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## Referee immunity to blown calls remains unsettled area

The umpire, referee, linesman or line judge are often an unnoticed, yet integral component of the game, match or contest. It is only when an apparent error is made that a professional game official is even noticed in most sports contests.

But, even in the age of instant replay, errors in officiating can result in the alteration of the outcome of a game. Officiating mistakes have already resulted in controversial endings to a few playoff games this year.

On Jan. 20, the New Orleans Saints battled the Los Angeles Rams for a chance to play in the Super Bowl. With the score tied at 20 and less than two minutes left in the game, the Saints were in the red zone at the Rams' 13-yard line.

Drew Brees dropped back to pass and passed down the right sideline — the Rams' defensive back, Nickell Robey-Coleman, leveled Saints' wide receiver Tommy Lee Lewis with a helmet-to-helmet collision as Lewis attempted to catch Brees' pass. Everyone watching could see the blatant violation of the NFL's rule against pass interference and player safety rules. Yet, the officials did not throw a penalty flag.

The Rams, thereafter, forced overtime and ultimately won the game.

Afterward, no one hesitated to agree that the referees blew the call — not even the NFL. Fans, commentators, and players argued that the Saints — not the Rams — would have won the game if not for the blown call. Instead of having a chance at the Lombardi Trophy, the Saints' season ended because of referee error.

In the legal equivalent of a Hail Mary pass, two New Orleans Saints season ticket holders filed suit, hoping to force the NFL commissioner to reverse the results of the NFC championship. Their lawsuit alleged that Commissioner Roger Goodell should have implemented a league rule governing "extraordinarily unfair acts."

These litigants sought the reversal of the game's result or the rescheduling of a game — in its entirety or from the point when the act occurred. But U.S. District Judge Susie Morgan rejected the ticket-holders' pursuit of a court order to force Goodell to investigate the blown call in the NFC title game and then decide on whether to rewind the game clock. See *Badeaux v. Goodell*, 358 F. Supp. 3d 562 (E.D. La. 2019)

The NHL, too, has

admitted to tarnishing the ending of a playoff game. On May 15, with the series tied at one game apiece, the San Jose Sharks and St. Louis Blues faced off in the Stanley Cup Playoffs' Western Conference Finals. The Sharks won the game in overtime after a blatant illegal hand-pass led to Erik Karlsson's game-winning goal just seconds later. The hand-pass went without a whistle.

Though the Blues ultimately went on to win the series and advance to the Stanley Cup Final, this blown call represented another mishap on the part of the referees. The blown hand-pass call directly and obviously led to the game-ending goal.

What remedies will gamblers have if/when referees' calls alter the outcome of a game or changes the point spread in a game? Since the U.S. Supreme Court's decision in *Murphy v. National Collegiate Athletic Association*, 138 S. Ct. 1461 (2018), states are now free to legalize and regulate sports betting. One can only imagine the impact in the sports betting arena where the NFC Championship game is decided by a blown call instead of the teams' performance.

Certainly, officials are



### SPORTS TORTS

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only human — they will make mistakes. These officials undergo rigorous and time-consuming training to gain expertise and skill sets sufficient to officiate sporting events watched by thousands, if not millions, of fans every day. But given the enormous consequences of officials' mistakes, such mistakes raise serious questions of referee liability. Additionally, what remedies may a player seek against referees if a player suffers a grave injury?

These questions are slowly being dealt with by state courts and state legislatures. Some states adhere simply to a standard of reasonableness.

As one commentator notes, a Washington Supreme Court decision has been the "seminal case in support of a reasonableness standard for sports officials' liability." Kenneth W. Biedzynski, Comment, "Sports Officials Should Only Be Liable for Acts of Gross Negligence: Is That the Right Call?", 11 U. Miami Ent. & Sports L. Rev. 375, 386 (1994).

There, a referee officiating a high school wrestling match diverted his attention away from the wrestlers. *Carabba v. Anacortes School District No. 103*, 72 Wash. 2d 939, 942 (1967). With the official's attention diverted, one wrestler applied an illegal full nelson hold, which severed the other wrestler's spinal cord. Id. at 943.

The Washington Supreme Court held that reasonableness was the proper standard of care and that the trial court improperly dismissed the injured wrestler's lawsuit. See id. at 949 n.6, 959.

Other states have a hard time agreeing to hold officials liable for injuries suffered by players absent gross negligence. See *Biedzynski*, supra, at 387-401 (citing state statutes and case law supporting a recklessness standard for sports officials' liability).

Regardless which standard of care prevails, courts struggle with the causation element of negligence; it is oftentimes hard to establish that an official's call, or lack thereof, actually caused the injury or the outcome complained of.

It is certainly difficult to establish that an official's blown call caused a particular ending of a game, for that requires the aid of hindsight. But given the rise in controversial blown calls in recent seasons, courts are likely to see more lawsuits filed by

interested fans, players and team administrations to test the contours of referee liability.

With respect to liability for unfavorable outcomes resulting from erroneous officiating, at least one state has long rejected such claims by dedicated fans. See *Georgia. High School Association v. Waddell*, 248 Ga. 542, 543 (1981) (holding that "courts of equity ... are without authority to review decisions of football referees because those decisions do not present judicial controversies").

Similarly, the 3rd U.S. Circuit Court of Appeals recently held, in a related context, that the courts were not the proper forum to challenge NFL rules violations. See *Mayer v. Belichick*, 605 F.3d 223, (3d Cir. 2010). In *Mayer*, a New York Jets season ticket holder sued New England Patriots head coach, Bill Belichick, the Patriots and the NFL for violation of NFL rules during the "Spygate" scandal, where the Patriots videotaped their opponents' signals. *Id.* at 225.

Recognizing that judges "lack the knowledge, experience and tools in which to engage in" inquiries into professional sports league rule violations, the 3rd Circuit concluded that "it is not the role of judges and juries to be second-guessing the decisions taken by a professional sports league purportedly enforcing its own rules." *Id.* at 237.

Notwithstanding *Waddell* and *Mayer*, one sports betting forum has shown how it will take officials' mistakes into its

own hands. After the infamous no-call in the Saints-Rams title game, PointsBet Sportsbook, a New Jersey sports betting forum, chose to refund all money that bettors lost on points-spread and moneyline bets in favor of the Saints.

Fans who bet on the Saints via PointsBet received credited bonus bets in the amount that they lost. It has yet to be seen how other sports betting *fora*, such as Draft Kings or FanDuel, will react to like situations in the future.