



SPORTS LAW UPDATE

A newsletter from the
Sports Law Group
at Thompson Coburn LLP

THOMPSON COBURN LLP

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- 1. Several pro teams are eyeing possible stadium replacements or renovations this year, including the St. Louis Rams and the Minnesota Vikings. What are some of the major stadium negotiation issues, either for a franchise looking for better space or a city that wants to keep its team?**

The real issue becomes what is the life span of a stadium. Is it 20 years or 50 years? There doesn't seem to be a definitive answer, but what's clear is that the technology, design and footprints for stadiums and arenas are improving and growing each year. What appeared to be a state-of-the-art facility one day becomes old and tired as the next wave of buildings come online.

Regardless, arenas, ballparks or stadiums are critical revenue drivers for a team and its owners, and comfort and amenities that increase revenue must be addressed. The at-home television experience has improved so much that teams must make a trip to its venue worth the consumer's time and effort. This means convenience getting in and out of stadium — including parking proximity and public transportation — great concession and merchandise choices, comfortable seats, adequate space to move around, and reliable technology such as WiFi, so that while even at the game, fans have access to information and outside communication.

The obvious issue in this entire discussion is how are the renovations or constructions funded and by whom? The recent trend has been for a private-public partnership. This type of arrangement requires a healthy relationship between local and state government entities and the team. Communication and a clear understanding of the common goal are critical to a successful undertaking. There must be a win-win approach to this partnership if any progress is to be made and if teams want to avoid constant relocation.

- 2. For an up-and-coming athlete like Knicks point guard Jeremy Lin, what are the most important considerations as he starts weighing possible endorsement deals? How can he best harness "Linsanity" for business purposes?**

The simple answer is to continue to play well and help the Knicks win. In reality, that's the No. 1 critical component to maintaining commercial endorsement appeal for an athlete and/or a team.

However, Lin is in a very unique position. He's in New York. He plays for a well-known sports franchise. And he has loads of personal appeal as an Asian-American, Harvard-educated NBA player. All those elements make him special, and make him a one-of-a-kind endorser.

The most successful athletic endorsers are selective in the products they choose to endorse and mindful of the image they are trying to project in their product selection. Although Lin is playing in New York, his appeal has spread way outside of the New York market, and he has the ability to translate this appeal into national endorsement deals. Lin's sudden emergence on the athletic scene and, consequently, on a worldwide stage, creates an immediate opportunity for him to establish commercial relationships. Selectivity is important, but striking while the iron is hot cannot be underestimated.

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3. The University of North Dakota is at a standstill regarding its controversial “Fighting Sioux” nickname and logo. As university sports officials struggle with possible legislative changes to their nickname, what are some legal issues that could crop up for the school in regard to merchandising contracts or the use of their trademark?

The first issue is that merchandise manufacturers will be looking for substantial indemnification protection for producing items with the controversial logo or nickname. Another bone of contention is the risk and cost associated with creating a backlog of inventory that loses commercial value if the nickname and/or logo undergoes another change.

Another issue may be the potential for trademark abandonment. When a trademark is not used for three or more years, or when the mark is deliberately discontinued, it can be considered abandoned. Whatever trademark rights have built up in that mark could be lost, and outside parties could gain intervening rights to the trademark.

4. What are some of the major legal lessons of the NFL and NBA lockouts? What legal considerations should leagues be thinking about to avoid future impasses?

The flip answer: Avoid them like the plague.

Nevertheless, lockouts and strikes are tools employed by parties locked in any type of labor-management dispute. When one party reaches for those tools, both parties feel the brunt of its use in the industry.

However, what makes sports so special — and its labor disputes such a source of public consternation — is that a strike or lockout doesn’t just inconvenience the warring parties. It deprives millions of sports fans of entertainment and recreation, and the media of a major source of news and commentary.

Because both the NFL and NBA disputes were settled before many of the issues were fully decided, not much legal precedent was established. It still appears unclear whether the unions’ strategy will succeed. That strategy was de-certifying themselves — removing them from the labor exemption — and instead trying to avail themselves of antitrust laws in the courts.

There is an ebb and flow to the negotiation of sports collective-bargaining agreements. Deals and issues that seem to favor one side over the other at the beginning turn out not to operate as envisioned. Both sides — players and management — attempt to find ways to exploit the system to its individual and collective benefits. And although both individually and collectively the parties are partners, there is a competitive and adversarial relationship between all involved.

Consequently, conflict avoidance may not be possible. Changes in sports economics and the overall economy also will play a role in what issues are important in a given time. Unfortunately, these labor disputes always come down to the eleventh hour. In the meantime, the public posturing over the dispute leaves the buying public with a bad taste in its mouth.

If anything, the NBA and NFL lockouts teach us the valuable lesson that CBA talks should occur earlier and, ideally, take place out of the public spotlight.