

2023

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Recommended Citation

Emily Tompkins, *Fault Lines & Fractured Foundations: A Paradigm Shift for Equal Pay for Professional Women Athletes*, 2023 J. Disp. Resol. ()

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FAULT LINES & FRACTURED FOUNDATIONS: A PARADIGM SHIFT FOR EQUAL PAY FOR PROFESSIONAL WOMEN ATHLETES

*Emily Tompkins**

I. INTRODUCTION

In the face of adversity, professional female athletes have championed the fight for equal pay and brought the issue to the national stage. Testifying in front of the Congressional House Oversight Committee, Megan Rapinoe, a professional soccer player for the United States Women's National Team, articulates that "one cannot simply outperform inequality or be excellent enough to escape discrimination of any kind."¹ Megan Rapinoe's message has touched the hearts of not only Americans but also people all over the world, and her leadership has brought visibility to the realities of gender-based discrimination of female athletes in the United States.²

Pay inequality is a global problem. In the United States the pay gap is especially substantial; women make around 83 cents for every dollar that men make.³ This gap grows even more when considering race, sexuality, and education level.⁴ Professional sports likewise exhibit this disparity. The existing pay gap between men and female athletes is immensely disproportionate, as male athletes earn significantly more than female athletes. While this inequality is troublesome, the pay gap used to be significantly larger: during the 1960s, women made merely 61 cents for every dollar that men made.⁵ In 1963, President John F. Kennedy signed the Equal Pay Act into law as an amendment under the Fair Labor Standards Act of 1938.⁶ The Equal Pay Act was designed to combat pay inequality, as men were paid more than women for doing the same job.⁷

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1. Joseph Salvador, *Megan Rapinoe to Congress on Gender Pay Gap: 'We Don't Have to Wait*, SPORTS ILLUSTRATED (Mar. 24, 2021), <https://www.si.com/soccer/2021/03/24/megan-rapinoe-testifies-congress-gender-pay-gap>.

2. *Id.*

3. Greg Iacurci, *Women are still paid 83 cents for every dollar men earn, Here's why*, CNBC: EMPOWERED INV., <https://www.cnbc.com/2022/05/19/women-are-still-paid-83-cents-for-every-dollar-men-earn-heres-why.html#:~:text=In%20fact%2C%20a%20recent%20analysis,%2C%20geography%2C%20race%20and%20ethnicity> (May 19, 2022, 8:52 AM).

4. *Id.*

5. *Id.*

6. *Equal Pay Act*, HISTORY, <https://www.history.com/topics/womens-rights/equal-pay-act> (Apr. 2, 2019).

7. *Equal Pay Act of 1963*, NAT'L PARK SERV., <https://www.nps.gov/articles/equal-pay-act.htm> (last visited May 9, 2023).

The U.S. Women's National Soccer Team (USWNT) helped commence a national conversation for equal pay in professional sports. Over the last six years, the USWNT has been at the forefront of this issue as they battled the U.S. Soccer Federation for pay and treatment equal to the U.S. Men's National Team (USMNT). In May of 2022, the USWNT emerged victorious when the United States Soccer Foundation (USSF) agreed to a settlement of \$24 million dollars and commitment to provide equal pay going forward for both men's and women's teams.⁸

This article will analyze how negotiation creates gender-based disparate outcomes in collective bargaining agreements in the context of professional sports. In section II, this paper will first broadly cover the pay gap between men's and women's professional sports in the U.S. Section II will further explore the history and timeline of the USWNT's campaign for equal pay, evaluating the legal arguments that form the basis of the USWNT lawsuit. In section III, this paper will provide an overview of alternative dispute resolution (ADR) and discuss the prevalence of ADR processes in U.S. professional sports. Section III will scrutinize negotiation as an ADR methodology and scientific literature explaining the impact of gender on the outcomes of negotiation and apply those scientific findings to the USWNT. In section IV, this paper will analyze how the negotiation process can be amended to put professional women sports unions and athletes on equal footing in negotiating their contractual agreements.

II. THE USWNT AND GENDER INEQUITY

This section will discuss two things. First, this paper will examine the pay gap in the current landscape of professional sports and illuminate the statistical disparity that exists between men's and women's professional athletics. Second, this section will contextually explore and discuss the history of the USWNT equal pay movement, and how the USWNT were able to achieve equal pay.

A. *The Pay Gap In Professional Sports in the United States*

In the world of professional sports, the pay gap between men's and women's sports is an illustrative example of wage discrimination in the United States. In 2022, 48 of the top 50 highest paid athletes were men.⁹ The only women who broke through this threshold are tennis players Naomi Osaka and Serena Williams, while the majority of the top earning male athletes play football, men's basketball, or baseball.¹⁰ Further insight into this fact demonstrates that top earning female athletes compete in individual sports, like tennis, and not team sports.¹¹ The average player's compensation in professional sports exemplifies the problem of unequal

8. Jeff Carlisle, *USWNT, U.S. Soccer Federation settle equal pay lawsuit for \$24 million*, ESPN: SOCCER (Feb. 22, 2022, 6:32 AM), <https://www.espn.com/soccer/united-states-usaw/story/4599482/uswnt-us-soccer-federation-settle-equal-pay-lawsuit-for-24-million>.

9. Brett Knight et al., *HIGHEST-PAID ATHLETES, The Top 50 Sports Stars Combined To Make Nearly \$3 Billion In A Year, Crushing The Record*, FORBES, <https://www.forbes.com/athletes/> (last visited May 9, 2022).

10. *Id.*

11. *Id.*

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pay between men and women competing in the same sports.¹² A professional baseball player makes an average of \$4,031,549 per year, while a professional softball player makes an average of \$6,000 per year.¹³ For professional basketball, the average male professional athlete makes \$8,321,937 a year, while the average female professional athlete makes \$75,181 per year.¹⁴

Recently, the WNBA signed a new collective bargaining agreement that has improved compensation and better policies for its players.¹⁵ This agreement increased the average compensation per player to \$130,000, almost double what it was in 2019.¹⁶ However, this victory for the WNBA is just a small step in the right direction; WNBA players continue to earn fractions on the dollar compared to their NBA player counterparts.¹⁷ For major league soccer in the United States, the pay gap is equally substantial and pervasive when comparing the salaries of players in both leagues.¹⁸ In 2020, the differences in the team salary budget between the men's soccer league and women's soccer league were starting; the men's league had a budget of \$5,000,000, while the women's league had a budget of \$650,000—seven times less than the men.¹⁹ On an individual level, a professional men's soccer player's minimum guaranteed salary is \$63,547, while a professional women's soccer player's minimum guaranteed salary is only \$20,000.²⁰ On the putting green, golf has one of the largest pay gaps; the average man's salary is \$1,235,495, while the average woman's salary is \$48,993.²¹

To summarize, professional male athletes receive exponentially more compensation, both as individuals and as a collective, than female athletes. The USWNT, tired of being victims of the pay gap, has taken this issue public by publishing op-ed pieces in newspapers and appearing on television shows.²² The USWNT's use of their media platforms to bring awareness to the issue of equal pay has not only created a national conversation but also elevated women's professional sports in the U.S. and abroad.²³

B. *USWNT & Equal Pay*

Fighting for equality takes time, dedication, and unwavering leadership. In the fight for equal pay, the USWNT has confronted the systemic barriers and stereotypes to change the status quo. The campaign for equal pay began on March 31, 2016, with leaders for the USWNT filing a complaint with the Equal Employment

12. *Male vs Female Professional Sports Salary Comparison*, ADELPHI UNIV. (May 20, 2021, 9:12 AM), <https://online.adelphi.edu/articles/male-female-sports-salary/>.

13. *Id.*

14. *Id.*

15. Michael McCann, *Analyzing the WNBA's New CBA Deal and What It Means for the Future of the League*, SPORTS ILLUSTRATED (Jan. 14, 2020), <https://www.si.com/wnba/2020/01/14/wnba-cba-labor-salary-raise-players-association>.

16. *Id.*

17. *Id.*

18. *Male vs Female Professional Sports Salary Comparison*, *supra* note 12.

19. *See id.*

20. *See id.*

21. *See id.*

22. Jessica Fletcher & Stephanie Yang, *The USWNT lawsuit timeline*, SBNATION (Feb. 3, 2017, 8:30 AM), <https://www.starsandstripesfc.com/2017/2/3/14498152/complete-updated-uswnt-ussf-cba-negotiation-timeline>.

23. *Id.*

Opportunity Commission (EEOC) to investigate U.S. Soccer's discriminatory practices.²⁴ The leaders consisted of five USWNT players: Carli Lloyd, Hope Solo, Alex Morgan, Megan Rapinoe, and Becky Sauerbrunn.²⁵ In the complaint, the players alleged that the USMNT were paid and treated far better than the USWNT.²⁶ The EEOC charge asserts that despite both the USMNT and USWNT bringing in a projected 17.7 million dollars in revenue for U.S. Soccer in 2016, the USMNT is projected to lose 1 million dollars for fiscal year 2017, while the USWNT is projected to bring in 5 million in profit.²⁷ Yet, despite the success of the USWNT players in competition and in generating revenue, the USWNT players earn only 25% of the salary of USMNT players.²⁸ The charge goes on to signal how female soccer players are paid less than male soccer players in four different areas: Friendlies, World Cup, Olympics, and Other Compensation.²⁹ "Friendlies" are games that are played outside of organized leagues or tournaments and are noncompetitive.³⁰ In "friendlies," the USWNT players are paid between 38% to 72% of the compensation that USMNT earn per game.³¹ For their respective versions of the FIFA World Cup, the USWNT players earn less than half of the USMNT for making the team roster, as USWNT players earn \$30,000 and the USMNT players earn \$68,500.³² Additionally, the USMNT earned nine million dollars for losing in the round of 16, whereas the USWNT earned two million dollars for winning the entire World Cup tournament.³³ Lastly, the USMNT players were given more travel funds per diem than the USWNT players despite both teams engaging in the same travel.³⁴

While awaiting the EEOC's report, the USWNT entered into a new collective bargaining agreement with the U.S. Soccer Federation in April of 2017.³⁵ While the USWNT was able to achieve better terms in this new agreement, these terms still

24. Stephanie Yang, *USWNT file federal complaint with EEOC over USSF wage discrimination*, SBNATION (Mar. 31, 2016, 8:16 AM), <https://www.starsandstripesfc.com/2016/3/31/11336778/uswnt-file-federal-complaint-eeoc-ussf-wage-discrimination>.

25. Bill Chappell, *U.S. Women's Soccer Team Members File Federal Equal-Pay Complaint*, NPR: THE TWO-WAY (Mar. 31, 2016, 10:36 AM), <https://www.npr.org/sections/thetwo-way/2016/03/31/472522790/members-of-u-s-women-s-national-team-file-federal-equal-pay-complaint>.

26. *Id.*

27. Julie Spies-Gans, *USWNT Files Lawsuit Against U.S. Soccer In Fight For Equal Pay*, HUFFPOST, https://www.huffpost.com/entry/uswnt-wage-discriminatory-suit-us-soccer_n_56fd33c3e4b0a06d5804ecac (Apr. 1, 2016) [https://web.archive.org/web/20230417030135/https://www.huffpost.com/entry/uswnt-wage-discriminatory-suit-us-soccer_n_56fd33c3e4b0a06d5804ecac].

28. *Id.*

29. Mari Bryn Dowdy & Malaise Marks, *THE FIGHT OFF THE FIELD: Legal Issues Surrounding Compensation of Female Professional Athletes*, N.J. STATE BAR ASS'N N.J. LAW., Feb. 2021, at 32, <https://www.segalmccambridge.com/wp-content/themes/paperstreet/assets/Feb%202021%20NJ%20Mag%20Dowdy%20Marks.pdf>.

30. Ben Clayfield, *What is a Friendly in Soccer, and Why Are They Played?*, YOUR SOCCER HOME, www.yoursoccerhome.com/what-is-a-friendly-in-soccer-and-why-are-they-played/ (last visited May 7, 2023).

31. *U.S. Women's National Soccer Team's EEOC Filing*, SCRIBD, https://www.scribd.com/doc/306515475/U-S-women-s-national-soccer-team-s-EEOC-filing#download&from_embed (last visited May 7, 2023).

32. *Id.*

33. *Id.*

34. *Id.*

35. Dowdy & Marks, *supra* note 29, at 31–32.

fell far short of equal pay and treatment to the USMNT.³⁶ The better terms of this agreement included higher base salaries, bonuses,³⁷ and control of the “group’s likeness rights for licensing non-exclusive rights in sponsorship categories in which U.S. Soccer does not have a sponsor.”³⁸ Relinquishing control of “group likeness rights” allows the USWNT players the ability to negotiate for various sponsorships and therefore earn additional money through endorsement deals, channels that were previously unattainable by the USWNT players.³⁹

In February of 2019, the EEOC investigation concluded, and the EEOC issued a “right to sue letter”⁴⁰ to the USWNT players.⁴¹ Less than a month later, all 28 members of the USWNT filed a class action lawsuit against the U.S. Soccer Federation claiming that the USWNT were discriminated against because of their gender in violation of the Equal Pay Act and Title VII of the Civil Rights Act of 1964.⁴² In this lawsuit, the USWNT argued that gender discrimination was not only affecting their wages, but also the conditions of their job, from traveling to games, medical treatment, and other conditions of their employment such as frequency of training and competing in games.⁴³ For the USWNT, the biggest challenge was to “overcome questions about the differences in their pay structures and their negotiated collective bargaining agreements.”⁴⁴ This is because the USSF’s best defense against the USWNT is asserting that even if the terms of the USWNT CBA are worse than the USMNT’s, the USWNT voluntarily accepted the terms and pay structure in the CBA and therefore are contractually bound to the CBA terms.⁴⁵

36. Mahita Gajanan, *The USWNT Seeks Nearly \$67 Million in Damages in Equal Pay Lawsuit Against U.S. Soccer. Here’s What to Know About the Case*, TIME, <https://time.com/5653250/uswnt-equal-pay-lawsuit/> (Feb. 21, 2020, 10:56 AM).

37. Associated Press, *USWNT suing U.S. Soccer for gender discrimination*, N.Y. POST (Mar. 8, 2019, 1:24 PM), <https://nypost.com/2019/03/08/uswnt-suing-u-s-soccer-for-gender-discrimination/>.

38. Kim McCauley, *USWNT CBA a victory for all American women’s soccer players, not just the best ones*, SBNATION (Apr. 5, 2017, 12:17 PM), <https://www.sbnation.com/soccer/2017/4/5/15190488/uswnt-cba-deal-united-states-national-team-usa-womens-soccer>.

39. James Bridget Gordon, *A Quick and Dirty Look at The New USWNT Collective Bargaining Agreement*, PASTE (April 5, 2017, 2:48 PM), www.pastemagazine.com/soccer/a-quick-and-dirty-look-at-the-new-uswnt-collective/.

40. See EXHAUSTION OF ADMINISTRATIVE REMEDIES AND STATUTES OF LIMITATIONS UNDER EMPLOYMENT DISCRIMINATION LAWS, PRACTICAL LAW LABOR & EMPLOYMENT, Westlaw (2022). A plaintiff bringing an action under Title VII of the Civil Rights Act, is required to “exhaust their administrative remedies,” meaning that the plaintiff must first file their claim of discrimination with the Equal Employment Opportunity Commission (EEOC), *id.* However, plaintiffs are not required to exhaust administrative remedies when bringing an action under the Equal Pay Act, *id.* For the USWNT, their charges included violations of the Equal Pay Act, and violations of Title VII of the Civil Rights Act, which explain why members of the USWNT filed their charge of discrimination with the EEOC first, Dowdy & Marks, *supra* note 29, at 32. The EEOC will then issue a “right to sue letter,” to the party bringing the action, and this letter permits the charging party to bring their claim to court, RIGHT-TO-SUE LETTER, PRACTICAL LAW GLOSSARY ITEM 4-502-7667, Westlaw (2022).

41. Dowdy & Marks, *supra* note 29, at 32.

42. Michael McCann, *Inside USWNT’s New Equal Pay Lawsuit vs. U.S. Soccer –and How CBA, EEOC Relate*, SPORTS ILLUSTRATED (Mar. 8, 2019), <https://www.si.com/soccer/2019/03/08/uswnt-lawsuit-us-soccer-equal-pay-cba-eeoc-gender-discrimination>.

43. Andrew Das, *How U.S. Soccer and Its Players Got to Equal Pay: a Timeline*, N.Y. TIMES, <https://www.nytimes.com/explain/2022/02/25/sports/uswnt-soccer-equal-pay?action=click&module=RelatedLinks&pgtype=Article> (May 18, 2022).

44. *Id.*

45. McCann, *supra* note 42.

In June of 2019, U.S. Soccer agreed to mediate with the USWNT; the mediation was to take place after the Women's World Cup.⁴⁶ In August of 2019, after several days of mediation in New York City, the talks fell apart and no agreement was reached.⁴⁷ A spokeswoman for the USWNT explained in the aftermath that "it is clear that USSF, including its board of directors and President Carlos Cordeiro, fully intend to continue to compensate female players less than men" and are determined to "perpetuate fundamentally discriminatory workplace conditions and behavior."⁴⁸ In response, the USSF declared that USWNT counsel were "inconsiderate" of the mediation process and were "aggressive" in their approach to the mediation.⁴⁹ Meanwhile, with both parties' eyes set on litigation, the USWNT was certified as a class in November of 2019 by a district court in California, and both parties filed for summary judgment in 2020.⁵⁰

In May of 2020, Judge Gary Klausner, a U.S. District Court Judge in California, ruled on the USSF's summary judgment motion.⁵¹ Judge Klausner dismissed the equal pay act portion of the lawsuit, rationalizing that there was not a "triable issue that WNT players are paid less than MNT players."⁵² The context of this ruling is significant as the USWNT's performance on the international stage was exceptional from 2015 to 2019, and Judge Klausner's failed to consider how "women could earn more in total but still be paid at a lesser rate to violate the equal pay act."⁵³ Notably, Judge Klausner held that "differences in payment structure were the result of choices made by the women's players and their unions."⁵⁴ This holding is significant because it decimated the USWNT's equal pay claim.⁵⁵ While the USWNT did agree to the different pay structure,⁵⁶ the question arises, why? Why did the USWNT agree to a different pay structure that would compensate them significantly less than the USMNT pay structure? This paper aims to answer that question and provide some much-needed context for how the USWNT's collective bargaining negotiations were set up for failure.

Despite these setbacks, in February of 2022, negotiations between the U.S. Women's National Team and U.S. Soccer culminated in a historic agreement.⁵⁷ U.S. Soccer agreed to pay both men and women equal wages for all future competitions

46. Rachel Bachman, *U.S. Women's Team and Soccer Federation Agree to Mediation in Pay-Equity Suit*, WALL ST. J., <https://www.wsj.com/articles/u-s-womens-team-and-soccer-federation-agree-to-mediation-in-pay-equity-suit-11561133991> (June 21, 2019, 12:32 PM).

47. Andrew Das, *Mediation Talks between U.S. Women's Team and U.S. Soccer Break Down*, N.Y. TIMES (Aug. 14, 2019), <https://www.nytimes.com/2019/08/14/sports/uswnt-mediation-us-soccer.html>.

48. *Id.*

49. *Id.*

50. Fletcher & Yang, *supra* note 22.

51. Graham Hays, *Judge sides with U.S. Soccer in USWNT equal pay lawsuit*, ESPN (May 1, 2020, 7:41 PM), https://www.espn.com/espnw/sports/story/_/id/29125363/judge-sides-us-soccer-equal-pay-lawsuit.

52. *Id.*

53. *Id.*

54. *Id.*

55. *See id.*

56. *Id.*

57. *See* Andrew Das, *U.S. Soccer and Women's Players Agree to Settle Equal Pay Lawsuit*, THE N.Y. TIMES, <https://www.nytimes.com/2022/02/22/sports/soccer/us-womens-soccer-equal-pay.html> (May 18, 2022).

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and in employment agreements.⁵⁸ Additionally, U.S. Soccer agreed to pay the USWNT \$24 million, with \$2 million to be invested in a fund that supports female professional players after their soccer careers end.⁵⁹ The \$22 million is to be paid to the athletes as back pay for the disparity in pay they faced in the past,⁶⁰ a latent admission of guilt by the U.S. Soccer Federation for the pay gap between the USMNT and USWNT.⁶¹ On September 6, 2022, in Washington D.C., the last contingency of the settlement was formally resolved with players and representatives from the USWNT formally signing new collective bargaining agreements with the equal pay clauses and structures in writing.⁶² For the first time in the United States history, a professional women's sports team will have an equal pay structure to that of the male sports team and equal prize money for men's and women's tournaments.⁶³

The significance of the USWNT momentous victory after a multi-year fight will have resounding effects for female athletes in the years ahead. Notably, this campaign illuminated many harmful stigmas embedded in individuals in the governing sports' institutions that influence discussions surrounding female athletes' compensation.⁶⁴ A few days after the USWNT filed the lawsuit in 2020, the U.S. Soccer Federation filed a response with the court, arguing that it is "'indisputable science' that the women lacked the 'skill' of male players," and "that the women don't face the same responsibilities as the U.S. men."⁶⁵ Comments that U.S. Soccer's previous lawyers had signaled earlier that "U.S. Soccer's defense was going to be rooted in misogyny and condescension."⁶⁶ This statement helps shed light to the prevalence of sexist opinions and how they drive gender-based discriminatory practices.⁶⁷

The USWNT struggle for equal pay is not a story in isolation; rather, across the country, many women, including women in collective bargaining unions, are fighting for better pay, terms, hours, and conditions. However, this fight often takes place in the shadows, with women having inadequate information, minimal bargaining experience, and less negotiating power. ADR processes of negotiation and mediation perpetuate this pay inequality.

III. COLLECTIVE BARGAINING & THE USWNT

This section will accomplish three things. First, this paper will provide an overview of alternative dispute resolution and discuss the interplay of ADR mechanisms

58. Meg Linehan, *USWNT players reach settlement with U.S. Soccer for total of \$24 million in pay discrimination lawsuit*, ATHLETIC (Feb. 21, 2022), <https://theathletic.com/4182003/2022/02/22/uswnt-players-reach-settlement-with-u-s-soccer-for-total-of-24-million-in-pay-discrimination-lawsuit/>.

59. *Id.*

60. Linehan, *supra* note 58.

61. *Id.*

62. Anne M. Peterson, *U.S. Soccer, Players Formally Sign Equal Pay Agreements After USWNT Match*, NBC BOS., <https://www.nbcboston.com/news/sports/u-s-soccer-players-formally-sign-equal-pay-agreements-after-uswnt-match/2827612/> (Sept. 6, 2022, 10:03 PM).

63. *See id.*

64. Nancy Armour, *US Soccer backs off sexist, demeaning characterizations of USWNT in latest legal filing*, USA TODAY, <https://www.usatoday.com/story/sports/soccer/2020/03/16/us-soccer-no-longer-relying-blattant-misogyny-lawsuit-uswnt/5065776002/> (Mar. 17, 2020, 1:19 AM).

65. *See id.*

66. *Id.*

67. *See id.*

in professional sports. Second, this paper will discuss how the USWNT utilized ADR to reach agreements with their employer, the USSF, over the terms, conditions, and privileges of their employment. Third, this paper will analyze how gender affects negotiation outcomes, and can contribute to pay disparities between men and women.

A. Overview of ADR and Professional Sports

Today, professional sports organizations consistently employ ADR procedures and practices, from adjudicating conflicts and disputes to negotiating new contracts and collective bargaining agreements.

ADR is defined as “a set of actions that are used by organizations to try to solve disagreements without using a court of law.”⁶⁸ ADR mechanisms usually enlist the help of third-party facilitators and can be either binding or nonbinding on the parties involved.⁶⁹ The most common types of ADR include negotiation,⁷⁰ mediation,⁷¹ and arbitration.⁷² As opposed to litigation, ADR processes give all parties more control over the process in resolving their dispute.⁷³ A few benefits of ADR processes include efficiency, decreased expenses, flexibility, voluntary participation, and confidentiality.⁷⁴ However, while the benefits are alluring, ADR processes have some innate drawbacks. These disadvantages include: the prior precedents are not binding, the lack of objectivity of third parties enlisted by repeat player parties, the parties can use the process in bad faith way to stall, the secrecy and confidentiality of settlement agreements limit information available to future parties, and the power imbalances can influence the overall outcomes.⁷⁵

68. *ADR*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/adr> (last visited May 9, 2023).

69. *See id.*

70. Rajeev Dhir, *Negotiation: Definition, Stages, Skills, and Strategies*, INVESTOPEDIA, <https://www.investopedia.com/terms/n/negotiation.asp> (Apr. 28, 2023) (negotiation is the process in which parties will meet informally to resolve an issue through strategic discussion and reach a solution that is acceptable to all parties involved.); *ADR MECHANISMS IN THE US: OVERVIEW*, PRACTICAL LAW LITIGATION, Westlaw (2022) (negotiation is the most informal and flexible methods of dispute resolution, and is not binding on the parties, meaning they are not required to reach a solution).

71. Daniel Liberto, *Alternative Dispute Resolution (ADR): Definition and Meaning*, INVESTOPEDIA, <https://www.investopedia.com/terms/a/alternative-dispute-resolution.asp> (July 26, 2021) (mediation is the process in which parties will negotiate in the presence of an impartial mediator, who assists in the discussion to help both parties reach a mutually agreeable outcome.); *ADR MECHANISMS IN THE US: OVERVIEW*, PRACTICAL LAW LITIGATION, Westlaw (2022) (mediation is voluntary and non-binding, and unlike other processes, it allows for “more creativity and flexibility over settlement options than litigating in the court or arbitration.”).

72. Daniel Liberto, *Alternative Dispute Resolution (ADR): Definition and Meaning*, INVESTOPEDIA, <https://www.investopedia.com/terms/a/alternative-dispute-resolution.asp> (July 26, 2021) (arbitration is more formal than mediation or negotiation, and in arbitration, parties will meet in a private forum in the presence of a neutral arbitrator who functions like a Judge); *ADR MECHANISMS IN THE US: OVERVIEW*, PRACTICAL LAW LITIGATION, Westlaw (2022) (the parties have more freedom in designing the policies and procedures that govern the arbitration, and the arbitrator is not constrained to precedent or Federal rules in giving their ruling on the issues).

73. *ADR Advantages*, WORLD INTELL. PROP. ORG., <https://www.wipo.int/amc/en/center/advantages.html> (last visited Nov. 7, 2022).

74. Sterling Miller, *The problems and benefits of using alternative dispute resolution*, THOMSON REUTERS (Apr. 29, 2022), <https://legal.thomsonreuters.com/en/insights/articles/problems-and-benefits-using-alternative-dispute-resolution>.

75. *Id.*

While ADR has its pros and cons, the professional sports industry in the United States has adopted various mechanisms of ADR, especially negotiation. Negotiations in the sports industry can cover topics such as broadcasting rights of games,⁷⁶ stadium leases,⁷⁷ sponsorships and endorsements,⁷⁸ and various others. In the collective bargaining process, sport franchises and unionized athletes frequently engage in negotiations.⁷⁹

Collective bargaining encompasses the process through which individuals assemble into a single unit, called a union.⁸⁰ The union will then negotiate with its employer to bargain over the terms and conditions of their job.⁸¹ Terms that are commonly negotiated between athletes and professional sport franchises include: player salaries, discipline rules, transfer rules, health benefits, hours and work conditions, among others.⁸² These terms are essential to protect athletes' well-being, safeguard their legal rights, and ensure that sport franchises are not exerting dominion and control over their athletes.⁸³

In the United States, collective bargaining units have formed for practically all professional sports, men's and women's alike.⁸⁴ For women's professional sports, many professional teams have formed unions, such as the Women's National Basketball Players Association and the National Women's Soccer League Players Association.⁸⁵ Other professional sports, such as the National Women's Hockey League Players' Association, are not unionized; instead, the players are represented by outside organizations that represent the interests of the athletes.⁸⁶ Both men's and women's sports unions engage in the same collective bargaining process. The process of negotiating an agreement consists of four general steps: "(1) preparation for negotiation, (2) exchanging information, (3) bargaining, and (4) closing/follow up action."⁸⁷ However, despite engaging in the same negotiation processes, women continue to be paid significantly less than male athletes.⁸⁸ To fix this problem, the only solution currently available is to wait for the agreement to expire and renegotiate, advocating for better terms in the subsequent contract.

76. See Bryan Beasley, *Sports Media Contracts: Evaluating Revenue to Leagues and Universities*, BLEACHER REP. (Dec. 29, 2010), <https://bleacherreport.com/articles/556188-sports-media-contracts-evaluating-revenue-to-leagues-and-universities>.

77. See Cari A. Stern, *The Case for Alternative Dispute Resolution in Sports*, SPORTS LITIG. ALERT (Feb. 10, 2012), <https://sportslitigationalert.com/the-case-for-alternative-dispute-resolution-in-sports/>.

78. See Brenda Barron, *Sponsorship Agreements for Sports Teams: Everything You Need to Know*, THEME BOY (May 30, 2018), <https://www.themeboy.com/blog/sponsorship-agreements-for-sports-teams-everything-you-need-to-know/>.

79. Stern, *supra* note 77.

80. *Collective Bargaining*, AFL-CIOS, <https://aflcio.org/what-unions-do/empower-workers/collective-bargaining#:~:text=Collective%20bargaining%20is%20the%20process,work%20and%20family%2C%20and%20more> (last visited May 10, 2023).

81. *Id.*

82. *Collective Bargaining Agreements in Sports Leagues*, JUSTIA, <https://www.justia.com/sports-law/collective-bargaining-agreements-in-sports-leagues/> (last visited May 10, 2023).

83. *Id.*

84. *Id.*

85. Dowdy & Marks, *supra* note 29, at 32–33.

86. *Id.* at 33.

87. Diane Magrane, MD, *Negotiating for Success: Basic Stages*, ASS'N AM. MED. COLL. (Nov. 30, 2004), <https://www.aamc.org/professional-development/affinity-groups/gfa/faculty-vitae/negotiating-success-1#:~:text=Shell%20describes%20the%20process%20in,Bargaining%2C%20and%20Closing%20and%20Commitment>.

88. *Male vs Female Professional Sports Salary Comparison*, *supra* note 12.

B. USWNT's Use of Negotiation

The USWNT utilized the ADR system of negotiation to reach agreements over the terms, conditions, and privileges of employment with the USSF. Like in the employment field, collective bargaining agreements between player association unions and the sport franchise employer expire after a certain amount of time.⁸⁹ For the USWNT, the adversity they faced in fighting for equal pay was not solely a legal obstacle but encompassed various social and structural barriers. A large part of that fight required the USWNT players association to negotiate with the U.S. Soccer Federation over the terms and conditions of their collective bargaining agreement.

For the USWNT, a massive problem in their equal pay argument involved the U.S. Women's National Team Players Association (USWNTPA) negotiating for and agreeing to a different pay structure than the USMNT.⁹⁰ The decisive reason for denying the USWNT's equal pay claim was that the women agreed to the guaranteed salary structure⁹¹ and not the "pay for play" structure⁹² that the USMNT had agreed to.⁹³ Judge Klausner held that the USWNT cannot claim their pay system is inferior to the USMNT after binding themselves to that structure.⁹⁴ Furthermore, Judge Klausner acknowledged the value of the guaranteed salary in giving women job security over men.⁹⁵ Overall, the differences of pay structure allowed for the USMNT to earn more than the USWNT, because of the high monetary awards of performance bonuses for each game played under the "pay for play" system.⁹⁶

Fellow USWNT player and union representative Megan Rapinoe, who was present for the collective bargaining agreement negotiations, had some thoughts.⁹⁷ Rapinoe explained that during the negotiations, "the men's contract was never offered to us, and certainly not the same amount of money" and, "to say we negotiated for a contract and that's what we agreed to, I think so many women can understand what that feeling is going into a negotiation, knowing that equal pay is not on the table."⁹⁸ These sentiments expose the realities underlying the negotiation, because one cannot negotiate for terms that they do not know are available.

89. Shivanshu Goswami & Prakhar Srivastava, *COLLECTIVE BARGAINING IN SPORTS: LEGAL REGULATIONS AND CHALLENGES*, DAILY GUARDIAN, <https://theguardian.com/collective-bargaining-in-sports-legal-regulations-and-challenges/> (last visited May 10, 2023).

90. Ken Schultz, *Judge's ruling against USWNT equal pay lawsuit based on 'appropriate application' of law*, OUTSPORTS (May 8, 2020, 5:00 AM), <https://www.outsports.com/2020/5/8/21251265/uswnt-equal-pay-lawsuit-us-soccer-court-attorney-legal-analysis>.

91. Catlin Murrar, *USWNT, USMNT pay gap explained: Comparing their U.S. Soccer contracts as both sides negotiate new CBAs*, ESPN (Feb. 10, 2022, 9:38 AM), <https://www.espn.com/soccer/united-states-usaw/story/4589310/uswntusmnt-pay-gap-explained-comparing-their-us-soccer-contracts-as-both-sides-negotiate-new-cbas>. The guaranteed salary structure is a pay structure in which players are given base salaries regardless of whether the player is playing in competitions, *id.* For the USWNT, rostered players are guaranteed a salary of 100,000a year, but players that are not included on that list can still make a salary of between \$3,250 -- \$4,500 a game, *id.*

92. *Id.* (the pay for play structure, is a pay structure where there is no guaranteed salary, and rather compensation is earned based on "call-ups, game appearances, and performance bonuses.").

93. Hays, *supra* note 51.

94. *Id.*

95. *Id.*

96. Schultz, *supra* note 90.

97. *Id.*

98. Alex Reimer, *Megan Rapinoe perfectly explains why judge got equal pay ruling wrong*, OUTSPORTS (May 4, 2020, 7:28 AM), <https://www.outsports.com/2020/5/4/21246309/megan-rapinoe-good-morning-america-interview-explains-why-equal-pay-ruling-is-wrong>.

C. Gender Inequity & Negotiation

Men typically achieve better agreements in a negotiation than women.⁹⁹ Several scientific studies and experiments have affirmed this finding.¹⁰⁰ Recently, a study conducted by Boston College has contributed to this body of research, finding that between young girls and boys, “gender differences in negotiation emerge in childhood,” with girls as young as eight years old “asking for less than boys when negotiating with a man.”¹⁰¹ This finding is especially significant, as it “mirrors the dynamics of the negotiation gap that persists between men and women in the workforce.”¹⁰² While the explanation for why this gender-based disparity takes place is still unknown, this finding gives meaning and support to the current issue of gender differences influencing negotiation outcomes.¹⁰³

Various explanations have been offered to account for the disparity between the negotiation outcomes of men and women. In negotiation, salary is one of the most negotiated subjects.¹⁰⁴ There are two realms of importance in understanding the differences between men and women in negotiating over wages: (1) the propensity of an individual to initiate a negotiation with an employer¹⁰⁵ and (2) the ability of the person to negotiate for the wages they want.¹⁰⁶

For the first characteristic, a seminal study conducted by Babcock and Laschever in 2003 revealed that, between recent male and female MBA graduates, female graduates were disproportionately less likely to negotiate their wages for their first job.¹⁰⁷ According to this study, 7% of women negotiated their wages, while 57% of men negotiated their wages, evidencing how men are eight times as likely to participate and initiate negotiations.¹⁰⁸ This is significant because the ability to initiate negotiations has a profound impact on overall compensation, as financial incentives that take the form of base salaries, raises, benefits, and promotions frequently depend on a person raising the issue and negotiating with their employer.¹⁰⁹ Therefore, given women’s lower propensity to negotiate for these financial incentives, men achieve higher wages and financial benefits.¹¹⁰ Asking why women have

99. Alain P. C. I. Hong & Per J. van der Wijst, *Women in Negotiation: Effects of Gender and Power on Negotiation Behavior*, 6 NEGOT. & CONFLICT MGMT. RSCH. 273, 283 (2013), <https://onlinelibrary.wiley.com/doi/pdf/10.1111/ncmr.12022>.

100. Maria Recalde & Lise Vesterlund, *GENDER DIFFERENCES IN NEGOTIATION AND POLICY FOR IMPROVEMENT*, 1–18 NAT’L BUREAU OF ECON. RSCH. (December 2020), https://www.nber.org/system/files/working_papers/w28183/w28183.pdf.

101. Boston College, *A gender gap in negotiation emerges between boys and girls as early as age eight*, SCI. DAILY (Apr. 1, 2021), <https://www.sciencedaily.com/releases/2021/04/210401112534.htm>.

102. *Id.*

103. Ed Hayward, *Seeds of gender salary gap sown early*, BOS. COLL. UNIV. COMM’N (Mar. 2021), <https://www.bc.edu/bc-web/bcnews/science-tech-and-health/psychology/study-probes-origins-of-gender-negotiation-gap.html>.

104. Kathy Gurchiek, *Study: Women Negotiate Pay When Given the Chance*, SOC’Y FOR HUM. RES. MGMT., <https://www.shrm.org/hr-today/news/hr-news/pages/more-professionals-are-negotiating-salaries-than-in-the-past.aspx> (May 10, 2019).

105. Francine D. Blau & Lawrence M. Kahn, *The Gender Wage Gap: Extent, Trends, and Explanations*, NAT’L BUREAU ECON. RSCH. 1, 40 (Jan. 2016), https://www.nber.org/system/files/working_papers/w21913/w21913.pdf.

106. Recalde & Vesterlund, *supra* note 100.

107. *Id.*

108. *Id.*

109. See Blau & Khan, *supra* note 105, at 40–41.

110. See *id.* at 40.

a lower propensity to negotiate is important. One reason to account for this disparity is that women face harsher treatment and higher social costs in comparison to men for bringing a negotiation.¹¹¹ An experiment conducted in 2005 found that male evaluators exceedingly penalized women instead of men for trying to increase their salaries through negotiation.¹¹² Further, this study discredits the belief that men always prefer to negotiate over women; instead, women are more reticent to initiate a negotiation when the evaluator is a male, and this poses the greatest risk to the woman.¹¹³

The second characteristic looks to a woman's ability to negotiate for the wages they want.¹¹⁴ Studies have produced conflicting results, finding that in some situations women obtain worse agreements than men, but in others there is no impact.¹¹⁵ Despite the lack of uniform scientific findings, a few factors are informative of the impact of gender on negotiation outcomes.¹¹⁶ Some of those factors include, "(1) whether there is significant ambiguity over negotiability and the bargaining range of a term; (2) whether individuals negotiate on behalf of someone else or themselves; (3) whether stereotypes are triggered during the negotiation; (4) and the gender of the evaluator in comparison."¹¹⁷

For factor (1), research shows that men are more likely to engage in a negotiation and refuse to settle for less than when there is ambiguity.¹¹⁸ Women, on the other hand, are less likely to initiate a negotiation and will settle for less when they lack information on whether salary is negotiable and the parameters of the bargaining range.¹¹⁹ For factor (2), women that represent themselves and their interest in a negotiation are judged more critically and reach worse outcomes than men, while women that negotiate for someone else's interest reach better outcomes.¹²⁰ For factor (3), stereotypes play a role in negotiation process; when women are perceived to deviate from traditional gender roles and norms, women face greater retaliation from the evaluators and achieve worse agreements than men.¹²¹ Lastly, for factor (4), the gender of the evaluator matters; women who negotiate with male evaluators receive worse negotiated outcomes than men.¹²²

111. Katrien Stevens & Stephen Whelan, *Negotiating the Gender Wage Gap*, 58 INDUS. RELS.: J. ECON. & SOC'Y 141, 143 (Jan. 16, 2019), <https://onlinelibrary-wiley-com.proxy.mul.missouri.edu/doi/10.1111/irel.12228>.

112. Hannah Riley Bowles et al., *Social incentives for gender differences in the propensity to initiate negotiations: Sometimes it does hurt to ask*, 103 ORG. BEHAV. & HUM. DECISION PROCESSES 84, 95 (2007), <https://www.sciencedirect-com.proxy.mul.missouri.edu/science/article/pii/S0749597806000884>.

113. *Id.* at 98.

114. Recalde & Vesterlund, *supra* note 100, at 4.

115. Stevens & Whelan, *supra* note 111, at 144.

116. Recalde & Vesterlund, *supra* note 100, at 4.

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. See Recalde & Vesterlund, *supra* note 100, at 4.

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D. The Gender Inequities Created by Negotiation Impacted the Outcome of the USWNT's Collective Bargaining Agreement of 2017.

When applying these factors to the USWNT negotiations with the USSF, the impact of gender on the negotiation outcomes becomes very pronounced. First and foremost, the USWNTPA is comprised of professional players on the USWNT. The union has two tiers, with the upper tier consisting of the executive collective bargaining agreement committee and the second tier consisting of voting members.¹²³ For both tiers, all the members are current rostered players on the USWNT; there are no professional negotiators.¹²⁴ As factor (2) indicated, women perform worse when representing themselves and their interests in a negotiation. For the USWNTPA, although the union represents interests of professional women athletes that are not part of the USWNTPA, the union and its collective bargaining members are primarily representing themselves and their own interests. The unique role and identity of the bargaining unit here is salient. Explanations for why this distinction occurs are that women face greater backlash when they negotiate for self-promotion than when they advocate for promoting others.¹²⁵ Further, in comparison to men, women “experience a relative lack of perceived deservedness for themselves,” which can account for agreeing to lower outcomes when negotiating, but when negotiating on behalf of others, women are more “responsive to the needs of others” and these needs motivate their social behavior and shape their social surroundings.¹²⁶

Additionally, as research indicated, women perform worse than men when there is ambiguity in a negotiation.¹²⁷ Studies found that where there is increased “structural ambiguity,” meaning that parties have less knowledge as to what is negotiable and the bargaining range is, women achieve worse negotiated agreements than men.¹²⁸ As Megan Rapinoe’s statements expressed earlier, the USWNTPA felt that ambiguity in the negotiations with the USSF.¹²⁹ For the USWNT, the player’s union did not have access to the actual terms of the USMNT contract and pay structure, and the lack of information likely influenced the USWNT to agree to a worse pay structure because they could not judge what a good or appropriate outcome was.

Lastly, as to factor (3), professional sports in and of themselves were historically male dominated, while women have been categorically excluded from participating.¹³⁰ While this exclusion is no longer true today, and women play sports recreationally, collegiately, and professionally, the underlying biases and cultural stigmas that traditionally operated to exclude women continue to marginalize them in

123. *Get to Know Our Players*, U.S. WOMEN’S NAT’L TEAM PLAYERS ASS’N, <https://uswntplayers.com/players/> (last visited May 10, 2023).

124. *Id.*

125. Hannah Riley Bowles et al., *Constraints and triggers: Situational mechanics of gender in negotiation*, 89 J. PERSONALITY & SOC. PSYCH. 1, 31 (2005), <https://dash.harvard.edu/bitstream/handle/1/38036097/Bowles%20Babcock%20McGinn%202005.pdf?sequence=1>.

126. *Id.* at 10-11.

127. *Id.* at 24.

128. *Id.* at 7, 24.

129. Reimer, *supra* note 98.

130. Kirsten Rasmussen et al., *Gender Marginalization in Sports Participation through Advertising: The Case of Nike*, 18 INT. J. ENV’T. RSCH & PUB. HEALTH, 1, 3 (2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8345737/>.

athletics today.¹³¹ As women, the USWNT players' participation in professional athletics already triggers stereotypes, because their identity as professional female athletes deviate from traditional gender norms.¹³² Soccer as a sport is historically a "male sport" that promotes "masculine traits and ideals" such as "competition, toughness, domination, and physical strength."¹³³ The USWNT have constantly battled these types of stereotypes and criticisms.¹³⁴ The USSF, as the employer for the USWNT, has used discriminatory stereotypes to justify paying the USWNT less than the USMNT.¹³⁵ The role of stereotypes as held by the USSF likely impacted the negotiations for equal pay with the USWNT.¹³⁶ The USWNT's ability to negotiate for equal pay and terms in their CBA likely encountered two types of stereotypes: firstly, stereotypes regarding women as athletes and the biological differences between men and women as evidence for differences in wages,¹³⁷ and secondly, stereotypes surrounding women in negotiations. For example, the USSF issued a statement chastising the USWNT for being "inconsiderate" and "aggressive" during mediation.¹³⁸ The pervasiveness of discriminatory stereotypes function to prevent the USWNT from reaching an agreement equal to the USMNT.

IV. ANALYSIS

The system is set up for women to fail. With the USWNT bargaining on an already unequal playing field, the marginally improved terms for each collective bargaining agreement cycle are not enough to bridge the pay gap to that of the men's professional sports teams' CBAs.

In negotiating for pay, women are less successful than men and reach lower negotiated salaries.¹³⁹ Scientific literature has offered various solutions to mitigate this problem. One such solution focuses on encouraging women to "negotiate more" and to "improve women's negotiation skills" in order to improve their overall negotiated outcomes.¹⁴⁰ However, this approach and recommendation has little evidence of success and in many cases can induce more harm than benefits.¹⁴¹ Rather, the better approach is the "fix the institution method."¹⁴² This approach aims to reform the underlying processes to prevent gender influenced outcomes from continuing.¹⁴³

In the context of the USWNT's collective bargaining process, fixing the institution involves reforming the negotiation process to remedy the information

131. *Id.*

132. *Id.* at 4.

133. *Id.*

134. Armour, *supra* note 64.

135. Kim Elssesser, *U.S. Soccer Says Women Don't Deserve Equal Pay Because They Have Less Skill*, FORBES (Mar. 11, 2020, 3:29 PM), <https://www.forbes.com/sites/kimelssesser/2020/03/11/us-soccer-says-women-dont-deserve-equal-pay-because-they-have-less-skill/?sh=1f275dc06bb0>.

136. *Id.*

137. *Id.*

138. Reuters Staff, *USWNT's mediation with USSF breaks down*, REUTERS (Aug. 14, 2019, 9:28 PM), <https://www.reuters.com/article/us-soccer-worldcup-uswnt-pay/uswnts-mediation-with-ussf-breaks-down-idUSKCN1V507J>.

139. Hong & Wijst, *supra* note 99, at 283.

140. *Id.* at 5–7.

141. *Id.* at 5.

142. *Id.* at 9.

143. Recalde & Vesterlund, *supra* note 100, at 9.

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asymmetry and power imbalances between the USSF and USWNT. As Megan Rapinoe alluded, the negotiations between the USWNTPA and the USSF were not conducted on equal footing.¹⁴⁴ The feelings she had of “going into a negotiation knowing equal pay is not on the table. Knowing anywhere close to your male counterparts is not even on the table,” are feelings commonly shared amongst many female athletes.¹⁴⁵ To garner a better understanding and appreciation of these sentiments, this author spoke with former professional soccer players Joanna Lohman¹⁴⁶ and Julianne Sitch.¹⁴⁷

Joanna Lohman was a part of the growth of women’s soccer in the U.S. as a professional soccer player from 2008 to 2019.¹⁴⁸ Joanna has played professionally in the United States, in Europe, and on behalf of the USWNT, where she made nine appearances in international games.¹⁴⁹ Throughout her 16-year career as a professional soccer player, Joanna encountered various challenges beginning at the very inception of her professional career. As a senior at Pennsylvania State University (Penn State), in anticipation of being drafted into the women’s soccer league (WUSA), Joanna was approached by the Penn State Men’s Soccer Coach while walking across the quad. He informed her that the league had folded.¹⁵⁰ While Joanna was able to play professional soccer overseas, her feeling of unpredictability and uncertainty persisted.¹⁵¹ After a few years, Joanna returned to play for the Washington Freedom in the Women’s Professional Soccer (WPS) league and later in the NWSL when the WPS folded.¹⁵²

As a professional soccer player, Joanna explained how she and so many other players were willing to put up with abysmal conditions in order to pursue her dreams.¹⁵³ Joanna said that resilience was the only option while she was being paid below minimum wage, tolerating abusive coaches,¹⁵⁴ and working multiple side jobs to make ends meet.¹⁵⁵ Joanna described how she was willing to put up with the poor conditions, low wages, and abusive coaches just to have a league to play in.¹⁵⁶

This author also spoke with former professional soccer player and current college soccer head coach Julianne Sitch.¹⁵⁷ Julianne, like Joanna, experienced the

144. Reimer, *supra* note 98.

145. Armour, *supra* note 64.

146. Telephone interview with Joanna Lohman, professional soccer player (Oct. 24, 2022).

147. Telephone interview with Julianne Sitch, professional soccer player (Nov. 11, 2022).

148. Telephone interview with Joanna Lohman, *supra* note 146.

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. Telephone interview with Joanna Lohman, *supra* note 146. Joanna Lohman played under Coaches, Paul Riley, Richie Burke, and Rory Dames, *id.* Coaches who were investigated and found to have engaged in serious physical and emotional misconduct and abuse of professional women soccer players, see *U.S. SOCCER RELEASES FULL FINDINGS AND RECOMMENDATIONS OF SALLY Q. YATES’ INDEPENDENT INVESTIGATION AND COMMITS TO MEANINGFUL CHANGES AND IMMEDIATE ACTIONS*, U.S. Soccer (Oct. 3, 2022), <https://www.ussoccer.com/stories/2022/10/sally-q-yates-investigation-findings>. Joanna discusses how as a player, there was a culture of silence in tolerating the abuse, in large part due to the lack of power she and everyone else had as players in comparison to the owners and coaches of the club, see telephone interview with Joanna Lohman, *supra* note 146.

155. Telephone interview with Joanna Lohman, *supra* note 146.

156. *Id.*

157. Phone interview with Julianne Sitch, *supra* note 147.

instability of soccer leagues as a budding professional player.¹⁵⁸ Julianne's first experience was in the Women's Professional Soccer (WPS) league, where she was paid \$25,000 per season (6 months) as a player.¹⁵⁹ In the WPS, the minimum salary allowed was \$25,000, and players also had their housing and meals covered.¹⁶⁰ For the next three years, Julianne played for different teams in the WPS. In 2012, while she was playing for the Chicago Red Stars, the league folded.¹⁶¹ When the National Women's Soccer League (NWSL) was enacted, Julianne returned to play for the Chicago Red Stars in the new league.¹⁶² As a professional soccer player in the NWSL, Julianne was paid \$5,000 per season (year), the minimum salary allowed.¹⁶³ Like Joanna, Julianne only had health insurance for the months in which her team was in season, which was less than six months out of the year.¹⁶⁴ Julianne was not just a professional athlete, but also working two other jobs: training clients as early as 6:00 A.M. and coaching club soccer at night. Julianne would work as many as three additional jobs outside of being a professional athlete just to make ends meet.¹⁶⁵ For the rest of Julianne's professional career, her salary increased only slightly above \$5,000.¹⁶⁶

Julianne described that, like so many other players of her generation, she fell into the trap of being grateful to have the opportunity to pursue her dream as a professional soccer player and having a league to compete in that she did not know she could ask for more.¹⁶⁷ Julianne explained that as a professional player, she never once negotiated her contract or negotiated for higher wages; instead, she was willing to accept less because she did not want to compromise her dream.¹⁶⁸

Julianne further explained that there was no players' union during her time as professional player in the NWSL and, although people would stand up and try to speak up for changes, these efforts were unsuccessful. In response to people speaking up for change, sport franchise organizations are threatening to take the league away.¹⁶⁹ From Julianne's perspective, the players union is essential to continue the fight and ensure players of the next generation have a place to play.¹⁷⁰

Now, as head coach for the University of Chicago Men's Soccer team, Julianne is shattering the glass ceiling by taking up a traditionally male position and even outcoaching the other male coaches.¹⁷¹ In her first season as head coach, Julianne has led the team in an undefeated regular season record of twenty wins, one tie, and

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. Phone interview with Julianne Sitch, *supra* note 147.

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.* Julianne shared an intriguing anecdote, where she and her father broke down how much more money, she could've made working at McDonalds for the same number of hours she worked as a professional athlete: discovering that she would have made substantially more money working at McDonalds, *id.*

169. Phone interview with Julianne Sitch, *supra* note 147.

170. *Id.*

171. David Waldstein, *A 'Landmark' as Women Will Coach Against Each Other in Men's Soccer*, N.Y. TIMES, <https://www.nytimes.com/2022/10/26/sports/soccer/nyu-chicago-women-soccer-coaches.html> (last updated Oct. 27, 2022).

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a final-four appearance at the NCAA Tournament that is still currently underway.¹⁷² When asked about these exceptional accomplishments, Julianne humbly explained that “women can be in these roles, and are qualified, and the more we can be in these roles, we are giving the vision for these girls to aspire to.”¹⁷³ It’s important for women to take up these positions “to empower young women to dream big and go after it.”¹⁷⁴ For Julianne, her experiences playing professional soccer were some of the best times she has ever had, and it is hard to reconcile these positive experiences with the disparities in wages and treatment she faced.¹⁷⁵

Julianne would later lead her team in an undefeated regular and post-season record of twenty-three wins, one tie, and a first-ever national championship.¹⁷⁶ Julianna’s leadership as head coach for the University for Chicago Men’s Soccer team can be said as none other than historic. In her first season as head coach, the Chicago men’s soccer team had its first ever undefeated season and brought home its first ever NCAA Division III trophy in winning the national championship.¹⁷⁷ Both of these landmark achievements for the University of Chicago, the Men’s Soccer team, and the players, is amplified by the further momentous impact Julianne has had in this year alone for women in sport leadership.¹⁷⁸

In 2021, a statistical report published by the Department of Education Equity in Athletics, found that “there were no women head coaches in men’s football, soccer, baseball or basketball across 1,000 NCAA institutions surveyed,” and furthermore “more than half of women’s teams were coached by men. (In women’s soccer specifically, 66% of head coaches were men.)”¹⁷⁹ With this championship win, Julianne solidified her legacy in history, as becoming the “first woman to coach an NCAA men’s soccer team to a national title.”¹⁸⁰ Julianne and her coaching staffs’ accomplishment didn’t go unnoticed, as Julianne and the University of Chicago Men’s Soccer Coaching staff was awarded the 2022 National Coaching Staff of the Year by the United Soccer Coaches organization, in addition to being named the University Athletic Association Coaching Staff of the Year.¹⁸¹

Context is fundamental to understanding the complexities behind why the USWNT agreed to the 2017 collective bargaining agreement with the USSF. As Julianne and Joanna explain, they had to be resilient in the face of adversity, instability, and ambiguity to pursue their dream of playing professional soccer and were willing to endure financial and circumstantial hardship to do so.¹⁸² The USMNT

172. 2022 Chicago Men’s Soccer Schedule, *2022 Chicago Men’s Soccer Schedule*, U. CHI. DEP’T ATHLETICS & RECREATION, <https://athletics.uchicago.edu/sports/msoc/2022-23/schedule>, (last visited Nov. 27, 2022).

173. *Id.*

174. Phone interview with Julianne Sitch, *supra* note 147.

175. *Id.*

176. 2022 Chicago Men’s Soccer Schedule, *supra* note 172.

177. Claire Kuwana, *How One coach, Her ‘Championship Mindset’ and an NCAA Men’s Soccer Program Made History*, SPORTS ILLUSTRATED, <https://www.si.com/soccer/2023/03/29/julianne-sitch-university-chicago-coach-ncaa-mens-soccer-history> (April 11, 2023).

178. *Id.*

179. *Id.*

180. *Id.*

181. *UChicago Men’s Soccer Earns USC National Coaching Staff of the Year*, U. CHI. DEP’T ATHLETICS & RECREATION, <https://athletics.uchicago.edu/sports/msoc/2022-23/releases/20221216ocx3pb> (April 11, 2023).

182. *Id.*; Phone interview with Joanna Lohman, *supra* note 146.

players union further exposed the massive power of the USSF over the USWNT.¹⁸³ The USMNT explained in a public statement that since the USSF controls the National Women's Soccer League (NWSL) in addition to the USWNT, the approaching start of the NWSL season “created tremendous pressure on the USWNT players to get a deal done, even if it was on completely unfair and discriminatory terms.”¹⁸⁴ Furthermore, the USMNT union points out that the USWNT, when “faced with a monopolist controlling their two primary potential employers and aware that a work stoppage could destroy the third effort at a women's professional soccer league in the United States,” the USMNT believe “the women had no reasonable alternative but to accept the 2017-2021 terms the Federation demanded.”¹⁸⁵

To summarize the information above, in the context of the 2017 CBA, it was extremely unlikely that USWNT would be able to secure an agreement that codified equal pay. There was significant ambiguity in the negotiations as to what pay structure or what wage numbers would guarantee the USWNT equal pay.¹⁸⁶ The USWNT negotiation triggered various adverse stereotypes held and utilized by the USSF. Women are penalized for trying to increase their salary by negotiation. The USSF put immense pressure on the USWNT to finalize the 2017 CBA before the NWSL season began, preying upon the genuine fears of the union for another potential collapse of their league. Lastly, Joanna and Julianne's experiences are very illuminative. Professional women soccer players were so resilient and *willing* to put up with discriminatory circumstances to pursue their dreams in the face of adversity. The USSF likely knew that its female players lack alternative domestic playing opportunities and experience greater employment uncertainty and took advantage of these vulnerabilities during negotiations.

To address the pay-gap, it is imperative that pay transparency requirements be implemented among all professional leagues, for both women and men.¹⁸⁷ A prominent criticism connotes ADR as “eroding the public's access to information” that is highly valuable to the public and in their interest to know.¹⁸⁸ Pay transparency is but one of the types of information, yet is one of the most imperative, as it results in significant gender and race disparities in wages. The secrecy surrounding wages and the salary range creates an information asymmetry at the bargaining table,¹⁸⁹ as the “employer” party has an advantage over the “employee” party in having superior information they can use to achieve a better, cheaper “deal” at the table.¹⁹⁰ The lack of information allows the bargaining party to dictate the terms of the

183. McCauley, *supra* note 34; *STATEMENT ABOUT THE USWNT 2017-2021 CBA*, U.S. NAT'L SOCCER TEAM PLAYERS ASS'N, <https://ussoccerplayers.com/2020/02/statement-about-the-uswnt-2017-2021-cba.html> (Feb. 12, 2020).

184. McCauley, *supra* note 34; *STATEMENT ABOUT THE USWNT 2017-2021 CBA*, U.S. NAT'L SOCCER TEAM PLAYERS ASS'N, <https://ussoccerplayers.com/2020/02/statement-about-the-uswnt-2017-2021-cba.html> (Feb. 12, 2020).

185. *STATEMENT ABOUT THE USWNT 2017-2021 CBA*, *supra* note 183.

186. Reimer, *supra* note 98.

187. Elsesser, *supra* note 135.

188. Stephanie Brenowitz, *Deadly Secrecy: The Erosion of Public Information Under Private Justice*, 19 OHIO ST. J. DIS. RES. 679, 685 (2004).

189. Jamal Aziz, *The Wave of Pay Transparency Laws: Why We Should Discuss Our Salaries*, LOYOLA U. CHI. SCH. L. (Feb. 9, 2022), <http://blogs.luc.edu/compliance/?p=4453>.

190. David Burkus, *Why Do We Keep Salaries Secret?* FORBES (FEB. 2, 2016, 4:03 PM), <https://www.forbes.com/sites/davidburkus/2016/02/02/why-do-we-keep-salaries-secret/?sh=6398e4ba4df8>.

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negotiation and take advantage of the other party's lack of knowledge of the true bargaining range, especially as it relates to salary.¹⁹¹

For the USWNT, not only has the USSF consistently engaged in a concerted effort to limit the information available to the USWNT, but also limit the information to the USMNT, in the negotiations over each team's collective bargaining agreements.¹⁹² The USSF's wealth of information and ability to use this information to their advantage in negotiations has allowed the USSF to safeguard the wealth produced by the USWNT and keep this revenue for their own interests.¹⁹³ Furthermore, the ambiguity over salary that the USSF injected into the collective bargaining negotiations with the USWNT in 2017 allowed for the USSF to once again get away with paying the USWNT less than what they should have been paid, given the USWNT were purposely kept unaware of the true extent of the wages they could bargain for.¹⁹⁴ The most important solution to address this problem is mandating pay transparency for collective bargaining negotiations. This would likely involve making available all information regarding the bargaining range for wages from the top salaried player to the bottom, as well as all other revenue reports. This will help to eliminate some of the shroud of ambiguity and allow player unions and players themselves to effectively bargain for equal pay. Outside of pay transparency, transparency as to other conditions and terms needs to be made available to both men and women bargaining units. Another solution is to reform the overall negotiation process for unions in engaging with their employer. This reform should formalize and standardize the negotiation process to dissolve any other ambiguous externalities that may negatively impact women's professional unions. An idea to add to the negotiation would be an option for the inclusion of a mediator to facilitate the collective bargaining negotiations.

As Julianne discussed earlier, players coming together and unionizing in their league is essential for future substantive change. While many of the leagues have player unions, a good percentage of women's professional sports are not yet unionized. Incorporating a collective bargaining unit for each league is an essential step in addressing pay inequality and other inequalities present.

For Joanna, the needle is moving today, and it is starting at the top.¹⁹⁵ With professional NWSL clubs being bought and managed by a consortium of ownership, and women like Natalie Portman investing in women's soccer, the game is growing, and the resources are improving.¹⁹⁶ This past season, Joanna describes how records have been shattered. For example, during the week of October 16th to October 24th, the four largest crowds ever came to the NWSL playoff games.¹⁹⁷ More people are coming to games, more fans are becoming involved, and media companies are finally recognizing the potential they missed out on and are streaming games on primetime.¹⁹⁸

191. Bowles et al., *supra* note 125.

192. *STATEMENT ABOUT THE USWNT 2017-2021 CBA*, *supra* note 183.

193. *Id.*

194. *Id.*

195. Phone interview with Joanna Lohman, *supra* note 146.

196. *Id.*

197. Seth Vertelney, *The four biggest NWSL playoff crowds ever all happened within a week*, PRO SOCCER WIRE (Oct. 24, 2022, 11:24 AM), <https://prosoccerwire.usatoday.com/2022/10/24/nwsl-playoff-attendance-record-2022/>.

198. Phone interview with Joanna Lohman, *supra* note 146.

V. CONCLUSION

Megan Rapinoe said, “I’ve been devalued, I’ve been disrespected and dismissed because I am a woman. I’ve been told that I don’t deserve any more than less because I am a woman. Despite all the wins, I’m still paid less than men who do the same job that I do.”¹⁹⁹ Megan Rapinoe’s sentiments and the USWNT’s campaign for equal pay have touched the hearts of millions across the globe, awakening into consciousness an all too apparent truth; men are culturally valued higher than women in sports.²⁰⁰ Recently, the Canadian Women’s National Soccer Team has picked up the mantle in the fight for equal pay.²⁰¹ The Canadian players cite Canada Soccer Federation’s nonpayment of compensation for the 2022 year, cuts to their budget, lack of support, and dismissal of pay equity proposal as reasons the national team went on strike.²⁰² However, this protest was short lived, as the Canada Soccer Federation threatened the players instead of addressing the players concerns.²⁰³ The players explained that Canada Soccer “told us that if we did not return to work — and did not commit today to playing in Thursday’s game against the United States — they would not only take legal action to force us back to the pitch, but would consider taking steps to collect what could be millions of dollars in damages from our Players’ Association and from each of the individual players currently in camp.”²⁰⁴ The Canadian Men’s National Team has joined in the fight to push for pay equality as well.²⁰⁵ With the threat of litigation looming over the Canadian Women’s Soccer teams head, the team agreed to play in the SheBelieves Cup, but signified to the world their plight by wearing “T-shirts that said “Enough is Enough” during the national anthem,” and joining the US Team to create a circle of solidarity before the start of the game.²⁰⁶ A few weeks later, with the resignation of Canada Soccer President, and right before Canadian Women Soccer leaders were to testify before the House of Commons, Canada Soccer announced an interim agreement with the Women’s National team, of a collective bargaining agreement that would guarantee equal pay between the Men’s and Women’s team.²⁰⁷ As the final agreement is still yet to be reached, and negotiations continue in the background, the future is promising for Canada’s Women’s National Soccer Team equal pay movement.²⁰⁸

199. Salvador, *supra* note 1.

200. Amy J. C. Cuddy et al., *Men as Cultural Ideals: How Culture Shapes Gender Stereotypes*, 1-24 (Harv. Bus. Sch., Working Paper No. 10-097, 2010), https://www.hbs.edu/ris/Publication%20Files/10-097_0b862da9-45e9-40f2-b59d-796f7fc88276.pdf.

201. Ryan Morik, *Canadian women’s soccer team on strike citing equal pay issues, budget cuts*, N.Y. POST (Feb. 22, 2023, 3:02 PM), <http://nypost.com/2023/02/11/canadian-womens-soccer-team-on-strike-citing-equal-pay-issues/>.

202. *Id.*

203. Neil Davidson, *Canadian women end strike, citing threat of legal action from Canada Soccer*, CBC (Feb. 11, 2023, 10:27 AM) <https://www.cbc.ca/sports/soccer/canada-soccer-women-negotiations-pay-equity-1.6745387>.

204. *Id.*

205. *Id.* (leading women professional soccer player Christine Sinclair notes that both the men’s and women’s teams “are upset at budget cuts to their programs this year — and what they say is lack of financial transparency by Canada Soccer.”)

206. Anne M. Peterson, *Canadian women soccer players testify to distrust of leaders*, ASSOCIATED PRESS (Mar. 9, 2023), <https://apnews.com/article/canada-womens-soccer-equal-pay-dispute-61ee76a5ee947437b87f1fbcdf79d096>.

207. *Id.*

208. *Id.*

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As professional women athletes, professional sports teams, and country national teams follow in the United States footsteps, to advocate for equal pay, it becomes imperative to change and fix our institutions that perpetuate pay inequity. At the end of the day, “it isn’t what we say or think that defines us, but what we do.”²⁰⁹ The campaign for pay equality does not end here and, in the inspirational words of Julianne, “be grateful, but continue to fight and push for more. Dream big and go after your dreams.”²¹⁰

209. *Jane Austen Quotes*, GOODREADS, <https://www.goodreads.com/quotes/118901-it-isn-t-what-we-say-or-think-that-defines-us> (last visited May 9, 2023).

210. Phone interview with Julianne Sitch, *supra* note 147.