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## What To Watch For In Sports Law In The 2nd Half Of 2016

By Zachary Zagger

*Law360, New York (July 5, 2016, 7:24 PM ET)* -- A key decision on New Jersey's attempt to legalize sports betting at its casinos and racetracks, which should frame a nationwide debate over sports gambling, is expected in the coming months, but it's only one of several issues sports attorneys will be watching in the second half of 2016.

Also on their radar are several lingering issues with daily fantasy sports, as well as other matters just coming to the surface like the emergence of eSports.

Here, Law360 takes a look at some of the big issues that will drive litigation and deals in the coming months.

### The Push to Legalize Sports Betting

In mid-February, 12 judges of the Third Circuit met in a Philadelphia courtroom to once again scrutinize New Jersey's attempts to legalize sports betting at its struggling casinos and racetracks. Some attorneys say the pending decision by those judges could provide a road map for states to allow sports betting within their borders without running afoul of federal law and potentially spur further debate over removing federal restrictions.

Standing in the way of New Jersey and other states is the federal Professional and Amateur Sports Protection Act, which prohibits state governments from passing laws to "authorize" sports betting. New Jersey tried to do just that, but was shot down by the Third Circuit despite questions over PASPA's constitutionality. Undeterred, the state passed another measure, this time partially repealing its anti-sports betting laws as applied to casinos and racetracks. Once again it was struck down.

But an en banc panel reheard the case just as momentum toward legalized sports betting is growing, even among the leagues that brought the legal challenges against New Jersey.

Already, NBA Commissioner Adam Silver has explicitly come out in favor of a system of highly regulated, but legal, sports betting. Other moves seem to indicate less resistance to sports betting and gambling such as the NHL's recent approval of an expansion franchise in Las Vegas, where sports betting is legal.

"I think the path to legal sports betting is going to come into much sharper focus before the end of this year — what it is going to look like, what path it will take," said Daniel Wallach, a shareholder with Becker & Poliakoff PA. "Win or lose, I think New Jersey is going to get enough in this Third Circuit

opinion to craft a bill to put it over."

### **Ticket Selling and Reselling Litigation**

New York Attorney General Eric Schneiderman made a splash earlier this year when he released a report blasting the sports and entertainment ticket industry as a "fixed game" that blocks the general public from being able to buy tickets to popular events at face value.

Schneiderman's report outlined several issues such as distribution of tickets to so-called "insiders," policies that restrict the resale of tickets such as setting price floors, and unscrupulous ticket reselling companies, some of which use software called "bots" to buy up large amounts of tickets before the public has a chance to do so.

There have already been several lawsuits over sports teams' attempts to control the resale market for tickets, which have gotten a surprising amount of traction in courts, according to attorneys.

"Frankly they have gotten a lot more traction than I would have thought when they were filed," said Patrick H. Reilly of Faegre Baker Daniels.

Just weeks ago, the New Jersey Devils settled a proposed class action alleging the NHL team refused to renew season tickets in an effort to control the resale, or secondary, market. Terms of the settlement were not disclosed, but the fact the court let it go that far is significant and could lead to further litigation.

The New York Yankees recently reached a deal with online ticket reseller StubHub to end a dispute and allow ticket holders to resell their tickets on the site. However, StubHub reportedly agreed to a price floor for the tickets, placing a minimum sale price at 50 percent of face value.

### **The Growth of eSports**

The burgeoning competitive video gaming, or eSports industry, has attorneys watching to see what will come next, as new competitions keep popping up and television deals are reached.

Seemingly emerging from thin air, the industry is based around watching people play video games like League of Legends, World of Warcraft and Call of Duty. Already, Turner Broadcasting System Inc. has an agreement to televise competitions, but with this rapid growth, attorneys say many legal issues must be still sorted out.

"It is still the Wild West and very antiquated and being run in the way that baseball and many of these other professional leagues were running in their infancy," said sports and entertainment litigator Glen Rothstein of Greenberg Glusker Fields Claman & Machtiner LLP.

There will be a whole host of issues as eSports leagues become more sophisticated, from labor and contract issues, to league governance and perhaps even anti-doping mechanisms to check for cognition-enhancing drugs that could give competitors an unfair advantage, Rothstein said.

### **Daily Fantasy Sports Regulation**

The daily fantasy sports, or DFS, industry has been in turmoil since last fall when leading companies

DraftKings Inc. and FanDuel Inc. were targeted in several class actions making consumer protection claims. However, potentially more deadly was the threat of state and federal authorities deciding DFS contests violate various state anti-gambling laws.

In the midst of this turmoil, seven state legislatures — Colorado, Indiana, Tennessee, Mississippi, Virginia, Missouri and New York — have passed bills this year to legalize and regulate DFS. Notably in New York, the bill would seemingly put an end to the most problematic parts of enforcement lawsuits by the state attorney general. However, lawsuits still remain in Illinois and Texas over the legality of such contests.

Even in states that have legalized DFS, several consumer protections and other restrictions are being imposed. Several issues still must be sorted out, including taxes, licensing and registration, as the industry moves into this newly regulated realm, attorneys said.

--Editing by Mark Lebetkin and Patricia K. Cole.

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