PREVENT DEFENSE: TRADE SECRET PROTECTION IN PROFESSIONAL SPORTS

Kevin Paule, Esq.[*]

Abstract

Data has never been more important in professional sports. On the field, players obsess over advanced statistics and the use of analytics. Off the field, front offices use newfound statistics and modeling to gain a competitive edge in setting starting lineups, drafting players, and structuring contract extensions. Stadium scoreboards and baseball cards now prominently display statistics that were an afterthought a generation ago. Thus, with this growth in analytics comes a need for teams and leagues to protect their information.

Trade secret disputes are nothing new—companies have always taken efforts to protect their secrets and limit unfair competition. But, with the growth of data in front offices, this trend appears likely to enter the sports arena. Recent litigation between the New York Knicks and the Toronto Raptors highlights the issues teams and sports leagues may face in protecting their data and in determining which legal arena should hear the dispute. Further, with the growth of sports gambling, teams and leagues have additional incentives to protect their information from outsiders and competitors.

This Article analyzes the current framework under the law and governing documents of the "Big 4" leagues: Major League Baseball (MLB), the National Basketball Association (NBA), the National Football League (NFL), and the National Hockey League (NHL). Additionally, this Article analyzes the issues presented in the ongoing legal saga between the Knicks and the Raptors before proposing solutions for teams and leagues to consider in order to avoid these issues, and when they inevitably occur, how to limit their exposure in the public arena.

INTRODUCTION 208

I. EXISTING LANDSCAPE 208
A. *Trade Secret Protection*.....208
B. *Legal Landscape*.....210
C. *Dispute Resolution Under League Collective Bargaining Agreements and Constitutions*.....211

II. THE KNICKS-RAPTORS LAWSUIT AS A CASE STUDY 218

* Kevin Paule is a litigation attorney at the Tampa office of Hill Ward Henderson. Kevin's practice includes prosecuting and defending trade secret and restrictive covenant disputes, and he has been involved in cases involving professional sports teams, leagues, and athletes.

III. PROPOSALS.....221

CONCLUSION.....222

INTRODUCTION

The book *Moneyball* by Michael Lewis introduced casual sports fans to the growth of analytics.[1] In the book (and the movie), the 2002 low-budget Oakland Athletics adopted a different way of thinking about scouting players.[2] Instead of relying on scouts and traditional statistics, such as batting averages and runs batted in, the team placed greater reliance on analytics.[3] Ivy League degrees replaced scouts and former players who had spent a lifetime playing and studying the game.[4]

While not all general managers resemble Brad Pitt, front offices in professional sports have adopted the mentality exposed in *Moneyball*. This approach has impacted all sports, with analytics taking hold amongst players, coaches, and front offices. In the highly competitive sports world, everyone is looking to gain an edge, whether it be by changing their swing angle, shot percentage, or line pairings.

Data has never been more important in professional sports, and with that comes the need for data protection. Recently, one professional sports team sued another, accusing it of pilfering its proprietary information.[5] Similarly, with legal gambling normalized, professional and amateur teams have taken steps to conceal information that could be used to sway betting lines.

Teams and sports leagues should look to current trade secret laws to protect their proprietary data and, when possible, keep disputes out of the public eye. While fans enjoy competition on the field, legal disputes cause drama and problems off the field.

I. EXISTING LANDSCAPE

A. *Trade Secret Protection*

As one court has noted, "to qualify as a 'trade secret' information must both derive independent economic value from not being generally known or readily ascertainable and be subject to reasonable efforts to maintain

1. *See generally* MICHAEL LEWIS, MONEYBALL: THE ART OF WINNING AN UNFAIR GAME (2004).

2. *See generally id.*; *see also* MONEYBALL (Columbia Pictures 2012).

3. *See supra* note 2.

4. *Id.*

5. *See generally* N.Y. Knicks, L.L.C. v. Maple Leaf Sports & Ent. Ltd. d/b/a Toronto, No. 1:23-cv-07394-JGLC (S.D.N.Y. Aug. 21, 2023) (hereinafter *Knicks Lawsuit*).

its secrecy."[6] Among other things, trade secrets can include customer lists[7] and marketing methods and techniques.[8]

Sports leagues are no different. While teams may have previously been run by former players and relied primarily on scouting reports, the use of analytics has exploded over the past two decades.[9] Front offices now compete for talent with hedge funds and Fortune 500 companies, with some front office employees having never played the sport at a competitive level.[10]

The importance of sports-related data has also grown with the increase in sports gambling. In 2018, the United States Supreme Court cleared the way for states to legalize sports gambling.[11] In *Murphy v. National Collegiate Athletic Association*, the Court overturned the Professional and Amateur Sports Protection Act, a 1992 law passed by the federal government that limited the ability of states to expand or offer sports gambling.[12] Prior to the *Murphy* decision, sports gambling was generally permitted only in Nevada.[13] Following the ruling, sports gambling has made its way into the majority of states, with gamblers able to place bets online.[14]

As a result, at least one university has taken steps to protect data that could sway gambling lines.[15] Similarly, sports leagues have implemented rules on gambling, including what sports can be wagered on and where bets can be placed.[16]

---

6. Beard Rsch., Inc. v. Kates, 8 A.3d 573, 589 (Del. Ch. 2010).

7. *See, e.g.*, Great Am. Opportunities, Inc. v. Cherrydale Fundraising, L.L.C., No. 3718-VCP, 2010 WL 338219, at *20 (Del. Ch. Jan. 29, 2010).

8. AlixPartners, L.L.P. v. Benichou, 250 A.3d 775, 783 (Del. Ch. 2019).

9. *See, e.g.*, Leigh Steinberg, Changing the Game: The Rise of Sports Analytics, FORBES (Aug. 18, 2015, 3:08 PM), https://www.forbes.com/sites/leighsteinberg/2015/08/18/changing-the-game-the-rise-of-sports-analytics/?sh=240660ba4c1f [https://perma.cc/X25M-XZR9].

10. *Id.*

11. Murphy v. NCAA, 584 U.S. 453, 479–80 (2018).

12. *Id.* at 459–60, 462.

13. *Id.* at 459–60.

14. Patrick Everson, *Regulated Sports Betting Industry Booming Five Years After PASPA's Repeal*, FOX SPORTS, https://www.foxsports.com/stories/other/regulated-sports-betting-industry-booming-five-years-after-paspas-repeal [https://perma.cc/562M-LQ5U] (May 19, 2023, 11:05 AM).

15. Richard Johnson, *Tulane to Require Coaches, Staff to Sign NDA as Precautionary Move Against Sports Betting*, SPORTS ILLUSTRATED (Aug. 24, 2023), https://www.si.com/college/2023/08/24/tulane-nda-nondisclosure-agreement-insider-info-betting-gambling [https://perma.cc/H7XN-5AFF].

16. Alex Andrejev, *What Are the NFL's Gambling Rules for the Super Bowl in Las Vegas?*, THE ATHLETIC (Feb. 7, 2024), https://theathletic.com/5252613/2024/02/07/super-bowl-gambling-rules-nfl-players-las-vegas/ [https://perma.cc/2JKY-Y3S7].

B. *Legal Landscape*

There are several layers to trade secret protection at both the state and federal level. At the federal level, the Defend Trade Secrets Act provides a civil cause of action for plaintiffs to pursue the misappropriation of their trade secrets.[17] Similarly, some states have corresponding statutes protecting trade secret theft, including Florida,[18] Delaware,[19] and California.[20]

Notably, a company does not have *carte blanche* to label information or data as a trade secret.[21] Instead, the party seeking redress for trade secret misappropriation must, at a minimum, demonstrate that the information qualifies as a trade secret (including that it is not generally known) and that there was an express or implied understanding that the secrecy of the information would be respected.[22] Companies are required to point to the factors above and establish that the alleged trade secret derives independent value and is not generally known by the public.[23]

In the sports world, where games, scores, and statistics are publicly available, proving misappropriation can be tricky. Courts have generally ruled that third parties are free to accumulate and use compilations of player names and statistics that are in the public domain.[24] Thus, simply compiling statistics will not warrant trade secret protection.

Companies also take steps to protect the unfair use of their trade secrets before theft occurs. This often includes non-disclosure provisions

17. 18 U.S.C. § 1836(b)(1) (2016).

18. FLA. STAT. § 688.001–688.009 (2023).

19. 6 DEL. CODE § 2001–2009 (2023).

20. CAL. CIV. CODE § 3426 (2012).

21. *See* Labyrinth, Inc. v. Urich, No. 2023-0327-MTZ, 2024 WL 295996, at *31 (Del. Ch. Jan. 26, 2024) (denying trade secret claims, in part, because plaintiff failed to adequately plead the existence of a trade secret).

22. *See* Elenza, Inc. v. Alcon Labs. Holding Corp., 183 A.3d 717, 721 (Del. 2018).

23. *See, e.g.*, Great Am. Opportunities, Inc., 2010 WL 338219, at *16 (noting that "[t]he plaintiff bears the burden of providing the existence and misappropriation of a trade secret" . . . including "that a trade secret exists").

24. *See* C.B.C. Distrib. and Mktg., Inc. v. MLB Advanced Media, L.P., 443 F. Supp. 2d 1077, 1107 (E.D. Mo. 2006) (finding that the names and playing records of Major League Baseball players are not copyrightable and may be used by a third-party in fantasy sports games); *see also* CBS Interactive Inc. v. NFL Players Ass'n, Inc., 259 F.R.D. 398, 417–18 (D. Minn. 2009) (finding that third-party had right to use "package of player information" that included "names, player profiles, up-to-date statistics, injury reports, participant blogs, pictures, images, and biographical information").

in contracts.[25] In the event of theft, the employer also has a common-law remedy for pursing a breach of contract action.[26]

Other ways to protect against unfair competition include provisions known as "restrictive covenants." These include restrictions on working for competitors (known as "non-compete provisions") and restrictions on soliciting the company's customers or employees. Recently, the Federal Trade Commission issued a federal ban on most forms of non-compete provisions.[27] While companies are not required to demonstrate the existence of a "trade secret," most states still require that a company seeking to enforce a restrictive covenant justify it on grounds that it protects a legitimate business interest.[28] Based on recent data, a minority of sports teams employ non-disclosure agreements or other forms of restrictive covenants to protect their data.[29]

C. *Dispute Resolution Under League Collective Bargaining Agreements and Constitutions*

In this same context, parties often have to determine the procedure for dispute resolution. In employment agreements (as well as other contexts), there has been a growing trend to have disputes heard in arbitration, rather than in the court system.[30] While there has been some pushback from state and federal legislatures in the areas of employment discrimination and sexual harassment, courts generally hold that arbitration provisions are enforceable.[31] Of course, there are pros and cons to choosing

---

25. *4 Things You Should Know About Non-Disclosure Agreements*, THOMAS REUTERS (Mar. 11, 2022), https://legal.thomsonreuters.com/en/insights/articles/4-things-to-know-about-non-disclosure-agreements [https://perma.cc/BH9E-A6FA].

26. *See, e.g.*, Courtroom Sciences, Inc. v. Andrews, No. 3:09-CV-251-O, 2009 WL 1313274, *34–*36 (N.D. Texas May 11, 2009).

27. Final Rule, Non-Compete Clause, 89 FR 38342 (Apr. 23, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/noncompete-rule.pdf [https://perma.cc/PQP2-T7L7].

28. *See, e.g.*, FLA. STAT. § 542.335(b) (2023) (stating that the person seeking enforcement of a restrictive covenant shall plead and prove the existence of a "legitimate business interest" to justify enforcement of the restrictive covenant); Ga. Code § 13-8-55 (2023) (requiring that "[t]he person seeking enforcement of a restrictive covenant shall plead and prove the existence of one or more legitimate business interests justifying the restrictive covenant").

29. *See* Lara Grow & Nathaniel Grow, *Protecting Big Data in the Big Leagues: Trade Secrets in Professional Sports*, 74 WASH. & LEE L. REV. 1567, 1606–07 (2017).

30. Erin Mulvaney, *Mandatory Arbitration at Work Surges Despite Efforts to Curb It*, BLOOMBERG L. (Oct. 28, 2021, 1:01 PM), https://news.bloomberglaw.com/daily-labor-report/mandatory-arbitration-at-work-surges-despite-efforts-to-curb-it [https://perma.cc/R4LD-QBTL].

31. *See* Deborah A. Widiss, *New Law Limits Mandatory Arbitration in Cases Involving Sexual Assault or Sexual Harassment*, AM. BAR ASSOC. (Nov. 22, 2022), https://www.americanbar.org/groups/labor_law/publications/labor_employment_law_news/fall-2022/new-law-limits-mandatory-arbitration-in-cases-involving-sexual-assault-or-harassment/#:~:text=In%20March%202022%2C%20Congress%20enacted,)%2C%20went%20into%20effect%20immediately [https://perma.cc/8DXQ-B3X2].

arbitration over litigation, but one benefit of arbitration from the perspective of the employer is the confidential nature of such proceedings.[32] While some documents in court can be filed under seal, the general default rule is to allow open access to courts and to prohibit the sealing of non-confidential information.[33]

Arbitration provides two unique applications in the sports world. First, subject to state law, teams can require their employees (including coaches and front office executives) to resolve disputes in arbitration. The recent litigation between NFL coach Brian Flores and various NFL teams is a prime example.[34] Flores currently serves as the Defensive Coordinator for the Minnesota Vikings.[35] Previously, Flores was the Head Coach of the Miami Dolphins for three seasons until he was terminated at the end of the 2022 season.[36] Flores's termination was shocking partly because the Dolphins had finished the season winning eight of the team's final nine games.[37]

Following his termination, Flores filed a lawsuit against the NFL, the Miami Dolphins, the New York Giants, and the Denver Broncos, alleging that his termination and subsequent failure to be hired as a new head coach was the result of racial discrimination.[38] In response, several of the defendants filed motions to compel arbitration.[39] Ultimately, the court required Flores to submit his claims against the Dolphins to arbitration but ruled that because he did not have a contractual relationship with the other teams, he was free to pursue such claims in court.[40] The court denied the argument by the NFL and several teams that Flores's claims were barred in court by the NFL Constitution.[41]

Second, when the commissioner of a sports league serves as the sole

---

32. Samuel Estreicher & Steven C. Bennett, *The Confidentiality of Arbitration Proceedings*, 240 N.Y. L.J. 31 (Aug. 13, 2008).

33. *See, e.g.*, Nixon v. Warner Comm., Inc., 435 U.S. 589, 597 (1978) ("It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.").

34. *See generally* Flores v. NFL, F. Supp. 3d 198 (S.D.N.Y. 2023) (hereinafter *Flores Case*).

35. *Brian Flores*, MINNESOTA VIKINGS, https://www.vikings.com/team/coaches-roster/brian-flores [https://perma.cc/BTC6-HNBU].

36. Complaint para. 14, *Flores Case* (No. 1).

37. Dan Treacy, *Brian Flores Coaching Record: Why Dolphins Fired Head Coach After Back-to-Back Winning Seasons*, THE SPORTING NEWS (Oct. 23, 2022), https://www.sportingnews.com/us/nfl/news/brian-flores-coaching-record-dolphins-fired-coach/snvlx3wco9vb67kmyjgfuc6x#:~:text=The%20Dolphins'%20decision%20to%20fire,when%20he%20explained%20the%20decision [https://perma.cc/C56G-6ZV7].

38. Complaint paras. 14–24, *Flores Case* (No. 1).

39. Motion to Compel Arbitration, *Flores Case* (No. 47); Memorandum of Law, *Flores Case* (No. 48); Declaration, *Flores Case* (No. 49); Declaration (No. 50).

40. Opinion and Order at 12, 14, *Flores Case*, 658 F. Supp. 3d 198 (No. 76).

41. *Id*. at 21–22.

arbitrator in disputes between teams and employees, the process may not be enforceable. A former St. Louis Rams employee brought claims against the team for age discrimination and, rather than subject him to an unconscionable arbitration with the NFL Commissioner as the sole arbitrator, the court ruled in favor of appointing a neutral arbitrator that was not affiliated with the league.[42]

In addition to contractual agreements between teams and employees, sports leagues are also governed by Collective Bargaining Agreements (CBAs). Further, each league has a constitution. Relevant here, each league's CBA and constitution sets forth procedures on dispute resolution.

The NBA's CBA provides a system for arbitration for disputes between the NBA and its players association in Articles XXXI and XXXII.[43] Regarding gambling, Article VI, Section 5(c) of the NBA's CBA provides that "[a]ll players shall be required each Season to attend and participate in one (1) anti-gambling training session conducted by their Team and/or the NBA. If a player, without proper and reasonable excuse, fails or refuses to attend an anti-gambling training session, he shall be fined $100,000."[44]

Regarding disputes between and amongst teams, Article 24 of the NBA's Constitution provides that the Commissioner's duties include the following:

> (c) The Commissioner shall have the responsibility for the general supervision and direction of all business and affairs of the League and shall have all such other powers as may be necessary or appropriate to fulfill this responsibility.
>
> (d) The Commissioner shall have exclusive, full, complete, and final jurisdiction of any dispute involving two (2) or more Members of the Association.
>
> (e) The Commissioner shall have the right to investigate all charges, accusations, or other matters that may adversely affect the Association or its Members.
>
> . . .
>
> (i) (i) The Commissioner shall have the power to suspend a Player, Coach, Member, Owner, or other person subject to the Commissioner's jurisdiction for a definite or indefinite period and to impose such fines and other penalties as are authorized by Article 35, 35A or any other Article or Section relating thereto of this Constitution and By-Laws. The

42. State ex rel. Hewitt v. Kerr, 461 S.W. 3d 798, 813 (Mo. 2015) (en banc).
43. NBA Collective Bargaining Agreement, arts. XXXI and XXXII.
44. *Id.* at art. VI, section 5(c).

> Commissioner shall have the power to declare null and void any Player transaction made by and between Members of the Association or by and between Members of the Association and any organization outside of the Association.
>
> (ii) The Commissioner shall represent Members in disputes with operators of teams in other leagues or associations as to rules of ownership of contracts or rights to services of Players.
>
> . . .
>
> (l) The Commissioner shall, wherever there is a rule for which no penalty is specifically fixed for violation thereof, have the authority to fix such penalty as in the Commissioner's judgment shall be in the best interests of the Association. . . .
>
> (m) Following an opportunity for the affected party to submit evidence and be heard, all actions duly taken by the Commissioner pursuant to this Article 24 or pursuant to any other Article or Section of the Constitution and By-Laws, which are not specifically referable to the Board of Governors, shall be final, binding and conclusive, as an award in arbitration, and enforceable in a court of competent jurisdiction in accordance with the laws of the State of New York. In connection with all actions, hearings, or investigations taken or conducted by the Commissioner pursuant to this Article 24, (i) strict rules of evidence shall not apply, and all relevant and material evidence submitted may be received and considered, and (ii) the Commissioner shall have the right to require testimony and the production of documents and other evidence from any Member, Owner, or Referee, any employee of any Member or Owner, and/or any employee of the Association, and any person or Entity not complying with the requirements of the Commissioner shall be subject to such penalty as the Commissioner may assess.[45]

The NHL's CBA provides one reference to gambling in its "Standard Club Rules" which are rules that teams are permitted to impose on players.[46] The second Standard Club Rule prohibits "[g]ambling on any NHL Game."[47]

Regarding dispute resolution, the NHL's Constitution provides the following:

---

45. NBA Const., art. 24.
46. NHL Collective Bargaining Agreement, section 30.7(b); Exhibit 14.
47. *Id.*

> The Commissioner shall have full and exclusive jurisdiction and authority to arbitrate and resolve:
>
> (1) any dispute that involves two or more Member Clubs of the League or two or more holders of an ownership interest in a Member Club of the League;
>
> (2) any dispute between or among players, coaches, or other employees of any Member Club or Clubs of the League (unless such dispute is unrelated to and outside the course and scope of the employment of the disputants);
>
> (3) any dispute between any player or other employee designated by the Member Club and any Member Club or Clubs.
>
> (4) any dispute between a player and any official of the League; and
>
> (5) any dispute involving a Member Club or Clubs, or any players or employees of the League or any Member Club or Clubs, or any combination thereof, that in the opinion of the Commissioner is detrimental to the best interests of the League or professional hockey or involves or affects League policy.
>
> In any case involving the deprivation of a Member Club's material property rights (other than rights to or interest in a player or other employee), an aggrieved Member Club may appeal the Commissioner's determination to the Board of Governors. The decision of the Commissioner shall be upheld unless three-fourths of the Governors shall vote to reverse it.
>
> Except in such circumstances, the authority of the Commissioner to arbitrate disputes pursuant to this provision shall be binding to the same extent as if the parties had entered into a formal arbitration agreement and the decision of the Commissioner shall be final and binding on all parties and shall not be subject to any review. The Commissioner may elect not to arbitrate a dispute in any circumstances that he determines appropriate.[48]

The NFL's CBA provides for a System Arbitrator to hear disputes.[49] Regarding gambling, the NFL Player Contract attached to the NFL's CBA provides a clause on the "Integrity of Game" that spells out prohibitions on certain gambling and gambling-related activity:

---

48. NHL Const., art. VI, section 6.3(b).
49. NFL Collective Bargaining Agreement, art. 15, section 6.

> Player recognizes the detriment to the League and professional football that would result from impairment of public confidence in the honest and orderly conduct of NFL games or the integrity and good character of NFL players. Player therefore acknowledges his awareness that if he accepts a bribe or agrees to throw or fix an NFL game; fails to promptly report a bribe offer or an attempt to throw or fix an NFL game; bets on an NFL game; knowingly associates with gamblers or gambling activity; uses or provides other players with stimulants or other drugs for the purpose of attempting to enhance on-field performance; or is guilty of any other form of conduct reasonably judged by the League Commissioner to be detrimental to the League or professional football, the Commissioner will have the right, but only after giving Player the opportunity for a hearing at which he may be represented by counsel of his choice, to fine Player in a reasonable amount; to suspend Player for a period certain or indefinitely; and/or to terminate this contract.[50]

MLB's CBA spells out its Grievance Procedure in Article XI.[51] Further, with respect to player disciple, Article XII of MLB's CBA provides that a player may be disciplined for "just cause for conduct that is materially detrimental or materially prejudicial to the best interests of Baseball, including, but not limited to, engaging in violation of federal, state, or local law."[52]

MLB's CBA also contains an explicit sports betting policy that sets forth prohibitions on the "tipping" or disclosure of confidential information:

> Confidential information, including non-public information regarding player health, rosters, lineups, transactions, discipline or umpires, may be sought by individuals who desire to exploit such information in the betting markets. Major League Players are prohibited from intentionally disclosing such confidential information regarding their Clubs, their Club's Minor League affiliates or MLB, or any professional or amateur baseball team or league, to any person with the knowledge that that person intends to use such confidential information in connection with the betting markets.[53]

---

50. NFL Collective Bargaining Agreement, app. A, section 15.

51. MLB Collective Bargaining Agreement, art. XI.

52. MLB Collective Bargaining Agreement, art. XII, section B.

53. MLB Collective Bargaining Agreement, attachment 60, Sports Betting Policy for Major League Players.

MLB's Constitution further requires that teams avoid litigation in disputes among one another. In Article VI, titled "Arbitration," the MLB Constitution provides:

> Sec. 1. All disputes and controversies related in any way to professional baseball between Clubs or between a Club(s) and any Major League Baseball entity(ies) (including in each case, without limitation, their owners, officers, directors, employees and players) . . . shall be submitted to the Commissioner, as arbitrator, who, after hearing, shall have the sole and exclusive right to decide such disputes and controversies and whose decision shall be final and unappealable. [. . .]
>
> Sec. 2. The Major League Clubs recognize that it is in the best interests of Baseball that all actions taken by the Commissioner under the authority of this Constitution, including, without limitation, Article II and this Article VI, be accepted and complied with by the Clubs, and that the Clubs not otherwise engage in any form of litigation between or among themselves or with any Major League Baseball entity, but resolve their differences pursuant to the provisions of this Constitution. In furtherance thereof, the Clubs (on their own behalf and including, without limitation, on behalf of their owners, officers, directors and employees) severally agree to be finally and unappealably bound by actions of the Commissioner and all other actions, decisions or interpretations taken or reached pursuant to the provisions of this Constitution and severally waive such right of recourse to the courts as would otherwise have existed in their favor. In the event of any legal action other than as prescribed by Section 1 of this Article VI by any Club (including, without limitation, their owners, officers, directors and employees) in connection with any dispute or controversy related in any way to professional baseball, or in the event of noncompliance with any action of the Commissioner, with any action or decision taken or reached pursuant to the provisions of this Constitution, or with the terms or intent of this Article VI, in addition to any other remedy that may be available to the Commissioner, the Commissioner may direct that the costs, including attorneys' fees, to the Office of the Commissioner or any other Baseball entity, whether as plaintiff or defendant, of any court proceeding or other form of litigation resulting therefrom be reimbursed to the Office of the Commissioner or such other Baseball entity by such non-complying Club (on its own behalf and including, without limitation, on behalf of its owners, officers, directors and employees). Nothing herein

> shall be construed to limit any rights of indemnity that the Major League Clubs or any Major League Baseball entity may have against any Club.[54]

Thus, when teams have disputes amongst themselves, leagues already have clear guidelines in place for how the dispute should be heard. Namely, that the respective commissioner will privately hear the matter and issue a ruling outside of the court system. But, this leaves open the possibility that disputes involving non-player employees can be heard in open court.

II. THE KNICKS-RAPTORS LAWSUIT AS A CASE STUDY

The ongoing legal battle between the New York Knicks and Toronto Raptors highlights these issues. On August 21, 2023, the Knicks filed a lawsuit in federal court against the Raptors and various members of the Raptors organization.[55] As alleged in the lawsuit, a former Knicks front office employee, Ikechukwu Azotam, brought proprietary information from the Knicks to his new employer, the Raptors.[56] The Knicks also sued current Raptors Head Coach Darko Rajaković.[57]

According to the Knicks, the former employee improperly accessed the Knicks system and secretly forwarded the Knicks proprietary information to his personal email account.[58] The Complaint notes that this proprietary information included scouting reports, play frequency reports, a prep book, and a link to third-party licensed software.[59] The Knicks brought claims for violations of the Computer Fraud and Abuse Act, violations of the Defend Trade Secrets Act, misappropriation of trade secrets under New York common law, breach of contract against the former employee, Mr. Azotam, tortious interference with contractual relations, conversion, unfair competition, and unjust enrichment.[60]

The Raptors have denied any wrongdoing and accused the Knicks of orchestrating a publicity stunt.[61] First, the Raptors noted that to the extent any information was taken, it was publicly available, and thus would not qualify for trade secret protection.[62] The Raptors stated that many teams across the league (including both the Knicks and the Raptors) have access to the third-party software provider that stored the Knicks's allegedly

54. MLB Const., art. VI.
55. *Knicks Lawsuit*, *supra* note 5.
56. *Id.* at para. 1.
57. *Id.*
58. *Id.* at para. 43.
59. *Id.* at paras. 41–43.
60. *Id.* at paras. 59–63, 67–72, 85–88, 97–101, 107–10, 114–18, 121–26, 127–29.
61. Memorandum of Law at 14, *Knicks Lawsuit* (No. 22).
62. Motion to Dismiss at 12, *Knicks Lawsuit* (No. 21).

confidential information.[63]

The Raptors also pointed to language in the NBA's CBA relating to arbitration between teams.[64] The Raptors argued that Article 24 of the NBA's CBA required that the dispute between the Knicks and Raptors be resolved by the NBA Commissioner.[65] However, the case is still pending and, as of the writing of this Article, the court has not yet issued any dispositive rulings.

While this appears to be the first civil lawsuit between two sports teams relating to the alleged theft of trade secrets or intellectual property, it is not the first incident. In 2011, Jeff Luhnow was hired as the General Manager of the Houston Astros.[66] Prior to that, he worked for the St. Louis Cardinals.[67] In 2015, it was discovered that Christopher Correa, an employee from Luhnow's former team, the Cardinals, had accessed the Astros's internal system.[68]

It is unclear what information, if any, was gleaned by the Cardinals. The team reportedly cooperated with the MLB and law enforcement—the federal government charged Correa with multiple crimes.[69] In response, Correa pled guilty and was sentenced to forty-six months in prison and was ordered to pay $279,039 in restitution.[70] He also received a lifetime ban from the MLB Commissioner.[71]

Unlike the Knicks's posture against the Raptors, the Astros chose not to pursue claims against the Cardinals. But the MLB did impose punishment on the Cardinals.[72] The team lost its top two picks and was required to provide them to the Astros along with $2 million in fines.[73]

In addition to the competitive reasons to protect data, teams and leagues also have an increased interest in protecting proprietary information from finding its way to sportsbooks and gamblers. As noted

---

63. Memorandum of Law at 14, *Knicks Lawsuit* (No. 22).

64. *Id.* at 10.

65. *Id.*

66. *Astros Hire Jeff Luhnow as GM*, ESPN (Dec. 8, 2011, 1:20 AM), https://www.espn.com/mlb/story/_/id/7329675/houston-astros-hire-former-st-louis-cardinals-vice-president-jeff-luhnow-general-manager [https://perma.cc/WD5Y-WYJ9] (Notably, Mr. Lunhow would be relevant in a different scandal involving the use of sports data resulting in his termination from the Astros.); *see also* Jeff Pasan, *Astros' Jeff Luhnow, AJ Hince Fired for Sign Stealing*, ESPN (Jan. 13, 2020, 2:00 PM), https://www.espn.com/mlb/story/_/id/28476780/astros-jeff-luhnow-aj-hinch-fired-sign-stealing [https://perma.cc/JH7C-7269].

67. *See supra* note 63.

68. Ben Reiter, *What Happened to the Houston Astros' Hacker?*, SPORTS ILLUSTRATED (Oct. 4, 2018), https://www.si.com/mlb/2018/10/04/chris-correa-houston-astros-hacker-former-cardinals-scouting-director-exclusive-interview [https://perma.cc/E8WT-S6JT].

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

by Tulane's athletic director when the athletic department required non-disclosure agreements, "this is a reminder to everyone who works in the department, from tutors to academic advisers to equipment to every staff member, that there's also information that you hold because you're around the athletes, you're around the training room, you're around the academic advisers. There's information you hold that can also be used for gambling purposes, and that information needs to stay closely held for the protection of the athlete and the protection of the integrity of the game."[74]

While the effects of legalized gambling remain to be seen, Jontay Porter, a forward on the Raptors, was recently banned from the NBA for disclosing confidential information to sports bettors, limiting his own participation in games based on betting lines, and betting on NBA games.[75] Additionally, MLB superstar Shohei Ohtani was recently involved in a gambling scandal when his interpreter was charged with stealing money in order to placate his gambling habit.[76]

With the rise of sports gambling and even more information available about every player and every team, it is inevitable that civil and criminal issues will continue to arise in the sports world. Teams and leagues should be proactive in protecting their data and setting clear guidelines on how to handle disputes and rule violations. This includes clear dispute resolution frameworks in order to avoid situations such as the Knicks lawsuit where the fight plays out in public view.

III. PROPOSALS

The Knicks lawsuit offers lessons to teams and sports leagues (as well as employers outside the athletic space). Like any business, teams should take steps to protect their data and trade secrets. While turnover is inevitable in any industry and front office employees will move from one team to another, teams should make sure that information does not "walk out" the door when one employee leaves. This could be as simple as requiring employees to sign non-disclosure agreements. In drafting these agreements, teams should distinguish and differentiate between public information, such as widely published statistics and videos, and

74. Richard Johnson, *Tulane to Require Coaches, Staff to sign NDA as Precautionary Move Against Sports Betting*, SPORTS ILLUSTRATED (Aug. 24, 2023), https://www.si.com/college/2023/08/24/tulane-nda-nondisclosure-agreement-insider-info-betting-gambling [https://perma.cc/UB6H-4GC2].

75. *Jontay Porter Banned From NBA for Violating League's Gaming Rules*, NBA (Apr. 17, 2024), https://www.nba.com/news/jontay-porter-banned-from-nba [https://perma.cc/4GHR-MJSQ].

76. Jesse Yomtov, *Shohei Ohtani Interpreter Allegedly Stole $16M From MLB Star, Lost $40M Gambling: What to Know*, USA TODAY, https://www.usatoday.com/story/sports/mlb/dodgers/2024/04/13/shohei-ohtani-interpreter-ippei-mizuhara/73309114007/ [https://perma.cc/LL7R-43U7] (Apr. 13, 2024, 2:23 PM).

proprietary information, such as coding.

Teams should also be proactive in prohibiting employees from gambling or sharing inside information with third parties. Knowing something as simple as a starting lineup may sound benign, but this knowledge has the possibility to sway betting lines and cause public distrust if such information ends up in the hands of bookmakers. The best practice is for teams to ensure that information to media flows through proper channels by making clear which team officials are permitted to share injury designations and other information with third parties and the media. Team employees should avoid sharing inside information with friends or colleagues, even in passing, to avoid information ending up in the wrong hands. Of course, this can be a delicate balance as players may want to alert friends and families whether they are expected to start in a particular game.

Along those same lines, leagues should set straightforward rules and procedures relating to gambling and the handling of information and make sure that this is clearly communicated to all league personnel and players. Even the innocent transmission of information can result in a scandal for an employee or team depending on who ultimately receives the information. This includes teams at the amateur level as well as in the professional ranks. Information about anything that can be bet on is valuable to the right (or wrong) people.

Finally, leagues should ensure a uniform framework for resolving disputes among teams. While league constitutions already have procedures in place, these can be emphasized at the team level by implementing non-disclosure provisions into employment agreements. Additionally, where possible, employment agreements should incorporate league constitutions in order to take advantage of such dispute resolutions frameworks.

CONCLUSION

Recent news stories about gambling scandals and the Knicks-Raptor litigation are important reminders that sports leagues and teams will continue to face issues relating to the use and disclosure of their proprietary information. Leagues should continue to set parameters on who is permitted to access and share information as well as the procedures for resolving disputes. Teams should be more proactive and have a business-minded focus on limiting exposure to confidential data. Additionally, when hiring new front office employees, teams should provide training on the use of such data and require employees to execute non-disclosure agreements. While the next scandal may be inevitable, these steps will better position teams and leagues to handle any fallout.