

2015 NATIONAL SPORTS LAW **NEGOTIATION COMPETITION**

ROUND TWO

“A New Hope”

GENERAL FACTS FOR BOTH TEAMS

Professional athletes, like many in the sports and entertainment industry, have their personal lives thrust into the spotlight. Their actions are scrutinized and the media magnifies their mistakes. Their place in society requires them to perform both on and off the field where they are held to a higher standard due to their status as public figures and role models.

With the above in mind, domestic violence is an issue nearly all American professional sports leagues have recently been forced to address due to their players’ involvement in such incidents. In just the past few years, Ray Rice of the Baltimore Ravens, Jeff Taylor of the Charlotte Bobcats, and Francisco Rodriguez of the Milwaukee Brewers, and others have played a role in some type of domestic violence dispute. With the media and fans following closely, the players’ respective teams, sponsors, and endorsers have been forced to either continue supporting the athlete or separate themselves from the accused.

The Parties

The Women’s Sports Foundation

The Women’s Sports Foundation (the “WSF” or the “Foundation”) was established in 1974 to advance the lives of amateur and professional female athletes through sports and physical activity. Founded by tennis legend Billie Jean King, the WSF boasts an annual \$4 million operating budget with offices in Nassau County, New York, and New York City, New York. WSF provides scholarships and grants to aspiring female athletes, as well as access and mentorship to the underprivileged, while encouraging sporting and physical activity for inactive females.

The Foundation is one of the top five public grant-giving women’s funds in the United States. In the past 34 years, the Foundation has awarded more than \$50 million in educational and cash grants to advance participation, research, leadership in sports, and physical activity for girls and women.

As the charity of choice for *espnW*, the Foundation maintains its operating budget through donations, along with support from its three principal national sponsors: FOX Sports, Gatorade, and NBC Sports. In particular, Gatorade has been a partner of the Foundation for fifteen years. As a national partner, Gatorade is the co-presenting sponsor of the “Travel and Training Fund” and the “Salute to Women in Sports” awards.

The WSF’s Board of Trustees (the “Board”) consists of a variety of female athletes, prominent businesspeople, major benefactors, and leaders of women’s sports organizations. The Board works to establish fiscal policy, oversee fundraising and human resources, and advance the Foundation’s goals and objectives. A nine-person executive committee (the “Executive Committee” or “Committee”) meets monthly, while the full Board meets three times per year.

Hope Solo

Hope Solo (“Solo”) is the starting goalkeeper for the United States Women’s National Soccer Team (“USWNT”). After playing collegiately for the University of Washington, Solo was named to the USWNT for the first time in 2000 and has been a member of the USWNT for Olympic and FIFA World Cup matches.

Since being named the USWNT’s starting goalie in 2005, Solo has established herself as one of the top goalkeepers in the world. She won gold medals with the USWNT in the 2008 and 2012 Summer Olympics. She led the team to a runner-up finish in the 2011 World Cup and a first-place finish in the 2015 World Cup. For her respective performances in World Cup play, Solo won the “Golden Glove Award” (best goalkeeper in the Tournament) in both 2011 and 2015 and the “Bronze Ball” award (third best player in the Tournament) in 2011.

Following her performance in 2011, Solo’s reputation carried over from the soccer field into a role as an off-the-field celebrity. She has signed endorsement deals with Seiko, Simple Skincare products, Nike, BlackBerry, Ubisoft, Electronic Arts (“EA Sports”), Gatorade, and Bank of America, and starred in an EA Sports commercial alongside now retired professional basketball player Steve Nash to promote the video game *FIFA 12*. Solo also famously competed in 2013 on ABC’s *Dancing with the Stars*, where she and partner Maksim Chmerkovskiy made it to the semifinal round before being eliminated.

Solo has been featured on many magazine covers, including: *Fitness*, *Sports Illustrated*, *Newsweek*, *TV Guide*, *Seattle Metropolitan Magazine*, and *Vogue*. She also appeared in the 2011 *ESPN the Magazine Body Issue*. Her 2012 HarperCollins published autobiography *Solo: A Memoir of Hope*, debuted at number three on *The New York Times Best Seller List* in the hardcover non-fiction category – the highest ever for a book about soccer. She has also received numerous awards for her public service to women’s sports, including the 2012 “Do Something Award” and the 2012 *Hall of Game* “She’s Got Game Award.” She was named a “Woman of Inspiration” by

the Phoenix Mercury of the Women's National Basketball Association in 2012, and was named the 2013 "Sports Spectacular Female Athlete of the Year."

However, Solo's career has also been marred by a variety of personal incidents, both on and off the field. Following a 2007 World Cup match, Solo publically criticized her coach for benching her in favor of 36-year-old Briana Scurry, who had a strong history of performance against their opponent, Brazil. As the starting goalie for the USWNT, Solo had previously given up just two goals in four games in the tournament and had shut out Sweden, Nigeria, and England immediately preceding the match where she was benched. Scurry and the USWNT lost 4-0, ending a 51-game undefeated streak. While Solo apologized for her comments the following day, she was removed from the team for the third-place match against Norway in what team captain Kristine Lilly called a team decision.

A few years later, Solo received a warning from the U.S. Anti-Doping Agency ("USADA") in advance of the 2012 Summer Olympics after the banned substance Canrenone was detected in her system by a urine test. Solo claimed the substance was in a pre-menstrual medication she was prescribed, and she was not aware it contained any banned substances. She cooperated with the USADA and was not required to withdraw from any matches.

More recently Solo's marriage to retired National Football League ("NFL") player Jerramy Stevens has been marked by domestic violence issues. On November 12, 2012, Stevens was arrested following a domestic assault investigation after an altercation left Solo injured. Stevens was released the next day after a judge determined there was not enough evidence to hold him. The couple was married on November 13, 2012, the same day Stevens was released from custody.

On Monday, January 19, 2015, Stevens was arrested near the USWNT training camp in Manhattan Beach, California, for suspicion of driving under the influence. It was Stevens' third DUI arrest since 2003. While Solo was not arrested, Stevens was driving a USWNT van with Solo as his passenger. She allegedly got out of the car to argue with police after Stevens was arrested. Following this incident, Solo was suspended from U.S. Soccer activities for thirty days. She was reinstated on February 21, 2015.

The Incident

In June 2014, Solo was arrested and charged with two misdemeanor counts of assault in the fourth degree for an incident at the suburban Seattle home of her half-sister, Teresa Obert. Solo was released after pleading not guilty during her arraignment in court.

On January 13, 2015, the judge dismissed both charges based on a lack of cooperation from the alleged victims. However, in a rare move that required permission from city administrators,

prosecutors appealed the dismissal to the Superior Court of Washington. Oral arguments were heard on September 11, 2015 and the judge has taken the matter under consideration.

Public statements by both Solo and the alleged victims, along with public police records and case documents, have clouded the situation. In advance of the 2015 Women's World Cup in Canada, Solo said she herself was a victim, merely defending herself against her 6-foot-8, 270-pound nephew and half-sister.

However, an exposé by ESPN's *Outside the Lines* that compiled a series of interviews with Obert, police reports, sworn depositions, and a transcript of the 911 call from the Obert's home published on June 7, 2015 – the day after the opening ceremonies of the 2015 World Cup – told an entirely different story of the night in question.

According to the ESPN article, the Oberts arrived at their home at around 10:00 p.m. to find Solo parked outside in her car with a bottle of wine following a fight with her husband. By 1:00 a.m., the encounter had escalated into violence as Solo and her nephew exchanged insults. After briefly subduing her, Solo then attacked her nephew. According to the nephew's deposition, Solo "jumped on top of [him] and started bashing [his] head into the cement" inside the garage. The nephew then called 911 for help.

Police reports state Solo's nephew had redness around his nose and left jawbone and a "bleeding cut on the bottom of his left ear, just above the earlobe." His T-shirt was ripped and his arms were "bright red and had scratch marks." Further, the police report indicated Obert had bruising on the left side of her face," and "a large scratch mark on the right side of her neck." Her clothing was in "disarray" and it "appeared she could not stand."

Additionally, according to the report, after Solo's arrest, a still-drunk Solo became combative and repeatedly hurled insults and obscenities at the officers. When one officer asked her to remove a necklace, Solo told the officer the piece of jewelry was worth more than he made in a year.

On June 26, 2014, Solo issued an apology on Facebook for her involvement in the incident.

In response to questions about his client's behavior, Solo's attorney stated in an email to *Outside the Lines*: "[A]ny of us would be upset at being wrongly arrested." He indicated Solo "was not intoxicated; she was concussed," and that had the case gone to trial, a "renowned concussion expert" would have testified that Solo's behavior was consistent with someone who suffered a "significant head injury," rather than being drunk.

Following the ESPN report, commentators and public figures including ESPN's Keith Olbermann, Bill Plaschke of the *Los Angeles Times* and U.S. Senator Richard Blumenthal (Democrat–Connecticut) called for Solo's immediate suspension from U.S. Soccer, comparing her to NFL players Ray Rice, Adrian Peterson, and Ray McDonald, who had been suspended, released, or

banned from League play for their acts of domestic violence. Solo was criticized for benefiting from a “double standard” where women are punished much less severely for domestic violence than men.

The Negotiation^{1,2}

On August 19, 2015, due to the negative backlash following the publication of the ESPN *Outside the Lines* article, the WSF Executive Committee unanimously voted to recommend removing Solo from her role as a WSF athlete. In pushing for this decision, WSF founder Billie Jean King, an advocate and financial supporter of the National Coalition Against Domestic Violence (NCADV) for over three decades, hoped to make an example of Solo under her zero tolerance policy in regard to athletes accused of domestic violence.

However, when Solo’s former USWNT teammate and WSF President Angela Hucles called Solo to inform her of the Board’s decision, Solo became irate, reiterating she was a victim of domestic assault as opposed to being the aggressor. Solo accused the WSF of playing to the media instead of doing the right thing. Solo stated she had spoken to King personally following her June arrest and King had promised the Foundation’s full support. Solo said the Foundation should be publically backing her against further allegations, given that the case was dismissed. Solo told Hucles that if the WSF refused to reverse its decision and come out publically on her side as it had previously, she would sue the Foundation for defamation and release a number of “dirty secrets” that she threatened would ruin the Foundation’s credibility.

To avoid being thrust into a public scandal, Hucles called a meeting with Solo’s attorneys to discuss Solo’s future with WSF. Solo has given her attorneys full authorization to be creative in efforts to find a solution with the WSF. Similarly, the WSF Board of Trustees has given its legal representatives the authority to agree to any solution that will advance the WSF’s interests and allow for a peaceful resolution.

¹ All facts regarding the potential removal of Hope Solo from the Women’s Sports Foundation are fictional. The purpose of this fact pattern is an educational exercise and it is not intended to be a real-life commentary of current events.

² Note: The use of a calculator is not permitted for this round.

CONFIDENTIAL FACTS FOR HOPE SOLO

Since Hope Solo exploded onto the national scene in 2011, she has been the talented, glamorous, and marketable face of women's soccer in the United States. However, Solo has come to realize that with fame comes responsibility. As much as Solo enjoys the accolades, she knows the various incidents in which she has been involved greatly affect her image in a negative manner. In turn, continual questions about these incidents have affected her self-esteem and her on-field performance at times.

When Solo was contacted by WSF President Angela Hucles, she was distraught. She could not believe her former teammate and good friend would publically betray her without listening to her side of the story. Solo had spoken to her friend, and personal hero, Billie Jean King, about the incident both after the arrest and after her case was dismissed. Solo was confident at that time King and the WSF were firmly on her side. However, she had become suspicious of the WSF's true intentions when they did not publically support her following the case's dismissal or after the release of the *Outside the Lines* report. She now knows why.

Solo is hoping to convince the WSF she will not be in any more trouble with the law. After returning from her suspension in February, Solo has been on her best behavior, staying out of trouble, and making a variety of public and private goodwill appearances for charity. Despite being barraged by questions throughout the 2015 World Cup, Solo played very well, helping to lead her team to the World Cup title, winning her second Golden Glove, and reestablishing herself as a star in women's sports. While she is aware her on-field performance will not make her legal troubles simply go away, Solo feels the timing of the WSF's decision is insulting. Instead of helping propel women's soccer forward, the WSF is only extinguishing the positive atmosphere currently surrounding the USWNT and women's soccer in the United States.

Removal as a WSF athlete would be a worst-case scenario for Solo. However, Solo knows she is currently losing the public relations battle. Not having the support of a well-regarded organization like WSF would deal a major blow to her efforts to rehabilitate her image. Thus, if the WSF is adamant about removing Solo from the organization, Solo hopes their removal will at least be done quietly and hopefully at a later date.

While Solo has not yet lost a sponsor or endorsement, she fears WSF's public disavowal would be the first domino to fall in a long line of endorser rejections. Solo cares deeply about the WSF's mission and would like to remain affiliated for that reason alone. At the same time, she also fears a public dismissal from WSF could cause her to lose her biggest sponsor, Gatorade.

Gatorade has been involved with the WSF for over 15-years and is committed to the advancement of women's sports. The possibility Gatorade will be fearful to break ranks with the WSF is too

strong to ignore. Solo knows the WSF has a strong influence on Gatorade, and if the WSF removes Solo, Gatorade will likely follow suit. In advance of an important and potentially costly appeal of her criminal case, the loss of Solo's biggest sponsor Gatorade would be a financial and public relations nightmare for her.

While Solo has tried to keep quiet about the issue since the *Outside the Lines* report was released in early-June, now the World Cup is over, Solo would be willing to help start a campaign against domestic violence in order to both share her story and rehabilitate her name in the public eye. However, her publicity team wants to have full control over both the campaign and any corresponding press statements with minimal input from the WSF.

Above all, Solo is most upset that the WSF made this decision based on the Executive Committee's recommendations rather than by a vote by the entire Board. Solo has friends on the Foundation's Board that are not on the Executive Committee and she knows those friends would support her. Solo feels strongly that the WSF's decision to remove her without giving the entire Board a say is unfair and against the Foundation's Bylaws.

If Solo cannot convince the WSF to reverse their decision entirely, she would at least like the Foundation to allow her to make her case to the entire Board at their next meeting in early December. She feels that by telling her side of the story she can convince the Board to not only reverse the decision, but to come out publically in her favor with a press release either now or once the court rules on her case.

On the other hand, Solo firmly believes this controversy will blow over with time. While her trial attorneys have continuously cautioned her against claiming she has been vindicated by the case's procedural dismissal in January, Solo feels the dismissal is the first step towards proving her innocence. She feels the courts will eventually conclude, as U.S. Soccer did after thoroughly investigating the incident, that no further action against her is warranted. Despite the tabloids and her own half-sister's comments, Solo does not feel she has anger issues or an alcohol problem. Solo does not want to enroll in rehab, even to appease her critics.

Unless Hope is attacked in public by WSF staff or Board members, she does not seriously intend to do anything that will publicly embarrass or legally challenge the WSF. Solo strongly believes in the Foundation's mission and does not want to ruin the good things the organization does.

Solo knows, however, that certain key members of the Executive Committee have run the organization in a very unscrupulous fashion that borders on being corrupt. A good friend of hers who is a younger Board member has complained to her on multiple occasions that a member of the Executive Committee pressured her to vote to approve a partnership with an apparel company that she had thought was a terrible deal for the WSF. When Solo's friend emailed this Executive Committee member to ask why the Committee had approved this deal, the member replied that the

Executive Committee had unanimously approved the deal, and Hucles personally had vouched for the company's integrity and willingness to make further concessions later.

However, Solo's friend found out after the Board approved the apparel deal that the vote was by no means unanimous and actually contentious. After this, Solo's friend did some digging and found out the husband of the Executive Committee member she had contacted was a minority owner of the apparel company the WSF had collaborated with, and the Committee member who had pushed for the deal's approval stood to make a fortune as a result of the new partnership. But since Solo's friend did not know whom on the Board she could trust, she has thus far kept the information to herself. Solo's friend believes strongly in the Foundation's purpose and while she does not want to do anything to harm the WSF, she has been debating leaking the information to the press "for the good of the mission."

While Solo does not know any specifics and her friend has pleaded with her to keep her identity anonymous, she is willing to share what she knows about this unethical behavior with the Board if the WSF is willing to delay a decision and give her an opportunity to speak to the Board. However, since a great deal of the unethical behavior she knows about involves key members of the Executive Committee, she will only share this information with the Board as a whole, not just the Executive Committee. She simply does not trust the Executive Committee to make ethical decisions and feels once they hear what she knows, they will attempt to hide the information from the rest of the board and possibly further distance themselves from Solo.

However, if the WSF is willing to be flexible and wait to remove her from her position as a WSF athlete until after a final decision is made on her domestic violence case; Solo is willing to sign a non-disclosure and non-disparagement agreement to prevent her from speaking publically about the unethical behavior. Solo is also willing to try to convince her friend to share the specifics about the unethical behavior at the next full Board meeting in December 2015.

More than anything, Solo wants the support of her trusted friends and colleagues as she struggles through a very difficult time in her life. If she is given the chance to speak in front of the Board and the Foundation decides to keep her as a WSF athlete, at least for the time being, she is insistent the WSF issue a press release reaffirming their relationship and throwing their full support behind Solo as she moves forward with her case. While she is looking forward to moving forward, she still feels betrayed by Hucles and the Foundation and wants to ensure that if the relationship is to continue, the Foundation will be behind her moving forward.

More generally, so long as your doing so will not interfere with her other priorities mentioned, Solo hopes you, as her legal representatives, will be creative both in thinking of other steps the Foundation can take to advance her interests, and in securing the Foundation's agreement to take those steps. Solo is leaving the negotiation to your discretion, and will agree to anything in her best interests.

CONFIDENTIAL FACTS FOR WOMEN'S SPORTS FOUNDATION (WSF)

As the charismatic and popular face of women's soccer and perhaps women's sports in general, Hope Solo was a natural choice as an athlete representative for the Foundation when she was named a WSF partner-athlete in 2006. For nearly a decade, the partnership has been a fruitful one for both sides. Solo has contributed vastly to the WSF's fundraising and outreach campaigns, while the WSF has defended Solo vigorously in her previous public controversies.

In fact, when Solo was removed from the World Cup team in 2007 after criticizing her coach's decision to bench her against Brazil, Aimee Mullins, the Foundation's president at the time, drew headlines by attacking the media for criticizing Solo for something that happened constantly in men's sports without any controversy or concern. The WSF also publically supported Solo when she was an alleged victim of domestic violence at the hands of her then-fiancé Jerramy Stevens, and WSF supported Solo when she married Stevens one day after his release from custody on the assault charge.

However, given the current increased public interest on the issue of domestic violence, WSF president Angela Hucles feels the decision to recommend removing Solo from her position is a just decision. While Hucles and the Executive Committee believed Solo's side of the story for a while, new allegations in the June *Outside the Lines* report have turned Solo toxic, and she could do more harm than good to the WSF's public image and outreach efforts.

Hucles believes WSF was also correct in waiting until after the World Cup to go public. She did not want to do anything to distract the USWNT any further. She also wanted to see whether the intense public scrutiny would cause Solo to come clean or at least be more open about the mistakes she has made in light of the new allegations. The USWNT's victory in the World Cup did nothing to change Hucles' mind; if anything, she wanted to ensure the goodwill Solo would receive from her performance would not brush her legal troubles under the rug and Hucles was glad the Executive Committee felt the same way.

The Executive Committee is unanimous in its decision that given its intense campaigns against domestic violence and its recent history of criticizing the NFL for its culture of domestic violence, the WSF would be inviting intense criticism by not taking action to remove Solo as a WSF partner. Furthermore, many members of the Executive Committee, including King and Hucles, feel Solo has been untruthful, both in her public statements and in private conversations about the incident.

At this point, the Executive Committee is unsure what to believe, and wish to take action against Solo before any additional negative facts and allegations become public. The Executive Committee and the Board of Trustees have fiduciary duties in operating the Foundation, and keeping Solo as a partner-athlete might show the Foundation does not have a clear stance regarding

domestic violence offenders. Worse, the WSF may be seen as operating under a double standard regarding male and female athletes and public figures.

Above all, Hucles wants Solo to see the Executive Committee's decision to remove her was a decision made thoughtfully and seriously. When the Executive Committee unanimously voted for Solo's removal in mid-June, the majority of the Executive Committee, including King, wanted to issue an immediate press release announcing Solo's removal from all Foundation roles and activities. However, Hucles was able to convince the Executive Committee to wait until she could speak with Solo privately. Moreover, a break in the action might provide Solo a chance to speak to the Executive Committee before the decision was approved by the Board at the July meeting. However, unless a different agreement can be reached at today's meeting, the Executive Committee has given strict instructions that Solo must be removed by the end of the year with an immediate Board vote to follow.

Hucles was upset when Solo responded by threatening the Foundation with lawsuits and claims of unethical behavior. She does not know exactly what unethical behavior Solo is referring to, but has some idea of what it could be. Last month, Hucles was made aware of an Executive Committee member's financial interest in an apparel company which just started a new partnership with the WSF earlier this year. According to Hucles' source, a trusted board member, a member of the Executive Committee, improperly used her influence, including misrepresenting the Executive Committee's reasoning for recommending approval of the contract to board members and soliciting votes by offering favors and financial incentives for voting to approve the deal, to get the contract approved.

Hucles had found this deal suspicious from the beginning and voted against its' adoption, as it did not really help the WSF, but gave the company a lot more than the WSF generally offers its sponsors, including liberal use of WSF trademarks and a restrictive exclusivity clause against the WSF, which surprised Hucles. However, Hucles was outvoted at both the Executive Committee and Board levels, and thought nothing of it until she was approached with these allegations. The allegations have been particularly troublesome for Hucles, as the Executive Committee member's ties to the organization were unknown to herself or most other senior Board members. In violation of WSF Bylaws, the conflict of interest was not disclosed to the Board or the other members of the Executive Committee, and the member alleged to have the ties did not recuse herself from the voting.

While the WSF's counsel has confirmed this conflict does not give rise to any criminal or civil liability, if the information were released without proper context, it could seriously embarrass the organization. Hucles needs more time to determine whether the allegations are true or not, so she can take proper action depending on what her investigation reveals. Thus, if Solo has any information or documentation that could help shed any light, Hucles needs this information to be handed over immediately and confidentially.

Once the Board votes to remove Solo from the WSF, the Executive Committee has recommended the WSF release a short, one-line press release, stating Solo has been removed from her position as a partner-athlete. However, if the relationship remains toxic, the Board sees this as a chance to assert its position as advocates against domestic violence regardless of gender.

At this point, the Board would prefer to see Solo agree to resign from the Foundation and would allow for a press release that stated Solo and the Foundation have “mutually agreed to part ways” if an agreement on a smooth and mutual transition can be reached. The Executive Committee would also be willing to allow Solo and her publicity team to expand on this, perhaps with a statement affirming Solo’s commitment to the WSF’s ideals of promoting women’s sports, but a mutual parting of the ways was the best course of action for now.

In the interests of taking the high road, Hucles is still willing to grant Solo the opportunity to tell her side of the story in front of the Executive Committee in November or the entire Board at the December meeting. However, Hucles is firm that Solo must agree to four (4) conditions before she is allowed to speak to the Foundation. First, Solo must apologize to the Executive Committee publically, and to Hucles personally, for her actions and her threats. Second, Solo must tell Hucles and the Board about all of the unethical activities she claims to know about and hand over any supporting documentation to the Executive Committee. Third, regardless of what action WSF takes against Solo, she must agree to drop all threats and agree to refrain from filing a lawsuit against Hucles, the WSF Board, Executive Committee, and the Foundation in general. Finally, Solo must agree to sign a non-disclosure and non-disparagement agreement regarding all Foundation activities.

If Solo is willing to speak in front of the Executive Committee or Board, the Board has agreed to delay any public action or statement until after Solo’s appearance. The Executive Committee will convene right after Solo speaks to re-vote on their recommendation, and submit that recommendation to the Board for an immediate vote.

More generally, so long as your doing so will not interfere with your client’s priorities, the WSF hopes you, as the organization’s legal representatives, will be creative both in thinking of other steps Solo can take to advance the interests of the WSF, and in securing Solo’s agreement to take those steps. The Foundation’s Board of Trustees is leaving the negotiation to your discretion, and will agree to anything in their best interests.