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Adam Epstein  
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## Maryland Sports Law

**Maryland Sports Law**

**Adam Epstein\***

\* J.D., M.B.A., Professor, Department of Finance and Law, Central Michigan University. A draft of this paper was originally presented at the 2012 Mid-Atlantic ALSB (Academy of Legal Studies in Business) Conference in Baltimore at Johns Hopkins University's Inner Harbor campus. Thank you to all the attendees who provided invaluable input and insight.

## Introduction

The purpose of this article is to explore cases and to provide a perspective on how individuals, universities and professional teams associated with the state of Maryland have had a varied impact on sports law in general emanating from this state found in the Mid-Atlantic region of the United States.<sup>1</sup> This article also serves as a primer for anyone studying sports law in general—particularly for those interested in intellectual property or disability issues—though legal disputes from a variety of subjects have impacted Marylanders and others from the Chesapeake Bay and Potomac River region and beyond.<sup>2</sup> Maryland played an important role in shaping sports law nationally and continues as part of the discussion.<sup>3</sup>

Maryland, also known as the *Old Line State* and the *Free State*, is the 19th most populous American state with almost six million residents.<sup>4</sup> The ninth smallest state in terms of geography with only 10,460 square miles of land and water, the state of Maryland houses many prominent professional sports teams and individuals.<sup>5</sup> Maryland also boasts a long-list of transient, defunct

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<sup>1</sup> The research demonstrated that many of the significant cases and events came from the Beltway area though the article did not originally intend to be so Baltimore-centric.

<sup>2</sup> This article attempts to focus on law from Maryland rather than the District of Columbia. For the latter, one might explore, e.g., *DeFrantz v. United States Olympic Comm.*, 492 F. Supp. 1181 (D.D.C. 1980), *aff'd* 701 F.2d 221 (D.C. Cir. 1980) (Holding that the requested injunction against President Carter for alleged violation of the Amateur Sports Act of 1978 by not sending a team to the 1980 Moscow Olympics is improper and unjustified).

<sup>3</sup> See, e.g., Michael McCann, *Issues Raised About Pre-Draft Questions Likely to Spur Reforms*, SPORTS ILLUSTRATED (May 7, 2010, 4:03PM), [http://sportsillustrated.cnn.com/2010/writers/michael\\_mccann/05/07/questions/index.html](http://sportsillustrated.cnn.com/2010/writers/michael_mccann/05/07/questions/index.html) (noting that Maryland is one of 21 states that prohibit discrimination based upon sexual orientation, which could lead to controversy if a player is asked about his sexual orientation during a pre-draft interview with the NFL); see also Claire Williams, *Sexual Orientation Harassment and Discrimination: Legal Protection for Student-Athletes*, 17 J. LEGAL ASPECTS SPORT 253, 271-72 (2007) (citing *Yost v. Bd. of Regents, Univ. of Md.*, 1993 U.S. Dist. LEXIS 17648 (D. Md. Nov. 19, 1993), in which plaintiff field hockey player Vicki Yost claimed that she was forced to keep her sexual orientation to herself or lose her athletic scholarship, though the District Court decided she lacked standing because she was no longer a student-athlete there anymore thereby never addressing her First Amendment claim).

<sup>4</sup> See VISIT MARYLAND, *Maryland Facts*, <http://www.visitmaryland.org/Students/Pages/MarylandFacts.aspx> (last visited May 20, 2013); see also Greg Latshaw, *Diversity Grows with Population in Maryland*, USA TODAY (Feb. 17, 2011, 4:29 PM), [http://usatoday30.usatoday.com/news/nation/census/2011-02-09-maryland-census\\_N.htm](http://usatoday30.usatoday.com/news/nation/census/2011-02-09-maryland-census_N.htm).

<sup>5</sup> VISIT MARYLAND, *supra* note 4; see also Frank Deford, *Jousting Anyone?*, SPORTS ILLUSTRATED (Sept. 1, 2003), <http://sportsillustrated.cnn.com/magazine/features/si50/states/maryland/essay/> (discussing prominent events in

or rebranded professional teams.<sup>6</sup> Maryland and the surrounding region (including D.C.) had one of the greatest sports years in 2012-2013.<sup>7</sup>

Not surprisingly, most of the significant sports law cases emanate from the Baltimore area. This city, Maryland's largest, had been the home to the Baltimore Colts of the National Football League (NFL), which moved to Indianapolis in 1984, and is currently home to both the NFL's Baltimore Ravens and Major League Baseball's (MLB) Baltimore Orioles.<sup>8</sup> Baltimore should not be confused with the Washington, D.C. area, however, even though they are a mere forty miles apart.<sup>9</sup> Interestingly, the NFL's Washington Redskins play their home games at FedEx Field in Landover, Maryland, but actually practice and have their business operations in neighboring Virginia.<sup>10</sup> Meanwhile, the Washington Nationals (MLB) play in Washington, D.C. along with the Washington Capitals of the National Hockey League (NHL) and Washington

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Maryland sports history including the Pimlico Race Course (*Preakness Stakes*), the University of Maryland national championships in football, NFL star Johnny Unitas of the Baltimore Colts, and the Baltimore Ravens having won the Super Bowl in 2001 [they also won in 2013]; see also Jean Marbella, *Michael Phelps Throws Water on Reports that He'll Return to Olympic Pool*, BALT. SUN (May 17, 2013), [http://articles.baltimoresun.com/2013-05-17/sports/bs-sp-michael-phelps-return-rumors-0518-20130517\\_1\\_haney-project-michael-phelps-bob-bowman](http://articles.baltimoresun.com/2013-05-17/sports/bs-sp-michael-phelps-return-rumors-0518-20130517_1_haney-project-michael-phelps-bob-bowman) (noting that Michael Phelps is a Baltimore native).

<sup>6</sup> See, e.g., Pasquale Prezioso, *Your Baltimore Bullets History Primer*, WIZARDSXTRA.COM (Oct. 13, 2013), <http://www.wizardsxtra.com/2013/10/15/your-baltimore-bullets-history-primer>; see also WIKIPEDIA, *Sports in Maryland*, [http://en.wikipedia.org/wiki/Sports\\_in\\_Maryland](http://en.wikipedia.org/wiki/Sports_in_Maryland) (last visited May 20, 2013).

<sup>7</sup> See Kevin James Shay, *Playoff Fever Grips Baltimore-Washington Region*, GAZETTE.NET (Oct. 5, 2012), <http://www.gazette.net/article/20121005/NEWS/710059702/1009/playoff-fever-grips-baltimore-washington-region&template=gazette>; see also Jill Rosen, *Hailing the Redskins and Ravens (Plus Nats and O's, too)*, BALT. SUN (Jan. 4, 2013), [http://articles.baltimoresun.com/2013-01-04/features/bs-ae-fan-dream-20130104\\_1\\_ravens-fan-ravens-flags-rgiii](http://articles.baltimoresun.com/2013-01-04/features/bs-ae-fan-dream-20130104_1_ravens-fan-ravens-flags-rgiii); see also Adam Vingan, *Washington, Baltimore "Unlikely Sports Capital," According To Sports Illustrated Cover*, NBC WASHINGTON (Sept. 26, 2012, 4:44 PM), <http://www.nbcwashington.com/blogs/capital-games/Washington-Baltimore-Unlikely-Sports-Capital-According-To-Sports-Illustrated-Cover-171364991.html>. In 2012-2013, the Washington Redskins, Baltimore Ravens, Baltimore Orioles, Washington Nationals, and Washington Capitals all played in the post-season with the Ravens winning the Super Bowl in 2013.

<sup>8</sup> See Keith Eggener, *The Demolition and Afterlife of Baltimore Memorial Stadium*, DESIGN OBSERVER (Oct. 22, 2012), <http://places.designobserver.com/feature/demolition-and-afterlife-baltimore-memorial-stadium/36278/>.

<sup>9</sup> See Mike Frandsen, *Nationals Fans Should Never Root For Orioles, Period*, CBS DC (Oct. 8, 2012, 10:00AM), <http://washington.cbslocal.com/2012/10/08/washington-nationals-fans-should-never-root-for-baltimore-orioles-period/> (discussing how despite their geographic proximity, "Baltimore is a totally different place than D.C."); see also Ken Rosenthal, *Baltimore was Meant to Hate Washington, and its Redskins, Too*, BALT. SUN (Jan. 10, 1992), [http://articles.baltimoresun.com/1992-01-10/sports/1992010189\\_1\\_washington-redskins-bandwagon-falcons-fan](http://articles.baltimoresun.com/1992-01-10/sports/1992010189_1_washington-redskins-bandwagon-falcons-fan).

<sup>10</sup> See, e.g., Michael David Smith, *D.C. Mayor Wants Redskins to Consider Changing Their Name*, NBC SPORTS (Jan. 9, 2013, 2:07PM), <http://profootballtalk.nbcsports.com/2013/01/09/d-c-mayor-wants-the-redskins-to-consider-changing-their-name/>.

Wizards of the National Basketball Association (NBA).<sup>11</sup> What follows is a summary of some of the more noteworthy Maryland sports law cases and laws.

### *Federal Baseball*

One of the most debated and discussed cases in sports law involved a professional baseball team from Baltimore known as the Baltimore Terrapins.<sup>12</sup> Students of sports law recognize that professional baseball has held a unique exemption from antitrust laws in accordance with the controversial interpretation by the Supreme Court in *Federal Baseball Club of Baltimore, Inc. v. Nat'l League of Professional Baseball Clubs*.<sup>13</sup> The Terrapins played at Terrapin Park, later known as Oriole Park, a ballpark that was eventually consumed by a fire.<sup>14</sup>

Attempting to create a third major baseball league, the Federal League of Base Ball Clubs (the Federal League) only lasted from 1914-1915 and had eight teams.<sup>15</sup> The owners of the American and National Leagues eventually bought out the Federal League, but the Terrapins'

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<sup>11</sup> See, e.g., Ben Fischer, *Verizon Center Promises Increased Security after Boston Marathon Bombing*, WASH. BUS. J. (Apr. 17, 2013, 3:07PM), <http://www.bizjournals.com/washington/blog/2013/04/verizon-center-promises-increased.html?page=all>; see also, Adam Vingan, *Nationals, Capitals Lead Respective Divisions On Same Day For First Time Ever*, NBC WASHINGTON, (Apr. 5, 2013, 10:43AM), <http://www.nbcwashington.com/blogs/capital-games/Nationals-Capitals-Lead-Respective-Divisions-On-Same-Day-For-First-Time-Ever-201615531.html>.

<sup>12</sup> *Fed. Baseball Club of Balt., Inc. v. Nat'l League of Prof'l Baseball Clubs*, 259 U.S. 200, 208 (1922) (asserting that baseball did not involve interstate commerce and, instead, "[t]he business is giving exhibitions of base ball [sic], which are purely state affairs."); see also *State v. Milwaukee Braves, Inc.* 144 N.W.2d 1, 12 (Wis. 1966) (holding that state antitrust laws were not applicable to the sport of baseball).

<sup>13</sup> *Federal Baseball Club of Baltimore, Inc.*, 259 U.S. 200; see also Nathaniel Grow, *Defining the "Business of Baseball": A Proposed Framework for Determining the Scope of Professional Baseball's Antitrust Exemption*, 44 U.C. DAVIS L. REV. 557 (2010); see also Samuel G. Mann, *In Name Only: How Major League Baseball's Reliance on Its Antitrust Exemption is Hurting the Game*, 54 WM. & MARY L. REV. 587, 591-97 (2012) (discussing the history of the impact of the decision in *Federal Baseball*); see also ADAM EPSTEIN, *SPORTS LAW* 349-50 (1st ed., Cengage Learning 2002) (discussing the Federal Baseball decision and its progeny).

<sup>14</sup> See Byron Bennett, *Baltimore's Other Major League Ballfield-Terrapin Park/Oriole Park*, DEADBALL BASEBALL (Dec. 16, 2012), <http://deadballbaseball.com/?p=1805>.

<sup>15</sup> See *Baseball Reference, Federal League*, BASEBALL-REFERENCE.COM, [http://www.baseball-reference.com/bullpen/Federal\\_League](http://www.baseball-reference.com/bullpen/Federal_League) (last visited May 24, 2013).

owners were not part of that buyout.<sup>16</sup> As a result, the Terrapins sued the team owners of both the American and National Leagues, including the Federal League itself, claiming that this violated the federal Sherman Antitrust Act by conspiring to monopolize professional baseball by undermining the Federal League which had been trying to compete with the other two.<sup>17</sup>

The Supreme Court of the United States held that antitrust laws do not apply to professional baseball because the game was merely an exhibition and did not affect interstate commerce.<sup>18</sup> In a unanimous decision in 1922, 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.<sup>19</sup> The unique *Federal Baseball* decision has caused legal controversy and criticism for almost 100 years regarding baseball's antitrust exemption under federal law while other sporting activities, leagues or organizations are not.<sup>20</sup> *Federal Baseball* was subsequently affirmed by the unsuccessful legal challenge by George Toolson, a minor league pitcher who

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<sup>16</sup> See *Baltimore Terrapins, History*, SPORTS HISTORY, <http://sportshistory.wikidot.com/baltimore-terrapins> (providing that Major League Baseball did not return to Baltimore until 1954 when the St. Louis Browns moved to Baltimore and became the Baltimore Orioles) (last visited June 10, 2013).

<sup>17</sup> See Grow, *supra* note 13, at 566-68 (2010) (noting that Baltimore won in district court, but that decision was overturned on appeal); see also Nathaniel Grow, *Today in Sports Law History*, SPORTS LAW BLOG (May 29, 2012, 9:30AM), <http://sports-law.blogspot.com/2012/05/today-in-sports-law-history.html> (discussing that in 1919, a jury awarded Baltimore an \$80,000 verdict (trebled to \$240,000), but organized baseball prevailed on appeal, and the Supreme Court affirmed on May 29, 1922).

<sup>18</sup> *Federal Baseball Club of Baltimore, Inc.*, 259 U.S. at 208-09. Justice Oliver Wendell Holmes stated that baseball was "purely state affairs." This was not the first professional baseball case to emanate from Maryland, however. See *Baltimore Base Ball & Exhibition Co. v. Pickett*, 78 Md. 375, 28 A. 279 (1894) (discussing what degree of skill was required of a professional baseball player-employee. John Pickett played second base for the team but he was discharged because he did not exercise the degree and efficiency required of a professional baseball player in the National League).

<sup>19</sup> *Federal Baseball Club of Baltimore, Inc.*, 259 U.S. at 208-09.

<sup>20</sup> See, e.g., Jonathan D. Gilleman, Comment, *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, 2440-41 (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, Inc.* 348 U.S. 236 (1955) (denying antitrust exemption to professional boxing).

remained stagnant at the AAA level in the New York Yankees' organization.<sup>21</sup> *Federal Baseball* remains intact despite the enactment of *The Curt Flood Act of 1998* which was an attempt by Congress to legislatively override the antitrust ruling, though its impact appears to be minimal.<sup>22</sup>

When studying antitrust issues related to Maryland, one might also explore the antitrust case that sparked *The Merger* in which the American Football League (AFL) sued the NFL in the 1960s for violation of section 2 of the Sherman Act.<sup>23</sup> The AFL alleged that the NFL had established a market monopoly, but the Fourth Circuit Court of Appeals ruled in favor of the NFL on the basis of insufficient evidence of the NFL's intent to monopolize though it was a natural monopoly.<sup>24</sup> The Washington Redskins were a member of the NFL, one of 13 teams at the time, and the two leagues merged in 1968.<sup>25</sup>

#### *Baltimore Colts*

In 1984, the NFL did not stand in the way when the Baltimore Colts moved to Indianapolis where the team was renamed the Indianapolis Colts.<sup>26</sup> Nine years later, the

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<sup>21</sup> *Toolson*, 346 U.S. at 356-57 (determining in a 7-2 decision that Congress did not intend to include the business of baseball within the scope of federal antitrust laws and reaffirming the *Federal Baseball* decision with a one-paragraph majority opinion).

<sup>22</sup> Curt Flood Act of 1998, 15 U.S.C. § 26b (2013); see also Nathaniel Grow, *Reevaluating the Curt Flood Act of 1998*, 87 NEB. L. REV. 747, 751-58 (2009) (discussing the Act and the risks associated with the process of union decertification. Grow also notes that the Act amended the Clayton Act of 1914 and gives baseball players, like those in the NBA and NFL, the right to sue under antitrust laws provided they first decertify as a union). The Washington Senators was the team that MLB player Curt Flood eventually played for (briefly) after refusing to be traded to the Philadelphia Phillies. Flood sat out the 1970 season and was traded to the Senators the next year, though his career ended when he retired after playing only 13 games for the Senators in 1971. See *Flood v. Kuhn*, 407 U.S. 258, 282 (1972) (referencing Federal Baseball Club of Baltimore, Inc. v. Nat'l League of Professional Baseball Clubs, 259 U.S. 200 (1922)).

<sup>23</sup> *Am. Football League v. Nat'l Football League*, 205 F.Supp. 60 (D. Md. 1962), *aff'd* 323 F.2d 124 (3rd Cir. 1963).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See Steven R. Hobson II, *Preventing Franchise Flight: Could Cleveland have Kept the Browns by Exercising its Eminent Domain Power?*, 29 AKRON L. REV. 665, 681-84 (1996) (citing *Baltimore v. Balt. Football Club, Inc.*, 624 F. Supp. 278 (D. Md. 1985), and discussing how Robert Irsay, the owner of the Baltimore Colts, moved his team to Indianapolis after his attempts to reach a new leasing agreement with Memorial Stadium in Baltimore failed, and the



Canadian Football League (CFL) granted a team franchise to a Baltimore-based team making it one of four American teams in the CFL.<sup>27</sup> The CFL named this new team the *Baltimore Colts*.<sup>28</sup> After the NFL threatened to sue over the use of the word *Colts*, the CFL changed the team's name to the *Baltimore CFL Colts*, and launched media advertisements, licensed merchandise, and took steps in preparation for the beginning of the football season.<sup>29</sup>

Still, the Indianapolis Colts and the NFL sued Baltimore's new team in federal court for trademark infringement based on misappropriation and consumer confusion.<sup>30</sup> The United States District Court for the Southern District of Indiana issued an order preventing the new team from using the name *Colts*, *Baltimore Colts* or *Baltimore CFL Colts* in connection with the playing of professional football, football game broadcasts, or the sale of merchandise.<sup>31</sup> The court reasoned that purchasers of *Baltimore CFL Colts* merchandise would likely think that the new team was related to the Indianapolis Colts thereby violating the federal Lanham Act, 15 U.S.C.S. §§ 1051 et seq., because consumers would have been likely to mistakenly think that new team *Baltimore Colts* was related to the *Indianapolis Colts* thereby causing a trademark infringement.<sup>32</sup> The new CFL team and its owner appealed the court's decision.<sup>33</sup>

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unsuccessful attempt by the Mayor and City Council of Baltimore to condemn this professional football team through the use of its eminent domain powers); see also Ashby Jones, *Maryland's Run for the Preakness: Would it Be Constitutional?*, WALL ST. J. (Apr. 9, 2009, 6:08PM), <http://blogs.wsj.com/law/2009/04/09/marylands-run-for-the-prekness-would-it-be-constitutional/> (discussing Maryland's governor, Martin O'Malley's plan to exercise eminent domain powers over the Pimlico Race Course, where the Preakness is held every May, to keep it in Baltimore because of federal bankruptcy filings by the race's current owner, Magna Entertainment Corp., of Canada).

<sup>27</sup> *Indianapolis Colts v. Metro. Balt. Football Club Ltd. P'ship*, 34 F.3d 410 (7th Cir. 1994).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 413.

<sup>31</sup> *Id.* at 411.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

On appeal, the new CFL team argued to the Seventh Circuit Court of Appeals that the Indianapolis Colts had abandoned the Baltimore Colts trademark.<sup>34</sup> Still, this court held that the Colts' abandonment of the old mark did not entitle the CFL to use the Colts' name and could possibly confuse fans regarding the identity, sponsorship or league affiliation of the new team.<sup>35</sup> After reviewing survey evidence offered by both parties, the court ultimately concluded that the use of the name *Baltimore CFL Colts* for its team and merchandise would likely confuse a substantial number of consumers.<sup>36</sup> In sum, the Seventh Circuit Court of Appeals affirmed the district court order that prevented the CFL from using the *Colts* name. The team then renamed itself the *Baltimore Stallions* though the club only lasted three years before moving to Montreal, Quebec.<sup>37</sup>

As demonstrated by the *Federal Baseball* and *Baltimore Colts* cases, the city of Baltimore has had legal issues related to its professional sports teams including the actual names of the teams themselves. However, this has not been anything new for Baltimore or Maryland-based teams as the next several cases illustrate.

### *Washington Redskins*

If there is a current professional team name that has sparked legal controversy over the issue of politically incorrect nicknames it is the Washington Redskins football team.<sup>38</sup> Given the

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<sup>34</sup> *Id.* at 412.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> See Ben Jacobs, *Baltimore's Greatest Canadian Sports Team: A Brief History of the CFL Colts*, THE CLASSICAL (Dec. 15, 2011, 1:54PM), <http://theclassical.org/articles/baltimores-greatest-canadian-sports-team-a-brief-history-of-the-cfl-colts>.

<sup>38</sup> See Associated Press, *'Redskins' Deemed Racial Slur at Washington Museum*, USA TODAY (Feb. 8, 2013, 7:30AM), <http://www.usatoday.com/story/sports/nfl/redskins/2013/02/07/washington-redskins-racial-slur-racist-smithsonian/1900941/>.

evolution of controversy related to utilization and promotion of negative images and stereotypes related to groups of people, it is highly unlikely that any new professional or amateur team today would adopt a team name, nickname, moniker or a mascot that would appear to be so culturally insensitive as Redskins, particularly to those with Native American ancestry.<sup>39</sup> While the Redskins' organization has been involved in various high-profile disputes, none have lasted as long as the attempt to declare the team's name to be an actual violation of federal law and to be removed by lead plaintiff Suzan Shown Harjo, president of the advocacy group Morning Star Institute.<sup>40</sup>

The mark *Redskins* was first registered in 1967.<sup>41</sup> In 2013, however, several members of the U.S. House of Representatives supported a bill entitled the *Non-Disparagement of American Indians in Trademark Registrations Act of 2013*, which would effectively cancel all existing federal trademarks using *Redskins*.<sup>42</sup> Recently, a three-judge panel on the federal Trademark Trial and Appeal Board (TTAB) considered arguments about whether the term *Redskins* should be considered a slur and therefore not worthy of trademark protection under federal law.<sup>43</sup> Still, the Washington Redskins' owner Daniel Snyder, who bought the team in 1999, has made it clear that he has no intention of changing the team's name or logo.<sup>44</sup>

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<sup>39</sup> Other professional sports teams that still use a Native American moniker including the Kansas City Chiefs (NFL), Cleveland Indians (MLB), Atlanta Braves (MLB), and Chicago Blackhawks (NHL).

<sup>40</sup> See Erik Brady, *Redskins' owner Snyder: 'We'll never change the name'*, DELMARVA NOW (May 10, 2013), <http://www.delmarvanow.com/article/20130510/SPORTS/305100030/Redskins-owner-Snyder-We-ll-never-change-the-name->.

<sup>41</sup> See Associated Press, *Challenge to Redskins Name Begins*, ESPN (Mar. 7, 2013, 6:44 AM), [http://espn.go.com/nfl/story/\\_/id/9029154/challenge-washington-redskins-team-name-begins-trademark-hearing](http://espn.go.com/nfl/story/_/id/9029154/challenge-washington-redskins-team-name-begins-trademark-hearing) (noting that the team was actually of its trademark protection in 1999, but the ruling was overturned on appeal in part because the courts decided that the plaintiffs had waited too long to make their complaint).

<sup>42</sup> See Ben Pershing, *Lawmakers Offer Bill to Ban 'Redskins' Trademark*, WASH. POST (Mar. 20, 2013), [http://articles.washingtonpost.com/2013-03-20/local/37865987\\_1\\_federal-trademarks-redskins-trademark-protection](http://articles.washingtonpost.com/2013-03-20/local/37865987_1_federal-trademarks-redskins-trademark-protection).

<sup>43</sup> *Id.*

<sup>44</sup> See Erik Brady, *New Generation of American Indians Challenges Redskins*, USA TODAY (May 10, 2013), <http://www.usatoday.com/story/sports/nfl/redskins/2013/05/09/native-americans-washington-mascot-fight/2148877/>.

During the interim, in 1994 and then 1999, several Native American petitioners filed a complaint with the TTAB seeking the cancellation of the trademark *Redskins* under Section 2(a) of the Lanham Act, often referred to as the federal trademark law.<sup>45</sup> The federal Court of Appeals for the District of Columbia considered whether canceling the registration of the Washington Redskins football team was appropriate (the club's official name is *Pro-Football, Inc.*) based upon the assertion that its name is a racial slur and is disparaging to Native Americans.<sup>46</sup>

In *Pro-Football, Inc. v. Harjo*, after years of litigation involving procedural issues involving the doctrine of laches, whether the name is in violation of the Lanham Act (i.e., the name is immoral, deceptive, scandalous) remains uncertain.<sup>47</sup> The U.S. Supreme Court in 2009 did not grant certiorari, but it appears that the legal battle continues today.<sup>48</sup> In fact, Washington, D.C. mayor Vincent C. Gray mentioned that if the team were to move back to D.C. that there would need to be a discussion of the name change.<sup>49</sup> Amanda Blackhorse has now taken the lead in a new case, *Blackhorse v. Pro-Football, Inc.*, and is attempting to demonstrate again that under Lanham Act 15 U.S.C. §1052(a), that trademarks which depict “immoral, deceptive, or scandalous matter” or “matter which may disparage . . . persons, living or dead, institutions, beliefs, or national symbols” should not be registered, and therefore the term *Redskins* should be

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<sup>45</sup> See *Harjo v. Pro-Football, Inc.*, 30 U.S.P.Q.2d (BNA) 1828 (T.T.A.B. 1994), *Harjo v. Pro-Football, Inc.*, 50 U.S.P.Q.2d 1705, 1727 (T.T.A.B. 1999); *Pro-Football, Inc. v. Harjo*, 284 F. Supp. 2d 96, 125 (D.D.C. 2003); see also John R. Wallace, *Discriminatory & Disparaging Team Names, Logos, & Mascots: Workable Challenges & the Misapplication of the Doctrine of Laches*, 12 RUTGERS RACE & L. REV. 203 (2011).

<sup>46</sup> *Harjo v. Pro-Football, Inc.*, 50 U.S.P.Q.2d (BNA) 1705, 1738 (T.T.A.B. 1999), *rev'd*, 284 F. Supp. 2d 96 (D.D.C. 2003).

<sup>47</sup> *Pro-Football, Inc. v. Harjo*, 415 F.3d 44, 367 U.S. App. D.C. 276, 2005 U.S. App. LEXIS 14312, 75 U.S.P.Q.2d (BNA) 1525 (2005); see also ADAM EPSTEIN (SPORTS LAW) 386 (discussing the Lanham Act and trademark prohibitions under that act).

<sup>48</sup> *Pro Football, Inc. v. Harjo*, 565 F.3d 880, 385 U.S. App. D.C. 417, 2009 U.S. App. LEXIS 10295 (D.C. Cir. 2009).

<sup>49</sup> See Mike DeBonis, *Redskins Name Change Should be Discussed, Vincent Gray Says*, WASH. POST (Jan. 9, 2013), <http://www.washingtonpost.com/blogs/mike-debonis/wp/2013/01/09/redskins-name-change-should-be-discussed-vincent-gray-says/>.

disqualified, just as was attempted to be demonstrated in the decade-long litigation involving *Harjo*.<sup>50</sup>

### *Baltimore Ravens*

In 1996, owner Art Modell moved his Cleveland Browns football team to Baltimore where they play now as the *Baltimore Ravens*.<sup>51</sup> The movement from the shores of Lake Erie to the Chesapeake Bay area sparked much controversy, including national discussion as to how to finance the building of newer and better public stadiums.<sup>52</sup> However, arguably the most controversial issue to follow the move from Cleveland to Baltimore was yet another intellectual property dispute involving a Baltimore team.<sup>53</sup> In particular, the question revolved around who owns the rights to the design of the Baltimore Ravens' logo, the NFL team itself or a man named Frederick Bouchat, a security guard and amateur artist who is credited with the drawing that was used by the Ravens as their original logo for their first three seasons from 1996 to 1998.<sup>54</sup>

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<sup>50</sup> See Tamlin H. Bason, *House Bill Would Amend Trademark Act to Clarify That 'Redskin' a Disparaging Term*, BLOOMBERG BNA (Mar. 27, 2013), <http://www.bna.com/house-bill-amend-n17179873066/> (noting that §1064(3) of the Lanham Act allows for the cancellation of a trademark which violates §1052(a)).

<sup>51</sup> See Ross Todd, *Ravens Logo IP Case Splits Down the Middle*, CORPORATE COUNSEL (Mar. 22, 2013), <http://www.law.com/corporatecounsel/PubArticleCC.jsp?id=1363868999732&thepage=1>; see also Baltimore Ravens Football, VISIT BALTIMORE, <http://baltimore.org/sports/baltimore-ravens/> (last visited May 26, 2013) (noting that Baltimore native Fred Bouchat sketched ideas for the team's logo and faxed the drawings to an official at the Maryland Stadium Authority. Todd characterizes Bouchat as Baltimore's "peskiest rival" and as a "doodler.").

<sup>52</sup> See, e.g., Todd Senkiewicz, *Stadium and Arena Financing: Who Should Pay?*, 8 SETON HALL J. SPORTS L. 575 (1998). The state of Maryland provides lottery ticket revenue to help pay for M&T Stadium at Camden Yards (Baltimore Ravens) and Oriole Park at Camden Yards (Baltimore Orioles). See Matthew J. Parlow, *Equitable Fiscal Regionalism*, 85 TEMP. L. REV. 49, 89 (2012) (citing Shane Mecham, *The House that Consensus Built: Consensus Building in Stadium Construction*, 38 URB. LAW. 1087, 1115 (2006)); see also Paul M. Anderson & W.S. Miller, *Sonic Bust: Trying to Retain Major League Franchises in Challenging Financial Times*, 21 J. LEGAL ASPECTS OF SPORT 117, 153 (2011) (noting that the Baltimore Ravens lease for M&T Bank Stadium contains a provision stating, "No Relocation: Maintenance of Franchise: During the Term, the Team will not relocate nor, permit any of its home games, during the regular season or otherwise, to be played in any location other than the Football Stadium.").

<sup>53</sup> See, e.g., John Imhoff, *Bouchat v. Baltimore Ravens Ltd. Partnership*, 56 N.Y.L. SCH. L. REV. 1619 (2011).

<sup>54</sup> *Bouchat v. Baltimore Ravens, Inc.*, 241 F.3d 350 (4th Cir. 2000) (discussing that apparently Bouchat had faxed a copy of his design to then chairman of the Maryland Stadium Authority John Moag, but the Ravens claimed the Shield B (B Shield) logo was independently created); see also *Baltimore Orioles, Inc. v. Major League Baseball*

Bouchat apparently created the basis for the original team's primary logo in 1995 prior to the team's arrival from Cleveland, and in 1996 he sent a fax to the Ravens' organization asking for a letter of recognition and an autographed football helmet after the team started using his logo.<sup>55</sup> In June of 1996, the NFL licensed the logo for merchandise sales.<sup>56</sup> A month later, and inefficiently late, Bouchat registered his sketch with the U.S. Copyright Office.<sup>57</sup> In 1998, a jury ruled that the Ravens actually stole the logo from a Bouchat, but a jury did not award monetary damages.<sup>58</sup>

Then, in *Bouchat v. Baltimore Ravens, Inc.*, a federal judge from the District of Maryland ruled that Bouchat was not entitled to an injunction preventing the logo's further use.<sup>59</sup> The court also ruled, however, that the Ravens pay him "reasonable compensation for such use."<sup>60</sup> The design dispute between Bouchat and the Ravens sparked over ten years of litigation surrounding the rights to the old logo design known as the *Flying B*.<sup>61</sup> The length of the dispute by Frederick

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Players Ass'n, 805 F.2d 663 (7th Cir. 1986) *cert. denied*, 480 U.S. 941 (1987) (holding that the Baltimore Orioles' copyright in telecasts of major league baseball games preempted the players' rights of publicity in their baseball game performances, and thus any state law right of publicity claims were generally preempted by the federal Copyright Act).

<sup>55</sup> Bouchat v. Baltimore Ravens Football Club, 346 F.3d 514, 516-17 (4th Cir. 2003).

<sup>56</sup> *Id.*

<sup>57</sup> Bouchat v. Baltimore Ravens Ltd. P'ship, 619 F.3d 301, 322 (4th Cir. 2010).

<sup>58</sup> *Id.* at 319.

<sup>59</sup> *Id.*

<sup>60</sup> Bouchat v. Balt. Ravens L.P., 2011 U.S. Dist. LEXIS 129530, \*10 (D. Md. Nov. 9, 2011).

<sup>61</sup> Bouchat v. Balt. Ravens L.P., 2011 U.S. Dist. LEXIS 129530, \*1 (D. Md. Nov. 9, 2011) (noting that for the 1996 through 1998 seasons, the Baltimore Ravens used as the team's primary symbol, the "Flying B Logo" though it had been copied from a drawing, "the Flying B Drawing" by Bouchat. The Bouchat case saga's history includes Bouchat v. Baltimore Ravens, Inc., 228 F.3d 489, 56 USPQ2d 1422 (4th Cir. 2000), *cert. denied* (U.S. May 21, 2001) (No. 00-1494); Bouchat v. Baltimore Ravens, Inc., 241 F.3d 350 (4th Cir. 2000); Bouchat v. Baltimore Ravens Football Club Inc., 346 F.3d 514 (4th Cir. 2003); Bouchat v. Bon-Ton Dep't Stores Inc., 506 F.3d 315 (4th Cir. 2007); Bouchat v. Baltimore Ravens Ltd. P'ship, 587 F.Supp. 2d 686 (D. Md. 2008), *aff'd in part, rev'd in part by* Bouchat v. Baltimore Ravens Ltd. P'ship, 619 F.3d 301 (4th Cir. 2010) (hearing the case for the fourth time and ruled that the commercial use of game and highlight films from the first three seasons violated Bouchat's copyright); Bouchat v. Baltimore Ravens L.P., 2011 U.S. Dist. LEXIS 129530, 100 U.S.P.Q.2d (BNA) 1719 (D. Md. Nov. 9, 2011) (allowing the Ravens to use the original team logo in highlight films, but ordered the sides to try to agree on compensation). Apparently Bouchat had faxed a copy of his design to then chairman of the Maryland Stadium Authority John Moag, but the Ravens claimed the winged Shield B logo was independently created. From 1996-1998, the Ravens used this logo with raven wings flanking a shield with the letter "B." 228 F.3d 489, 56 USPQ2d 1422 (4th Cir. 2000), *cert. denied* (U.S. May 21, 2001) (No. 00-1494). The district court and subsequently the Fourth Circuit Court of Appeals affirmed, holding that Bouchat was barred from obtaining damages under the

Bouchat rivals that of any in the history of sports law, including the *Harjo* litigation involving the Washington Redskins' team name.<sup>62</sup> It did not end there.

In 2010, a federal appeals court heard the case for the fourth time and ruled that the commercial use of game and highlight films from the first three seasons (1996-1998) violated Bouchat's copyright, and that he should *not* be prevented from seeking an injunction.<sup>63</sup> However, in 2011, a judge allowed the Ravens to use the original team logo in highlight films, but ordered the sides to try to agree on compensation.<sup>64</sup> The case continued further, and Bouchat demonstrated that a video game manufacturer's use of the Ravens' original logo in its 2010, 2011 and 2012 versions of the *Madden NFL* video game series as part of the throwback uniforms was not a *fair use* even if it had nostalgic value.<sup>65</sup>

In 2013, a federal judge dismissed Bouchat's copyright infringement case against National Football League Properties, but held that he could pursue his claim against Electronic Arts Inc. (EA Sports), the California-based video game maker.<sup>66</sup> District Court Judge Marvin J. Garbis held for *fair use* for NFL Films, that Bouchat presented "not a scintilla of evidence" that NFL Properties had licensed the use of the logo to EA Sports and financially benefited from that

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doctrine of claim preclusion, and that he was ineligible to receive statutory damages because of his failure to register his copyright before the infringement began.

<sup>62</sup> See Todd, *supra* note 51 (noting that even though the Ravens have won two Super Bowls in their 17 year history, the Bouchat litigation remains unresolved); see also *Cmtys. for Equity v. Mich. High Sch. Ath. Ass'n*, 2008 U.S. Dist. LEXIS 25640 (W.D. Mich. Mar. 31, 2008) (noting the decades-long defense counsel's egregious tactics of harassment, intimidation, and rude, uncooperative, dilatory, and hostile litigation methods, Judge Richard Alan Enslen began his opinion with in bold face type font, "When the game is complete, the loser should not complain about the rules.").

<sup>63</sup> *Bouchat v. Baltimore Ravens Ltd. P'ship*, 587 F.Supp. 2d 686 (D. Md. 2008), *aff'd in part, rev'd in part by Bouchat v. Baltimore Ravens Ltd. P'ship*, 619 F.3d 301 (4th Cir. 2010).

<sup>64</sup> *Bouchat v. Baltimore Ravens L.P.*, 2011 U.S. Dist. LEXIS 129530, 100 U.S.P.Q.2d (BNA) 1719 (D. Md. Nov. 9, 2011).

<sup>65</sup> *Bouchat v. Nat'l Football League Props., LLC*, 910 F. Supp. 2d 798 (D. Md. Nov. 19, 2012). The court analyzed and applied the four *fair use doctrine* factors listed in 17 U.S.C. § 107: (1) the purpose and character of the use, (2) the nature of the copyrighted work, (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and (4) the effect of the use on the potential market for the original work.

<sup>66</sup> See Stewart Bishop, *NFL Released From Ravens Logo Copyright Dispute*, LAW 360 (Apr. 4, 2013), <http://www.law360.com/articles/430376/nfl-released-from-ravens-logo-copyright-dispute>.

license, but *no fair use* for EA Sports itself.<sup>67</sup> The *Bouchat* case appears to have finally held that the use of the *Flying B* logo in *stadium* picture displays, photos, film and video documentaries is *substantially transformative* and minimally commercial in nature (and is therefore essentially fair use), while use of the logo in a *video game* is commercial and *non-transformative* (therefore not fair use).<sup>68</sup> The case may continue against EA Sports, though one wonders what the real point to this case is anymore and why it just has not settled out of court.<sup>69</sup>

### *Washington Wizards*

Though they play in D.C., just outside the Maryland state border, today's Washington Wizards NBA team also faced an intellectual property legal challenge in the late 1990s from a team from New York City who also used the name *Wizards*.<sup>70</sup> In *Harlem Wizards Entm't Basketball, Inc. v. NBA Props.*, the Harlem Wizards, a theatrical basketball team since 1962, had their injunction request denied against this use of the mark *Wizards* by the NBA team, though they argued using the term *Wizards* amounted to trademark infringement.<sup>71</sup> Although the court

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<sup>67</sup> *Id.*; see also Todd, *supra* note 51 (noting that U.S. District Judge Marvin Garbis still presides over the same litigation day and bifurcated Bouchat's lawsuit into trials on infringement and damages, and while one jury ruled in favor of infringement, another jury ruled that the NFL did not owe Bouchat any damages because any profits involving the original Flying B logo were due to the Ravens' marketing efforts, not Bouchat.).

<sup>68</sup> See Brian Wm. Higgins, *Maryland Court Denies Electronic Arts Fair Use Defense in Bouchat's Latest Copyright Infringement Case*, MARYLAND IP LAW (Dec. 23, 2012), <http://www.marylandiplaw.com/2012/12/articles/copyrights/maryland-court-denies-electronic-arts-fair-use-defense-in-bouchats-latest-copyright-infringement-case/>.

<sup>69</sup> See Alison Matas, *Federal Judge Throws Out Case Against NFL over Ravens Logo*, BALT. SUN (Apr. 8, 2013), [http://articles.baltimoresun.com/2013-04-08/business/bs-bz-nfl-logo-20130408\\_1\\_flying-b-logo-madden-nfl-garbis](http://articles.baltimoresun.com/2013-04-08/business/bs-bz-nfl-logo-20130408_1_flying-b-logo-madden-nfl-garbis); see also Todd, *supra* note 51, noting that Bouchat hired Baltimore lawyer Howard Schulman to file the infringement lawsuit in 1997, and that Bouchat's never-ending case is due to Schulman's own "lack of business judgment." Todd notes that despite the jury awarding Bouchat no monetary damages, Judge Garbis revealed that he would have given Bouchat slightly less than \$25,000, representing 1 percent of the team's merchandise and souvenir profit, and that the timeless lawsuit represents "another decade of Schulman's litigation crusade...").

<sup>70</sup> See *Harlem Wizards Entm't Basketball, Inc. v. NBA Props.*, 952 F. Supp. 1084, 1088-89 (D.N.J. 1997) (summarizing history of the professional NBA basketball team nickname).

<sup>71</sup> *Id.* at 1093.



found that the Harlem Wizards did have a legally protectable interest in the mark *Wizards*, the court found that there was no likelihood of confusion because of the differences in the services offered by the parties since the Harlem Wizards performed entertainment basketball shows at high schools, colleges, summer camps, and charitable events.<sup>72</sup> The court stated, "...under these circumstances, a wizard is not a wizard."<sup>73</sup>

The aforementioned cases demonstrate that the Baltimore and Washington, D.C. area has been a hotbed for sports law-related lawsuits. Whether one explores the seminal antitrust *Federal Baseball* decision involving the Baltimore Terrapins of the defunct Federal League, or the various intellectual property challenges involving team names and logos for the Baltimore Colts, Baltimore Ravens, Washington Redskins and Washington Wizards, one can see that the Chesapeake Bay region has had an impressive showing in American legal history. In addition to the aforementioned antitrust and intellectual property cases, several sports law disputes related to disability issues have moved to the forefront of national prominence emerging from the state of Maryland as well.

#### *Feldman*

Three hearing-impaired Redskins fans, Shane Feldman, Brian M. Kelly, and Paul Singleton, filed a lawsuit against the team and FedEx Field in August, 2006.<sup>74</sup> They alleged

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<sup>72</sup> *Id.* at 1087.

<sup>73</sup> *Id.* at 1099.

<sup>74</sup> See Associated Press, *Deaf Advocates Sue Redskins Seeking Closed-Captioning*, ESPN (Sept. 20, 2006), <http://sports.espn.go.com/espn/wire?section=nfl&id=2596132> (noting that there was assistance for the class-action lawsuit with the help of the National Association of the Deaf); see also *Feldman v. Pro Football, Inc.*, 579 F. Supp. 2d 697 (D. Md. 2008) (demonstrating that the lawsuit was against Pro Football, Inc., the corporation that owns and operates the Redskins, and WFI Stadium, the corporation that owns and operates FedEx Field).

violations of Title III of the Americans with Disabilities Act (ADA) at the Landover, Maryland stadium by not captioning the Jumbotron and other video monitors at the facility.<sup>75</sup> Almost immediately after filing the lawsuit, FedEx Field made some changes to accommodate the hearing impaired, but the lawsuit continued.<sup>76</sup>

The Redskins contended that patrons could fully enjoy a football game by observing the action on the field.<sup>77</sup> However, the federal District Court for the District of Maryland held that the ADA required the Redskins to provide auxiliary aids for the aural content broadcast over the public address system, including music lyrics.<sup>78</sup> In 2011, the Fourth Circuit Court of Appeals agreed that attending Redskins' football games was actually more than a football game: it was an entertainment experience of which the music plays a significant role.<sup>79</sup> After several years of litigation, the Redskins had to make all information, including song lyrics, accessible to patrons with hearing loss.<sup>80</sup>

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<sup>75</sup> See Hamil R. Harris, *Hearing-Impaired Fans Sue for Access to Closed-Captioning*, Wash. Post, Sept. 20, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/09/19/AR2006091901403.html> (noting that a growing number of university stadium Jumbotrons were beginning to offer closed-captioning already, including the University of Texas Longhorns); see also Gabe Feldman, *The Redskins and the ADA*, Sports L. Blog (Nov. 3, 2008, 6:55 PM), <http://sports-law.blogspot.com/2008/11/redskins-and-ada.html> (offering that Title III of the ADA states that: "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation by any person who owns, leases, or operates a place of public accommodation." 42 U.S.C. § 12182(a). The regulations also state that: "A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities." 28 C.F.R. § 36.03(c)).

<sup>76</sup> See John F. Waldo, J.D., *A Perspective on the Feldman Case and the ADA-What it Means*, Sports Litigation Alert, Dec. 30, 2011, <http://www.ruderware.com/attorneys/SLAvolume8issue24.html>. (mentioning that shortly after the lawsuit was filed, the Redskins installed two ribbon boards to display captions costing in total about \$5,000, and the per-game cost of a captioner of about \$550).

<sup>77</sup> *Id.*

<sup>78</sup> *Feldman v. Pro Football, Inc.*, 579 F. Supp. 2d 697, 703 (D. Md. 2008), *aff'd* 419 F. App'x 381 (4th Cir. 2011).

<sup>79</sup> *Feldman v. Pro Football, Inc.*, 419 F. App'x 381, 391-92 (4th Cir. 2011).

<sup>80</sup> See Washington Redskins, *Disabled Access*, <http://www.redskins.com/fedexfield/disabled-access.html> (last visited May 26, 2013) (according to the Redskins' website, "The stadium also provides assisted listening devices as well as captioning for the hearing impaired for all in-stadium announcements, including play-by-play announcements, on ribbon boards located at the 50-yard lines on both sides of the stadium. Lyrics to the songs to which the Redskins cheerleaders perform during games are available via email by sending a request prior to each game (or if you are a season ticketholder, prior to the season) to accommodations@redskins.com.").

The *Feldman* decision had a national impact.<sup>81</sup> For example, in 2011 a hearing-impaired season ticket holder at the University of Kentucky (UK) sued the university on the same grounds so that closed-captioning would be placed on the scoreboards at UK's Commonwealth Stadium.<sup>82</sup> The case settled in 2012.<sup>83</sup> A similar lawsuit filed against The Ohio State University (OSU) resulted in a settlement in which OSU posts captions to announcements on the scoreboards and on television screens in the concourse areas.<sup>84</sup> The University of Oregon also modified its policy relating to captioning thereafter.<sup>85</sup>

### *McFadden*

In 2006, Atholton High School (Columbia, Maryland) student Tatyana McFadden competed as a wheelchair competitor in track and field.<sup>86</sup> She has spina bifida and is paralyzed from the waist down.<sup>87</sup> McFadden, an elite, world class Paralympian, had recently won a silver and bronze medal at the 2004 Paralympics in Athens, Greece, where she was the youngest member of the team at 15-years-old.<sup>88</sup> She sued Howard County Public Schools for disability

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<sup>81</sup> See, e.g., Client Alert, *Fourth Circuit Holds ADA Requires Expanded Access to Aural Content in Stadiums*, PROSKAUER.COM (Apr. 4, 2011), <http://www.proskauer.com/publications/client-alert/fourth-circuit-holds-ada-requires-expanded-access/>

<sup>82</sup> See Associated Press, *Deaf UK Fan Suing School; Wants Captions on Scoreboards*, HERALD-DISPATCH (May 5, 2011), <http://www.herald-dispatch.com/news/briefs/x1471243575/Deaf-UK-fan-suing-school-wants-captions-on-scoreboards>.

<sup>83</sup> See Brett Barrouquere, *UK, Deaf Fan Settle Suit*, USA TODAY (Feb. 15, 2012), [http://usatoday30.usatoday.com/news/nation/states/kentucky/2012-02-15-1089021597\\_x.htm](http://usatoday30.usatoday.com/news/nation/states/kentucky/2012-02-15-1089021597_x.htm); see also ADAM EPSTEIN (SPORTS LAW) 272.

<sup>84</sup> *Id.*

<sup>85</sup> See Press Release, *UO Captioning for Fans at Autzen Stadium*, UNIV. OF OREGON (Sept. 13, 2011), <http://uonews.uoregon.edu/archive/news-release/2011/9/uo-captioning-fans-autzen-stadium>.

<sup>86</sup> *McFadden v. Grasmick*, 485 F.Supp.2d 642, 651-52 (D. Md. 2007) (holding that Tatyana McFadden could participate as a wheelchair competitor (i.e., a wheeler), not earn points, and that this did not amount to discrimination under the ADA).

<sup>87</sup> *Id.*; see also ADAM EPSTEIN (SPORTS LAW) 258-65.

<sup>88</sup> See Tatyana McFadden (last visited June 10, 2013), <http://www.tatyanamcfadden.com/biography.html>.

discrimination because her school would only allow her to compete in an exhibition race.<sup>89</sup> As a result, McFadden raced able-bodied competitors, but she would only be scored against other female athletes using wheelchairs.<sup>90</sup>

However, the Maryland Public Secondary Schools Athletic Association (MPSSAA), the governing body for interscholastic athletics in Maryland, established a scoring policy under which team points for wheelchair race events would not be awarded.<sup>91</sup> Since very few schools competed in wheelchair racing, the MPSSAA decided that it would be an unfair competitive advantage for the athlete's school to earn points.<sup>92</sup> Ultimately, in 2007 a federal judge ruled that while McFadden could participate, she could not earn points.<sup>93</sup> The court noted that the MPSSAA had a legitimate 40% rule that only allowed the awarding of team points in an event in which schools representing at least 40% of the students in a certain class participate.<sup>94</sup> There were only three wheelers in the state at that time, and her event did not meet the requirement for team points.<sup>95</sup>

Still, as a direct result of McFadden's efforts, the assistance of the Maryland Department of Disabilities, the Maryland State Department of Education, and members of the Maryland disabilities community, Maryland passed the 2008 Maryland Fitness and Athletic Equity Act for Students with Disabilities, the first of its kind in the nation requiring equal athletic opportunities for disabled students, and to work with local school districts to improve adapted physical education and interscholastic athletic participation.<sup>96</sup> McFadden represented the U.S. in the

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<sup>89</sup> *McFadden*, 485 F.Supp.2d at 645-47.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> See Michael Popke, *Maryland Becomes First State Requiring Equal Athletic Opportunities for Disabled Students*, ATHLETIC BUS. (June, 2008), <http://www.athleticbusiness.com/articles/article.aspx?articleid=1786&zoneid=0>.

Beijing and London Paralympic Games, winning medals at both Games including three gold medals in London.<sup>97</sup>

### *Additional Examples*

Clearly Maryland cases have influenced national perspectives among antitrust, intellectual property, and disability issues in the context of sports law, but there are other categories worth exploring including hazing, discrimination, freedom of speech and homeschooling issues.<sup>98</sup> Maryland has had its host of sport and recreation law cases in various tort claims involving negligence.<sup>99</sup> This includes classic cases involving invasion of privacy

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<sup>97</sup> In Beijing she won four medals, winning silver in the 200m, 400m and 800m, and a bronze in the 4x100m relay. Interestingly, Tatyana's adopted sister Hannah (from Albania) was named in 2010 on the U.S. Paralympic 'first ever High School All-American Track and Field Team. Hannah competed for the U.S. in London as well in the 100m as a 16-year-old junior in high school, performed admirably but did not medal in the finals. See <http://www.pbs.org/wgbbh/medal-quest/video/detail/mcfadden-v-mcfadden-100m/>

<sup>98</sup> See Associated Press, *Freshman Made to Sit in Own Vomit, Urine*, ESPN (Sept. 12, 2005), <http://sports.espn.go.com/ncaa/news/story?id=2159738> (reporting that six women pleaded guilty to hazing for college field hockey hazing at Frostburg State University); see also Barbara Osborne, *Gender, Employment, and Sexual Harassment Issues in the Golf Industry*, 16 J. LEGAL ASPECTS OF SPORT 25, 51-52 (2006) (discussing *Burning Tree Club, Inc. v. Bainum*, 305 Md. 53, 501 A.2d 817, 1985 Md. LEXIS 895 (1985), exploring the issue whether Maryland Code, Article 81, Section 19(e)(4), which conditionally gave preferential tax assessment to private country clubs operated with the primary purpose of serving or benefiting members of a particular sex, violated the Equal Rights Amendment of the Maryland Declaration of Rights (Article 46). The court held that the private men's club's primary purpose provision was unconstitutional under the Equal Rights Amendment and therefore preferential tax assessment could not be given to private country clubs that discriminate on the basis of sex); see also Louis M. Benedict & John D. McMillen, *Free Expression versus Prohibited Speech: The First Amendment and College Student Sports Fans*, 15 J. LEGAL ASPECTS OF SPORT 5, 5-7 (2005) (offering that the University of Maryland spent \$ 30,000 in the 2002-2003 school year on a campus-wide sportsmanship program, but continued student fan misbehavior the following year caused UMD to request the Maryland Attorney General's office to research whether it could eject spectators for vulgar speech at sporting events); Paul J. Batista & Lance C. Hatfield, *Learn at Home, Play at School: A State-by-State Examination of Legislation, Litigation and Athletic Association Rules Governing Public School Athletic Participation by Homeschool Students*, 15 J. LEGAL ASPECTS OF SPORT 213, 247 (2005) (mentioning that in 2003, a bill was submitted in the Maryland legislature that would have allowed homeschool students to participate in public school extracurricular activities, but it was defeated in the House Ways and Means Committee).

<sup>99</sup> Paul J. Batista & Lance C. Hatfield, *Learn at Home, Play at School: A State-by-State Examination of Legislation, Litigation and Athletic Association Rules Governing Public School Athletic Participation by Homeschool Students*, 15 J. LEGAL ASPECTS OF SPORT 213, 247 (2005) (mentioning that in 2003, a bill was submitted in the Maryland legislature that would have allowed homeschool students to participate in public school extracurricular activities, but it was defeated in the House Ways and Means Committee); see Associated Press, *Freshman Made to Sit in Own Vomit, Urine*, Espn (Sept. 12, 2005), <http://sports.espn.go.com/ncaa/news/story?id=2159738> (reporting that six

among public universities within the state.<sup>100</sup> What follows are a few additional claims or controversies of note.

### *Workers Compensation*

Recently, the state of Maryland became a focus for discussion related to tort law in the context of workers' compensation issues.<sup>101</sup> For example, in 2012 the Maryland Court of Appeals found that former Washington Redskins player Darnerien McCants was considered a *covered employee*, upholding a Court of Special Appeals decision and therefore entitling him to workers' compensation even though the football-related injuries occurred outside of the state of Maryland.<sup>102</sup> The Redskins asserted that the majority of McCants' job took place in Virginia, not

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women pleaded guilty to hazing for college field hockey hazing at Frostburg State University); *see also* Barbara Osborne, *Gender, Employment, and Sexual Harassment Issues in the Golf Industry*, 16 J. Legal Aspects of Sport 25, 51-52 (2006) (discussing *Burning Tree Club, Inc. v. Bainum*, 305 Md. 53, 501 A.2d 817, 1985 Md. LEXIS 895 (1985), exploring the issue whether Maryland Code, Article 81, Section 19(e)(4), which conditionally gave preferential tax assessment to private country clubs operated with the primary purpose of serving or benefiting members of a particular sex, violated the Equal Rights Amendment of the Maryland Declaration of Rights (Article 46). The court held that the private men's club's primary purpose provision was unconstitutional under the Equal Rights Amendment and therefore preferential tax assessment could not be given to private country clubs that discriminate on the basis of sex); *see also* Louis M. Benedict & John D. McMillen, *Free Expression versus Prohibited Speech: The First Amendment and College Student Sports Fans*, 15 J. Legal Aspects of Sport 5, 5-7 (2005) (offering that the University of Maryland spent \$ 30,000 in the 2002-2003 school year on a campus-wide sportsmanship program, but continued student fan misbehavior the following year caused UMD to request the Maryland Attorney General's office to research whether it could eject spectators for vulgar speech at sporting events).

<sup>100</sup> *Bilney v. The Evening Star Newspaper*, 406 A.2d 652, 660 (Md. Ct. Spec. App. 1979) (denying privacy claims of six UMD scholarship basketball players who sued after their identification-through the process of elimination-regarding academic eligibility status were published to the community by several newspaper publications though they were public figures and therefore was a matter of legitimate public interest); *see also* *Univ. Sys. of Maryland v. Baltimore Sun Co.*, 381 Md. 79, 88-90 (2004) (publishing the salary information of coaches at public schools and universities is public information and must be made available).

<sup>101</sup> *Rowe v. Baltimore Colts*, 454 A.2d 872 (Md. Ct. Spec. App. 1983) (denying a football player benefits under the state workers' compensation statute because an occupation requiring physical contact cannot give rise to accidental injuries).

<sup>102</sup> *See* Andrea F. Siegel, *Ex-Redskin McCants Wins Workers' Compensation Ruling*, *Balt. Sun* (Aug. 23, 2012), [http://articles.baltimoresun.com/2012-08-23/news/bs-md-ar-mccants-ruling-20120823\\_1\\_football-games-nfl-teams-and-players-fedex-field](http://articles.baltimoresun.com/2012-08-23/news/bs-md-ar-mccants-ruling-20120823_1_football-games-nfl-teams-and-players-fedex-field). McCants, a wide receiver, played in 29 regular season games for the Redskins between 2002 and 2004. On April 18, 2007, McCants filed six workers' compensation claims with the Maryland Workers Compensation Commission for various injuries sustained at games in Philadelphia, Buffalo, Landover, and in in

Maryland, and the team's argument was successful at the trial court level.<sup>103</sup> However, McCants ultimately prevailed at the state court of appeals in which the court held that he was employed primarily for games played in Maryland.<sup>104</sup> By finding that McCants was a covered employee under Maryland law, McCants could continue to pursue his claims before the Maryland Workers Compensation Commission.<sup>105</sup>

### *University of Maryland*

The University of Maryland (UMD) itself, whose flagship campus resides in College Park, has had various prominent sport-related issues. For example, UMD was one of the first universities to recognize competitive cheer as a varsity sport, causing national discussion as to whether or not the sport should be considered a varsity sport for Title IX compliance purposes.<sup>106</sup>

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Ashburn, Virginia (the team's practice facility). See also Colleen K. O'Brien, *Redskins Wide Receiver "Covered Employee" for Purposes of Maryland Workers' Compensation Claim Due to Home Games at FedEx Field in Maryland, and in Spite of Practice Time in Virginia*, Semmes (Aug. 2012), <http://www.semmes.com/publications/cases/2012/08/pro-football-v-mccants.asp> (noting that Sec. 9-203(a)(2) of the Maryland workers' compensation states that an individual qualifies as a covered employee when working for an employer outside of the state on a "casual, incidental, or occasional basis" if the employer regularly employs the individual within Maryland).

<sup>103</sup> *Pro-Football, Inc. v. McCants*, 428 Md. 270, 288 (2012) (reversing the Circuit Court which had held for the Redskins based on the substantial time spent in Virginia, but determining that the time in Virginia was spent on practicing for football games which was "incidental to the main purpose" of being employed to play in football games).

<sup>104</sup> *Id.* at 286-87 ("The nature of a football player's employment, then, is defined by the games in which he participates..."). The Court of Appeals based its opinion on another Maryland case involving workers compensation and the Redskins in *Pro-Football, Inc. v. Tupa*, 197 Md. App. 463 (2011), *aff'd* 428 Md. 198 (2012) (holding that Redskins player Tom Tupa, a 17-year NFL veteran, was entitled to workers' compensation benefits after injuring his back during pregame warm-ups at FedEx Field in 2005 and the Redskins had to pay partial disability and medical expenses to Tupa).

<sup>105</sup> *Pro-Football, Inc. v. McCants*, 428 Md. 270 at 275.

<sup>106</sup> Terry Zeigler, *Is Competitive Cheer a Sport? Key Title IX Case Goes to Court*, Sports MD (June 21, 2010), [http://www.sportsmd.com/SportsMD\\_Articles/id/373.aspx](http://www.sportsmd.com/SportsMD_Articles/id/373.aspx) (discussing the lawsuit filed by five athletes and one coach from the Quinnipiac University women's volleyball team after they were notified that their team had been cut in favor of a less costly competitive cheer team, and noting that several universities have granted varsity status to their competitive cheer squads (University of Maryland and Seton Hall University), but at the time there has not been a test case to determine whether competitive cheer can be defined as a "sport" based on Title IX compliance); Liz Clarke, *Title IX Anniversary: Maryland Cuts Cheerleading, But was it Ever a Sport?*, Wash. Post (Apr. 13, 2012), [http://articles.washingtonpost.com/2012-04-13/sports/35453053\\_1\\_neena-chaudhry-female-athletes-title-ix](http://articles.washingtonpost.com/2012-04-13/sports/35453053_1_neena-chaudhry-female-athletes-title-ix);

This is not surprising, however, given that UMD is also one of the only universities in the NCAA the Football Bowl Subdivision (“FBS,” formerly known as “Division I-A”) to have had a woman (Deborah Yow) as its athletic director; from 1994 to 2010.<sup>107</sup> In 2012, UMD announced that it was leaving the Atlantic Coast Conference (ACC) to move to the Big 10 instead, though the ACC then filed a lawsuit in return and demanding to be paid the ACC exit fee by contract.<sup>108</sup> The outcome of the litigation is still to be determined, but UMD is set to begin participation in the Big 10 Conference in 2013.<sup>109</sup>

When studying Maryland sports law, one might consider exploring the life of former UMD star basketball player and first team All-American Len Bias.<sup>110</sup> Having grown up in Landover, Bias was drafted by the Boston Celtics as the second overall pick in the 1986 NBA draft but died two days later from a cocaine overdose.<sup>111</sup> As a direct result, Congress passed a stricter federal law, the Anti-Drug Abuse Act (also known as *The Len Bias Law*) the same year, a controversial law that offered tougher penalties for drugs which included mandatory sentences

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*see No Longer on the Sidelines*, Wash. Times, (Feb. 16, 2005), <http://www.washingtontimes.com/news/2005/feb/16/20050216-123423-7025r/?page=1> (noting that at the time, UMD was the only university in the country that counts competitive cheer as a scholarship sport to satisfy the requirements of Title IX, and the all-female competitive cheer team at Maryland is fully funded, having 12 scholarships and a \$357,000 budget the program is completely phased in for the 2005-06 school year). The NCAA still does not yet recognize competitive cheer as a sport, and in 2012, UMD planned to drop the team (renamed “acrobatics and tumbling”) along with seven other varsity sports. *See also* Mary Virginia Moore Johnson & Beth A. Easter, *Legal Liability for Cheerleading Injuries: Implications for Universities and Coaches*, 17 J. Legal Aspects of Sport 213, 216-17 (2007).

<sup>107</sup> *See* Alex Prewitt, *Debbie Yow on Maryland’s Big Ten Move: ‘Hope that Money’s Really Good’*, WASH. POST (Dec. 6, 2012), <http://www.washingtonpost.com/blogs/terrapins-insider/wp/2012/12/06/debbie-yow-on-marylands-big-ten-move-hope-that-moneys-really-good/>.

<sup>108</sup> *See* Associated Press, *Lawsuit Over Md.’s ACC Exit Goes Before Md. Court*, WBALTV.COM (May 24, 2013), <http://www.wbaltv.com/news/sports/lawsuit-over-mds-acc-exit-goes-before-md-court/-/9379464/20290050/-/a3272y/-/index.html>. The Atlantic Coast Conference filed a lawsuit in North Carolina state court on seeking to enforce a \$52M exit fee against the University of Maryland following the news that UMD was leaving to join the Big 10.

<sup>109</sup> *See* Jeff Barker, *Maryland Deal Included Multimillion-Dollar Travel Subsidy from Big Ten*, BALT. SUN (Mar. 15, 2013), <http://www.baltimoresun.com/sports/terps/bs-sp-terps-big-ten-travel-0315-20130314.0,1297978.story>.

<sup>110</sup> *See* Adam M. Acosta, *Len Bias’ Death Still Haunts Crack-Cocaine Offenders After Twenty Years: Failing to Reduce Disproportionate Crack-Cocaine Sentences Under*, 53 HOW. L.J. 825 (2010).

<sup>111</sup> *Id.*



for cocaine.<sup>112</sup> UMD's athletic department then became the target of accusations of various improprieties including academic and recruiting violations, and the chaos and scrutiny resulted in the subsequent resignations of both athletics director Dick Dull and head basketball coach Charles *Lefty* Driesell, a coach with Maryland for 17 years.<sup>113</sup>

### *Fantasy Sports*

Finally, one might consider exploring the impact of the state of Maryland's decision to enact a law to exempt certain online fantasy sports games from gambling prohibitions.<sup>114</sup> Maryland defines *fantasy sports* similarly to how the U.S. Congress did when it passed the 2006 Unlawful Internet Gambling and Enforcement Act (UIGEA) in that fantasy sports must be based upon skill rather than chance, have predetermined prize amounts made known to participants in advance, and derive results from the performance of multiple players from multiple teams in real-world sporting events, not solely on any single performance of an individual athlete in any single event or game.<sup>115</sup> When *Yahoo!* launched its *Yahoo! Pro Leagues* in 2012 which offered up to \$500 in cash prizes to fantasy football winners, the *Yahoo! Sports Terms of Service*

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<sup>112</sup> *Id.*

<sup>113</sup> See Sally Jenkins & Mark Asher, *Driesell Ousted as Maryland Coach*, WASH. POST (Oct. 30, 1986), <http://www.washingtonpost.com/wp-srv/sports/longterm/memories/bias/launch/driel.htm>; see also Kevin Mulligan, *Under a Cloud Maryland Still Reeling After Bias Tragedy*, PHILLY.COM (Oct. 21, 1986), [http://articles.philly.com/1986-10-21/sports/26061284\\_1\\_bias-investigation-long-and-gregg-cocaine-overdose](http://articles.philly.com/1986-10-21/sports/26061284_1_bias-investigation-long-and-gregg-cocaine-overdose).

<sup>114</sup> See Gaming Law Center, *Update: Maryland Law Exempting Fantasy Sports from Gambling Prohibition Goes Into Effect*, (2012), <http://gaminglawcenter.com/fantasy-sports.html>.

<sup>115</sup> See Brian Hughes, *Maryland Exempts Fantasy Sports from Gambling Prohibitions*, EXAMINER (Apr. 7, 2012), <http://washingtonexaminer.com/maryland-exempts-fantasy-sports-from-gambling-prohibitions/article/454811>; see also Greg Masters, *Fantasy Football Joins Md. Legislature's Late-session Frenzy*, WASH. POST (Mar. 16, 2012), [http://www.washingtonpost.com/blogs/maryland-politics/post/fantasy-football-joins-md-legislatures-late-session-frenzy/2012/03/16/gIQApyNIHS\\_blog.html](http://www.washingtonpost.com/blogs/maryland-politics/post/fantasy-football-joins-md-legislatures-late-session-frenzy/2012/03/16/gIQApyNIHS_blog.html) (noting that a 2006 opinion on poker tournaments issued by the state of Maryland's attorney general's office opined that *gambling* includes any game that requires decisions, the element of chance and a prize, one reason why fantasy football league organizers such as CBS and ESPN exclude Marylanders from winning prizes if they participate).

disallowed prizes in eight states, including Maryland, due to the lack of clarity, interpretation and enforcement of state and federal gaming laws.<sup>116</sup>

### *Conclusion*

The purpose of this article was to review some of the more prominent Maryland-related cases, incidents and laws that have impacted the study of sports law. It is apparent that Maryland is a leader when it comes to intellectual property issues with regard to team names. Disability-related decisions have harbored the forefront of national discussion as well. From the infamous 1922 *Federal Baseball* antitrust decision to the ad nauseam litigation involving ownership rights to the Ravens' logo to whether or not the term *Redskins* violates federal law, there is no reason to believe that the Chesapeake Bay area will not continue to affect sports law, drawing considerable attention to the Mid-Atlantic U.S., no matter what conference the University of Maryland ends up competing in.

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<sup>116</sup> See Marc Edelman, *Legal Issues in Fantasy Sports: Yahoo! More Risk Averse than CBS Sports*, Sports L. Blog (Aug. 27, 2012), <http://sports-law.blogspot.com/2012/08/legal-issues-in-fantasy-sports-yahoo.html> (offering that Illinois, in addition to Maryland, were excluded from the more risk-averse Yahoo! even though the *CBSSports Terms of Service* only prevent the paying of prizes to winners in six states, Arizona, Iowa, Louisiana, Montana, Vermont and Washington. Additionally, however, Maryland now allows the state Comptroller to issue special regulations, but it has yet to do so with regard to fantasy sports thereby creating ambiguity); see also Marc Edelman, *A Short Treatise on Fantasy Sports and the Law: How America Regulates Its New National Pastime*, 3 Harv. J. Sports & Ent. L. 1, 4-11 (2012).