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COMMENTARY

*U.S. WOMEN’S NATIONAL TEAM SCORES WITH SUIT
CERTIFICATION*

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Alex Morgan, Megan Rapinoe, and the rest of the U.S. Senior Women’s National Soccer Team (“WNT”) notched another major victory in early November. Morgan and Rapinoe, along with teammates Carli Lloyd and Becky Sauerbrunn, were named class representatives for the rest of the team by U.S. District Court Judge R. Gary Klausner in his November 8 order granting their motion for class certification.¹

The order came eight months to the day after the plaintiffs filed a putative collective action and class action suit against the U.S. Soccer Federation², asserting violations of the Equal Pay Act³ and Title VII of the Civil Rights Act of 1964.⁴ The suit alleged that U.S. Soccer discriminates against the Women’s National Team (WNT) by providing them with pay and working conditions inferior to that which it provides for their male counterparts.⁵

Under the pay structure in effect from 2001 to 2018, the Men’s National Team (MNT) was paid a minimum amount for each win or draw against a top 25 FIFA-ranked opponent.⁶ In 2012, in response to complaints about disparate pay, U.S. Soccer offered to begin paying the WNT for games that they won against top 10 FIFA-ranked opponents, but not for victories against lower ranked teams or draws.⁷ Additionally, each MNT member is paid \$13,166 for victories in non-tournament games (called “friendlies”) compared to the \$4,950 that each WNT member receives.⁸

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¹ Order Granting Motion for Class Certification.

² *Id.* at 1.

³ 29 U.S.C. § 206 (1963).

⁴ 42 U.S.C. § 2000e (1964).

⁵ Order, *supra* note 1, at 2.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

The WNT also alleged they have access to less chartered flights and are forced to play on more inferior surfaces than the MNT.⁹

U.S. Soccer had challenged the ability of the class representatives to show that they had suffered an injury-in-fact, since each one of them actually made substantially more than the highest paid member of the MNT during the time in question.¹⁰ The order, however, noted that the Equal Pay Act explicitly prohibits discriminatory rates of pay as opposed to just a disparate aggregate total, and that Title VII takes a similarly broad tact in prohibiting gender discrimination in compensation. Judge Klausner suggested that U.S. Soccer's claim would lead to an "absurd result."¹¹

The Court also rejected U.S. Soccer's argument that since plaintiffs could become parties to the claim through the piggyback doctrine (allowing for a class of similarly situated plaintiffs to "piggyback" off one plaintiff's timely filed complaint, and thus circumvent the exhaustion requirement in Title VII cases), there was no need to certify them as a class. The Court found judicial economy supported class certification.¹² Finally, the Court dismissed as "merely speculative" U.S. Soccer's claims that not all team members would favor the injunctive relief sought.¹³

The decision is seen as a victory for the WNT, and as likely to affect the broader debate over pay equality, both for general counsel dealing with such claims and other women's sports teams around the world.¹⁴

⁹ *Id.*, *Id.* at 6.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 5-6.

¹² *Id.* at 6.

¹³ *Id.* at 11.

¹⁴ Sue Reisinger, *Women Soccer Players' Suit Certification May Impact General Counsel Dealing With Pay Equity Issues*, CORPORATE COUNSEL, (NOV. 8, 2019, 5:33 PM), <https://www.law.com/corpcounsel/2019/11/08/women-soccer-players-suit-certification-may-impact-general-counsel-dealing-with-pay-equity-issues/>.