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U.S. Women's Soccer Scores US\$24-Million Goal

By Corey Fletcher and Jessie Lewis

On February 22, 2022, the United States Women's National Soccer Team ("Women's National Team") and the country's top governing body for professional soccer, the United States Soccer Federation ("USSF"), agreed to a settlement of US\$24 million in favour of the Women's National Team, putting an end to a three-year-long gender discrimination lawsuit.

To understand this settlement, let's review the past three years.

In June 2019, the Women's National Team scored two goals in the second half to beat the Netherlands and win the FIFA Women's World Cup in France. While the result was an amazing feat in and of itself, what was arguably more incredible was the chant of "Equal pay! Equal pay!" that erupted from the stadium's nearly 58,000 fans. This public display of support was a stark call to action stemming from the fact that the FIFA World Cup winners continued to be paid significantly less than their male counterparts.

For context, the Women's National Team has won four World Cup titles, while the men have never advanced past the quarterfinals in the modern-era World Cup. In fact, the best-ever showing for the men's team was a semifinal performance at the inaugural 1930 World Cup in Uruguay. Despite this, *Forbes* magazine noted that the maximum amount a Women's National Team player could earn if the team won the World Cup was about US\$261,000 per player. In comparison, an equally or less talented Men's National Team player could earn more than US\$1.1 million if his team won.

While the formal legal proceedings around this discrimination gained international attention following the Women's National Team's World Cup victory in June 2019, 28 of the Women's National Team players had already filed the gender discrimination lawsuit against the USSF on March 8, 2019. The lawsuit accused the USSF of, among other things, consistently paying the players on the Women's National Team lower salaries - violating the *Equal Pay Act*- and subjecting these players to more dangerous playing conditions compared to the Men's National Team. The players argued that the terms of the Collective Bargaining Agreement ("CBA") "establishes as a matter of undisputed fact that the USSF paid the players at a rate less than the men's national team." Namely, the players focused on the fact that their CBA provided for lower bonuses than the men for friendly games, World Cup-related matches and other tournaments. Ultimately, the players named in the lawsuit described the USSF's practices as "institutionalized gender discrimination" that had existed for years.

As its defence, the USSF noted that although the salaries were lower for the Women's National Team, they received a greater overall compensation and a greater average per-game basis than the men. The USSF also argued that the Women's National Team had rejected being paid under the same CBA as the men throughout its negotiation history and cannot base its analysis on what they would have made pursuant to the terms of the men's CBA.

In May 2020, Judge R. Gary Klausner rejected the claim that the Women's National Team players had been underpaid. This decision was based on the fact that the players on the Women's National Team had agreed to a salary model payment structure, while the men were on a pay-for-play model. Klausner sided with the USSF, noting that "the Plaintiffs cannot now retroactively deem their CBA worse than the [terms of the men's national team's] CBA by reference to what they *would have made* had they been paid under the men's national team pay-to-play structure when they themselves rejected such a structure." However, Judge Klausner did rule that the players' claims of unequal treatment in terms of travel, medical staff and training equipment could advance. He found that the USSF did not adequately address the alleged discrimination in respect to these elements, and that their arguments were too "implausible". For example, in response to the Women's National Team assertion that they received fewer chartered flights, the USSF argued that the men's team required a greater number of chartered flights in order to establish a

competitive edge against their opponents in an effort to offset the men's national team's unsuccessful record. The argument being that the more successful Women's National Team did not need this sort of *additional* competitive edge. Notwithstanding this half victory, in July 2021, the Women's National Team players named in the suit appealed the portion of Judge Klausner's decision concerning the unequal pay to the Ninth Circuit Panel.

On February 22, 2022, the Women's National Team and the USSF agreed to a settlement amount of US\$22 million to be distributed to the players named in the lawsuit in a manner proposed and approved by the Women's National Team and the District Court. The settlement also provided for an additional US\$2 million to be held in an account that the Women's National Team players named in the lawsuit can request allotments from at any time, to be used in their post-career goals and charitable efforts related to women's and girls' soccer. In addition, the settlement requires that the Women's National Team agrees to a new collective bargaining agreement and it be ratified by the players.

While this is a *kick in the right direction*, this will not be the last time we hear calls to action for pay equity in sports. As then-U.S. co-captain Megan Rapinoe put it, "this is going to be one of those incredible moments that we look back on and say the game changed forever... There is no justice unless this [pay inequity] never happens again."

Authors



Corey Fletcher
Student-at-Law
T 416.863.1500



Jessie Lewis
Associate
T 647.426.2318
jlewis@airdberlis.com

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