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NEWSLETTER EDITORS

Road to the Beijing Olympic Games: Legal and Business Issues In Staging Major Sporting Events

By Pilar Loyola (Summer Associate – Palo Alto)

Manatt's Sports Practice Group kicked off Olympic fever with a June 20 program titled "Road to the Beijing Olympic Games: Legal and Business Issues in Staging Major Sporting Events." The program's guest speaker was Jeff Gewirtz, a national leader in the field of sports law.



Jeff Gewirtz

Mr. Gewirtz is currently Senior Vice President and General Counsel with the New Jersey Nets NBA team and its affiliate company Brooklyn Sports & Entertainment, through which he has been named to the team that will consult the Beijing Organizing Committee for the Olympic Games on its windup and dissolution process. Mr. Gewirtz also is Chair of the Sports Division within the American Bar Association's Forum on the Entertainment and Sports Industries, and sits on the Board of Directors of both the National Sports Law Institute

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OUR PRACTICE

Behind every athlete's or sports team's highly public endeavors is a multi-billion dollar business infrastructure that operates in complex and specialized ways. It's a world where business judgment, public policy advocacy and legal skill are essential support for unique sports marketing and athletic endeavors. ... [more](#)

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and the Sports Lawyers Association. Prior to joining the Nets, Mr. Gewirtz served as General Counsel and Chief Legal and Government Affairs Officer for the United States Olympic Committee ("USOC") in Colorado Springs, Colorado. Prior to the USOC, Mr. Gewirtz was Counsel for The Coca-Cola Company, where he worked on sports, media and entertainment transactions. Prior to that, he served as Director of Legal Affairs for International Olympic Committee Marketing and Television Services SA, based in Lausanne, Switzerland, where he was a primary negotiator of global Olympic sponsorship alliances for the IOC as well as for the Sydney, Salt Lake, and Athens Games.

Mr. Gewirtz discussed a wide variety of issues concerning the upcoming Beijing Olympic Games. Among the topics covered were: the organizational structure of governing bodies within the Olympic movement; business-related issues concerning sponsorship, brand protection, media issues, and ticket sales; and hot-button issues such as anti-doping efforts and environmental and political issues surrounding the 2008 Olympic Games. The 90-minute program included questions from an audience of lawyers from across the country.

Mr. Gewirtz began the program by outlining the various governing bodies involved in the Olympic movement. At the top of the Olympic hierarchy sits the International Olympic Committee ("IOC"), a non-governmental organization that is not affiliated with any given country, and that owns the rights to the Olympic Games and the Olympic Winter Games. Below the IOC are national Olympic committees ("NOCs") like the United States Olympic Committee, which oversees the Olympic movement in the United States. Also reporting to the IOC are Organizing Committees for the Olympic Games ("OCOGs") that contract with the IOC to oversee and administer the Olympic Games in a particular host city. An example of an OCOG is the Beijing Organizing Committee for the Olympic Games ("BOCOG"), which has been tasked with organizing the upcoming Beijing Olympic Games. Elsewhere in the hierarchy are sports-specific International Federations ("IFs"). IFs are international, non-governmental organizations that are responsible for managing one or more Olympic sports at a world level. IFs typically set the rules for National Governing Bodies ("NGBs") – like USA Gymnastics, USA Swimming, and the United States Tennis Association here in the U.S. – which oversee their respective sports at the national level.

Mr. Gewirtz next discussed various business-related issues associated with the Olympic Games, including sponsorship deals, branding, media issues, and ticket sales. On the

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sponsorship front, Mr. Gewirtz mentioned that Visa, one of the more notable sponsors of the Olympic Games, has a deal with the IOC in which no other credit card can be accepted within Olympic venues in Beijing. Because of this, Visa is able to market itself as “[t]he only card accepted at the Olympic Games.” With respect to branding, Mr. Gewirtz discussed the family of well-known trademarks within the Olympic movement, including the Olympic symbol of the five interlocking rings, the words “Olympic” and “Olympiad,” and the phrase “Citius, Altius, Fortius” (which is Latin for “Swifter, Higher, Stronger”). Mr. Gewirtz shared his experiences in trying to protect these marks against improper use by third parties, particularly in the context of ambush marketing. Regarding tickets sales, Mr. Gewirtz discussed the numerous and various problems NOCs and OCOGs have faced and continue to face with unofficial ticket vendors.

Mr. Gewirtz then addressed more controversial issues, such as anti-doping efforts and athlete speech issues. Over the past year or so, there have been several doping scandals in the news, and some Americans have been stripped of their Olympic medals. Mr. Gewirtz said that athletes in the coming Games can expect to be subject to anti-doping measures more stringent than ever. Mr. Gewirtz also said that it will be interesting to watch the balance between an athlete’s desire to speak out in support of his or her beliefs on the one hand, and the demonstration regulations set forth in the Olympic Charter and prevailing local and national laws in China on the other hand. Although the conduct of athletes in the Olympic area is governed by the Olympic Charter, as soon as the athletes exit those areas their conduct becomes subject to Chinese law.

It is clear that, as the Beijing Olympic Games are set to begin, legal, business, and social issues such as those discussed by Mr. Gewirtz are going to become more and more significant. It will be interesting to see whether and how such issues are addressed.

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Trial For Thousands Of Retired NFL Players Remains Set For Next Month After Denial Of Summary Judgment Motion

By [Benjamin G. Shatz](#)

Our May issue reported how Manatt had won a class certification in federal court allowing Hall of Fame cornerback Herb Adderley to represent approximately 2,100 retired NFL

players in a lawsuit seeking more than \$100 million from the NFL Players' Union (the National Football League Players Association ("NFLPA")) and its licensing subsidiary Players Inc. Mr. Adderley alleged that he and thousands of other retired NFL players were solicited to sign group licensing agreements ("GLAs") but received no revenue from the licensing of their names, images, and biographies. Since then, the Defendants sought permission to appeal the class certification Order, but the Ninth Circuit Court of Appeals denied their petition. With class certification firmly in place, Mr. Adderley had to face the Defendants' next obstacle to trial, a summary judgment motion.



Football legend Herb Adderley
and Manatt attorney Ron Katz

The Defendants attempted to end Mr. Adderley's case for breach of contract and breach of fiduciary duty through summary judgment, arguing that his case presented no genuine issues of material fact. In an Order issued August 6, 2008 ([linked here](#)), Judge William Alsup of the Northern District of California denied the motion, noting that "[t]here continues to exist a genuine issue of material fact as to whether the GLAs guaranteed retired players something more than empty promises." Noting that in the previous class certification Order the Court stated that the GLA contract is "a masterpiece of obfuscation and raises more questions than it answers," the Court further notes in this Order that "Defendants' motion for summary judgment does not adequately answer those questions."

The Court explained that "[m]any retired NFL players signed GLAs, but they have allegedly received no revenue from the licensing of their names, images and biographies under those GLAs." More pointedly, the Court noted that "[t]housands of players who signed GLAs have yet to receive a penny from defendants," and that "this case is festooned with factual

issues.”

In particular, the Court stated that the plain wording of Defendants’ contract with video game manufacturer Electronic Arts (“EA”) – which pays Defendants a minimum of tens of millions of dollars annually – could reasonably be interpreted to include the licensing of rights to retired players; indeed, that contract specifically mentions retired players. Similarly, other agreements, including one with Topps Company, could reasonably include retired players. The Court emphasized that the Defendants’ arguments to the contrary “are directly in conflict with the plain language of the contracts as a reasonable jury could read them.” Moreover, factual issues remain concerning whether the plain wording of the GLAs created a fiduciary duty for Defendants to pursue licensing activities to generate a shared pool of money for retired players.

Finally, the Court also noted a “smoking gun” document that “holds some promise” for Adderley and the Class if it is admissible. The Order states that the document arguably “...provides evidence that EA, on the advice of [D]efendants, scrambled the identities of a number of retired players whose likenesses it used in the Madden NFL game, rather than paying for those players’ rights, even though those players had signed GLAs” (emphasis in original).

Trial remains scheduled for September 2008. For further information about this article or the lawsuit against the NFLPA and Players Inc., please contact

Ronald S. Katz at Manatt, Phelps & Phillips, LLP. Click [here](#) for a copy of the Order denying summary judgment.