PROFESSIONAL SPORTS and the LAW

January-February 2014 ● Volume 4, Issue 6

Sketchy Complaint Against Red Sox Will Be Considered in Mass. District

A federal judge from the District of Hawaii has transferred a legal action filed against the Boston Red Sox and a public relations firm to the District of Massachusetts after finding that the offending behavior occurred in Massachusetts as well as the fact that all the defendants reside there.

The motion to transfer was actually made by the pro se plaintiff in hopes that the court would grant that motion rather than grant the defendants' separate motions to dismiss the claim. While the court acquiesced to the plaintiff, it did not mince words in describing the weakness of the plaintiff's claim.

By way of background, Brian Evans, while living in Hawaii, created a song called "At Fenway," which some employees of the Red Sox were smitten with. Larry Lucchino, co-owner of the Red Sox, allegedly wrote in an email in 2011 that the song was "awfully nice. Let's find a way to make good use of it." David Friedman, vice president of the Red Sox, allegedly sent a letter to Evans' Hawaii address, stating that he was interested in exploring ways to use the song and giving Evans permission to contact other artists to develop a video featuring the song.

Evans subsequently moved to Massachusetts. He allegedly paid $40,000 to film the video at Fenway Park on September 25, 2012.

"A week later, on October 5, 2012, in

See Complaint Against on Page 12

What Can Be Learned from Settlement Between Flyers, Season Ticket Holders?

By Scott A. Andresen

Approximately 420 years after William Shakespeare put his words into print in Richard III to state that a time of unhappiness was past, they take on a Nostradamus-esque air in the City of Brotherly Love.

Comcast Spectator LP, the owner of the Philadelphia Flyers, NHL Enterprises LP, and a number of other Flyers-related entities (collectively, the "Flyers Defendants") agreed on December 11, 2013 to settle a class action lawsuit that accused the Flyers Defendants of deceptively excluding tickets to the Flyers' outdoor Winter Classic game against the New York Rangers from season ticket packages.[1]

Now is the winter of our discontent, made glorious summer by this sun of York…
—William Shakespeare, Richard III

Originally filed in the Superior Court of Mercer County, New Jersey on May 4, 2012, the matter was subsequently removed to the United States District Court for the District

See What Can Be Learned on Page 14

THIS ISSUE

PROFESSIONAL SPORTS and the LAW

HOLT HACKNEY
Editor and Publisher

ELLEN RUGELEY
Contributing Writer

STEVEN STAMPS
Contributing Writer

THE ROBERTS GROUP
Design Editor

Please direct editorial or subscription inquiries to Hackney Publications at:

P.O. Box 684611
Austin, TX 78768
(512) 716-7977
info@hackneypublications.com.

Professional Sports and the Law is published bimonthly by Hackney Publications, P.O. Box 684611, Austin, TX 78768. Postmaster send changes to Professional Sports and the Law. Hackney Publications, P.O. Box 684611, Austin, TX 78768.

Jahvid Best Concussion Case Questions Whether He Should Have Been Eligible for NFL Draft at All

Former Detroit Lions running back Jahvid Best has sued the NFL and helmet maker Riddell after a series of concussions prematurely ended his professional football career.

Best claimed in an 86-page complaint in Wayne County Circuit Court that the league knew about the risk of concussion and did little to protect him.

As for Riddell, Best claims the company marketed its Revolution helmet, which he wore while playing for the Lions, as a way to reduce the risk of concussions. This was a misleading claim, he alleged.

Best played college football at the University of California, where he reportedly suffered two concussions. A first-round draft pick of the Lions in 2010, Best suffered three concussions as a professional, the last in his second season in October 2011.

One of the interesting components of the lawsuit is that Best contends that he shouldn't have been eligible for the 2010 draft because of his history of concussions at Cal, including this one:

The NFL has never had a rule preventing players who had suffered multiple concussions in college from being taken in the draft,but it may be an idea whose time has come.

In the 2012 draft, Stanford's highly regarded wide receiver Chris Owusu, who had three concussions in college, was not drafted. Teams passed on him even though he had been reportedly cleared by Dr. Mitchel Berger, who chairs the neurosurgery department at the University of California at San Francisco and serves on the NFL's Head, Neck and Spine Committee, before the draft.

The practice of being cautious of drafting players with a history of concussions was reinforced in the 2013 draft when the Arizona Cardinals selected Texas A&M wide receiver Ryan Swoope in the 6th round, only to see Swoope, who had a history of concussions in college, retire after suffering a concussion in the NFL pre-season. On paper, Swoope might have gone in the second or third round, given his numbers at the NFL combine.

Anticipating Future Medical Problems

As for Best, his attorney, Bret Schnitzer, told the Detroit Free Press that he was "not prepared to give a specific amount" as to what his client is seeking.

"Unfortunately, with these types of injuries, as has been documented, the long-term effects of the injuries to the brain may not manifest themselves for a number of years," he told the paper. "Jahvid, obviously, had some manifestation of concussion syndrome, which is well-documented in the media. But in terms of the full extent of the injury to the brain, as we can see from other players and from the science, that can›t always be determined in a 25-year-old. It›s just like mesothelioma or asbestos type of case ... it sometimes takes decades to see the full ramifications of the injury."

Joseph M. Hanna of Goldberg Segalla said that "Best's lawsuit appears to be the first proactive suit of its kind, as he is not claiming to currently suffer from some of the more serious head trauma-related ailments (such as dementia or Alzheimer's), which plague his ex-NFL counterparts."

Best has not named the Lions in a negligence lawsuit because Michigan's workers' compensation law precludes him from suing the team directly for an on the job injury, unless the Lions committed an intentional tort. However, he has filed a worker›s-compensation claim against the team.

Using Volunteers in Concession Stand Poses Legal Risks

By Jordan Kobritz

To supplement their regular work force, concessionaires such as Aramark and Centerplate solicit local non-profit groups–youth sports groups, church groups, scouting groups, service clubs, etc.–to staff concession stands during sporting events. That practice can be viewed as a financial bonanza for the groups or a reckless disregard for the community at large, depending on your perspective.

It should be noted at the outset that the legality of using volunteers under these circumstances is highly questionable. Merely designating a worker as a "volunteer" instead of an employee is hardly the legal test established by the courts to determine if someone should be exempt from employment laws and tax withholdings. But that isn't the subject of this piece.

Concessionaires have a dual purpose in using volunteers. One, it allows the companies to curry favorable PR with the local community. More importantly, it increases a company's profits. Unlike workers who are paid an hourly wage, in addition to employer expenses for FICA taxes, Worker's Comp, unemployment taxes, insurance, etc., along with the cost of record keeping, volunteers work for free while the organizations they represent are paid a commission on sales. At one of its venues, Lucas Oil Stadium in Indianapolis, home of the NFL's Indianapolis Colts, Centerplate pays 8% on all alcohol sales and 9% on all food sales, percentages that are generally representative of the industry.

Under this arrangement, the more product the volunteers sell, the more they earn for their organizations. And the money can be very good, certainly more than can be generated from the traditional candy sales, bake sales and car washes that are the bane of non-profit fund raising. According to the website for Reliant Park in Houston, home of the NFL's Houston Texans and the Houston Livestock Show and Rodeo, Aramark "contributed over $500,000" in 2012 to non-profit organizations in the greater Houston area.

Use of the word "contribute" is more than a little ingenuous. Aramark didn't really contribute anything to anyone. The money was "earned" by the donated, i.e. free, labor of hundreds of volunteer workers. Volunteers are known to work long hours in sometimes less-than-ideal conditions that may not include air conditioning in hundred-degree weather or heat when the temperature is below freezing. Workers are usually required to show up at least two hours prior to an event and remain for an hour after the event is over, and many of them are on their feet the entire time. Some concession workers engage in backbreaking labor that can include jockeying beer kegs that weigh upwards of 165 pounds.

On the surface, using volunteers to staff concession operations at sporting events appears to be a win-win for the companies and the non-profit groups that supply the labor. The groups receive money for their worthwhile activities and the companies pay less than they otherwise would if they hired their own personnel. Concessionaires also avoid the attendant hassles that come with hiring and supervising additional employees. But there is a dark–and sometimes tragic–underside to the practice of using volunteers to sell concessions.

Volunteers, by definition, are not regular, fulltime employees. As such, they may work some events but not others, depending on their schedules or interests. That irregular work schedule oftentimes leads to inexperienced workers, which can be especially problematic when it comes to alcohol sales. In fairness, most concession companies require volunteers — along with full time personnel–to receive some level of training if they dispense alcoholic beverages. Centerplate requires all volunteers who sell alcohol to undergo a three-hour class in responsible alcohol sales. The class is taught by Training for Intervention Procedures or TIPS, an Arlington, Virginia based company that provides alcohol training for a number of concessionaires.

The training is designed to teach volunteers proper protocol in, among other things, carding customers, handling intoxicated fans, and how to spot signs of drunkenness — such things as slurred speech, poor balance and glassy eyes. If volunteers pass a test at the end of their training they are "certified" to sell alcohol for three years. But that's not nearly sufficient training given the circumstances volunteers deal with. Even the best trained, full-time concession worker will find it difficult to assess sobriety in a stadium setting, with hundreds of boisterous fans waiting in line clamoring to be served. For example, on game day at Lucas Oil Stadium there are upwards of 600 points of distribution, most staffed by volunteers, who can number 2,500. Couple that with the incentive to keep the taps flowing — remember, the more beer that's sold, the more money is raised for those worthwhile causes–and the use of volunteer workers can be a prescription for disaster.

A recent case demonstrated just how dangerous the practice of using volunteers can be. In 2010, Trenton Gaff was driving home from an Indianapolis Colts game when he swerved off the road and ran over two 12-year old girls, killing one of them and injuring the other. Gaff told police that he had consumed five beers while attending the game earlier in the day. The mother of the deceased girl, Betina Pierson, sued Centerplate. The case was dismissed

See Using Volunteers on Page 4

Using Volunteers in Concession Stand Poses Legal Risks

Continued From Page 3

on summary judgment and is currently on appeal. Gaff pled guilty to operating a motor vehicle while intoxicated and was sentenced to a year in prison.

The suit against Centerplate was based on the state's dram shop law which makes businesses that sell alcohol to an obviously intoxicated individual responsible for the damages caused to another. Despite their intent to protect the public, dram shop laws may operate in the reverse. Plaintiffs are required to prove that sellers of alcohol acted in a "reckless" or "irresponsible" manner or "knowingly" sold alcohol to an intoxicated person, standards that are difficult to meet.

The Pierson case is not the first of its kind. There have been other wrongful death and injury cases brought against stadium concessionaires, although not all of them involved the use of volunteer workers. And in fairness, concession operators have adopted a variety of policies and procedures in addition to alcohol training–shutting down alcohol sales prior to the end of an event, limiting the number of drinks sold to one individual, reducing the size of beverage containers, among others–in an effort to reduce drunkenness among sports fans.

Despite those efforts, there is no way to guarantee that all fans will leave a sporting event sober, even if all alcohol servers are experienced. But there is little doubt that the practice of using volunteers to dispense alcohol, and the formula under which they are compensated, increases the risk of drunken fans spilling out of a stadium onto the public streets.

According to Centerplate General Manager John Eric Stockholm, the company sold between $17-18 million in food and beverage at Lucas Oil Stadium and the adjacent Indiana Convention Center in 2012, meaning as much as $1.5 million was earned for non-profit organizations in the greater Indianapolis area. That's a lot of money, but at what cost?

Betina Pierson is represented by Dan Chamberlain of the Indianapolis firm of Doehrman Chamberlain.

Jordan Kobritz *is a former attorney, CPA, and Minor League Baseball team owner. He is a Professor in the Sport Management Department at SUNY Cortland and also maintains the blog:http://sportsbeyondthelines.com Jordan can be reached at jordan.kobritz@cortland.edu.*

Chris Kluwe Investigation Ongoing, Resolution Looming?

The Minnesota Vikings organization was aware that Special Teams Coordinator Mike Priefer was making derogatory remarks about gays, long before punter Chris Kluwe went public with those accusations this winter, according to recent comments from Kluwe's attorney, Clayton Halunen.

Halunen, who is co-counseling the case with the National Center for Lesbian Rights, claimed his client approached Vikings Player Development Director Les Pico about his allegations before he was cut by the Vikings on May 6, 2013.

The controversy then entered the public realm after Deadspin published an article (http://is.gd/EXxEMC) on January 2, 2014 in which Kluwe alleged that Priefer made derogatory remarks about gays and other members of the LGBT community both to him personally and in team meetings. The alleged remarks were made in 2012, when Kluwe was with the Vikings and also speaking out publicly against passage of a constitutional referendum in Minnesota to restrict marriage to heterosexual-only couples.

Kluwe alleged that Priefer's remarks were intended to humiliate him into silence. When that didn't happen, Kluwe alleged, other members of the Vikings management team pressured him to tone down his off-the-field comments in favor of equal marriage rights for all. The team ultimately cut him.

After the story broke, the Vikings organization released a statement, saying that it takes the allegations "very seriously and will thoroughly review this matter." It added that "Chris was released strictly based on his football performance."

The Vikings also retained former Minnesota Supreme Court Chief Justice Eric Magnuson and former Justice Department attorney Chris Madel to investigate the matter. The men are interviewing current and former members of the organization. The organization said it is confident the two attorneys will "address the issue with integrity ... and ... move swiftly and fairly in completing the investigation." Magnuson and Madel are attorneys at Robins, Kaplan, Ciresi and Miller.

Vikings Vice President of Legal Affairs Kevin Warren also issued the following statement: "This is a highly sensitive matter that we as an organization will address with integrity. Eric and Chris have stellar reputations in both the local and national legal community. They have handled numerous cases involving a wide range of issues, and we are confident they will move swiftly and fairly in completing this investigation."

Did the Vikings Have Notice?

In a recent development, Halunen noted, not only that Pico, knew about his fellow coach's comments, but that kicker Blair Walsh was ready to corroborate Kluwe and confirm that was present to hear Priefer's alleged remarks.

Walsh issued a statement on Jan. 2, supporting Priefer, adding he believed Kluwe was cut only because of his football performance, not because of his views.

"That's not acceptable to us," Halunen told ESPN.com. "If he's going to lie, there has to be accountability. If [players] choose to protect their own self-interests over telling the truth, we'll have no choice but to litigate the case in a court of law. They'll have to choose whether they want to perjure themselves and risk going to jail. That's the only thing we have to force anyone to talk. Every allegation is 100 percent true."

One of Kluwe's Objectives

"Chris paid a steep price for speaking out in favor of same-sex marriage rights in 2012 while he was a Vikings player," Halunen said in a statement in January. "Ultimately it may have cost him both his job with the Vikings and his career as an NFL player, along much

See Chris Kluwe on Page 6

Chris Kluwe Probe Ongoing

Continued From Page 5

emotional anguish over what he believed to be a kind of personal attack on him for his views on a vital issue of human rights.

"Even so, Chris is not bitter towards the Vikings, nor does he carry a personal vendetta against anyone associated with the team. He's grateful to the Vikings for the great career he had with the team. But he couldn't stand by when someone with as much influence in sports as a member of the Vikings coaching staff makes dangerous and dehumanizing statements against the LGBT community."

Kluwe said that among his objectives in the lawsuit is that all professional sporting organizations "institute a zero tolerance policy for bigotry and discrimination against members of the LGBT community.

"I can speak up because I can in my situation, knowing that others who are more vulnerable than me can't. Things are getting better in professional sports for LGBT people. But the kind of situation I experienced is still all too common — we can do much better yet."

Kluwe's stance may be having an impact.

Six days after the story broke, the National Hockey League became the first professional sports league in North America to have each of its member teams represented by players voicing support for LGBT (lesbian, gay, bisexual, transgender) athletes and fans.

"Having full and, more importantly, ongoing participation from the NHL, is a milestone for acceptance of all athletes at every level of play and sport," said Wade Davis, Executive Director of the You Can Play project. "Every major mens sports league has been represented in a You Can Play video and now every team in one of the world's premier sports leagues has actively participated. This support from professional leagues has a positive impact in locker rooms and anywhere sports are played."

"Young athletes everywhere look up to National Hockey League players as leaders on inclusion," NHL Commissioner Gary Bettman said in a statement. "Our players, our Clubs and every member of the NHL family will strive to support important initiatives such as You Can Play in our local communities and around the world."

You Can Play (www.YouCanPlayProject.org) is a Denver-based non-profit organization dedicated to changing the culture of locker rooms and sports venues to include all athletes and fans regardless of sexual orientation or gender identity. The project honors the life of the late Brendan Burke, an openly gay student manager of the Miami University (Ohio) hockey team. You Can Play has formal partnerships with the NHL, MLS, CWHL and a number of Canadian, minor league and NCAA conferences and teams.

Getting to Know Britton Gallagher's Professional Athletes & Entertainers Insurance Solutions

Editor's note: With an eye on the industry, we recently noticed the growing presence Professional Athletes & Entertainers (PAE) Insurance Solutions, a division of Britton Gallagher, and the myriad of solutions it provides to the industry. To that end, we sought out Jim Convertino, PAE's Director, and Jani Memorich, the division's Associate Director for an interview.

Question: *Who exactly do you work with and represent in the industry?*

Answer: PAE works closely with sports agents, lawyers, financial advisors, accountants and business managers to ensure their clients have the proper insurance protection for their unique exposures due to their profiles and professions. We work primarily with professional athletes, entertainers, directors, TV and movie producers, spokesmodels, screen writers, franchise owners, front office personnel and coaches, which allows us to dedicate our time to their unique schedules and liability exposures.

Q: *What needs do you fill with these individuals?*

A: We work closely with the advisor and client to provide a complete personal and commercial insurance review. We not only provide a simplified insurance program for each of our clients' homes, automobiles, jewelry, watercraft and umbrella coverages, we also cover their exposures outside of their personal insurance program. There are significant liability exposures for our clients' personal appearances, special events, birthday parties, commercial ventures, Foundations, Shell Corporations, LLCs, singing and promotional tours, television and movie productions, musical instruments, golf tournaments, life and disability coverage, basketball, baseball, hockey and football camps, websites and charity outings. Unfortunately, many professional athletes and entertainers, along with their advisors are unaware there are liability exposures with each of these.

Our clients and their advisors are only calling one cell phone number with any questions or claims at any time, including evenings and weekends. They are not calling a service center or getting a voicemail hoping for a call back during the weekend or after business hours. Our unique service model is specifically designed to simplify our clients' entire insurance program with one insurance broker and provide them with one phone number to call for any insurance related reason.

Q: *How do you interact with their agent, lawyer and/or financial advisor?*

A: We work directly with our clients' sports agent, lawyer and/or advisor to educate them on our service model and how it is unique in the industry. We let them know immediately we understand we are representing them to their client. It's imperative to be an asset rather than simply an added service. The reality is if we do not deliver on our service, the advisor can lose that particular client and many more. Our service also distinguishes advisors from their competitors, ensures their clients have the proper insurance program in place as part of their overall financial portfolio and saves them time in dealing with insurance issues. We understand and appreciate our relationships with our sports agents, lawyers and advisors.

If a client does not have the proper insurance coverage, they can lose a significant portion of their wealth unnecessarily in the event of a claim or lawsuit. They, unfairly or not, will blame their advisor. Our primary goal is to educate our clients on their exposures and simplify their entire personal and commercial insurance programs. We also provide coverage for their family members since they can pose a greater liability risk to the athlete or entertainer while also looking to minimize our clients' exposures. This eliminates any surprises in coverage issues during a claim and protects the advisor and client.

We always keep the advisor in the loop on everything. It is imperative they are not surprised if their client calls them with something that's happened to him or her, especially on a weekend or holiday.

Confidentiality is of the utmost importance, not only within PAE but with any of our relationships. Our clients' information is not shared with anyone outside of our division.

Q: *What is best part about working with these individuals?*

A: Easily the best part of working with our clients and their advisors is educating them on the importance of their insurance programs as part of their overall financial portfolio. Unfortunately, we see many advisors who do not make an insurance review part of their clients' financial plan. Understandably, many tell us it's simply because they do not have the confidence in finding an insurance broker who understands the business of sports and entertainment and is willing to provide the type of service required to meet their clients' demands. They are often surprised at what we find when providing our review for their clients and the exposures they didn't realize existed.

Professional athletes and entertainers have greater liability exposures and rarely have the time to review their coverages. We become their specialized consultant on their personal and commercial insurance programs.

Q: *What trends are you seeing in this space?*

A: Insurance is seen more and more as a commodity. Ironically, the higher profile

See Britton Gallagher's on Page 8

Herrick Represents Yanks in Fox's YES Network Deal

Herrick, Feinstein LLP recently represented the New York Yankees and Yankee Global Enterprises in 21st Century Fox's agreement to acquire a majority stake in the Yankees Entertainment and Sports Network (YES Network).

The acquisition, subject to regulatory and other requisite approvals, raises 21st Century Fox's ownership position in the regional sports network to 80 percent. The remaining 20 percent stake will continue to be held by Yankee Global Enterprises.

"Herrick's association with YES goes back to 2001, when we advised Yankee Global Enterprises in the formation of the network — which was a pioneering development in regional sports broadcasting," said Irwin A. Kishner, chairman of Herrick's Executive Committee. The Herrick deal team advising on 21st Century Fox's majority stake acquisition was led by Kishner, and included corporate partners Daniel A. Etna and Richard M. Morris.

Britton Gallagher's Athletes & Entertainers Insurance Solutions

Continued From Page 7

the client, the more liability and property exposures we find when providing our review for the advisor and their client, especially when looking at their Foundations or charity events and personal appearances. Many of our clients were with the same carrier and coverages they had when they were much younger and had less exposure. Advisors often let us know they have been looking for someone like us and appreciate what we add to their business model.

Q: *What is the biggest misconception about the services you provide?*

A: Many advisors think we charge a fee, see all insurance coverage and carriers as the same and do not critically look at their clients' insurance coverages until there is a lawsuit or claim denial. They mistakenly do not see the added value in having their clients' insurance reviewed before there is a significant loss of personal wealth that could've been covered with the right insurance coverage. We have a dedicated division specifically geared toward their clients and offer a significant benefit to their business and their clients.

The Angel Doth *Protest Too Much, Methinks* — Jack Clark and His Comment about Albert Pujols

By Scott A. Andresen

Queen Gertrude's paraphrased line from *Hamlet* (III, ii, 239) seems a perfect title for this article as it has been used as a figure of speech to indicate that a person's vehement attempts to convince others of something have ironically helped to convince others that the opposite is true by making the person look insincere and overly-defensive.

Our current rendition of *Hamlet* began on August 2, 2012 on St. Louis sports talk radio show "The King and the Ripper" when former St. Louis Cardinals slugger Jack Clark made the following comment about Albert Pujols:

"I know for a fact [Pujols] was 'a juicer' who used steroids and PED's and that trainer Chris Mihlfeld, who worked him out, shot him up."

Though Pujols has long been one of the players wondered and whispered about when the topic of PED's is discussed, Clark's allegations against him gave Pujols a decision to make. Does he simply refute the allegations and let them dissolve into the 24-minute news cycle currently surrounding sports, or does he resort to Lance Armstrong-esque litigation tactics to protect his reputation? A cursory analysis of the matter would seem to indicate that the former was a far better option for Pujols than the latter. With the possible exception of bass fishing, where beer and coffee have yet to be classified as "performance enhancing", allegations of PED use have been rampant amongst all sports—essentially rendering them little more than white noise on the sports landscape. There seemed to be little reason for Pujols not to follow the script previously written hundreds of time by other athletes accused of PED use. The option of litigation, on the other hand, would seem to be a lose-lose scenario for Pujols. In addition to subjecting his past conduct (read: PED and steroid use) to the discovery and sworn testimony commensurate with litigation, it would also shine an ongoing spotlight on Clark's allegations and keep them at the forefront of the public's attention under the best of circumstances. Under the worst of circumstances, Pujols's reputation would take a substantial hit if Clark's allegations were ultimately proved true, or even if additional allegations came to light against Pujols- substantiated or not. Finally, recent revelations about voracious litigants Lance Armstrong, Alex Rodriquez and others has public perception trending towards a belief that initiating litigation has absolutely nothing to do with an individual's actual guilt or innocence- and could, in fact, more likely be a guilty party with nothing left to lose making desperate last grasps at image rehabilitation.

In his August 2013 Petition initiating formal proceedings against Clark in St. Louis County Circuit Court, counsel for Pujols describes him as "a preeminent baseball player on and off the field whose character and reputation are impeccable and beyond reproach." Clark, conversely, was described as "a former major league baseball player turned struggling radio talk show host" who attempted to generate ratings by making "malicious, reckless and outrageous falsehoods about [Pujols]". In addition to costs and damages, Pujols' Petition sought a declaration and determination that the statements made by Clark were false.

Unfortunately, Pujols' decision to initiate litigation was met by a defense counsel for Jack Clark who dabbled in effrontery and defiance like Leonardo di Vinci dabbled in paint and marble. In an October 14, 2013 settlement letter that first came to light on *Deadspin*, counsel for Clark deftly moved between snark and sarcasm as he got to the ultimate point: If you're innocent, Albert, prove it. Highlights of the letter include:

"Having dispatched with the preliminaries, it appears the clumps in the proverbial kitty litter of this case related to statements attributed to Mr. Clark about "juicing" by [Pujols]."

"I...spied more than a handful of published pieces which appear to insinuate that [Pujols] and performance enhancing drugs go together like the childhood favorite, peas and carrots."

"In re-reviewing your Demand Letter, my eye was attracted to the italicized sentence on the first page (which I think was the intent of the use of italics). You concisely noted that [Pujols] "*has never taken any illegal performance enhancing drugs...*"(emphasis added to add emphasis)...Does your statement mean that [Pujols] admits to taking *legal* performance enhancing drugs?"

"...I have been authorized to proffer the following as a settlement proposal on behalf of Mr. Clark.

[Pujols] submits to a polygraph test to ascertain whether he is being deceptive when he asserts that he has never used steroids or performance enhancing drugs while in the minor and major leagues...

[Clark] submits to a polygraph test to ascertain whether he is being deceptive when he asserts that [Pujols'] trainer...told him that your client had 'juiced'...

The test results must be made publicly available and the administrator of the polygraph tests must be permitted to answer public and media inquiries relating to the tests and results..."

To date, Pujols has not accepted Clark's invitation for a "couples polygraph".

The most recent action on the case was a Motion to Dismiss or in the Alternative, Motion for a More Definite Statement that was filed by Clark on January 13, 2014. The Motion seeks to have the matter dismissed, or Pujols' Petition amended, as Pujols' initial Petition failed to allege the requisite elements of defamation in Clark's August 2012 statements. A hearing on the matter is set for February 20, 2014.

Baseball Stadium and Operator Found Not Liable for Infant Plaintiff's Accident When he Was Struck By a Foul Ball

The plaintiffs asserted claims against Sterling Doubleday Enterprises, L.P., Sterling Mets, L.P., New York Metropolitan Baseball, Inc. and Queens Ballpark Company, L.L.C. for common law negligence and *Res Ipsa Loquitur.*

During the 9th inning of a New York Mets vs. Florida Marlins game, infant plaintiff (who was twelve years old at the time of the accident) was struck by a foul ball that entered the right field stands.

The plaintiffs alleged that defendants were negligent in maintaining and operating the Citi Field baseball Stadium by permitting the occurrence to happen and not taking suitable and reasonable precautions.

The defendants served a pre-answer motion to dismiss, contending that infant plaintiff clearly appreciated the obvious and inherent risk of injury associated with attending a baseball gamed. The defendants annexed a YouTube video (http://www.youtube.com/watch?v=9YYbY0SQF3U) that depicted the accident- and the infant plaintiff holding a baseball glove, ready to catch an errant baseball in support of this point. The defendants demonstrated that the requisite protected area behind home plate was provided and plaintiffs did not avail themselves of the same.

Justice Duane A. Hart, sitting in Supreme Court, Queens County, found that defendants established that the negligence action should be dismissed because infant plaintiff assumed the risk of injury from an errant baseball. There is no duty of care owed to spectators who occupy seats in the unprotected areas.

Shlomo Eliezer Shalomoff and Valarie Shalomoff v Sterling Doubleday Enterprises, et. al.; S.Ct., Queens County; Index No. 1120/13; 12/10/13

Carla Varriale, Jarett Warner and Jordan Schur represented Sterling Doubleday Enterprises.

Sports Law Attorney Ed Hookstratten Dead At 83

Ed Hookstratten, who represented dozens of sportscasters, including Vin Scully, during a career of more than 50 years, has passed away at the age of 83. Besides Scully, he represented Dick Enberg, Merlin Olsen, Dick Stockton, Don Meredith, current Miami Heat President Pat Riley, and Marcus Allen as well as current University of Southern California Athletic Director Pat Haden.

Selig Appoints Attorney to EVP, Labor Relations

Commissioner Allan H. (Bud) Selig has announced the appointment of Daniel Halem as Executive Vice President, Labor Relations for Major League Baseball.

"This is another move by Selig to reorganize MLB's management structure in advance of the commissioner's impending retirement," Jordan Kobritz, a former attorney and Minor League Baseball team owner, told Professional Sports and the Law-. "It follows on the heels of Rob Manfred's appointment from Executive VP Economics and League Affairs to COO on September 30."

Kobritz, who is also chairman of the Sports Management Department at SUNY Cortland, added that Halem "has worked closely with Manfred on labor issues with players and umpires, including negotiations on the CBA and drug related matters. It's not a stretch to see Halem assuming the role that Manfred has had with Selig when Manfred is elected to succeed Selig as commissioner, which in my view is an inevitability and has been for some time."

In his new role, MLB said Halem will work "closely with club management officials and helps direct the administration of the revenue sharing system, the debt-service rule, the competitive balance tax, the salary arbitration system and the amateur draft support program, among other projects."

Selig said he was "pleased to expand Dan's role with Major League Baseball. Rob, Dan and their team have superbly managed a number of significant initiatives for our industry, and I believe that they will continue to support the work of our clubs with distinction in the future."

Halem joined MLB after working as a partner in the Labor and Employment Law Department at a New York City law firm, where he represented employers in collective bargaining, arbitration and administrative proceedings as well as in state and federal litigations. As a part of the firm, Halem counseled MLB on collective bargaining issues related to its players and umpires and he represented individual clubs in salary arbitration. Halem also represented and counseled the National Basketball Association, the Women's National Basketball Association, the National Hockey League and the New York Jets of the National Football League prior to joining MLB.

Halem graduated from Cornell University's School of Industrial and Labor Relations in 1988 and from Harvard Law

See Selig Appoints on Page 13

Complaint Against Red Sox Will Be Considered in Mass. District

Continued From Page 1

what appears at first blush to have been an unrelated event, Evans's mother died at Holy Family Hospital in Massachusetts," wrote the court. "Evans then created a website that criticized Holy Family Hospital, which was part of the Steward Health Care System, for alleged medical malpractice in the treatment of his mother."

Evans's attempts to profit from his video were unsuccessful. The Boston Red Sox did not feature "At Fenway." Evans alleges that, in declining to promote "At Fenway," the Red Sox were influenced by Steward Health Care System, which was allegedly unhappy about Evans's malpractice assertion. The Red Sox and Steward Health Care System are both represented by the same public relations firm, RBSC.

Evans claimed that the parties must have "coordinated their actions and conspired against him." Furthermore, he alleged that the Red Sox and RBSC have interfered with his opportunities with other potential sponsorships and conspired to "torpedo" or "destroy" his music video and related business relationships.

Evans, who moved back to Hawaii, sued the Red Sox for breach of contract, interference with contract, intentional infliction of emotional distress, and fraud. He also sued RBSC, alleging that it "worked in concert with the Red Sox to undermine Evans and his video."

As mentioned above, after the defendants moved to dismiss, Evans asked the court to transfer the case, rather than grant their motion.

In considering the latter, the court reviewed 28 U.S.C. § 1332(a), which states that diversity jurisdiction requires complete diversity of citizenship between opposing parties at the time the action is commenced. See, e.g. Lew v. Moss, 797 F.2d 747, 749-750 (9th Cir. 1986). Evans was able to show that he lived in Hawaii when he filed the instant action, and that there was an amount in controversy exceeding $75,000, another pre-requisite.

"Of course, having subject matter jurisdiction does not necessarily mean this case should remain before this court," wrote the court. The fact is the defendants "had little to no contact or connection to Hawaii," meaning the Hawaii court lacked general and specific jurisdiction over them.

While the court did not want to delve too much into the "sufficiency of the factual allegations" in the complaint, it did briefly note the weakness in the plaintiff's argument.

"This court is fully aware that the

See Complaint Against on Page 13

Complaint Against Red Sox Moved to Mass.

Continued From Page 12

contract claim is completely devoid of any description of contract terms," it held. "Evans says nothing about who entered into any contract or on what date. A party sued for breach of contract is entitled to some description of the contract terms that were allegedly breached. The interference with contract claim is similarly stingy on detail, and it is not clear what contract with what third party was allegedly interfered with by any defendant. Evans's fraud claim is, of course, subject to the particularity requirement of Rule 9(b) of the Federal Rules of Civil Procedure. These pleading matters are not, however, the subject of this court's ruling. Having determined that it lacks personal jurisdiction and that this case should be transferred, this court leaves the sufficiency of the factual allegations to the District of Massachusetts to address.

"If the court were to address pleading matters here and to find Evans's allegations wanting, this court would likely give Evans leave to file an amended complaint. Given the other rulings in the present order, it makes sense to leave that entire issue to the court that clearly does have personal jurisdiction."

Brian Evans v. The Boston Red Sox, et al.; D. Haw.; CIVIL NO. 13-00262 SOM-BMK, 2013 U.S. Dist. LEXIS 166307; 11/22/13

Attorneys of Record: (for plaintiff) Pro se, Keaau, HI. (for defendants) Brian A. Kang, LEAD ATTORNEY, Watanabe ING & Komeiji, Honolulu, HI; Michael C. Bird, LEAD ATTORNEY, Watanabe ING LLP, Honolulu, HI. Darin Robinson Leong, Sarah O. Wang, LEAD ATTORNEYS, Marr Jones & Wang LLLP, Honolulu, HI.

Selig Appoints Attorney to EVP, Labor Relations

Continued From Page 11

School, magna cum laude, in 1991. He grew up in New Jersey and now resides in New York.

Kobritz added that "these personnel moves should remove any doubt that this time he intends to follow through on his promise to step down in January 2015.

"The continuing reorganization of MLB's central office gives Selig's appointees an opportunity to get comfortable with their new responsibilities, sort of a dry run if you will, while he is still around to counsel and assist them."

What Can Be Learned from Flyers, Season Ticket Holders Settlement?

Continued From Page 1

of New Jersey by the Flyers Defendants immediately thereafter.

The complaint filed by Flyers season ticket holders Joyce Phillips, Gary Mengle and John Bakley alleged that the Flyers failed to provide their season ticket holders with tickets to the NHL's "Winter Classic" as part of their 2011-12 season ticket packages, and that the Flyers' subsequent offer to sell Winter Classic tickets, but only as part of a ticket package that also included tickets to a December 2011 game between former Flyers and New York Rangers players, and a January 2012 game between the Adirondack Phantoms and the Hershey Bears, amounted to breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL") and the New Jersey Consumer Fraud Act ("NJCFA"). The complaint also asserted claims against NHL Enterprises for intentional interference with contract, inducing breach of contract, unjust enrichment and alleged violations of the UTPCPL and the NJCFA.

The proposed class action settlement class members include Flyers season ticket holders who purchased and paid for full season ticket packages to Flyers preseason and regular season home games for the 2011-2012 NHL season, but excludes season ticket holders that had previously obtained a judgment on a claim that is covered by the releases in the settlement (e.g., the much-publicized Richard Abt small claims victory of $1,364.00 from Comcast Spectator in December 2011). Under the proposed settlement, the Flyers Defendants shall provide each settlement class member with one voucher for each Flyers full season ticket package for 2011-12 purchased, entitling recipients to either (i) $45.00 worth of food and beverage at the Flyers' home arena, or (ii) recipients' choice of an on-ice holiday card, scoreboard message during a game, or a piece of game-worn memorabilia (though this requires two vouchers...). The aggregate value for all vouchers issued is estimated in court filings to be between $625,500.00 and $1,100,000.

What Can Be Learned?

Though the Flyers Defendants will, assuming approval of the proposed class action settlement at a fairness hearing on March 24, 2014, likely settle this matter for less than it would have cost to successfully litigate, professional (and amateur) sports teams and leagues should take note of this matter for a number of reasons.

First and foremost, teams should review and revise their season ticket agreements

See What Can Be Learned on Page 15

What Can Be Learned from Flyers, Season Ticket Holders Settlement?

Continued From Page 14

and/or verbiage of communications with season ticket holders to carefully detail the circumstances under which they can remove games from season ticket packages. Be it acts of god, terrorists, team owners or league commissioners (often easily confused for each other), teams need to ensure that they have the ability to pull games out of packages. Teams also need to ensure that they clearly convey how refunds will be determined (e.g., a pre-determined calculation, face price of tickets, etc.) so that there is no possible argument that a particular event was more "valuable" than the price paid by the season ticket holder when they bought their season ticket package. Finally, teams need to ensure that they "make good" to season ticket holders when there is a perception that they are being shorted. As a Chicago Cubs season ticket holder, I can state with no hesitation that loyalty to a team is not based entirely (or at all) on the product currently on the field, ice or court. It is important for those spending many thousands of dollars to know that the organization values and respects them as season ticket holders, because their money could very easily be spent somewhere else.

General Counsel for a Pro Sports Franchise Shares His Insight

Below are some thoughts from a prominent general counsel for a professional sports franchise:

"At its heart the case is one of contract. Thus what was said in the renewal or purchase agreement materials seems to be key. If the Flyers did in fact sell tickets to all home games without a reservation of rights, then there is not much to talk about.

"If there was a reservation of rights, how real, how meaningful was it? Probably not much.

"Setting aside the written materials, there is the question of what was said by their staff. That might be ugly, as sellers always overstate.

"It is also the case that there is a precious bond between the club and ticket holders. To violate that bond invites trouble.

"The final takeaway is probably that the League Office(s) need to get this together before the season ticket renewal process begins. Otherwise, one is quite possibly in breach of contract and other state laws, and it violates the bond between the ticket holders and the club. Buried disclaimers will not likely work."

1 Joyce Phillips, et al. v. Comcast Spectator LP, et al., Case No. 3:12-cv-03606, in the U.S. District Court for the District of New Jersey.

Andresen *is the principal of Andresen & Associates, P.C. For more info, visithttp://www.andresenlawfirm.com/attorneys/andresen/ Research assistance on this article provided by Caitlin Brady, Washington University School of Law*

Team General Counsel Discuss Challenges, Opportunities

By Derrick Hutek

Attorneys from Central Florida's four major league sports franchises convened at the Tampa Club in downtown Tampa, FL on Thursday, December 12 for a panel discussion about legal issues facing team counsel on a daily and even hourly basis.

The event was presented by the Sports Lawyers Association, Holland & Knight, and Hill Ward Henderson.

The panel, consisting of David Cohen, General Counsel for the Tampa Bay Buccaneers; Nyea Sturman, Assistant Director of Legal Services for the Orlando Magic; John Higgins, Senior Vice President of Administration/General Counsel for the Tampa Bay Rays; and Jim Shimberg, Executive Vice President/General Counsel of Tampa Bay Sports and Entertainment, the parent company of the Tampa Bay Lightning and Tampa Bay Storm, was moderated by David Lisko of Hill Ward Henderson. Attendees included young practicing sports attorneys and law students eager to learn more about careers in sports. The panelists began by sharing their unique paths to becoming sports attorneys and contrasting their current work to that which occurs within a law firm.

Higgins, the very first employee of the then Tampa Bay Devil Rays, discussed his start as an associate with Fowler White and noted that he no longer has to keep time slips or hustle for business as an in-house attorney, as his focus is now on one client and whatever its legal needs may be. He also shared that his awareness of potential media interest and coverage colors some of the decisions he makes. Higgins, who served as the Rays' CFO for nearly a decade, credited the varied nature of his experience at a firm with providing him at least some familiarity with the concepts of nearly every issue that comes across his desk with the Rays.

Cohen surprised many in the audience by discussing his start as an athletic trainer with several professional baseball organizations and how that led him into workers' compensation work within sports and ultimately to the role of General Counsel.

Sturman's MBA served her well in her role within the Magic's Corporate Partnerships Department before she moved into her more wide-ranging position in 2012. She spoke about the challenges present when determining whether the nuanced details of a particular issue necessitate the hiring of specialized outside counsel and how the role of an in-house attorney is more that of a generalist.

Shimberg concurred with Higgins about the differences between firm and in-house work, discussing his 27 years as a member and partner of Holland & Knight, as well as his tenure as the City Attorney of Tampa prior to coming on board with the Lightning and Storm. He spoke about how much of what a GC does does not directly relate to the teams themselves, and that his past experience with complex real estate transactions has proven invaluable in his current role.

Students interested in pursuing careers within sports were encouraged by the panelists to acquire familiarity with several areas of the law that receive considerable attention from attorneys practicing within the industry. Higgins spoke of the ubiquitous presence of intellectual property law, as so many aspects of sport business involve the protection, exploitation, and licensing of trademarks and copyrights. Employment law also came up many times as an area of focus.

Panelists also discussed the importance of building a network within the industry, and not just with other attorneys. Cohen attributed nearly all of his opportunities to relationships he built during his career, including during his time as a student and athletic trainer. Shimberg shared his enthusiasm over the elevated sense of teamwork and excitement that working under an effective and inspiring executive team can create and how students and young lawyers interested in careers in sport need to understand that it is less about the individual than the organization as an in-house attorney.

Near the end of the evening, each panelist was asked what they saw as the biggest trend that would affect the careers of attorneys in the sports industry moving forward?

Sturman discussed the explosion of analytics and data collection within sports and the privacy concerns such practices raise among fans.

Cohen echoed the attention on big data and technology and again referenced employment law, noting that the trend in this area is continual change which can dramatically affect an organization.

Shimberg talked about how sports business is no longer simply limited to the competition on the playing surface and that his organization has renewed its focus on providing a world-class guest experience to ensure that the Lightning and Storm attract more than just hardcore sports fans.

Higgins echoed this by expressing the growing concern among sports organizations that technological advances are making in-person attendance a tougher sell. Several panelists also discussed the ever-growing merchandising industry and its unique challenges.

With each of these trends come new and interesting legal challenges, according to the panelists, which will keep current and prospective sports lawyers busy well into the future.