECTS OF SPORT 145, 146 (2003) (analyzing the basis of a landmark class action case filed against the NCAA for racial discrimination in which the plaintiffs alleged that the NCAA's use of the qualifying standards under Proposition 16 violated Title VI of the Civil Rights Act of 1964. The article continues with a summary of the United States Court of Appeals for the

member of the National Honor Society and track team in high school.[265] She met NCAA grade thresholds for freshmen but her SAT's were below par.[266] Because of her SAT score and the relevant NCAA regulations, she was not permitted to participate on her Division I school's track team during her freshman year.[267]

The plaintiffs brought suit against the NCAA under section 601 of Title VI of the Civil Rights Act of 1964 which states, "No person . . . on the grounds of race, [shall] be excluded from participation in, or be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."[268] The appeals court overturned the Eastern District of Pennsylvania which had permanently enjoined the NCAA from using its Proposition 16 eligibility standards[269] to establish basic academic standards for freshmen athletes.[270] The Third Circuit determined that the NCAA is not a program or activity that receives federal funds.[271] Thus, the court determined that Title VI does not apply to the NCAA even though it does apply to its member institution colleges and universities.[272] The case was ultimately settled out of court by way of a Consent Decree with the Department of Justice regarding initial eligibility rules for student-athletes.[273]

Lehigh Valley IronPigs (2007)

In Allentown, the Lehigh Valley IronPigs, the Triple-A, minor league baseball team affiliate to the Philadelphia Phillies, were thrust into a public debate two days after naming its mascot *PorkChop*, and the organization actually dropped the team nickname after receiving complaints from Hispanics that it was racially offensive.[274] The team, which began play in 2008, changed the name to *Ferrous* instead.[275] There were mixed reactions to the name change,[276] but the

---

Third Circuit's decision overturning the lower court, a new case (Cureton II), and the subsequent decision by the NCAA to voluntarily change its initial eligibility requirements).

[265] *Cureton* I, 198 F.3d at 110.

[266] *Id.*

[267] *Id.*

[268] *Id.* at 113 (citing 42 U.S.C. § 2000d). The plaintiffs alleged a Title VI violation based on the theory that Proposition 16 creates a *disparate impact* on racial minorities and was, therefore, racially biased.

[269] *Cureton* II, 252 F.3d 267 (2001).

[270] *Cureton* I, 198 F.3d 107 (1999).

[271] *Id.*

[272] *Id.* In the court's analysis, the Title VI regulations did not apply to the NCAA because the NCAA did not exercise *controlling authority* over its member institutions' ultimate decision about a student-athlete's eligibility to participate in collegiate athletics.

[273] *See* EPSTEIN, 202-203; *see also* Susan M. Denbo, *Disability Lesson in Higher Education: Accommodating Learning-Disabled Students and Student-athletes under the Rehabilitation Act and the Americans with Disabilties Act*, 41 AM. BUS. L.J. 145, 163-64 (2003). Ultimately, the Department of Justice settled with NCAA in a consent decree regarding initial-eligibility requirements for students with learning disabilities which required placing certain language in its Bylaws. This resulted in NCAA Bylaw 14.02.5, *Education-Impacting Disability*, which states, "An education-impacting disability is a current impairment that has a substantial educational impact on a student's academic performance and requires accommodation." (NCAA DIVISION I MANUAL 2013-14); *see also generally* Jeffrey M. Waller, *A Necessary Evil: Proposition 16 and Its Impact on Academics and Athletics in the NCAA*, 1 DEPAUL J. SPORTS L. CONTEMP. PROBS. 189 (2003).

[274] *See* Associated Press, *Baseball Mascot Gets New Name After 'PorkChop''Is Deemed Offensive*, FOX NEWS (Dec. 4 2007), http://www.foxnews.com/story/0,2933,314901,00.html#ixzz2bgpR5yiK.

[275] *Id.* (referencing the Latin word for iron, *ferrum).*

majority reaction as judged by the local paper was that the name should not have been changed in the first place.[277] The team had recently moved from Ottawa, Canada to the Philadelphia exurbs[278] and apparently the team management was not aware of the local connation *PorkChop* had for Hispanics in the area.[279] In the end, and quickly to its credit, the team dropped the mascot name two days later to avoid the controversy as soon as it realized that the name could be considered offensive.[280]

V. Conclusion

Our purpose in drafting this article was to illustrate the flavor of how Philadelphia and its culture helped to impact and shape sports law from a broad spectrum of legal issues. We have demonstrated by a sampling of cases and current news stories the attention and depth of Philadelphia sports' impact on tort law, criminal law, contract law, and issues related to gender and harassment. Having professional sports teams all the Big Four sports leagues and housing some of the most prominent universities in the country, there is reason to believe that more cases and stories will emanate from the largest city in Pennsylvania. No doubt, Philly fans will continue to go the distance, often too far, when challenged - whether in the courts, on the courts, or in the streets.

---

[276] *Tolerance in the Lehigh Valley*, MORNING CALL (DEC. 5, 2007), http://articles.mcall.com/2007-12-05/opinion/3823982_1_puerto-ricans-mascot-fan-contest.
[277] *Id*.
[278] Malcolm MacMillan, *Lehigh Valley IronPigs History*, THE BALLPARK GUIDE.COM, http://www.theballparkguide.com/minors/lehigh-valley-ironpigs/lehigh-valley-ironpigs-history (last visited Aug. 20, 2013).
[279] *See* Associated Press, *supra* note 274.
[280] *Id*.