

Sports Group Of The Year: Akin Gump

By **Zachary Zagger**

Law360, New York (February 6, 2017, 3:04 PM EST) -- Akin Gump Strauss Hauer & Feld LLP had a busy 2016 guiding the NFL to some major labor wins that confirmed the commissioner's authority, including an arbitration decision upholding the commissioner's new player personal conduct policy, earning the firm a spot as one of Law360's Practice Groups of the Year.

As a go-to law firm for the NFL, Akin Gump was involved in a trio of labor disputes that came to conclusion last year: Deflategate, involving New England Patriots quarterback Tom Brady; a case over a suspension of Minnesota Vikings running back Adrian Peterson; and a grievance over the player personal conduct policy issued by NFL Commissioner Roger Goodell in 2014.

All three cases ended in favor of the league and Goodell, setting strong precedent for the NFL, and to some extent other professional leagues, moving forward confirming the commissioner's authority to discipline players under the collective bargaining agreement.

"Taken together all three were pretty strong endorsements of the commissioner's authority," Akin Gump partner Daniel L. Nash told Law360. "The reason for that is a labor law principle that essentially, the parties to a collective bargaining agreement have a right to negotiate how things are handled. In each of the cases, both the courts and the arbitrator said this is what the parties bargained for and the labor laws require that the bargain be enforced."

While the Brady and Peterson cases grabbed a number of headlines, Akin Gump was integral in guiding the league to a win in a lesser-publicized dispute, in which the players union filed a grievance over a new player personal conduct policy issued in 2014.

The policy created the so-called commissioner's exempt list, a process by which the commissioner can temporarily suspend players charged with violent crimes, and enabled the commissioner to appoint an officer to hand out initial disciplinary decisions. The NFL Players Association argued that the new policy is on-its-face inconsistent with the league-players collective bargaining agreement.

But in April, arbitrator Jonathan B. Marks ruled in favor of the NFL, finding the exempt list is on-its-face consistent with the CBA, though saying the commissioner must follow certain procedures outlined in the bargaining agreement. The arbitrator further upheld the commissioner's authority to delegate



disciplinary decision making tasks as long as the commissioner makes final determinations on conduct detrimental issues.

In advising the league, Akin Gump was able to draw on its decades of experience representing the NFL in such disputes.

“I think our experience working with the same people at the league against the same opposing counsel and going before the same arbitrators gives us a unique perspective that we can draw upon in the cases that we are handling,” said Akin Gump partner Stacey Recht Eisenstein.

Last year, Akin Gump also had a role in representing the league in both the Brady and Peterson cases. In those cases, an arbitrator — in Brady’s case it was Goodell himself — had ruled against the player, leading them to appeal to the federal courts where they would win at the district court level. However, the courts of appeals in both cases ended up siding with the league.

In Brady, the Second Circuit in April upheld Brady’s four-game suspension for his alleged involvement in a scheme to use footballs deflated to below league standards. Brady and the player’s union had argued that the system in which Goodell could hand out the suspension and serve as an arbitrator is unfair, but the 2-1 circuit panel said “it is the regime bargained for and agreed upon by the parties, which we can only presume they determined was mutually satisfactory.”

Similarly in Peterson, the players union had argued that Goodell acted improperly by retroactively applying a stricter policy after Peterson pled no contest to a charge of misdemeanor reckless assault over hitting his son with a switch. But again, the appeal was tossed in August, with the Eighth Circuit affirming an arbitrator’s decision to uphold Peterson’s punishment.

“I think the response from the courts to the players is that their recourse under the collective bargaining agreement is in the appeal procedures that the union has agreed to and not in the courts,” Nash said.

Akin Gump is also representing the NFL in an ongoing lawsuit brought by former players who say the teams and team doctors encouraged the use of painkillers without regard to their harmful long-term effects. The firm had actually helped the NFL dodge a substantially similar lawsuit as being preempted by the CBA, but the plaintiffs brought the current case, this time naming all 32 teams individually. Akin Gump is further defending the league as the plaintiffs have appealed the dismissal of the first suit to the Ninth Circuit.

The matters are just further examples of the relationship the firm has built with the league as it makes its mark in some of the most high-profile cases in sports.

“There is certainly a great team of people in our group who have been working on NFL matters for over 10 years,” Eisenstein said. “We all have a longstanding relationship with lawyers in the league and it enables our practice to handle a variety of matters.”

--Editing by Emily Kokoll.