



Best's Insurance Law Podcast

“Ununiformed Uniforms”- Avoiding Claims for Denial of Participation in Sports - Episode #217

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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, Manager of *Best's Insurance Professional Resources*.

We're very pleased to have with us today attorney Al Goldberger, Al is a Qualified Member attorney from New Jersey and a 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 in its second edition. He's also a co-author of "Sport, Physical Activity, and Law," now in 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 associations, conference coordinators, coaches, athletic administrators, attorneys, and others involved in sports administration, including the National Association of Sports Officials, the American Bar Association...

The 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, and 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 with you again.

John: Today's discussion with AI is on not so uniform uniforms and avoiding claims for denial of participation in sports. AI, for our first question today, what would cause an athlete to be denied participation in a game?

AI: John, in broad terms, there are two reasons why athletes at all levels of competition are sometimes denied participation. Firstly, an athlete could be denied participation on the basis of either the athlete's noncompliance with regulations of a governing body or sponsoring organization.

Second reason would be a significant violation of the playing rules. This can take a number of forms. An ejection or disqualification can be the result of progressive violations or a single flagrant violation of the rules.

In addition to rules governing the play of the game, there are rules governing other aspects of the game, namely the attire to be worn and the playing implements and equipment needed to play the sport involved.

Any athlete or team member can be denied participation before the game, during the game, or even after the game, on the basis of conduct that presents an unreasonably enhanced risk to others.

John: AI, do claims by athletes for denial of participation predominantly arise in any particular level of competition?

AI: I think it's fair to say that youth sports probably generate more claims than sports involving adult participants, primarily because young athletes often play sports under the watchful eyes of parents, whose aspirations are sometimes fueled by the prospect of their child going on to other, higher levels of the game.

Parents, in some settings, are sensitive to any significant interruption of playing time, given the parents' investment of time and money in developing the athlete in their child. Anything that interferes with the child's advancement, if you will, to a higher level of sports is often not well received. These situations sometimes result in the assertion of claims.

John: AI, isn't it true that, by game time, the eligibility of athletes to play in a game will generally not be an issue? If that's the case, what would be the legal basis for denying participation to an athlete who has already "made the team" and is ready to play?

AI: It's yes to the first part. The basic requirements for eligibility, in the traditional sense of the word, in the sports context, involves a sign up and, basically, qualifying on paper, so to speak, for participation in the sport.

That said, eligibility on game day can be a little different. Participants must be, without getting too granular, properly attired and properly equipped. Proper attire includes the prescribed uniform as well as other attire that complies with the governing body or sponsoring organization's requirements for such things.

This would include participants wearing uniforms that are rules compliant, appropriate for the sport or activity involved, and, in some cases, that provide enhanced protection from bodily injury.

Then there's the question of equipment. Obviously, each sport has its own playing implements and the requirements for those playing implements. Whether it be balls, bats, clubs, pucks, helmets, caps, shin guards, pads of various kind, or other items specified in the rules must conform to written standards.

In addition, items worn on or about the body must be properly fitted. Lastly, the details of graphics and wording on uniforms, mascot type symbols, and other motivational adornments to uniforms and equipment must comply with the rules so as not to have the effect of taunting, baiting, or denigrating opponents either verbally or by symbols or other displays.

This is one reason why the official's authority to penalize violations usually begins well before the game starts, in most sports. Sportsmanship is paramount in an era where reports of hate speech and violence in sports are all too often claims waiting to happen.

John: Al, who is ultimately responsible for making decisions regarding who may participate?

Al: John, it's the game officials, referees, umpires, or judges, depending on the sport. Game officials are contractually obligated to conduct the game or competition in accordance with the playing rules.

Officials are required to penalize rules infractions so that minor violations don't ripen into more egregious violations, ejection, or disqualification of players or other team personnel. For officials, it's as important to know the limits of denial of participation as well as the legally permissible reasons to deny or terminate participation.

John: Al, what form of legal relief is generally sought?

Al: John, we find these claims are often in the civil rights category, sometimes for injunctive relief. Sometimes fee shifting and D&O coverages are likely implicated. Claimants may also look to statutorily imposed remediation for unlawful discrimination.

There's also a raft of state legislation, some of which we've discussed in these podcasts. This legislation can generate both civil and administrative claims under civil rights laws protecting an athlete's rights to display things such as religious articles, to modify their attire, and utilize medical devices to accommodate the athlete's health concerns.

Ultimately, the resolution of such claims may unfold in various venues, including courts, state or federal civil rights offices, or even governing body tribunals, often with the support of advocacy organizations.

Lastly, regarding unsporting conduct penalized by disqualification, some athletes, parents and schools will go into court with suit papers demanding injunctive relief reversing the disqualification. This usually carries a post-game suspension as well. As we've discussed in, I believe, one other podcast, these lawsuits are almost universally rejected by the courts at the trial level and, if not there, at the appellate level.

John: Al, one final question today. How can such claims be prevented or mitigated?

Al: John, the maze of playing rules and regulations and statutes governing sports participation, particularly in areas of alleged unlawful discrimination or medical or disability accommodation needs, presents a complex challenge for all involved parties.



For example, in many states, denial of participation on the basis of hairstyles is the equivalent of racial discrimination. If listeners have been following the AM Best podcast series, we did have a podcast regarding the so-called CROWN laws in effect in a number of states that do not permit a denial of participation on the basis of an athlete's hairstyle.

For their part, governing bodies and other sponsors of sports programs need to be acutely aware that there are times when playing rules are affected by or even superseded by legislation.

In high school or prep play where governing bodies adopted the National Federation of State High School Association rules codes, it is acknowledged that the implementation of accommodations due to state and federal statutes that are aimed at remediating discrimination on the basis of disabilities, practices, or customs regarding clothing and adornments...

This is an acknowledged aspect of sports, at least in high school and prep play. In a few states, namely Illinois, Maryland, Ohio, and Utah, an athlete may modify their uniform to comport with the athlete's religious, medical, or even cultural beliefs, in some states, to comport with the individual athlete's personal preferences or modesty.

All of these may be factors that come into play regarding game day eligibility. Game officials charged with enforcing the rules need to be aware of the rules and the law that affect the game, as do this is the hard part coaches, athletic directors, governing body administrators, and other sponsors of sports programs.

Finally, all involved in the delivery of sports programs need to be apprised of all rules modifications affecting a program or a game. Necessary accommodations must be communicated and, where required, necessary approvals obtained well before game time. That, to me, is basically how you avoid or mitigate claims.

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

Al: Thank you again, John. Great to be with you.

John: You were just listening to Al Goldberger, qualified member attorney from [Law Offices of Alan S. Goldberger](#). Special thanks to today's producer, Frank Vowinkel. Thank you all for joining us for "Best's Insurance Law Podcast." To subscribe to this audio program, go to our web page, www.ambest.com/professionalresources. If you have any suggestions for a future topic regarding an insurance law case or issue, please email us at lawpodcast@ambest.com.

I'm John Czuba, and now this message.

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