

Sports Litigation Alert

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Sports Lawyers Association Panel Explores Stadium Leases, Licenses and Financing

By **Jarett L. Warner**

Jeffrey B. Gewirtz, Esq., Senior Vice President & General Counsel for NETS Basketball/Brooklyn Sports & Entertainment, moderated a panel discussion at the Sports Lawyers Association Conference in Phoenix, Arizona last month that focused on the negotiation of stadium and arena leases, concession agreements and facility financing. As explained by Mr. Gewirtz during his opening remarks, the panel was designed to discuss the evolution of a sports venue, from the initial financing to food service elements.

Elizabeth M. Columbo, Esq., an attorney at Nixon Peabody, whose practice includes the intricacies of stadium finances, spoke about the various ways in which a stadium can obtain financing. This includes municipal bonds and the manner in which some professional sports teams received tax exempt financing.

The latter, called pilot bond financing, centers on the municipality taking ownership of the facility, then leases it to a private entity, typically the sports team, which makes rent payments in lieu of taxes.

She also discussed how creditors are increasingly requiring the teams to set aside reserves in case of a lockout or strike and sign non-relocation agreements that include a significant penalty in the event an owner decides to move the team.

Richard L. Brand, Esq., an attorney at Arendt Fox, whose practice focuses in part on negotiation of stadium licensing agreements, compared a sports stadium's licensing agreement to a shopping center filling its space with anchor and other tenants. He emphasized the need for the team to obtain enough contractually obligated

contracts to satisfy the lenders. The sporting team, itself, is the anchor tenant. The other tenants include agreements for the luxury suites, sponsorship agreements and premium seating rentals.

Emily N. Roisman, Esq., Vice President and Corporate Counsel for Feld Entertainment (whose productions include Ringling Bros. Barnum & Bailey Circus and Disney on Ice), discussed how her focus is not on entering into a lease agreement for a leasehold interest in a premises but rather a license agreement to allow her company's production to proceed at a particular venue. Although a stadium or arena typically provides the personnel to operate the venue (i.e., vendors, security, maintenance), her company is responsible for what occurs on stage. A critical aspect to the license agreements are the insurance and indemnification provisions, which make both the venue and her company responsible only for its own negligence.

Michael Perlberg, Esq., Senior Vice President and General Counsel for Levy Restaurants, spoke about the different types of concession agreements entered into at sporting venues. He distinguished the agreements where the vendor is paid a management agreement by the venue to where the vendor pays a percentage of the concessions to the venue. The decision as to the type of agreement entered into depends largely upon whether the venue wants to play a role in the day-to-day control of the concessions. One interesting point made was that the vendor typically holds the liquor license, making it more difficult for the sporting venue or team to terminate a concession contract.



Jarett L. Warner concentrates his practice in defending sports and recreational venues and operators, construction companies and premises owners and managers in personal injury actions.

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