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AV ATTORNEY OF THE YEAR FINALIST

JEFFREY KESSLER

PARTNER, WINSTON & STRAWN

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WHEN THE COUNTRY'S TOP ATHLETES are looking to compete with the major sports leagues or other organizations for breakthrough labor rights or contractual freedoms or more money, they often turn to battle-tested antitrust lawyer Jeffrey Kessler.

So it was no surprise last year when players for the U.S. women's national soccer team—that of the superstar squad that would soon huff and puff and plow its way to another World Cup crown—sought out the energetic Brooklyn-born lawyer.

Over a four-decade career, Kessler has helped lead the charge—legally, that is—for free-agency systems in both the NBA and NFL, winning the fight in both leagues. At the same time, he's negotiated ends to league-wide lockouts, and represented players and their unions in myriad high-stakes contract negotiations.

More recently, he has worked a five-year lawsuit against the NCAA that seeks to tear apart its “amateurism” structure for football and basketball players as we know it, by getting rid of the rules against paying athletes. (More on that one, later.)

And, of course, he has simultaneously maintained a defense-oriented corporate antitrust practice that has focused on representing an array of companies, including major electronics companies in Japan.

For the U.S. women's national soccer team, Kessler entered their long-time battle with the U.S. Soccer Federation—which employs them and the men's national team, and oversees the sport in the United States—at a momentous time. The team's players have long waged inside-baseball-type grievances against the federation over what they say is entrenched pay and work-condition inequity when compared to what the-much-less-successful men's team receives.



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But last March, led by Kessler as their lawyer, 28 players launched a federal gender discrimination lawsuit in Los Angeles against U.S. Soccer that demands major gains for the women's players. And the legal action itself, boosted by the players' fame and outspokenness, has now become a marker to many across the world in the larger movement for gender equality across all sports.

KESSLER, TODAY CO-CHAIR of Winston & Strawn's antitrust and sports law practices, won't say much about the lawsuit at this point—declining in August, for instance, to even reveal whether a planned mediation for the case had taken place—but when asked to talk

about the high-profile action in a career made up of many, he did say this:

“My career on the sports side has involved a series of these cases that try to achieve economic justice for professional athletes,” the 65-year-old attorney said. “So this case seems to be really just a logical extension of a number of other cases we”—that is, he and colleagues at three firms at which he’s been a partner over the decades—“have had for years.” He added, “We’ve worked on a lot of important cases, but this certainly ranks right up there.”

Back in 1977, Kessler wasn’t long out of Columbia Law School—where, he said, he’d “fallen in love with antitrust as a discipline” through his studies—when he joined the Manhattan office of Weil Gotshal & Manges. One of the big cases he helped litigate early on was defending clients Matsushita Electric and JVC against Zenith. Zenith had claimed, he said, that those companies and others were conspiring to take over the U.S. television market. The case led to a landmark U.S. Supreme Court antitrust decision that knocked down the conspiracy theory and claims.

But Weil, at the time, was also involved in helping now-legendary point guard Oscar Robertson fight the NBA for free agency rights and, after Robertson’s case settled to the athlete’s benefit, Kessler—who did not work himself on the Robertson matter—was asked by the firm to advise the NBA player’s union on antitrust matters. That work helped lead, he said, to a continuous stream of players and unions seeking him out in the coming years for work on other matters not related to antitrust.

Of the dual focus of his career—antitrust defense work and players’ rights work—he said of antitrust that he “loves the combination of law and economics, and the fact that over time you become an expert in an industry and then get to develop what is the right economic outcome for that industry and its set of problems.”

Whereas of sports law—in which he’s often been seated in heated arbitrations—he said he has loved the “chance to be in on the plaintiffs’ side” and to champion the cause of professionals that he says have been under-compensated on the free market for decades.

Tom DePaso, the National Football League Players Association’s general counsel, said in an email that Kessler has been the union’s “primary outside counsel ... for decades.”

He next called Kessler “one of the brightest lawyers I have ever met” and said, “What sets him apart is his ability to think on his feet faster than the opposition,

creatively crafting arguments to counter the other side in the courtroom and arbitration.”

“These same attributes,” DePaso continued, “also make him invaluable in the context of collective bargaining with the NFL.”

In these last 12 months, Kessler’s career has perhaps had even more notable moments than on average—if any of his yearly stretches can be called average.

He’s secured wins against class certification motions in two federal antitrust litigations, including in a major automotive parts case in the Eastern District of Michigan. In that action, purchasers of car bearings have sued Kessler’s automotive-parts manufacturer-clients as part of a sweeping multi-district litigation that seeks some \$13 billion in total damages, Kessler said.

And then, of course, there’s the football- and basketball-players case against the NCAA, in the Northern District of California. Launched in 2014, its goals are huge: It asks for an end to amateurism, as we know it, in major college football and basketball. And those goals have not been reached—at least not yet, said Kessler.

But last March, Judge Claudia Wilken ruled in the student-athletes’ favor, in 104 pages, when she decreed that payments to players that are educational-related can’t be limited.

Kessler pointed out that the decision—currently being appealed in the U.S. Court of Appeals for the Ninth Circuit—means that some \$200 million more per year would go to athletes via educational benefits, such as cash incentives for academic progress and graduate school tuition.

Still, many have underscored that the ruling doesn’t come close to reaching the plaintiffs’ goal of bringing about professional-like compensation. And a New York Times article from March said about the “victory”: “So why doesn’t it feel as if the group of athletes who pursued the litigation to end the NCAA’s rule won the case?”

But, to all of that, Kessler—ever the lawyerly thinker and fighter—said simply, “Yes, we had a broader relief [that we wanted]. And we will seek that on cross appeal.”

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