



## December 2025

A newsletter brought to you by the Sports Law Group at Proskauer.

Welcome to *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. In this issue, we feature contributions from Meredith A. Lipson, Wyatt B. Bui and Evan T. Rodgers.

Your feedback, thoughts and comments on the content of any issue are encouraged and welcome. We hope you enjoy this and future issues.

And to all our friends and families around the globe, Happy Holidays! And best wishes in the coming year.

Edited by **Robert E. Freeman**

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### Harlem Globetrotters Playing Defense in NIL Suit

The famous acrobatic, ball-spinning exhibition basketball team, the Harlem Globetrotters (the “Globetrotters”), recently found itself playing defense, not on the hardwood (against their archrival, the Washington Generals) but in the courthouse in a suit over the alleged misuse of a former player’s name, image and likeness (“NIL”) on merchandise. The suit was filed by former Globetrotter Lynette Woodard (“Woodard” or “Plaintiff”), and also includes additional parties: streetwear brand UNDRCRWN, LLC (“UNDRCRWN”), along with two Herschend Entertainment entities (the corporate parent of the Harlem Globetrotters team) and Harlem Globetrotters International, Inc. itself (the “HGI Defendants,” and collectively with UNDRCRWN, the “Defendants”). ([Woodard v. UNDRCRWN, LLC](#), No. 25-05415 (S.D.N.Y. Filed June 30, 2025)).

As reflected in a [recently filed stipulation of dismissal](#), Woodard and the HGI Defendants have settled their dispute. The settlement, however, did not include UNDRCRWN, which, in failing to respond to the Complaint, has not yet taken the court(room). Although the litigation has concluded as to the Globetrotters, Woodard’s allegations spotlight broader questions about the enforceability of contracts granting perpetual control over someone’s NIL.

The Globetrotters, founded in 1926, are a traveling exhibition basketball team with a storied history, known for their outright joy, red-white-and blue basketball, [dazzling ball-handling](#), trick shots, [pre-game warm-up song](#) (“Sweet Georgia Brown”) and showmanship, as well as a culture of engagement with local communities. In 2013, the team was bought by Herschend Family Entertainment Corp., a major U.S. themed attractions company. Woodard, a two-time Olympian, Hall of Famer, and WNBA player, became the [first woman ever to play for a men’s professional basketball team](#) when she joined the Globetrotters in 1985 (and played until 1987).

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Nearly forty years later, in 2022, pursuant to a merchandising agreement, UNDRCRWN launched a clothing collection with the Globetrotters that included the light blue [“Lynette” fleece hoodie and sweatpants](#). Woodard’s complaint (the “Complaint”) asserts that she had no idea the sweatsuit existed until after it had been publicly sold and worn, and that she received no compensation or opportunity to authorize the production. At some point, the defendants discontinued sales of the Lynette products.

The Complaint, filed in June 2025, asserts several claims, including contract, publicity rights, unfair competition and trademark claims. They all revolve around a single question: did the Globetrotters and its partners obtain the legal right to use Woodard’s name and likeness in perpetuity for merchandising?

The Complaint highlights Woodard’s 1986 player contract, stating that it contained provisions purporting to grant the team permanent publicity rights. Claiming that such provision is unenforceable, Woodard argues that she received no separate consideration for granting such lifetime rights and that it is both substantively and procedurally unconscionable to treat a two-season salary of \$75,000 as compensation for the perpetual use of her identity, among other contentions.

The Complaint also weaves in the 1983 Collective Bargaining Agreement between the Globetrotters and the United Basketball Players Association, which outlines players royalties on “covered merchandise” including apparel and similar items that were purportedly “in excess” of the rights under the individual player contract. According to the complaint, it required the team to compute net merchandising revenues annually and pay 25 percent of net revenues above \$5,000 from each individual merchandising agreement. Woodard alleges the Globetrotters never reported sales or paid royalties on the “Lynette” apparel, and failed to comply with these obligations, which, according to the Complaint, was a double dribble of sorts and a breach of the contract.

On the false endorsement front, Woodard asserts that naming and marketing the “Lynette” sweatsuit created consumer confusion and falsely suggested she

endorsed the apparel, in violation of Section 43(a) of the Lanham Act. Alongside the Lanham Act claims, Woodard asserted New York and California publicity-rights and privacy-law claims, all stemming from alleged unauthorized commercial use of her identity. Rounding out the Complaint are claims of unjust enrichment and unfair competition, with Woodard arguing that the Defendants benefited financially from her legacy while she received no compensation.

Woodard seeks, among other remedies, a declaration invalidating her 1986 contract, an injunction preventing further use of her name, disgorgement of profits, damages, punitive damages and attorney’s fees.

The HGI Defendants’ presented a full-court press in their [answer](#), filed in September 2025 (the “Answer”), and denied virtually every material allegation, emphasizing repeatedly that the “contracts speak for themselves” and rejecting the characterization that they misused Woodard’s identity or owed royalties. The HGI Defendants expressly disputed the suggestion that the perpetual publicity-rights provision lacked consideration. They also denied failing to comply with reporting obligations or any CBA-based requirements or having committed any infringement of plaintiff’s trademarks. The HGI Defendants also asserted an affirmative defense of waiver and laches, based on the gap in time between the launch of the Lynette merchandise and the filing of Plaintiff’s Complaint.

In the meantime, UNDRCRWN failed to answer the Complaint at all and, in October 2025, the court [entered a default](#) in favor of the Plaintiff against UNDRCRWN, with damages to be determined at a future hearing. With the Globetrotters now dismissed from the case by agreement, the remaining proceedings will focus on UNDRCRWN’s default and any subsequent damages determination.

Although the settlement removes the Globetrotters from the litigation, *Woodard v. UNDRCRWN* still highlights what some see as a tension between legacy contract language and modern NIL norms. The case serves as a reminder of how decades-old publicity-rights provisions can impact today’s commercial landscape, even when disputes resolve outside of a judicial decision.

### A Flight Plan That Never Cleared: Sixth Circuit Grounds Drone Deer Recovery

The Sixth Circuit just bucked a First Amendment challenge to Michigan's drone-hunting ban, declining to revisit *en banc* a prior decision that affirmed a ruling upholding a state law that prohibits the use of drones to hunt or collect game or fish. (*Yoder v. Bowen*, 146 F.4<sup>th</sup> 516 (6th Cir. 2025), *reh'g en banc denied*, No. 24-1593 (6<sup>th</sup> Cir. Oct. 3, 2025)). After this setback in the case, it would appear that it's time for the parties to file away their briefs and head back to camp.

The dispute began in July 2023 when plaintiffs Jeremy Funke, a Michigan hunter, and Mike Yoder ("Yoder"), a small business owner (collectively, the "Plaintiffs"), *sued* the Michigan Department of Natural Resources ("DNR"), arguing that [M.C.L. § 324.40111c](#), referred to as the "Drone Statute," unlawfully restricted Yoder's ability to operate his drone service in the state to locate downed game on behalf of hunters. They alleged that by preventing drone operators from gathering and conveying the location information of downed game to hunters, the Drone Statute violated their First Amendment right to disseminate and receive information. Asserting this alleged violation, Plaintiffs sought a permanent injunction restraining DNR from enforcing the Drone Statute.

The district court *dismissed* the case in June 2024, and more than a year later, a Sixth Circuit panel followed, *affirming* dismissal and subsequently denying rehearing. However, in the appeals court's refusal to rehear the case *en banc*, one judge, while respecting the denial for rehearing, wrote a statement suggesting this case highlighted a growing uncertainty surrounding the speech-inputs doctrine, particularly when new technologies are involved, and that Supreme Court guidance may soon be needed.

For hunters across the country, gearing up for fall hunting season involves significant time and preparation. Hunters spend countless hours preparing by building blinds, clearing brush for shooting lanes, and installing trail cameras with the hopes of bagging (or "harvesting") a deer and filling their tags by the end of the season. All this effort is meant to provide certainty to an activity where the presence of game and the desired outcome can often depend on sheer luck and the whims of Mother

Nature. Even with perfect preparation and careful aim, some hunters still come home empty-handed, as a wounded deer not hit with a vital shot can travel a great distance, making it notoriously difficult to find. Therefore, some hunters might look for assistance beyond tracking dogs and trail cameras to ensure that the hours spent preparing are worthwhile.

Hoping to solve these challenges, Yoder and his Ohio-based company, Drone Deer Recovery Media Inc. ("DDR"), sought to assist Michigan hunters by locating downed game using drones. When a hunter wounds a deer, they can contact DDR, which connects them with a network of professional drone pilots capable of swiftly finding downed game. Equipped with infrared cameras and thermal imaging technology, these drones can track a deer's heat signature and pinpoint its precise location for retrieval. According to [DDR](#), the average search takes 20 minutes, and their pilots have a 99 percent success rate.

But DDR's business never took flight in Michigan. DDR claimed that, despite frequent requests from Michigan hunters, they were unable to provide drone-recovery services in the state due to DNR's warnings that the company would be in violation of the Drone Statute, which prohibits using drones to "take" game. The relevant statute provides: "Use of unmanned vehicle or device. (2) An individual shall not take game or fish using an unmanned vehicle or unmanned device that uses aerodynamic forces to achieve flight or using an unmanned vehicle or unmanned device that operates on the surface of water or underwater." DNR interprets "use" to include "locate." Thus, when a drone locates an animal's carcass, the drone is being "used" to "collect" that animal, which DNR considers a "taking" in violation of the Drone Statute.

The [legislative commentary](#) to the statute explains that the law was enacted to prevent the use of drones by both anti-hunting activists attempting to disrupt hunting and hunters seeking an unfair advantage, as it considered such drone use "would violate fair-chase principles and take away from the spirit and tradition of ethical hunting and fishing." The Boone and Crockett Club, North America's oldest wildlife and habitat conservation group, [defines](#) fair chase as "the ethical, sportsmanlike and lawful pursuit and taking of any free-

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ranging wild game animal in a manner that does not give the hunter an improper or unfair advantage over the game animals.”

Filing suit in July 2023, Plaintiffs contended that DNR’s interpretation of the statute amounted to a content-based restriction on speech and hindered a “promising, innovative solution to deer carcass recovery.” By prohibiting drone operators from gathering and conveying the location of a downed deer, the complaint asserted that the statute allegedly targeted a specific category of information. Plaintiffs’ suit sought a declaration that DNR’s interpretation of the Drone Statute and proposed enforcement unlawfully burdened their First Amendment right to create and share information, as well as an injunction barring DNR from enforcing the statute to prevent the creation, transmission and receipt of certain location information via drones. In opposition, DNR moved to dismiss, arguing the Drone Statute regulates conduct (i.e., using a drone to locate a wounded deer), not speech (i.e., telling another person a deer’s location).

However, the Plaintiffs missed their shot when a Michigan district court [dismissed](#) their claims. The court, in part, held that the statute regulates conduct rather than speech, emphasizing that it prohibits the use of drones to assist in hunting, not the communication of location information. The court also held that Plaintiffs lacked standing to challenge the provision on First Amendment grounds, as “their ability to relay the location information is not regulated by the Drone Statute, just flying the drone.”

On appeal, the Sixth Circuit [affirmed](#) the dismissal, but on narrower grounds. Unlike the district court, the Sixth Circuit held the Plaintiffs did have standing (or a redressable injury), as a favorable ruling would have allowed the Plaintiffs to resume providing and receiving drone-based game recovery services. However, turning to the merits of Plaintiffs’ as-applied constitutional challenge, the panel still concluded that the Plaintiffs failed to hit the target. The panel stated that the drone use at issue is not “inherently expressive conduct” and identified the Drone Statute as a content-neutral regulation of conduct, thus triggering intermediate scrutiny (“[T]he Drone Statute does not ban the use of

drones for taking game based on the message conveyed or the information created.”)

Applying intermediate scrutiny, the panel held that the Drone Statute was constitutional. The court found that the statute served Michigan’s “substantial interest” in regulating hunting and natural resources within the state and that the statute’s legislative history confirmed that it was enacted to both prevent the disruption of hunting by activists and preserve fair hunting principles. Furthermore, the court found that the “neutral regulation” only burdened expression “incidentally” and no more than necessary to further the government’s objectives, therefore allowing the government to satisfy an application of intermediate scrutiny to the facts.

When the Plaintiffs sought rehearing *en banc*, the full Sixth Circuit declined another round in the case. However, Circuit Judge John K. Bush, who did not sit on the original panel, [wrote separately](#) to express concerns about the panel’s treatment of the speech-inputs doctrine. In Judge Bush’s view, the Supreme Court’s application of the doctrine suggests that “heightened scrutiny,” an undefined level of scrutiny perhaps above intermediate scrutiny, applies when the government seeks to ban the means to create speech (e.g., a government ban on the sale of pen and paper). He noted that the panel may have erred in one instance by narrowly interpreting the doctrine to apply only to “core political speech” and not applying a high enough level of scrutiny to the Michigan statute, and that such precedent might diminish First Amendment protection in a future case with higher stakes. However, he acknowledged that any misstep was understandable given the unclear and unsettled case law surrounding the doctrine.

While the court’s decision rejecting the Plaintiffs’ challenge was hardly a trophy to mount on a wall, the Plaintiffs’ challenge raised important questions about the future of First Amendment protections, specifically future courts’ treatment of the speech-inputs doctrine with respect to modern technologies. Judge Bush’s comments demonstrate lower courts’ need for additional clarity on the subject, even though the hunting drones central to this case were not the perfect vehicles for that discussion.



### Equine Activity Liability Act Proves to Be a High Fence to Recovery

A ride in a horse-drawn carriage may sound like a relaxing family activity, but does it leave passengers responsible for their own injuries in the event of a crash? According to the Michigan Court of Appeals, in most cases the answer is yes ([\*Goch v. The Edison Institute\*](#), No. 371176 (Mich. App. Oct. 17, 2025), [\*motion for reconsideration denied\*](#) (Nov. 25, 2025)).

After Rebecca Goch (“Goch” or “Plaintiff”) was involved in a crash as a horse-drawn carriage passenger, she sued the carriage’s operators for damages. But the Court of Appeals affirmed the trial court’s summary judgment for the carriage operators finding that they were exempt from liability under the Michigan Equine Activity Liability Act, [M.C.L. 691.1661](#) et seq. (“EALA” or “Act”), which shields equine activity sponsors from liability for injuries or death resulting from “an inherent risk of an equine activity.” By hopping in the carriage, Goch became a “participant” under the Act, according to the court, and her prospects of recovering damages dashed away.

The Henry Ford is a Michigan museum whose 80+ acre Greenfield Village location, the site of Henry Ford’s childhood home, offers visitors various attractions and activities to step back into time, including horse-drawn carriage rides. In July 2022, Goch took her family to Greenfield Village and together they boarded a horse-drawn carriage, known as an omnibus. During the ride, one horse’s bridle and blinders fell off after it rubbed against another horse, causing it to become agitated and start to bolt. The driver ultimately had to steer the carriage into a lamppost to stop the dangerous runaway. Goch alleged that during this episode she was “tossed around” and struck her head, leading to persistent blurred vision.

In April 2023, Goch sued the operator of The Henry Ford and the carriage driver (collectively, the “Defendants”) under various theories of negligence. The defendants moved for summary judgment, contending that the EALA shielded them from liability as an equine activity sponsor and that there was no willful and wanton misconduct that would fall outside the EALA’s immunity provisions.

The EALA is broadly written to encourage equine-related activities by limiting potential civil liability from claims by “participants” who “engage in an equine activity.” Under the EALA, to “engage in an equine activity” means: “riding, training, driving, breeding, being a passenger upon...whether mounted or unmounted. Engage in an equine activity includes visiting, touring, or utilizing an equine facility as part of an organized event or activity including the breeding of equines...” The statute further defines “equine activity” as including “a ride, trip, hunt, or other activity, however informal or impromptu, that is sponsored by an equine activity sponsor.” It also states that “inherent risk of an equine activity” is “a danger or condition that is an integral part of an equine activity, including, but not limited to...(i) An equine’s propensity to behave in ways that may result in injury, harm, or death to a person on or around it; (ii) The unpredictability of an equine’s reaction to things such as sounds, sudden movement, and people, other animals, or unfamiliar objects.” The EALA contains several exceptions to immunity, such as the negligent provision of faulty equipment or an act or omission that constitutes a willful disregard for the safety of the participant.

Plaintiff responded that, because she was not a passenger “upon” a horse, she was not engaged in equine activity under the Act and the EALA offered no protection to the defendants in this case and does not prevent claims from passengers of horse-drawn carriages.

The trial court disagreed with Goch’s narrow interpretation of the statute and granted summary judgment to the defendants, determining that the bolting horse was not caused by any act of the driver and Goch was a “participant” in equine activity who was prohibited from suing by the Act. Upon appeal, the Michigan Court of Appeals relied on the statute’s plain language and legislative history to uphold that conclusion.

While being a passenger “upon” a horse is one way to qualify as a participant “engaging in equine activity” under the EALA, the statute contains a “broad” list of equine activities that qualify, the court noted. It includes riding, training, driving, breeding and providing or assisting in veterinary treatment as qualifying activities. It also specifies that a participant can be unmounted. But what about a passenger on a horse-drawn carriage? The

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court's analysis focused on the word "drive," using its plain meaning definition found in Merriam-Webster's Collegiate Dictionary (11<sup>th</sup> ed) to determine a journey in a carriage qualifies as "driving" (which is a form of participation in an equine activity under the EALA).

The court further evaluated legislative history to conclude that the intent of the statute was to offer liability protection for a broad range of activities, including carriage rides. Relying on precedent, the court found the Legislature "obviously recogniz[ed] and anticipat[ed] that in an environment involving equines, potential liability could arise out of innumerable situations, including instances where... the participant, before the incident or accident, had no direct or meaningful interaction with the particular equine that caused the injury." This broad intent, in the court's view, covered liability arising from carriage rides.

Despite the adverse ruling – and the appellate court's subsequent refusal to reconsider its ruling – Plaintiff may still try to petition the Michigan Supreme Court to take up an appeal and possibly weigh in on the scope of immunity under the EALA. Stay tuned for the final ride to see who emerges as the ultimate winner.

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For more information about this practice area, contact:

**Neil H. Abramson**

+1.212.969.3001 – nabramson@proskauer.com

**Elise M. Bloom**

+1.212.969.3410 – ebloom@proskauer.com

**Arthur Burke**

+1.212.969.3668 – aburke@proskauer.com

**Kyle A. Casazza**

+1.310.284.5677 – kcasazza@proskauer.com

**Scott P. Cooper**

+1.310.284.5669 – scooper@proskauer.com

**Grant Darwin**

+1.212.969.3306 – gdarwin@proskauer.com

**Rob Day**

+44.20.7280.2040 – rday@proskauer.com

**Benjamin J. Freeman**

+1.212.969.3712 – bfreeman@proskauer.com

**Robert E. Freeman**

+1.212.969.3170 – rfreeman@proskauer.com

**Kristian M. Herrmann**

+1.212.969.3056 – kherrmann@proskauer.com

**Wayne D. Katz**

+1.212.969.3071 – wkatz@proskauer.com

**Christine G. Lazatin**

+1.212.969.3478 – clazatin@proskauer.com

**Joseph M. Leccese**

+1.212.969.3238 – jleccese@proskauer.com

**Adam M. Lupion**

+1.212.969.3358 – alupion@proskauer.com

**Kevin J. Perra**

+1.212.969.3454 – kperra@proskauer.com

**Lee Popkin**

+1.212.969.3326 – lpopkin@proskauer.com

**Howard Z. Robbins**

+1.212.969.3912 – hrobbins@proskauer.com

**Bradley I. Ruskin**

+1.212.969.3465 – bruskin@proskauer.com

**Bart H. Williams**

+1.310.284.4520 – bwilliams@proskauer.com

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