

## Best's Insurance Law Podcast

### [What Insurers Should Know About Potential Claims Based on Hair Discrimination - Episode #198](#)

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**Hosted by:** John Czuba, Managing Editor

**Guest Attorney:** Al Goldberger of [Law Offices of Alan S. Goldberger](#)

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**John Czuba:** Welcome to "Best's Insurance Law Podcast," the broadcast about timely and important legal issues affecting the insurance industry. I'm John Czuba, Managing Editor of *Best's Insurance Professional Resources*.

We're pleased to have with us today, [Attorney Al Goldberger](#). Al is a New Jersey attorney and veteran sports official with more than three decades' experience officiating college and high school basketball and baseball, and high school football. He officiated college and high school basketball for over 30 years.

He also umpired college baseball for the Eastern College Athletic Conference and worked as a high school football official throughout the state of New Jersey. Al is the author of "Sports Officiating -- A Legal Guide," the recognized authority on the law for referees, umpires, and those who supervise their services.

Based in suburban Fairfield, New Jersey, he is a member of the New Jersey, New York, and Maryland Bar Associations, counseling clients nationwide in sports industry and athletic risk management and liability defense, officiating program management, business-related disputes, administrative hearings, and contractual relations.

Al also serves as parliamentarian and legal counsel to the International Association of Approved Basketball Officials. He's also a frequent speaker to officiating at sports organizations, conference coordinators, coaches, athletic administrators, attorneys, and others involved in sports and athletic officiating administration, impacting many colleges, universities, and school districts nationally.

Al also serves as an adjunct instructor in the Fairleigh Dickinson University Sports Management program. In addition to Sports Officiating -- A Legal Guide now in its second edition, he is also co-author of "Sport, Physical Activity, and the Law," a college textbook which is now in its third edition.

**Al Goldberger:** Thank you, John. It's good to be with you again

**John:** Al, thank you for joining us again today. Today's discussion will be on the CROWN laws and the impact on sports legislation. Al, for our first question, what are the CROWN laws, and how does the legislation affect sports?

**Al:** John, as we approach the end of 2022, state laws known as CROWN acts reflect the lawmakers' beliefs that discrimination on the basis of one's hairstyle is, in most cases, the equivalent of race discrimination. The acronym CROWN stands for "Creating a Respectful and Open World for Natural Hair."

Such laws have been enacted in about 19 states with additional legislation pending; and more than two dozen municipalities and counties have enacted similar ordinances and regulations.

The CROWN laws are probably best described as legislative amendments to state civil rights laws that primarily focus on proscribing racial discrimination based upon certain natural or protective hairstyles and adornments when those hairstyles represent traits that are commonly and historically associated with race.

These hairstyles typically would involve things like tightly curled hair worn in locks, cornrows, twists, braids, Bantu knots, afros, or similar. These laws affect sports in the states involved in profound ways — as students who, based on their choice of hairstyles, have been deprived of equal opportunities to play sports are often among those affected by systemic racism.

Members of Congress have recognized discrimination against persons whose hairstyles are reflective of traits that are historically or commonly associated with race. H.R.2116 passed the House of Representatives in March of this year and is awaiting Senate action.

In the past few years, though, state and local legislation has increased to the point where CROWN Acts or related local regulation exist in some form in most states.

The effect on sports played by young people is profound as rule makers in a number of sports have been forced to re-examine what they maintain are safety-based restrictions on hair adornments and even hairstyles so as to not run afoul of the new legislation.

**John:** Al, what should organizations know about the laws in particular?

**Al:** John, in the sports context, students who are barred from participation because of their hairstyle may well appear with mom and dad in tow at states civil rights agencies and courthouses.

As a result, any number of potential defendants could develop a claims history if precautions are not taken. For example, the Massachusetts CROWN law, now in effect for about a month, deals directly with sport and even names. I'm going to quote.

"A school district, school committee, public school, non-sectarian school, the Massachusetts Interscholastic Athletic Association, or any equivalent school organization, or an entity or board that provides athletic officials, including ...referees and umpires for school sports or athletics events, shall not adopt or implement a policy or code, including, but not limited to, any policy or code pertaining to a student's participation in sports or athletic events, that impairs or prohibits a hairstyle that is historically associated with race."

Now, all CROWN laws may not be so sports-specific, but for the most part, the CROWN laws include students in the class of persons afforded redress for race discrimination.

**John:** Al, do the laws apply to only certain levels of athletic competition? How would claims of violations be characterized, and are these laws tied to civil rights legislation?

**Al:** Like with any other area of public health, the people in sports, like all of us, regardless of what business we're in, need to pay attention to the science. The American Academy of Pediatrics cites a number of things. We've read about a lot of them.

Depending on the number of participants in a particular sport, the frequency and duration of contact, the spacing that's available, the ventilation of the facility, there are some things that can be done to mitigate the risks.

The public health authorities place a lot of stock in minimizing travel to other communities and regions. Of course, one of the touchstones of youth sports is, we talked about a few minutes ago, the travel teams. Traveling and the ancillary activities present, obviously, their own risks to young athletes and to the adults who travel with them.

The American Academy of Pediatrics also cites the usual suspects. They talk about frequently touched surfaces need to be cleaned and disinfected at least daily or between uses. They talk about not sharing equipment, talk about locker room use should be reduced. Ventilation sometimes is not what it should be, particularly in the older buildings.

They talk about athletes not sharing food or drink and the proper use of face masks, which have come into favor in terms of wearing a better mask as opposed to just something covering your mouth and nose. All of these things, of course, apply to sports. They're not always practical in terms of what the athletes are doing.

Is it impeding their breathing, or do the masks present some kind of choking hazard? These are all considerations. It's very difficult when you're dealing in youth sports, where you have a high component of adult volunteerism to get folks frankly to pay attention to a lot of items, like hygiene, distancing, and sanitizing.

As officials, we sometimes look with a jaundiced eye on some of these suggestions about sanitizing surfaces and distancing in the sports venue when it's impossible even to sometimes get the players to pull their pants up above their rear ends while playing the sport, as required by the rules-makers.

All of these things are dependent on people who have varying views of the significance of the items and frankly, aren't always able to put these practices or willing to put these hygiene and safety practices into use.

**John:** How has this impacted officiating, Al. What does, in your opinion, the revised sports landscape look like now?

**Al:** It has impacted officiating greatly because, like with other areas of endeavor, many of the professionals in the field have opted out. As officials, we know the games go on, but we also know that without the officials, it's just a pick-up game. At some point, of course, early on in the pandemic, lots of games went on.

Lots of high school athletes were down in, particularly in Texas, if I remember correctly, playing high school-age baseball tournaments. Lots of officials have elected not to referee or umpire under circumstances of COVID. That superimposed on already a nationwide shortage of officials, particularly in the youth sports area has changed the landscape considerably.

Other factors, factors other than infectious disease have contributed to a shortage of officials, not the least of which is frequent instances of assaults on officials, and poor sportsmanship and abusive behavior on the part of participants, more adults than children, I have to add. All of these things contribute to the shortage of officials. The landscape has changed.

Officials in some cases are being asked to take on additional responsibilities and enforce certain regulations that have something to do with the disease that also becomes problematic. Officials are also being asked to execute waiver documents, as our athletes as well. All of these are factors.

**John:** You mentioned a point before where in one particular case they crossed over states to play an important game or match. Have there been any key rule changes or have any states been in the forefront of rule changes based on what's been happening?

**Al:** Not so much rules changes, John, but regulations regarding some of the ancillary activities, the travel arrangements, and whether or not spectators are permitted, what number of spectators or how they are to comport themselves, and so on and so forth.

As far as playing rules changes, probably fewer than most people think. Most playing rules changes come about as a result of things that happen during competition that raise either a safety concern, an enforceability concern, or a concern with the balance between offense and defense in the sport.

With the games down over the past two years, there hasn't been that much that has gone on with mass cancellations. In a sense, some parts of the sports landscape have stood still, and rules changes are among them. Obviously, we have venue restrictions, distancing restrictions, and other guidelines imposed by local health authorities.

**John:** Al, what do you think the future holds?

**Al:** A fellow named Casey Stengel who's well-known to sports fans from a few years back said, "Never make predictions, especially about the future." I think in this case he was probably right. The future for youth sports requires a recognition. Like the headline said, "All sports are pro sports" in a very real sense."

Also, in the future, we need to understand that we can't lose perspective. If it's going to be reason, science, and protecting those who can't protect themselves, then there's a chance that we all could survive, and youth sports could survive the global pandemic. If it's just a case of my child wants to play, and the children need to play, then we have some significant problems.

Public health experts tell us that infection results from not only the close proximity of the athletes when they're engaged in the competition, but the travel, the locker rooms, the sideline, the meals, and the lack of hygiene practices. These all can lead to infection. If it's just "my child wants to play," that doesn't seem to me like a real good reason.

We've faced this before. It's not just COVID-19, John, it's unsafe facilities, it's failure to teach fundamentals, it's dangerous environmental conditions, and it's not responding properly to an incident that might have caused traumatic brain injury, not dealing with that properly.

You don't solve these things by passing out pamphlets or by educating parents. You solve them by appropriate administration of the competition. It's becoming harder and harder. COVID-19, very serious, obviously, but it's another thing that we have to deal with in youth sports. We don't always deal with it well, frankly, so we need to get better.

**John:** Al, thanks so much for joining us again today.

**Al:** My pleasure, John. Thank you.

**John:** You've just listened to [Al Goldberger](#), attorney from New Jersey. Special thanks to today's producer Frank Vowinkel.

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I'm John Czuba, and now this message.

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