

## **Elite Swimmers, Pro Swimming League, Sue FINA Over Antitrust Violations**

*Lawsuit alleges FINA leverages its market dominance to extract—and largely keep for itself—enormous revenues from the labor of the world’s best swimmers*

December 7, 2018

SAN FRANCISCO—A pair of top U.S. swimmers and a top Hungarian swimmer filed a class-action lawsuit today against Fédération Internationale de Natation (“FINA”), the international organization that controls access to the Olympic Games and World Championships, over its threats to ban swimmers from the Olympic Games if they compete in events that FINA does not pre-approve.

On behalf of elite swimmers around the world, the plaintiffs charge FINA with unlawfully restraining competition in the market for top-tier international swimming competitions. Their lawsuit follows FINA’s crackdown against a two-day competition that a new professional league planned to sponsor in Turin, Italy, in late December 2018. Organizers were forced to cancel that meet after FINA said it would ban from the Olympics any swimmer who swam in it. As result, swimmers lost the chance to compete for more prize money and were blocked from earning appearance fees.

The popularity of competitive swimming has soared over the last decade. Its athletes believe a professional league that will compensate its best athletes and better reward them for a lifetime’s worth of hard training and sacrifice is long overdue.

Tom Shields, an Olympic gold medalist who, along with FINA World Champion swimmer Michael Andrew and Olympic gold medalist Katinka Hosszú, is a lead plaintiff in the proposed class-action lawsuit, said he joined the suit because he has dreamed for years of seeing the sport expand to include a professional league. “We are closer now than ever before to making that dream come true,” he said. “But that dream is being blocked by FINA.”

In a simultaneous filing, the International Swimming League (“ISL”) separately sued FINA for its anticompetitive conduct. The ISL was responsible for coordinating the Turin event that FINA blocked, and it has plans to roll out a series of matches in 2019 featuring approximately 300 of the world’s best swimmers.

“Governing bodies and commercial enterprise co-exist in other sports and even work together for the betterment of the sport. But FINA’s priorities just are not aligned with those of the swimmers, and as a result the sport has not been allowed to evolve with the times,” ISL CEO Ali Khan said. “The ISL deserves a chance to offer

swimmers more opportunity to compete and earn a living, and the swimmers deserve not to be shackled to FINA's whim. And the laws here and in Europe require that ISL has that chance."

Driven in significant part by swimming's growing popularity, FINA earned about \$118 million in gross revenues from all aquatics events in 2016 and 2017. It paid only 12.5 percent of that amount to athletes in the form of prize money.

"Very few select swimmers make a living swimming, while FINA is making a killing," said Andrew, who in 2013 became the youngest swimmer to go pro. "FINA's main consideration is not for swimmers. FINA set our sport back into the dark ages by blocking ISL's request. They can co-exist."

To prevent swimmers from participating in non-FINA events, and thereby maintain its control over swimmer-derived revenue, FINA recently rewrote its rules so that it could ban swimmers from competing in events even when they did so in their individual capacity or as part of a team that is not affiliated with any FINA-member federation. FINA undertook that action only after the ISL refused to pay FINA a \$50 million fee that FINA had demanded as the price for FINA's approval of ISL events.

Through that and other measures, FINA effectively makes elite swimmers its world-wide indentured servants who can compete only in FINA events and who can earn only what FINA is willing to pay. FINA's actions leading to the forced cancellation of the ISL events—initially to be in Las Vegas but which FINA pressure moved to Italy—have been met with universal international condemnation from swimmers. Those actions are now being met with forceful legal challenges, the first to be pursued against FINA's iron-fisted grip over swimmers' opportunities.

"There is simply no justification for FINA's efforts to prevent ISL from expanding opportunities for both swimmers and their millions of fans around the world," ISL's Khan said.

Neither of the two lawsuits challenge FINA's authority to operate as the gatekeeper of the Olympic Games. Rather, they allege that FINA unlawfully wields that power to prohibit swimmers from participating in non-FINA events or in any events that FINA does not formally approve.

Katinka Hosszú, a three-time Olympic gold medalist and seven-time World Champion, said the lawsuit instead seeks to allow swimmers a fighting chance to earn their due. "My passion has always been to push swimming in the direction where swimmers are partners of the governing body, not just muppets," she said. "ISL takes swimmers seriously, not like FINA."

The lawsuits state claims for violations of the Sherman Act, for tortious interference with contractual relations or prospective economic relations, for collusion to unreasonably restrict competition, and for monopoly. The lawsuits seek injunctive relief and monetary damages for the named plaintiffs and for all class members.

The class-action lawsuit is *Shields, et al. v. FINA*, Case No. 18-cv-07393. ISL's lawsuit is *International Swimming League, Ltd. v. FINA*, Case No. 18-cv-07394. Both suits are pending in the U.S. District Court for the Northern District of California.

#### Source/Contacts

Neil Goteiner  
Farella Braun + Martel LLP  
235 Montgomery Street, 17th Floor  
San Francisco, California 94104  
Telephone: (415) 954-4400  
ngoteiner@fbm.com

Eric B. Fastiff  
Lieff Cabraser Heimann & Bernstein, LLP  
275 Battery Street, 29th Floor  
San Francisco, CA 94111  
Telephone: (415) 956-1000  
efastiff@lchb.com