

Jeffrey Kessler Discusses “Deflategate” Victory in Interview with ESPN Radio

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Sports Law Practice Co-Chair Jeffrey Kessler spoke with radio hosts Ian Fitzsimmons and Freddie Coleman on September 4, 2015, the day after Judge Richard Berman of the Southern District of New York vacated a four-game suspension imposed on New England Patriots quarterback Tom Brady in connection with “Deflategate.” In the interview, Mr. Kessler, who also serves as Chair of Winston’s Antitrust/Competition Practice, discusses the ruling and what it means for the future of disputes between the National Football League and its Players Association (NFLPA).

“We won because the judge agreed with us that the process that was used by Commissioner Goodell was fundamentally unfair,” Mr. Kessler said. “He never gave Brady or the union a chance to effectively present their case.”

During the interview, Mr. Kessler reiterated that, in acting as the arbitrator, Commissioner Goodell did not act in a fundamentally fair way and did not adhere to the league’s Collective Bargaining Agreement. Judge Berman agreed with this point of view, and Mr. Kessler stated that he believes any fair-minded judge will also reach the same conclusion and will uphold Judge Berman’s ruling in any appellate proceedings.

According to Mr. Kessler, Judge Berman’s job “was to see if the Commissioner here complied with the Collective Bargaining Agreement, or complied with fundamental fairness, or otherwise acted in a legally proper way. That is what he was committed to rule upon and that is why he threw this aside.”

Mr. Kessler discussed that the NFL may in the future want to consider Major League Baseball’s recent Personal Conduct Policy, which was a result of collective bargaining between the players union and the owners, and which utilizes neutral arbitration. Such a model would be desirable for the NFL as well.

As for next steps in the litigation, Mr. Kessler stated that a potential appeal would likely be decided sometime in 2016. However, he suggested that “maybe the NFL will look back and say that maybe they should take the same posture that Mr. Kraft (the New England Patriots owner) took here and say, ‘OK, I disagree, but for the good of the game, let’s put this behind us and move on and not appeal.’ ... Maybe it’s their turn now.”

To listen to the full interview, [click here](#).

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