



EDITOR'S CORNER

Covid-19 Legal News for Sports Events and Rights Holders

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By Sherri Middleton

With sporting events from amateur to professional levels being forced to postpone or cancel in the past months because of Covid-19, rights-holders, governing bodies and organizers were faced with legal questions about contracts, registration fees and performance clauses.

I reached out to Kent Schmidt, a partner at the international law firm Dorsey & Whitney in southern California to provide clarification about legal disputes and obligations with sporting events.

Schmidt provided some information that I believe will be helpful to planners and he was also kind enough to create a video highlighting the legal information that may be useful to *SportsEvents* readers. (Watch the video below)

“The sports industry is facing thousands of disrupted business relationships and corresponding contracts, ranging from tickets with fans that will have to be refunded to multi-million-dollar licensing agreements now worth far less than before,” Schmidt said. “Although *force majeure* clauses and the legal doctrine of impossibility of performance will apply in many cases, another legal theory that is particularly appropriate to the sports industry and cancelation of major events is the frustration of purpose rule. The frustration of purpose finds its origins in English law, from a scenario similar to what we now face with canceled seasons and major sporting events.”

Schmidt said the cases are a series of English appellate decisions arising from the cancelation of the coronation in 1902. The courts ruled that even if it were possible for contracts to be performed, such as renting rooms along a parade route of the coronation, the purpose of the transaction was to be able to view the coronation. As a result of the cancelation of the coronation, the purpose of the contract was frustrated, and the parties should be released from their contractual obligations. “In much the same way, hundreds of ancillary contracts associated with major sporting events will come within the same frustration of purpose rule. Without fans in attendance, the purpose of the contract is frustrated, and the party should be released from having to perform,” Schmidt said.

The attorney said years of litigation will take place following the Covid-19 pandemic and postponement or cancelation of events as a result of pulling the plug. The court will have to decide who is “left holding the bag?” he said. “These issues come down to contract questions including the language of the agreements and applying contractual doctrines. But equitable considerations will also predominate. Particularly for situations in which one party is better able to absorb the loss, the courts will apply a fairness principle,” Schmidt said.

In the sports industry, Schmidt said licensing fees, advertising contracts and other contracts are signed in advance of the season. “Since possession is nine-tenths of the law, there will be questions relating to whether licensing fees and other consideration already paid prior to the pandemic will have to be refunded,” he said.

Now that the country is now re-opening, a number of lawsuits have been filed as Schmidt highlights in his blog at www.leftcoastlaw.com. By May 26, almost 400 Coronavirus Class Action lawsuits had been filed nationwide by consumers, employees and shareholders with a growing number of cases regarding the CARES Act and some filings against China.

The majority of the class actions relate to tickets and fees for upcoming events that have not been fully refunded. Those lawsuits were filed against StubHub and other ticket resellers.