

## How World Aquatics Lost An Antitrust Case, But Owed Only \$1

By Bryan Koenig

*Law360 (March 13, 2026, 3:05 PM EDT)* -- World Aquatics, swimming's international governing body, faced a \$40 million damages claim from an upstart swimming league that could have been tripled under U.S. antitrust law, but ended up largely off the hook after a nominal \$1 January jury verdict.

The trick to avoiding a potentially catastrophic damages award, according to World Aquatics' lawyers with Latham & Watkins LLP, was in recognizing early that the fight should not be over their client's liability but over International Swimming League's own failures, and convincing the jury that any alleged boycott only could have stopped ISL from hosting swimming meets for a brief few months.

"My opening focused on the short period of time in 2018, basically the period from May to December, when there was a dispute. We made clear that was all resolved by early 2019 and then ISL was able to go forward and basically put on three full seasons of events, 38 events in total," said Latham's Christopher S. Yates. "Our core theme was that [ISL] failed on its own at the end of the day. It had a full and fair chance to succeed in the marketplace and then fail."

In its suit, ISL claimed World Aquatics barred swimmers and national federations from competing in meets other than its own. The league sought more than \$40 million in damages — which could have been trebled under antitrust law — stemming from lost profits, an amount World Aquatics had argued was derived "from a wholly speculative lost sponsorship value of over \$59 million."

World Aquatics' lawyers told Law360 in an interview that their case also focused heavily on the fact that, in Yates' words, there's "not a lot of money to be made in swimming."

For instance, he said the U.S. national governing body, USA Swimming, has never made money in the events it hosts. And he said the legal team representing World Aquatics, formerly known as FINA, explained to the jury that the costs of swimming competitions were made worse by ISL's shortcomings in people, experience and expertise.

According to the Latham team, the shifted focus helped take the heat off what Yates called "bad emails" from 2018 and early 2019, under a prior administration at World Aquatics, that exposed the body to liability.

"That's kind of how we, I think, ultimately effectively teed up the case for the jury, focusing a lot more time and effort on the witnesses related to damages. And in many ways, acknowledging but minimizing the stuff related to liability," said Latham's Aaron T. Chiu. "That ultimately worked out for us in the end,

and I think strategically is how we approached kind of teeing up the case that was to be tried against ISL. And ultimately, as the trial progressed, seeing how the evidence came in, we pivoted."

Yates said the Latham attorneys were able to undermine ISL's case so well, including in cross-examination, that they opted not to call World Aquatics' damages expert at all, preferring to send the case to the jury as quickly as possible — jurors began deliberations on Jan. 22 and rendered their verdict the next day.

Chiu called the decision not to call the damages expert in whom the defense had invested so much an "interesting" but "fraught choice."

"At that point you're not sure whether you're leaving something on the table," he said. But the Latham team was so confident in its cross-examinations that it didn't want to risk "breath[ing] some life or legitimacy into what ISL is claiming for damages" by calling its expert.

"It's a little unusual to get to that point and feel confident enough to pull your own expert, but it was just kind of one of those gametime decisions," Chiu said.

World Aquatics' executive director, Brent Nowicki, similarly credited the outcome to the change in focus.

"We shifted the narrative to emphasize to the jury the short-term nature of the dispute. And we focused on highlighting to the jury the significant market hurdles faced by professional swimming, drawing on testimony from our witnesses, ISL's own witnesses and industry experts," Nowicki said in a statement.

"This strategic pivot allowed us to demonstrate that ISL's claimed difficulties and damages stemmed from its own issues and the realities of the market, and not from World Aquatics' actions. The jury's verdict reflected that this approach ultimately resonated," he added.

Underscoring World Aquatics' strategy, Yates said, were the comments of the jurors after U.S. District Judge Jacqueline Scott Corley encouraged them to speak to the parties.

"And one of the things that became clear was that they just didn't believe the ISL financials," Yates said. "I think at the end of the day, they just didn't believe that the ISL had the experience, the expertise, or had actually suffered the damages they claimed to have suffered."

Despite the minimal damages award, jurors in their Jan. 23 verdict sided with ISL on nine of 11 questions on the verdict form, finding the league proved that World Aquatics and one or more of its member federations refused to deal with ISL pursuant to an agreement to boycott ISL's events. It also found that ISL proved that the agreement cut off its access to a "supply, facility or market necessary to compete" and that ISL was injured as a result, an injury that antitrust laws are intended to prevent.

The only things ISL didn't prove were that the agreement to boycott had no purpose other than "disadvantaging" the league and that the refusal to deal "was reasonably necessary to achieve competitive benefits," the jury decided.

The verdict form didn't explain how the \$1 damages award was calculated.

ISL spun the outcome as a victory in a January statement that made no mention of the damages award.

Instead, it focused on the jury's findings that World Aquatics violated U.S. antitrust law "using illegal, anti-competitive tactics to curtail" the upstart's development. The verdict, it said, "ensures FINA's conduct cannot be repeated in future." That could include when the league makes its promised future "relaunch."

"The purpose of ISL bringing these proceedings against FINA was to allow it to compete on an even playing field without unlawful interference and disruption," the league said. "ISL has always supported athlete choice by creating more career opportunities for swimmers, while helping grow the sport's global audience through innovative new formats which engaged viewers."

It remains unclear what if any plans ISL has to continue fighting World Aquatics in court. The parties asked in late January that Judge Corley hold off on entering final judgment until they've "conferred and, if possible, agreed on further orders to be submitted to and entered by the court." In a stipulation Judge Corley agreed to Jan. 29, the parties said they'll follow up by March 20. In the meantime, they agreed "to refrain from submitting any further motions to the court during the pendency of this stipulation," including for judgment, costs or a new trial.

Left unmentioned in ISL's statement was a deal World Aquatics had previously struck with swimmers pursuing a parallel case. Under that settlement, World Aquatics agreed to pay \$4.63 million to settle claims that it barred swimmers from competing in events under the threat of suspension, jeopardizing athletes' ability to participate in Olympic and World Championship events.

The settlement with swimmers also bars World Aquatics from enforcing a rule that blocked the athletes from competing in independent events. Nor, under that deal, can World Aquatics restrict independent swimming events, and it must recognize alternative events.

According to the Latham team, the swimmers' deal was crucial for ISL's case, because it made permanent a 2019 change to World Aquatics' rules and negated the need for further resolution of the antitrust claims.

"The reality is that Judge Corley made pretty clear on the record that she thought that this Swiss entity suing a Swiss international federation had taken up enough time of the U.S. courts and that she thought that the injunction in the swimmer case ... really takes care of everything," Yates said.

Chiu said the swimmers' deal also helped by ensuring World Aquatics wouldn't have to face the two lawsuits together.

"As you can imagine, the dynamic of that before a jury would have been, I think, a lot tougher for us," Chiu conceded. "Heading into the trial against ISL, I think those sorts of headwinds and us being able to kind of resolve the swimmer side of things also set us up to really crystallize this as really a case in which ISL was seeking damages that really weren't justified."

In addition, Yates said the swimmers' settlement was important on its own for an organization largely run by officials who are themselves former athletes. "The hardest part of this case for our client was just tense relationships with swimmers," he said.

"Having a dispute with athletes was never what World Aquatics wanted," Yates said.

ISL filed its suit in 2018. Judge Corley initially granted summary judgment in World Aquatics' favor, but

the Ninth Circuit overturned that ruling in 2024.

Yates called the Ninth Circuit's revival "particularly challenging" because it effectively allowed ISL to proceed on claims that World Aquatics' boycott amounted to a per se antitrust violation, taking away its ability to argue the tournament restrictions were otherwise justified, or that the defendants' market power was watered down by wider competition. That left minimizing damages, and pointing out that among ISL's failings is an outstanding \$7 million still owed to its swimmers.

"We sort of tailored our crosses to focus on things like that, the lack of believability of their financial statements, the fact that they still have not paid the swimmers everything they were promised and owed from the 2021 season," Yates said.

ISL is represented by William A. Isaacson, Meredith R. Dearborn and Agbeko Petty of Dunn Isaacson Rhee LLP.

World Aquatics is represented by Christopher S. Yates, Aaron T. Chiu and Sean M. Berkowitz of Latham & Watkins LLP.

The case is International Swimming League Ltd. v. World Aquatics, case number 3:18-cv-07394, in the U.S. District Court for the Northern District of California.

--Additional reporting by Hailey Konnath, Elaine Briseño, Matthew Perlman and David Steele. Editing by Marygrace Anderson.