

## MVP: Winston & Strawn's Jeffrey Kessler

By Ryan Boysen

*Law360 (December 17, 2019, 3:22 PM EST)* -- Winston & Strawn LLP's Jeffrey L. Kessler spent the past year locked in a legal arm-wrestling match with U.S. Soccer over its alleged refusal to pay female players the same as male players, and aggressively pursuing an appeal that could kill the NCAA's cherished amateurism model, securing his spot as one of Law360's 2019 Sports & Betting MVPs.

### ***HIS BIGGEST ACCOMPLISHMENT THIS YEAR:***

Kessler secured a landmark ruling in March against the National Collegiate Athletic Association in a yearslong suit that for the first time directly challenges the NCAA's ban on college athlete compensation.

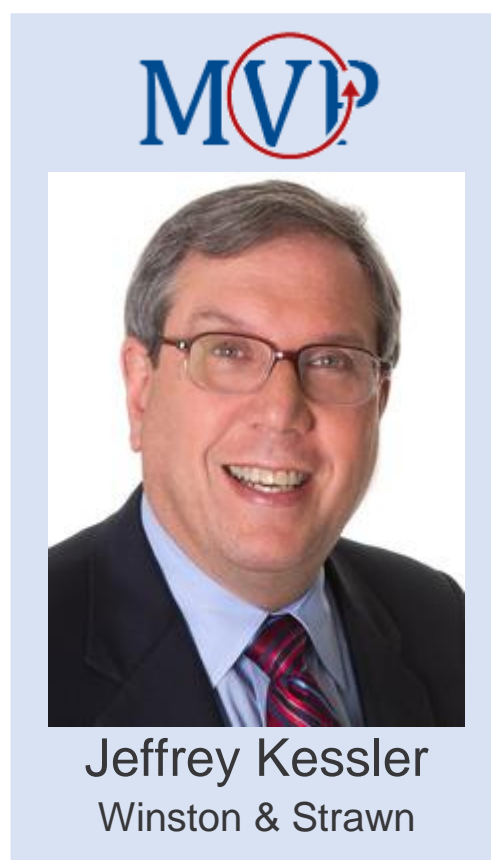
In that ruling, U.S. District Judge Claudia Wilken blasted the NCAA for hiding behind the nebulous concept of "amateurism" to justify practices that clearly run afoul of U.S. antitrust laws. But in a not entirely unexpected twist, Judge Wilken declined to go all the way and blow up those rules for good.

Now, on appeal, Kessler and the class of student-athletes he represents are asking the Ninth Circuit to do just that. If they're successful, the case could reinvent the college sports landscape by allowing student-athletes to be paid directly and allowing schools to bid for the most sought-after players.

The NCAA, meanwhile, is fighting the appeal tooth and nail, largely by arguing that the Ninth Circuit's ruling in the separate but related suit *O'Bannon v. NCAA* should foreclose Kessler's *Alston v. NCAA* case entirely.

Kessler said it was immensely satisfying to prevail, mostly, in district court, a victory he said was made all the sweeter because it so clearly reflects the public's growing awareness of — and distaste for — what he terms the NCAA's exploitative "cartel" business model.

"Ten or 15 years ago, we wouldn't have been able to bring this suit," Kessler told Law360. "But now



public opinion has swung decisively in our favor. I saw a poll the other day that said even a majority of Division I athletic directors believe their athletes should at least be able to profit off their name, image and likeness."

"The NCAA itself will be the last bastion of defense for what everyone else recognizes is a broken system, and they will have to be dragged kicking and screaming into the 21st century," he added.

#### ***HIS BIGGEST CHALLENGE:***

Kessler said the most frustrating thing he's had to deal with all year is the intransigence of the U.S. Soccer Federation, which his clients — players on the four-time world-champion U.S. Women's National Team — are suing in a bid to be paid the same amount as their far less successful male counterparts.

Kessler has been fighting U.S. Soccer for several years on that front, and he said he's baffled by the federation's refusal to settle the suit and agree to pay its women's team the same amount as its men's team. Instead, the federation has dug in its heels and is seeking discovery to prove that any discrepancy in pay might be justified because the athletes on the women's team allegedly make more money from sponsorships each year.

"It's confounding, this irrational, stubborn unwillingness to step up and settle the case by agreeing to equal pay," Kessler said.

"They can easily afford to treat these female players the same way they treat the men's team," he added. "Instead, they've chosen to engage in legal trench warfare."

#### ***HIS PROUDEST MOMENT:***

Given how close he's become with some members of the women's team during the course of their equal pay fight, Kessler said it was uniquely rewarding this year to again see them dominate on the field.

This summer, they won the FIFA Women's World Cup for the fourth time, and Kessler said he was filled with pride as he watched the final game.

"Even though I obviously had nothing to do with that victory, it was incredibly fulfilling to see them out there performing at the top of their game," Kessler said. "Especially since I know all too well everything they have to put up with off the field."

#### ***OTHER NOTABLE CASES:***

Unlike many sports lawyers, Kessler has always been an antitrust pro at heart. He likes to say he fell into sports more or less by accident, and only because he was able to bring his antitrust chops to bear on problems that were vexing players. Most notably, he helped introduce the modern free agency system to the NFL in the early 1990s, in the landmark suit *McNeil v. NFL*.

And yet while Kessler unquestionably remains best known for his sports work, he's still heavily involved in what he refers to as his "first love" — straight antitrust work.

Last year Kessler helped Panasonic, a client of his for nearly 40 years, fight off a class certification bid in a suit accusing the electronics giant of fixing battery prices.

More recently, he's defeated a class certification bid in an antitrust suit against a group of ball bearing manufacturers he represents, and he helped wireless licensing clearinghouse Avanci LLC hit back

against an antitrust suit brought by a German car parts supplier.

In a reversal of his well-known work on behalf of the NFL Players Association, Kessler also helped represent a Hollywood talent agency resist an antitrust dispute with the Writers Guild of America.

"These cases obviously get a lot less attention than all of the sports cases, but the attention isn't what drives me," Kessler said. "I just love practicing the craft, writing briefs, arguing in court. I get a lot of satisfaction out of simply being a lawyer and knowing that area of the law very well."

— *As told to Ryan Boysen*

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