



**Sports and Entertainment Conference  
July 24, 2018 (Playa Vista)**

**#ACCSocalSEnt2018**



**Dealing with Sexual Misconduct – Some Lessons from  
The Olympic Movement**

Presented by: Steven B. Smith, Esq.

Bryan Cave Leighton Paisner, LLP

E: [steve.smith@bcplaw.com](mailto:steve.smith@bcplaw.com)

P: 719-381-5487

[bcplaw.com](http://bcplaw.com)

## Some Background Statistics on Sexual Abuse and Molestation

- 1 in 5 girls and 1 in 20 boys are abused (source: National Center for Victims of Crime)
- 1 in 5 women who attended a residential college during a four-year span said they had been sexually assaulted (source: Washington Post and Kaiser Family Foundation)
- Nearly 100 colleges and universities had at least 10 reports of rape on their main campuses in 2014 (source: Washington Post and U.S. Dept. of Education)
- Less than 5% of rape victims attending college report their attack to law enforcement (source: U.S. Senate Subcommittee on Financial & Contracting Oversight)

3

BRYAN  
CAVE  
LEIGHTON  
PAISNER **BCLP**

## Scandals in the News

- USA Gymnastics/Dr. Larry Nassar
  - Nassar is the doctor who was accused of molesting dozens of minor girls
  - He was convicted in criminal court and is now spending the rest of his life in prison
  - Dozens of women came forward to describe the horrific things he did
  - This ultimately cost the CEO of the USOC and the CEO of USA Gymnastics their jobs, even though they may have “followed the book”

4

BRYAN  
CAVE  
LEIGHTON  
PAISNER **BCLP**

## Scandals in the News

- Harvey Weinstein
  - Powerful movie executive who used his power to force himself onto women
  - Approximately 80 women have come forward to accuse him of rape, sexual assault and sexual molestation
  - On May 25, 2018, Weinstein was arrested in New York, charged with rape and other offenses, and released on bail

5

BRYAN  
CAVE  
LEIGHTON  
PAISNER 

## Scandals in the News

- Since the story on Weinstein broke, many women have come forward with similar stories of powerful men raping, molesting and sexually harassing them
- This has led to the rise of the #MeToo movement
- Sadly, the number of incidents being reported goes on and on

6

BRYAN  
CAVE  
LEIGHTON  
PAISNER 

## Why Should You Be Concerned?

- If your organization deals with children in any way, you are at risk and need to take steps to address the risk
- Further, even if you don't deal with children, there is always a possibility of sexual molestation and worse arising in the workplace
- Do you know how to deal internally with a report of sexual abuse?

7

BRYAN  
CAVE  
LEIGHTON  
PAISNER 

## What Can We Learn from SafeSport?

- SafeSport is the effort developed by the U.S. Olympic Movement about 8 years ago to deal with situations where adults, like coaches, trainers, doctors, etc. use their authority and imbalance of power to take advantage of children
- This is critical because most organizations in the Olympic movement have programs to develop youth participation; some programs have tens or even hundreds of thousands of youth members. So the odds are high of having incidents involving minors is high

8

BRYAN  
CAVE  
LEIGHTON  
PAISNER 

## SafeSport

- SafeSport also covers situations involving adults where there is an imbalance of power between individuals, such as coach-athlete relationships

9

## What Does SafeSport Cover?

- SafeSport covers 6 areas:
  - Sexual abuse and misconduct
  - Physical abuse
  - Emotional abuse
  - Bullying
  - Harassment
  - Hazing

10

## Who Is Covered?

- SafeSport covers anyone who is either:
  - Under the jurisdiction of an Olympic governing body; and
  - Anyone who is appointed to a position of authority over another individual within the governing body.

11

BRYAN  
CAVE  
LEIGHTON  
PAISNER 

## How Does It Work?

- The USOC has created the U.S. Center for Safe Sport to (i) receive complaints of violations of SafeSport policies; (ii) investigate those complaints, and (iii) adjudicate those complaints that warrant charges
- The Center will impose penalties on those found guilty; in most instances, the penalty will involve a lifetime suspension from the Olympic movement (note, however, that this does not stop the individual from continuing in the sport outside of the Olympic movement)

12

BRYAN  
CAVE  
LEIGHTON  
PAISNER 

## How Does It Work?

- The Center includes a number of protections for victims within its process, including the ability to testify without having to be in the same room as the accuser, and even having cross-examination handled by the arbitrator, and not the attorney for the accused
- Governing bodies require background screening for anyone who is involved with minors in any way

13

## Why Does SafeSport Matter to You?

- This is now an “industry standard” in the Olympic movement
- It is possible that, over time, courts will recognize this as the industry standard for sports organizations, entertainment companies and others
- So, it is important that we understand and appreciate lessons from SafeSport

14

## What Lessons Can We Learn from This?

1. This is a societal problem. So far, it has impacted churches, the sports and entertainment industries, and others. You need to be prepared for the possibility that you might have to deal with this
  - Especially if you deal with children
  - Even if you don't deal with children, women are becoming more empowered to come forward about what happened to them, so you could face a Harvey Weinstein-type issue

15

BRYAN  
CAVE  
LEIGHTON  
PAISNER 

## What Can We Learn?

2. The worst thing you can do is to ignore warning signs or complaints
  - Often, it is very difficult for women to come forward. But, just because someone fails to come forward does NOT mean you can't take action
  - If you suspect there is sexual misconduct going on, be ready to investigate and take action

16

BRYAN  
CAVE  
LEIGHTON  
PAISNER 

## What Can We Learn?

### 3. If you learn of wrongdoing, you need to take a few steps:

#### a. Get the perpetrator away from potential victims

- If an alleged wrongdoing involves children, make sure that the perpetrator is no longer around children to the fullest extent you can
- If the alleged wrongdoing involves adults, consider putting the alleged perpetrator on leave

17

## What Can We Learn?

#### b. If appropriate, report the matter to the authorities

- In some situations, you will be a mandatory reporter. In other words, you are required by law to report incidents to the police
- If you are in doubt, report. It is much better to report when you didn't need to, than to fail to report when you should have

18

## What Can We Learn?

### 4. Turning the matter over to police can be fraught with problems

- Often, the police will ask you not to take action or to conduct your own investigation, as it could interfere with their investigation
- Don't assume the police will act quickly
- You may still have a duty to act, and to act quickly

19

BRYAN  
CAVE  
LEIGHTON  
PAISNER 

## What Can We Learn?

- Tip: Get the request from the police not to conduct an investigation in writing. This is what ultimately came back to bite the CEO of the USOC
- Often, the police will not take action. This does NOT mean you do not need to take action
- The reason police may not take action is a high burden of proof. You probably do not have the same burden of proof

20

BRYAN  
CAVE  
LEIGHTON  
PAISNER 

## What Can We Learn?

5. Create an environment where victims feel comfortable coming forward
  - During the USA Gymnastics controversy, we heard this concern from a number of women – they did not feel comfortable coming forward
  - Coming forward is a very difficult and often traumatic process for the victim. Make it as easy as possible for the victim

21

BRYAN  
CAVE  
LEIGHTON  
PAISNER 

## What Can We Learn?

6. Be prepared to take quick action
  - Make sure you have the policies in place to be able to take quick action
  - Understand if you have an obligation to provide a hearing or some other means for the alleged perpetrator to state his case
  - If you have procedures in place, be sure to follow them

22

BRYAN  
CAVE  
LEIGHTON  
PAISNER 

## What Can We Learn?

7. Be sure to have background screening requirements in place for anyone who works with children
  - This is clearly the industry standard by now. If you don't do this, you will almost certainly be found negligent
  - Not all background screens are created equal

23

BRYAN  
CAVE  
LEIGHTON  
PAISNER **BCLP**

BRYAN  
CAVE  
LEIGHTON  
PAISNER **BCLP**

[bcplaw.com](http://bcplaw.com)

24

## Steven B. Smith

Partner, Colorado Springs

T: +1 719 381 8457 Steve.Smith@bcplaw.com

**PRACTICE AREAS** Technology, Entrepreneurial and Commercial Practice; Intellectual Property; Sports and Entertainment Group; Trade Association, Business League & Professional Association Practice; Nonprofit Organizations; Global Hospitality Team; Strategic Alternatives and Corporate Reorganization

**ADMISSIONS** Colorado, 1991

**EDUCATION** University of Michigan, J.D., 1991; Harvard University, A.B., magna cum laude, 1987



Steven Smith is the Managing Partner of the Colorado Springs office. His practice focuses on sports law, including naming rights, sponsorships, licensing agreements, stadium operations, television and media contracts, and representing leagues and National Governing Bodies. Mr. Smith has been recognized as a "Leader in His Field" for Sports Law by Chambers USA 2011.

- **Naming Rights Agreements.** Mr. Smith has advised, and negotiated on behalf of, both corporate sponsors and sports properties on all aspects of naming rights agreements. The total value of those agreements exceeds \$1B. Representative deals include Progressive Field (Cleveland), Oracle Arena (Oakland), Amerquest Field (Arlington, TX), Qwest Field (Seattle), the O2 (London), Honda Center (Anaheim), Bank of America Stadium (Carolina), Qwest Arena (Boise) and TD Ameritrade Park (Omaha).
- **Sponsorships and Licensing Agreements.** Mr. Smith has completed sponsorship and licensing agreements valued in excess of \$1.5B. He has advised VISA, USA, and Progressive Insurance on general sponsorship matters. He also represented Amerquest in its sponsorship of the Super Bowl Halftime Show, several major league baseball teams and the California Speedway. Mr. Smith has also been heavily involved in sponsorships with National Governing Bodies, including USA Swimming's recent sponsorships with AT&T, BMW and Marriott, as well as U.S. Speedskating's deals with Verizon and The Colbert Nation.
- **Stadium Operations.** A central part of Mr. Smith's practice includes advising clients on contracts involving stadium operations, such as ticketing, concessions, pouring rights, advertising, and television.
- **Television and Media Contracts.** Mr. Smith has represented a number of sports properties in all aspects of television and media agreements. He has completed deals with most major sports networks, including ABC, NBC, CBS, Fox Sports, ESPN, ESPN2, and OLN/Versus, both domestically and internationally. In 2007, he completed negotiations on the LPGA-TOA television revenue sharing agreements. He has also advised clients on a number of agreements involving transmission of events over the Internet and other digital media.

- Leagues and National Governing Bodies. Mr. Smith currently represents a number of leagues, such as the Pacific Coast League of Professional Baseball Clubs, as well as International Federations and National Governing Bodies in the Olympic movement. He regularly advises clients on athlete eligibility matters, agreements for use of athlete images, team selection, sponsorships and licensing agreements, event agreements, television and other media deals, protection of intellectual property, and general issues of corporate law.

## Representative Experience

- Represented El Paso Chihuahuas in naming rights agreement for new stadium (February 2014)
- Negotiated television agreements between the Mountain West Conference and ESPN and CBS (2013-14)
- Negotiated Dolby Theater Naming Rights Agreement for the home of the Academy Awards (May 2012)
- Successfully defended the World Tenpin Bowling Association in a contract dispute before the Court of Arbitration for Sport (March 2011)
- Pacific Coast League Workout of Memphis Redbirds Franchise (November 2010)
- Mountain West Conference Entry Agreement with Boise State University (August 2010)
- USA Swimming Sponsorship Agreement with Marriott (June 2010)
- USA Swimming Sponsorship Agreement with AT&T (December 2009)
- U.S. Speedskating Sponsorship Agreement with The Colbert Nation (November 2009)
- USA Basketball Marketing Rights Agreement with NBA (May 2009)
- TD Ameritrade Naming Rights Agreement for College World Series Park in Omaha (June 2009)
- World University Games Television Agreement with Fox College Sports (August 2008)
- Progressive Casualty Insurance Company Title Sponsorship of Automotive X Prize (March 2008)
- Progressive Casualty Insurance Company Naming Rights Agreement with Cleveland Indians (January 2008)
- LPGA-Tournament Owners Association Revenue Sharing Agreement (December 2007)
- Professional Rodeo Cowboys Association-Wrangler Title Sponsorship of National Finals Rodeo (May 2007)
- Oracle-Golden State Warriors Naming Rights Agreement (October 2006)
- Anaheim Mighty Ducks Naming Rights Agreement with Honda Motor Company (July 2006)
- USA Swimming Sponsorship Agreement with Toyota (March 2005)
- Ameritrust - NFL Super Bowl Halftime Sponsorship (2004)

- Seattle Seahawks - Naming Rights Agreement with Qwest Communications (June 2004)
- Ameritrust - Naming Rights Agreement with Texas Rangers (May 2004)
- Professional Rodeo Cowboys Association - Television Agreements with CBS, ESPN and OLN (2002-03);
- U.S. Speedskating - Successful Defense against Claims of Race Fixing by Athletes (January 2002)
- Sawis Center (St. Louis, MO) Arena Naming Rights Agreement (August 1999)

## Professional Affiliations

- Colorado (El Paso County) Bar Association
- Sports Lawyers Association

## Civic Involvement and Honors

- *Who's Who Legal*, Sports & Entertainment, 2016
- Colorado Springs Sports Corporation, Board of Directors
- Vision Trust International, Board of Directors
- Rotary Foundation, Fellow to Geneva, Switzerland, 1987–1988
- Board of Elders, The Gathering at Jackson Creek
- *Chambers & Partners USA*, National recognition in Sports Law, 2011
- *Colorado Springs Business Journal* Top 40 Business Leaders Under Age 40 (2000)



