

Sports Group Of The Year: Winston & Strawn

By Adam Rhodes

Law360 (February 8, 2018, 3:35 PM EST) -- A year spent representing Ezekiel Elliott in his fight to dodge a six-game suspension from the NFL and the North American Soccer League in its antitrust fight against the U.S. Soccer Federation helped earned Winston & Strawn LLP a place among Law360's Sports Practice Groups of the Year.

The firm backed Dallas Cowboys running back Elliott in his fight to overturn a domestic-violence suspension handed down in August 2017 that was upheld by seasoned NFL-appointed arbitrator Harold Henderson, waging the war in New York and Texas federal court as well as before the Fifth and Second circuits.

While Winston & Strawn co-executive chairman Jeffrey Kessler called the case exhausting, he added that it was important to shine a light on "some of the real inequities and lack of procedures in the NFL discipline system."

Though Elliott ultimately dropped his appeal, the Winston & Strawn team over the course of the speedy case won a handful of victories that delayed the suspension.

In September, a Texas federal judge paused the suspension pending the outcome of a players union challenge to the arbitrator's decision upholding the punishment. The same judge days later refused stay the ruling pending appeal.

Now in New York federal court, the NFL Players Association in October won a temporary restraining order that kept the running back on the field and in November, the Second Circuit agreed to stay his suspension and expedite his appeal.

The firm in past years has also represented the NFLPA in the union's fight to overturn suspensions levied against three former and current players for the New Orleans Saints, Minnesota Vikings running back Adrian Peterson, and New England Patriots quarterback Tom Brady.

Also at the Second Circuit, the firm is arguing the North American Soccer League's suit that was lobbed in September, accusing U.S. Soccer of playing favorites by revoking the its D-II status. NASL in November lost a bid for a preliminary injunction in New York federal court that would have restored its D-II status.



Winston & Strawn partner and sports practice co-chair David Feher told Law360 that the case went to the heart of how soccer is organized in the U.S. and additionally tackles the landmark issue of how the sport will be structured in the nation versus how its structured in the rest of the world.

Though the sports practice at the firm is a “boutique, specialized group,” Kessler touted the practice, which boasts between 17 and 25 attorneys, as a crucial area of focus for the firm.

“We work on extremely high profile matters but by numbers we are a relatively small piece of the entire firm,” he said. “The firm makes it a priority because of the high visibility work we do and the influence we can have on this particular business.”

He added that the practice, which is spread among offices in New York, Washington, D.C., Chicago, San Francisco and London, is on a growth path domestically, especially in light of an upcoming U.S. Supreme Court ruling on a federal sports betting ban, as well as internationally.

The NASL and Elliott cases, as well as the firm’s yearslong fight against the NCAA over its alleged anti-competitive caps on student-athlete compensation, are key examples of the firm’s focus on working for players.

“What’s fun about our practice is at its core it’s about workers rights and [...] it just so happens that the sports industry is the setting for a lot of cases that have a lot of carry over and import elsewhere,” David Greenspan, a sports and antitrust litigator with the firm who has worked on the Elliott case and the sprawling NCAA grant-in-aid multidistrict litigation.

Kessler echoed that sentiment.

“We have been particularly representative of those who have been wronged by established sports institutions and established leagues [and] those who are striving for their fair treatment,” he said. “Whether it’s a new entrant in a league or players in the various sports or league sponsors in others, that’s really been the hallmark of our practice.”

While the Elliott case is resolved, the NASL and NCAA grant-in-aid multidistrict litigation are still ongoing.

When asked about the MDL, which was preceded by a proposed antitrust class action that the firm led in 2014, Greenspan took the NCAA to task.

“In our view, that’s just naked price fixing dressed up with a whole bunch of words like ‘amateurism’ that are frankly, empty,” he said.

The sports practice doesn’t only handle litigation, Greenspan noted. The firm has additionally worked on deal financing, team acquisitions and even collective bargaining negotiations alongside the National Basketball Players Association.

“[Our] bread and butter has always been work for players,” Greenspan added. “We’re often anti-establishment but 100 percent never adverse to player or player issues.”

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