ALL BETS ARE OFF

Holland & Knight LLP, Partner *Katherine A. Baker,* along with Associates *Johnny P. ElHachem* and *Samantha Ahearn* explain the litigation surge reshaping the sports betting industry. An overview of trending legal claims and key compliance considerations

Since the Supreme Court struck down the Professional and Amateur Sports Protection Act (PASPA) in 2018, legal sports betting has expanded to thirty-nine states and Washington, D.C. The commercial sports-betting market generated approximately $16.9 billion in revenue in 2025, before tribal sportsbook revenue and Florida mobile sports betting are included. That growth has been accompanied by increasingly sophisticated litigation challenging not only how operators advertise and conduct wagering, but in some cases the design of the platforms themselves.

Four litigation fronts now deserve particular attention: (1) duty-of-care and product liability claims tied to gambling addiction; (2) deceptive promotion and advertising claims; (3) loss-recovery actions premised on allegedly unlawful gambling; and (4) privacy claims under the Video Privacy Protection Act (VPPA), California Invasion of Privacy Act (CIPA), and federal and state wiretap statutes. The cases are still developing, and outcomes vary sharply by jurisdiction. But taken together, they show that sportsbook litigation is moving beyond traditional licensing disputes and toward the operator's product design, marketing architecture, customer data, and historical wagering activity.

1. Duty of Care and Product Liability: Is the Sportsbook Itself the Product?

The most potentially consequential litigation borrows from the mass-tort playbook used in other industries. Plaintiffs allege, for example, that online sportsbooks are designed to encourage compulsive behavior through rapid wagering opportunities, personalized notifications, data-driven promotions, and VIP programs, and that operators failed to warn adequately about those risks.

This is no longer a handful of isolated complaints. A growing number of lawsuits focused primarily on product-liability theories have been filed across several states. The complaints allege defective design, failure to warn, and deceptive or unfair conduct involving targeted promotions, notifications, personalization and VIP programs.

Traditional negligence theories have encountered substantial resistance, however. At least one appellate court held with respect to a sports betting customer's interactions with VIP hosts that the relevant state law did not impose a common-law duty of care on gambling operators to protect problem gamblers.

The more novel question is whether plaintiffs can avoid the no-duty problem by characterizing the digital platform itself as a defective product. Courts are split on whether a sports betting operator's app interface can qualify as a "product" under state product-liability law.

The emerging lesson is important. The central issue is no longer simply whether a sports betting operator owes a duty to stop a customer from gambling. Plaintiffs are increasingly attacking product architecture itself, and the viability of that theory may turn on state-specific concepts of what constitutes a "product."

Operator consequence. App design, customer segmentation, VIP outreach, responsible-gaming interventions and the records documenting those systems should be treated as part of the potential litigation file. Product, CRM, responsible-gaming and legal teams should be able to explain not only what the written policies require, but how those systems operate in practice.

2. Deceptive Promotions and Advertising: From "Risk-Free" to the Fine Print

A second litigation front targets promotional language, particularly "risk-free" bets, "no sweat" offers, deposit matches and sign-up bonuses whose restrictions may be less prominent than the headline offer.

The theory is straightforward: the headline communicates one economic proposition, while the wagering, playthrough or withdrawal requirements allegedly deliver another. Recent cases show that courts are willing to examine that gap closely.

Recent federal court decisions illustrate the growing judicial willingness to let deceptive-advertising claims against sports betting operators survive the motion to dismiss stage. In multiple cases, courts have found that promotional language such as "risk-free" and "no risk" constitutes actionable factual representations rather than mere puffery. These rulings have allowed a range of theories to proceed, including statutory consumer-protection claims, common-law and equitable fraud, intentional misrepresentation, and unjust enrichment, arising from casino deposit match offers, sportsbook deposit promotions, and similar incentive-based marketing.

Notably, courts have drawn a distinction between promotional phrases that imply a concrete factual

LEFT: Katherine A. Baker, Partner

promise and softer marketing language that amounts to non-actionable sales talk. Where operators used terms suggesting the absence of financial risk, courts have been more inclined to find that consumers could reasonably rely on those representations.

The trend carries a clear message for the industry: aggressive promotional language is increasingly being treated as a litigation liability rather than a harmless marketing convention. Operators should carefully evaluate the claims embedded in their promotional materials and ensure that bonus and deposit-match offers are accompanied by clear, conspicuous disclosures of material terms and conditions.

Regulators are scrutinizing the same conduct. A state consumer-protection agency recently announced that one operator agreed to provide a significant consumer refund following an investigation into deposit-match and deposit-bonus promotions. The agency emphasized that operators must clearly communicate wagering requirements and other conditions attached to promotional awards.

The regulatory framework reinforces that point. Ohio requires promotional rules to be clear and unambiguous and provides that an offer described as "free" or "risk-free" cannot require the patron to incur a loss or risk personal funds to use or withdraw winnings. North Carolina requires sports-wagering advertisements not to target persons under 21, to identify the operator, to include gambling-addiction resources, and not to be misleading to a reasonable person. Connecticut goes further in several respects, including by prohibiting advertising that obscures material facts and barring third-party compensation tied to patron volume, wager volume or amount, or wager outcomes. The American Gaming Association's responsible marketing standards likewise prohibit "risk-free" terminology.

Federal law is a more limited piece of this puzzle than it appeared a year ago. The FTC's "Free" Guides still require material conditions of a "free" offer to be disclosed clearly and conspicuously at the outset. But the FTC's broader amendments to the Negative Option Rule, commonly called the "click-to-cancel" rule, were vacated by the Eighth Circuit on procedural grounds. In 2026, the FTC conformed its regulations to that decision and reopened the subject through a new rulemaking process. Operators should therefore focus on existing federal deception principles and applicable state requirements rather than treating the vacated rule as current law.

Operator consequence. Run promotions from headline through withdrawal. The initial creative, qualifying deposit, bonus-credit mechanics, expiration, playthrough, cash-out restrictions, targeting criteria and affiliate instructions should tell one consistent story, and the approved version should be preserved so the offer can later be reconstructed.

3. Loss Recovery and Illegal Gambling: Illegality Does Not Automatically Equal Refundability

A third category of litigation seeks to recover gambling losses, sometimes on a qui tam basis, by arguing that the underlying activity was unlawful. These suits revive old statutes, including descendants of the English Statute of Anne, and combine them with modern challenges to the legality of daily fantasy sports ("DFS"), sports betting-style and other wagering products, and prediction-based platforms. Gambling loss recovery suits by customers, plaintiff's firms, and classes against gaming operators have been trending across the country for years. Typically they target unlicensed gaming operators where legality is more unsettled rather than licensed operators, but even licensed sports betting operators are not immune.

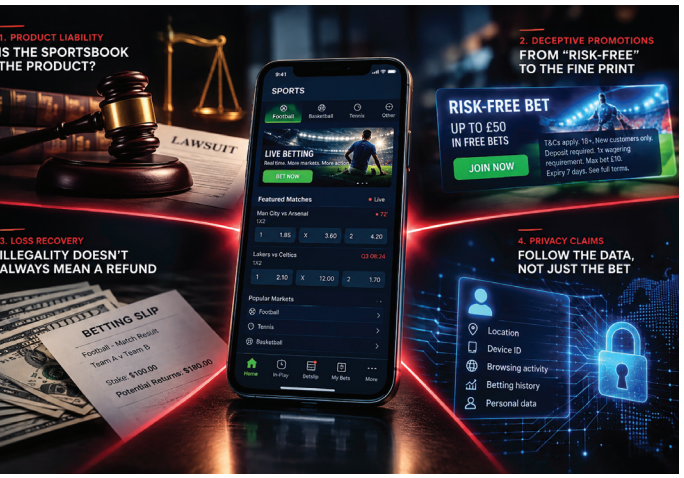
California remains an important flashpoint. In a formal opinion, the state attorney general concluded that paid DFS offered to players physically located in California violate section 337a of the California Penal Code section because they constitute wagering on sports. The opinion expressly reached both pick'em and draft-style DFS and explained that the federal UIGEA fantasy-sports provision does not override state gambling law. The opinion created a jumping off point for plaintiffs in a recent federal case to assert gambling loss recovery claims against a DFS operator on the theory that it was conducting illegal wagering in the state. While other consumer protection claims remained, the court dismissed with prejudice the

RIGHT: Johnny P. ElHachem, Associate

claims seeking monetary relief, including the Statute of Anne theory, holding that California public policy bars recovery of gambling losses absent express statutory authorization.

A separate case involving multiple sportsbook operators illustrates how a legislature can alter the exposure directly. The suit asserted a Statute of Anne claim seeking recovery of sports-betting losses and, in certain circumstances, treble damages. While the case was pending, the relevant legislature amended the statute to make clear that it does not apply to authorized sports wagering. The court dismissed the complaint with prejudice based on that amendment. An appeal remains pending.

State classification therefore matters twice. First, the plaintiff must establish that the wagering product was unlawful. Second, the plaintiff must identify a statute or other recognized cause of action that actually permits recovery of the loss. In particular, qui tam loss recovery claims where plaintiffs attempt to recovery the gambling losses of an unrelated third party face pleading hurdles such as properly identifying the specific circumstances of the loss in the complaint.



Operator consequence. Product legality and loss-recovery exposure should be analyzed separately, jurisdiction by jurisdiction. A legal-classification dispute can create regulatory exposure without necessarily creating a private refund remedy, while an old recovery statute can create unusually large claims if its text reaches the conduct at issue.

4. VPPA, CIPA and Wiretap Claims: Follow the Data, Not Just the Bet

The fourth litigation front arises from what happens after a customer opens an app, views content or interacts with a webpage. Tracking pixels, Software Development Kits (SDKs), advertising tags, and analytics tools can transmit identifiers, URLs, content information, and behavioral data to third parties, creating potential claims under statutes written long before modern ad-tech systems existed.

While these suits have been trending for years against video streaming platforms and media companies, gaming operators had largely avoided them until recently. One recent class action against a sports betting operator asserting VPPA and Federal Wiretap claims related to the use of pixels and tracking technologies ended in settlement.

The VPPA can create exposure when a qualifying video provider knowingly discloses personally identifiable information concerning a consumer's video-viewing activity. But the presence of a video and a pixel is not enough by itself. Provider status, consumer status, what information was transmitted, whether it identifies a particular person and particular video materials, and consent all matter. Potential exposure is high based on recent multimillion-dollar settlements outside the sports betting context where pixel-based disclosure of video-viewing information occurs.

CIPA presents a separate and rapidly changing problem. A federal court recently denied dismissal of claims involving common third-party tracking technology. The court later stayed the case while state courts considered whether CIPA's pen-register provision applies to commonplace internet technologies. The procedural shift underscores the complexity and unsettled nature of the legal landscape in this area.

Federal wiretap law adds another layer. Section 2511 of Title 18 of the United State Code supplies the substantive interception prohibition, while Section 2520 authorizes civil remedies for qualifying violations. State statutes can provide additional remedies and may differ materially on consent, party exceptions, interception and statutory damages.

Operator consequence. Build and maintain a live data map. Legal and privacy teams should know every pixel, SDK, tag and analytics vendor; which page, video or event triggers it; what fields leave the operator's environment; who receives them; what consent signal was captured; and how long the data is retained. Where consent is relied upon, it should be conspicuous, appropriately timed and tied to the actual data flow rather than resting solely on an inconspicuous privacy-policy link.

Practical Compliance Priorities

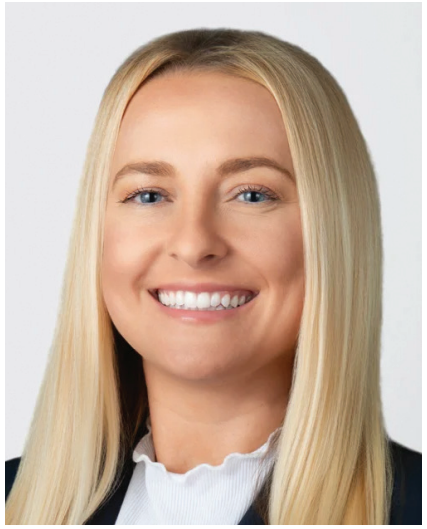
Across these four litigation fronts, several operating disciplines recur. Responsible-gaming teams should document self-exclusion, deposit and time limits, cooling-off tools, VIP escalation protocols and employee training. Product and CRM teams should preserve the decision logic behind notifications, promotions, customer segmentation and responsible-gaming interventions.

Marketing teams should review offers from headline through withdrawal and maintain the final creative, complete terms, targeting criteria and affiliate instructions together. Product-legality reviews should be refreshed as state statutes, attorney-general opinions and court decisions evolve, especially for DFS and novel wagering products. Privacy teams should maintain a current inventory of third-party tracking technology and test whether the actual implementation matches the consent and disclosures presented to users.

Conclusion

The litigation landscape facing sports betting operators in 2026 is becoming more sophisticated. Addiction cases are testing whether a sportsbook interface can itself be treated as a defective product. Promotion cases are moving beyond complaints and into decisions allowing consumer-protection and fraud theories to proceed. Loss-recovery plaintiffs are reviving centuries-old statutes, but courts are also drawing a line between illegal gambling and a legally cognizable right to recover losses. Privacy plaintiffs are applying VPPA, CIPA and wiretap theories to the tracking infrastructure embedded in digital wagering products.

The common denominator is operational evidence. The question in the next generation of sportsbook litigation will often be not only what the operator's written policy said, but how the product, promotion, VIP program or tracking technology actually worked for the customer. Operators that can demonstrate transparent marketing, defensible product design, effective responsible-gaming controls, jurisdiction-specific product review and privacy-by-design will be better positioned in an increasingly litigation-intensive environment.



RIGHT: Samantha Ahearn, Associate

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