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Welcome to the redesigned *Three Point Shot*, a newsletter brought to you by the Sports Law Group at Proskauer. *Three Point Shot* brings you the latest in sports law-related news and provides you with links to related materials. Your feedback, thoughts and comments on the content of any issue are encouraged and welcome. We hope you enjoy this and future issues.

Ski Manufacturer Chills Bode Miller's Comeback

World champion skier and six-time Olympic medalist Samuel "Bode" Miller had his eye on coming out of retirement for the 2016-17 season before a contract dispute with his former equipment sponsor, Head USA, put his hopes on ice. For those readers who don't follow ski racing, Bode Miller is the most decorated male U.S. alpine ski racer of all time. In addition to his Olympic medals, Miller achieved 33 World Cup wins and world championship titles in various disciplines. Miller's successful career came to an abrupt hockey stop when, in his only race of the 2014-15 ski racing season at the 2015 World Championships in Colorado, he hit a gate during his super-G run and severely injured his hamstring tendon.

Following the injury, Miller decided to explore industry opportunities outside of professional racing and ended his sponsorship relationship with Head USA by signing a termination agreement that contained a covenant that Miller would "not compete in World Cup or World Championship ski racing events for two full calendar years." After his relationship with Head USA ended, Miller began working with a competing ski equipment manufacturer, Bomber LLC ("Bomber"), in product development and as a brand ambassador. However, apparently having quickly grown bored with his après-ski life, Miller and Bomber filed suit against Head USA in California district court in September 2016, seeking a declaratory judgment that the restrictive covenant included in his termination agreement with Head USA was void. Miller, 39 years young, hoped that his suit would allow him to return to competition on Bomber skis, secure endorsements, and "protect his family's financial future."

Bomber is a Delaware limited liability company, based out of New York. Head USA is the U.S. distributor of a publicly traded company, Head N.V., which manufactures equipment for various sporting goods markets and is headquartered in the Netherlands. Miller's sponsorship relationship with Head USA began in 2006 and would have extended

through April 2016 if the parties had not mutually agreed to terminate the agreement early.

When Head USA learned of Miller's possible return, it quickly sent a cease and desist letter to Miller and Bomber, stating that, under the terms of the termination agreement, Miller could not compete unless it was on Head skis. Hitting this unexpected bump, Miller and Bomber filed their preemptive suit. In their suit, Miller and Bomber sought a declaratory ruling that the restrictive covenant in Miller's termination agreement with Head USA was not binding, was against public policy, and could not prevent Miller from competing under Bomber's sponsorship.

In response, Head USA filed a motion to dismiss for lack of personal jurisdiction, arguing that Head USA is incorporated under Delaware law, with its principal place of business in Colorado, and does not have sufficient ties to California to satisfy the requirements for imposing either general or specific jurisdiction. Head USA argued Miller's status as a California resident was irrelevant to the signing and performance of the termination agreement, and, therefore, that Miller's claims did not arise from any activity by Head USA in California. Unfortunately for Miller and his fans, the California court agreed and recently dismissed Miller's action for lack of personal jurisdiction over Head USA, thereby sending Miller's suit off-piste. (*See Miller v. Head USA, Inc.*, No. 16-1696 (C.D. Cal. Dec. 16, 2016)).

It is unclear what comes next for Miller, who issued a statement expressing his unhappiness with the outcome. Miller's attorney could refile in Colorado, but it remains to be seen whether the plaintiffs wish to expend resources litigating in the trails outside of California. Regardless, despite the disputed provision of his termination agreement with Head USA, Miller could put the avalanche of legal trouble behind him, and shock ski fans with a return to the packed powder on Bomber skis in the 2017-18 season—at the spry age of 40.

Golf Course Sunk by Faulty Follow-Through in Hole in One Insurance Dispute

As an update on a previous article published in the Summer 2016 edition of *Three Point Shot*, Old White Charities ("OWC" or "Old White") – the nonprofit group responsible for the Greenbrier Classic in White Sulphur Springs, West Virginia – has found itself stuck in the rough after a lengthy legal battle with its insurance underwriters. To recap, when OWC hosted the Classic back in 2015, it promoted a hole in one contest on the 18th hole. OWC promised to pay each fan seated in the grandstands $100 for the first hole in one and $500 for the second (and even $1,000 for the third). OWC attempted to avoid any hazards by obtaining an insurance policy totaling $2,300,000 for the contest. Exciting for fans, but not for OWC, two PGA golfers managed to shoot aces on the 18th hole during the tournament, requiring the owner of the Greenbrier to pay out roughly $200,000 in prize money.

OWC filed a demand for $900,000 in insurance coverage on the policy, but faced a major setback when its claim was denied. The underwriters subsequently brought suit for a declaratory judgment of noncoverage concerning the hole in one prize indemnity policies because OWC allegedly made incorrect statements in its application for coverage and otherwise deviated from the policy's provision that the 18th hole be at least "170 yards from the tee" for the covered hole in one contest. (*Talbot 2002 Underwriting Capital LTD v. Old White Charities, Inc.*, No 15-12542 (S.D. W. Va. filed Aug. 19, 2015)). The main

driver of the suit was that OWC had breached the minimum yardage requirement of the policy when the 18th hole on the day in question played at 137 yards, far shorter than OWC's alleged approximation of 175 yards. The underwriters claimed that the application for the insurance policy contained an actual minimum-yard requirement of 150 yards, which was later negotiated to 170 yards in the final policy binder. The underwriters also argued that OWC did not pay the policy premium prior to a July 1 deadline.

Hoping they could remain in contention, OWC filed a counterclaim against the underwriters and a third-party complaint for breach of contract, bad faith, negligence and fraud against several more underwriters and brokers involved in the transaction. (*Talbot 2002 Underwriting Capital LTD v. Old White Charities, Inc.*, No 15-12542 (S.D. W. Va. filed Sept. 11, 2015)). OWC argued that it was unaware that the 170-yard minimum was added to the policy. It also noted that it had no control over the course's yardage (as the PGA was responsible for pin placements), and that it had placed language in the application that specified the 18th hole played at an "average" of 175 yards. After some of the underwriters filed motions to dismiss, the court let the bad faith claim fade, but determined that the underwriters could still be on the hook for the remaining breach of contract and related claims.

The legal proceedings continued until early January, when the court finally granted the underwriters' motions for summary judgment and dismissed OWC's counterclaim and third-party complaint. (*Talbot 2002 Underwriting Capital LTD v. Old White Charities, Inc.*, No 15-12542 (S.D. W. Va. filed Jan. 6, 2017)). Ultimately, the minimum yardage requirement proved to be the albatross that prevented OWC from obtaining relief. While there may have existed a discrepancy between the 150-yard requirement in the application and 170-yard requirement in the final policy binder, the court found "there is no dispute that the 150-yard minimum in the application was known and agreed to by Old White and its agent." Moreover, the court rejected the arguments that the underwriters' actions created a reasonable expectation of coverage, ruling that OWC was aware throughout the negotiations that the underwriters wanted a minimum yardage requirement, and OWC "provided no evidence of any ambiguities, acts or statements by the Plaintiffs' agents that would have created a misconception." The court then dismissed OWC's breach of contract claims against the underwriters on similar grounds.

Although it may seem par for the course, the court's final judgment serves as an important reminder for insureds that careful review of material insurance policy provisions is essential prior to hosting any covered event. While OWC may have had the foresight to purchase insurance for not one but two holes in one on the same hole during the same competition (even if the odds of such an occurrence appear to be roughly 32,000 to 1), its failure to abide by the policy provisions means that OWC and the Greenbrier are now the ones left carrying the bag … and the bill.

Be Careful What You Say – Man United Footballer Scores Libel Judgment in Swedish Court

On January 9, 2017, the Varmland District Court in Sweden called a foul on Ulf Karlsson, the former Swedish national track and field team manager, finding him liable for aggravated libel for remarks made about Manchester United footballer Zlatan Ibrahimovic. At a panel hosted by the New Sporting Historical Societies Sports Café in Karlstad, Sweden, Ulf Karlsson suggested that Ibrahimovic had used performance-enhancing substances during his stint with the Juventus Football Club.

Ibrahimovic is the much-heralded striker who made his international debut as a member of Sweden's national team in 2001, serving as captain until his retirement from international play in 2016. In the intervening years, Ibrahimovic starred on several professional football clubs in top leagues in Sweden and Europe. Immediately following the accusations lobbed at him at the panel, Ibrahimovic cleared the alleged errant pass, claiming that he has never tested positive for doping.

Ibrahimovic began his career at Swedish club Malmo FF in the 1990s, and ultimately made his way to play for Juventus F.C. in Turin, Italy between 2004 and 2006. Prior to Ibrahimovic's arrival at Juventus, the football club had shaken off years of disappointing results by winning three Serie A titles, among other championships, in the late 1990s, leading some to allege that their methods to achieve such success were out of bounds. In 1998, following an investigation by local officials, the club premises were raided and investigators found 281 different types of pharmaceutical substances (the vast majority of which were not on the banned list), prompting additional inquiries. In 2002, the investigation culminated in a trial of several team officials, with an Italian court convicting the former team doctor of supplying players with the banned substance EPO between 1994 and 1998. On appeal, however, the team doctor's conviction was overturned.

Against that backdrop of events, Karlsson suggested that Ibrahimovic must have doped during his time with Juventus. "Zlatan went up 10 kilograms of muscle during the period at Juventus," Karlsson said at the panel. "It was pretty fast. In one year he did it." Karlsson took another free kick by making similar comments in an interview with a local newspaper, saying "Zlatan gained 10 kilos of muscle in six months at Juventus. That is impossible in such a short time."

Though Karlsson later issued an apology to the striker, Ibrahimovic refused to swap jerseys with Karlsson and brought claims against the former Swedish national coach for aggravated libel, claiming that the coach's words were intended to cause serious injury. The judge found Karlsson's comments at the panel to be offsides, ordering Karlsson to pay a fine of 24,000 kronor (about $3,400). In one excerpt, the verdict read: "Even if his remarks do not contain a direct accusation that Zlatan Ibrahimovic had taken steroids, the court finds that these remarks, given the context in which they were made, cannot be taken any other way than to give the impression that Zlatan Ibrahimovic would have taken steroids during his time at Juventus." However, the court sidelined the claim over statements made during Karlsson's newspaper interview, as it appears that Swedish law offers more protection to remarks made to journalists. Although Ibrahimovic sought an additional penalty against Karlsson for court costs, the court ruled that both parties should bear their own costs in this case.

With his victory in the courtroom and prolific goal scoring this season (e.g., Ibrahimovic is in the running for the Golden Boot award for the Premier League's top scorer), Ibrahimovic certainly hopes his winning ways continue, especially as Manchester United is currently sixth in the Premier League standings, a few spots out of a vaunted Champions League slot.

For more than 50 years, Proskauer has represented sports leagues and sports teams in all aspects of their operations.

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