

Sports & Betting Group Of The Year: Winston & Strawn

By **Grace Dixon**

Law360 (December 16, 2020, 3:26 PM EST) -- Winston & Strawn LLP secured a landmark victory eliminating the NCAA's cap on educational benefits for college athletes and helped the NFL, NBA and MLB players' unions draft return-to-play agreements in the midst of the coronavirus pandemic, earning the firm a spot among Law360's 2020 Sports Practice Groups of the Year.

The firm's sports law practice, composed of 55 attorneys spanning 12 cities on both sides of the Atlantic, has been a pioneer in the industry since it was founded nearly four decades ago.

"We started working on this before anyone thought of a discipline called sports law," sports law practice co-chair Jeffrey Kessler said.

This pedigree was on full display when the firm scored a March victory against the NCAA in a yearslong antitrust fight against caps on college athlete compensation. A Ninth Circuit panel decision opened the door to broader benefits tied to education costs, including postgraduate scholarships, musical equipment, study abroad funding and academic incentive awards. The Supreme Court has agreed to review the case.

"When you think of it, how did anyone ever concede that it made sense to restrict competition for educational benefits, and somehow that kind of rule could pass antitrust muster?" sports law practice co-chair David Feher said.

At trial, former athletes attested to their struggle to pay for meals, clothes and trips home after spending 40 to 60 hours a week on sports, with little time for academics. Feher pointed to a comment made by UConn star point guard Shabazz Napier in 2014 after the team's victory in the National Championship Game that he sometimes went to bed "starving" because he couldn't afford food.

"The NCAA, for too many years, has had too much deference in their ability to economically abuse other participants in the marketplace," Feher said. "They've repeatedly violated the antitrust laws and they've been repeatedly called to account, and it's only because of the antitrust laws and the impact of the legal system on the NCAA, that the NCAA has changed their practices to be less restrictive."

Now on appeal at the U.S. Supreme Court, the NCAA is fighting to overturn the win for athletes. Yet, the



antitrust ruling at the district court and circuit court level reflects a broader shift in public opinion, the partners noted.

"This is part of a larger movement, a big part of a larger movement. We've been changing people's minds and they're viewing the students, these athletes, in a different way completely," Feher said.

Winston & Strawn also stepped up to the plate amidst the uncertainty of the pandemic to guide the NFL, NBA and MLB players' unions through the process of drafting return-to-play agreements with the leagues.

The firm's attorneys helped athletes hammer out testing protocols, options for high-risk athletes to opt-out, rules for training camps, and a system for protecting and treating players who test positive for the coronavirus.

"The reason we were chosen for this work, and why we were so well equipped to handle it, is that we've been intimately involved in designing all of the economic systems for players in various sports," Kessler said. "We negotiated the agency salary cap systems in basketball, football and a lot of the work involves revising those very complicated rules so that the parties can go forward during the pandemic economically even though there's significant revenue loss."

The firm aided the NFL players' union in negotiating an entirely new amendment to their collective bargaining agreement with the league to address the potential economic, health and safety challenges posed by resuming play as coronavirus case numbers continue to rise.

Components of the agreement covered guidelines for dealing with the financial consequences of cancelled games and empty stadiums and rules for handling player-contract issues caused by COVID-19, among a host of other coronavirus-related rules.

The firm has also represented the U.S. Women's National Soccer Team in their fight for equal pay. Though the team has been a larger economic driver for the U.S. Soccer Federation than the men's team in recent years, a class action wage discrimination suit alleges they're paid substantially less.

In May, the women's team suffered a setback when a California federal judge dismissed their equal-pay claims. The team is appealing the ruling, and a trial for remaining discrimination claims is set to start in January.

"Equal pay for equal work is something that should be instinctive to everyone, and that's one of the reasons why I remain as confident as I can be that we're gonna end up in the right spot ... with this women's national team where they've been the world's best, where they achieve the highest TV ratings in the United States of any soccer game," Feher said.

--Editing by Nicole Bleier.