

Best's Insurance Law Podcast



Court-Ball in Sports- Liability and Defenses in Claims to Reverse Officials' Calls - Episode #207

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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 Qualified Member, 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.

Al is the author of "Sports Officiating A Legal Guide," now on its second edition. He's also a co-author of "Sport, Physical Activity, and Law," now on its third edition. Based in suburban Fairfield, New Jersey, Al serves clients nationwide in sports industry and athletic risk management. He is admitted to practice in New Jersey, New York, and Maryland.

Al is also a frequent speaker to sports organizations, conference coordinators, coaches, athletic administrators, attorneys, and others involved in sports administration, including the National Association of Sports Officials, the NASO Summit, American Bar Association...

Atlantic Coast Conference and Game Keepers Division I women's college basketball officials' professional development clinic, the Atlantic 10 Conference and Patriot League basketball officials' development camp, the International Association of Approved Basketball Officials, the USA Lacrosse Men's and Women's Officials Councils...

The California Basketball Officials Association, the California Interscholastic Federation, the National Intramural Recreational Sports Association, the National Parks and Recreation Association, the National Police Athletic League, many other associations, as well as many colleges, universities, and school districts. Al, we're very pleased to have you with us again today.

Al Goldberger: Thank you, John. Great to be back with you.

John: Today's discussion is "court ball" and sports liability and defenses and claims to reverse officials' calls. Al, are lawsuits seeking to have a referee's call in a game a recent or new phenomenon?

Al: They are not, John. In fact, lawsuits asking the court to change the result of a sports event by reversing a call or a decision have an 80 year history in this country. These cases that we have largely reflect that it's an unsuccessful history for the plaintiffs.

John: Why would anyone think a court would second guess a referee's call in a game, Al?

Al: John, for that answer, I need to turn to US District Judge James Boasberg of the District of Columbia federal court, who, on another topic, in facing a recusal motion, began his opinion by writing, "Since the dawn of organized sports, fans of losing teams have found a ready scapegoat for their hero's shortcomings, the referee."

That, I suppose, coupled with the idea of many citizens that the way to correct a perceived injustice is to go to court accounts for the relatively robust practice of filing a lawsuit to try to get a decision of a referee or even a sports governing body changed to free up eligibility or change the result of the game or a call to the athlete's benefit.

John: Are American courts generally willing to hear lawsuits seeking reversal of a referee's call in a game or the damages?

Al: American courts, of course, are a wonderful institution because, as we know, anybody can go to the courthouse and file a lawsuit. These lawsuits though, challenging officials' calls and governing body rulings, do not typically meet with ultimate success, especially the ones challenging on the field rulings.

A typical drill is that an aggrieved athlete or their team or their parents or their coach — or possibly even in the case of, at other levels, a spectator or a follower of a team goes into court, lawsuit in hand, seeking reversal of a call or a change in the outcome of a game or the replay of the game or some similar relief, including damages.

Trial courts, in truth, sometimes are sympathetic to some of these claims. If that happens, injunctive relief may be granted. A game for which the plaintiff athlete was ineligible before the lawsuit started now becomes eligible, at least for the time being, to play in the game or the match.

The drill typically is that the governing body, often a state high school or other sponsoring association, will obviously oppose the application. Sometimes they are successful at the trial court level. Sometimes they are not.

When they are not, then the alternatives are that the player involved may play in the game...In recent years, some of these associations have been postponing games, pending appellate review or at least until the smoke clears. Other times, ineligible athletes, because of their violations of the rules, have been permitted to play in the game, and the game went on.

That is not the end of the story because appellate judges know a thing or two about bad calls and a thing or two about the court system. They are prepared to reject almost all of the claims of disaffected athletes and their supporters to reverse an official's call.

Even when, at the trial level, a plaintiff may enjoy some success, that success is generally an ephemeral event. There are consequences that follow for the plaintiffs or for the plaintiffs' supporters when the particular lawsuit is reversed and the person or the athlete who became an eligible student athlete for that one game now is back to their status as an ineligible student athlete.

Now the school is in the position where they played a game with an ineligible student athlete. That oftentimes is the drill. Courts have well established legal principles. Oddly enough, from the cases that I have studied, most courts come to their determination that these suits are not legally cognizable without reference to the legal precedent that has come before.

In other words, most courts on the appellate level seem to decide for themselves. A typical comment of a judge hearing these matters would be something to the extent that courts ought not to meddle, especially when the parties have agreed to be bound by and have availed themselves of the rules and regulations of a particular sport or a particular governing body.

Also, in a recent case, a judge allowed that "the pursuit of further judicial action would result in the frustration of the world of athletics as we know it, describing what he called a slippery slope of deciding the outcome of athletic contests in court instead of on campus."

His fear was that were this type of suit to be recognized with success, this would inevitably usher in a new era of robed referees and meritless litigation due to disagreements with a disdain for officials' calls.

The judge characterized this as "an unintended consequence which hurts both the court systems and the citizens it's designed to protect." There are any number of similar sentiments expressed by judges in rejecting these claims.

John: Al, how about the popular notion that all opinions are of equal value? Is that a factor at all?

Al: I think it certainly is, especially in today's culture, John. There is a considerable degree of complexity to all sports rules, as you and I know. Judgments made in the course of a sporting event are made on the basis of what actually goes on, on the field, at the speed in which it happens, and viewed from the angle at which the officials view the play.

Films, even replays and camera angles and still shots, are not necessarily representative of the speed at which the action occurs and the angle which the official uses to try to rule on the play. Any supporter or any athlete who is wronged by a call, especially a call that he or she perceives has a profound effect on the outcome of the game will feel aggrieved on occasion.

In fairness, there are, every now and then, rules gaffes where an official or an officiating crew will misinterpret a rule. These also have resulted in challenges to officials' calls.

There is definitely what is largely the fallacious theory espoused by these plaintiffs that they are able to recognize a "bad call" and that if it is a bad call, then that's entitled to judicial redress. The courts have, as I said, almost uniformly rejected this notion, even assuming the call may arguably have been incorrect.

John: Al, is the relatively recent legalization of sports betting a factor in all this? The litigation aspect over sports officials' calls, is that focused primarily on professional sports, or does it hit the amateur, college, and high school levels as well at times?

Al: I would say, on balance, John, it's focused not so much on professional sports, although there are claims that have been made. Obviously, when big league sports are involved, those claims hit the wire services. There's a lot of publicity generated.

Primarily, in terms of volume, the focus is more on the interscholastic and other amateur levels of sport, where moms and dads are concerned that their athlete, who is always a D1 athlete in their minds, be given all the opportunities...

And not foreclosed from a tournament because of some suspension rule that disqualifies them from a game or two for some unsporting act or some flagrant foul that they may have committed.

Of course, at the lower levels, at the scholastic levels, there is much less colloquy and consensus building over replays and calls that may be erroneous being corrected as a result of the use of electronic replay or other equipment.

Most high school associations do not entertain replay on any significant scale, for obvious reasons. There are not 47 different cameras with high-speed electronics and circuitry to dice a play from every possible angle at every possible speed at the high school level.

That may account for some of the emphasis on amateur sports that we see more often in the court system than we see with professional sports. The claims involving professional sports are typically brought by supporters, season ticket holders, or other boosters.

In some cases, they have attempted to maintain class actions. They have alleged that there was, in some cases, some kind of conspiracy or even an intentional wrongdoing that resulted in incorrect calls.

These preposterous theories have been rejected by the courts, again, uniformly. That is the difference between the amateur and the professional claim, but neither one has met with much success over the years.

John: Al, one final question today. How do governing bodies and other parties, defendants, typically respond to such lawsuits? Typically, what are the results?

Al: The governing bodies realize that things are different than they were at the great altar of Zeus in the original Olympic games, where the athletes had to vow that they were eligible and they would obey the Olympic rules. Today, it's not so much.

The governing bodies are quite accustomed, frankly, to disputes over all kinds of violations of rules, not only violations of playing rules that may occur or be called on the field of play, but also violations of eligibility rules and other rules regarding particularly student athletes.

The governing bodies are accustomed to it. Their position, of course, is that when you agree to play sports, there have to be rules. The rules for any particular sport at any particular level are written. They're not verbal or not by general consensus. They are specific. There are interpretations.

As a matter of contract and as a matter of maintaining order and as a matter of realizing that without officials and without rules, then there can be no county championships. There wouldn't even be a game other than a pickup game. Sports, as we know it, and the competitive aspect of sports, as we know it, wouldn't really exist.

The governing bodies, obviously, frequently remind the court system, when these suits come up, that there are rules and that rules that govern eligibility in terms of temporary suspensions for uncivilized conduct and violations of rules need to be enforced. God knows today, if the game isn't safe and fair, then we don't have a game.

As one judge said, many years ago, when a couple challenged the cockfighting official's decision in a matter and disqualifying the couple's contestant, when you kill the umpire, you kill the game. That vintage type of decision proved to be very prescient.

The current day judges, and even going back to before the current day judges, largely have recognized this and turned away plaintiffs who seek to have a game refereed in the court system...Those plaintiffs have been largely turned away.

John: Al, thanks very much for joining us today.

Al: Thank you. My pleasure, John. Be well.

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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