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HERRICK QUARTERLY SPORTS UPDATE
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1. Conference Musical Chairs - How Television and the Development of RSNs are Altering the Collegiate Sports Landscape

Drastic changes in many of the largest NCAA Division I conferences have altered the landscape of college sports. Schools long associated with particular conferences are realigning themselves. Not surprisingly, money is driving the trend—primarily from the development of regional sports networks (RSNs), which provide growing revenue to conferences and schools.

Revenue generated from television isn't the only factor—some schools are seeking to improve their academic image by associating with a particular conference—but it is the primary factor. The launch of the Big Ten Network in 2006—the first internationally distributed network dedicated to covering a single college conference—marked a dramatic turn in college sports. Today, the Big Ten Network reaches approximately 40 million households across the Midwest and Canada. The Big Ten receives an estimated 88 cents per month for every subscriber to the network, and in 2008-09, the network alone was responsible for distributing $6.4 million to each of the schools in the Big Ten. The SEC, considered by many to be the strongest conference athletically, also boasts extremely lucrative TV deals. While it does not yet have a RSN, the SEC's two 15-year agreements with ESPN and CBS are worth more than $3 billion. What does that mean to the SEC's member schools? Earlier this year the conference divided a staggering $209 million among its 12 member schools.

When the Big Ten announced earlier this year that it was seeking to expand, the effects were felt throughout the collegiate landscape. Nebraska's decision to align with the Big Ten caused a scramble that nearly spelled the end of the Big 12 Conference. Its ultimate survival was due in large part to a restructuring of the conference's television agreement that greatly increases the revenues guaranteed to each member school, while also allowing Texas to pursue the establishment of its own RSN.

Expansion also gives conferences a footprint in markets where they may not otherwise have a presence. When the SEC flirted with Texas A&M earlier this year, bringing an untapped market into the conference was a primary motivator. Adding the fifth largest and tenth largest television markets in the U.S. (Dallas and Houston, respectively) would have allowed the SEC to generate more money by guaranteeing more viewers. Currently, the Big Ten is eyeing Rutgers University as a possible addition to give it a presence in the New York Metropolitan area. Expansion may also allow a conference to host a conference championship game, which also guarantees increased revenues. Such developments may ultimately lead to the development of a college football playoff at the Division I level, which also has the potential to increase revenues dramatically, especially for schools in the so-called "super conferences" that would likely have the most participants in such a playoff.

Conference realignment, while benefitting the schools that move and the conferences that seek to expand, also has adverse effects, particularly on the conferences that are left

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behind. The Big 12 initially sought exit penalties from Nebraska and Colorado, which is also leaving the conference, of $20 million from each school and recently settled with Colorado for $6.8 million and Nebraska for $9.2 million, respectively, to allow the schools to leave the Big 12 one year earlier than initially expected. The Western Athletic Conference recently sued Fresno State and Nevada to keep the schools, which have decided to join the Mountain West Conference, in the WAC through the 2011-12 season. The WAC felt that by attempting to hold these schools to their conference obligations, they could minimize disruption to the WAC and lessen the damage to its arrangements with sponsors and television partners.

The impact on sponsors and conferences of schools changing conferences can also be significant. While national brands may be able to adjust more easily to the new college landscape, regional sponsors, who may enter into certain arrangements based upon rivalries or matches that will no longer exist (e.g., Nebraska vs. Oklahoma), may be severely impacted. Realignment can also have the effect of shifting more power to the conferences, particularly stronger conferences like the SEC and Big Ten, which may seek better terms from sponsors and television networks. An expansion of the SEC, for example, would allow the conference to renegotiate its TV deal, which would likely provide even greater revenue to the conference. Sponsors and other entities involved in collegiate sports should continue to monitor these developments, since the game of conference musical chairs does appear to be over quite yet.

2. Impact of Globalization and Technology on Professional Sports

Technological advances are bringing sporting events to more people than ever before. Mobile devices, net books, laptops and satellite televisions have increased international viewership of sporting events. For the 2010 World Cup, ESPN3 (ESPN's broadband network for live sports programming) clocked nearly 7.4 million viewers, generating 15.7 million hours of viewing. The network's World Cup application was downloaded more than 2.5 million times and accessed by an average of one million users per day.

Though the World Cup may be seen as an outlier in terms of revenue generated and number of viewers, the international fan base continues to grow—even for smaller scaled local sporting events—with the aid of ever-advancing technology. This is due in part to athletes playing abroad, which may generate interest in a player's native country, and in part to the relatively new ability to watch games taking place anywhere in the world through live web stream or satellite television. Cross-border deals are also part of the equation as foreigners increasingly purchase interests in local teams, such as Mikhail D. Prokhorov recently becoming the first foreign owner of an NBA team. The potential sale of Liverpool, a soccer team in the English Premier League, has drawn the interest of potential purchasers from across the globe. This influx of interest creates opportunities for local and foreign sponsors and advertisers. The increased globalization of sports has also increased the value of many sport properties as evidenced recently by the $2 billion price tag—double the previous contract—for overseas television rights for the next three years of Premier League games.

Globalization of the NBA is not a new phenomenon, but technological advances are helping it continue. Today, the NBA finals are televised to more than 200 countries in over 40 languages. More than half of all NBA.com traffic comes from outside of the U.S. Due to its enormous popularity in China and because of high-profile players Yao Ming and Yi Jianlian, the number of Chinese sponsors and advertisers in the NBA is growing. Recently, the NBA announced a multi-year marketing partnership with the BBVA Group, a leading Spanish bank. As part of the partnership, BBVA will serve as the official bank of the NBA, WNBA and the NBA D-League in the U.S., Spain and Puerto Rico. MLB is also seeing its brand grow. Thanks to players such as Ichiro Suzuki, a significant number of Japanese sponsors, including Nintendo, MasterCard Japan, Ajinomoto, Sanyo Electric and Hitachi, can be seen throughout MLB stadiums. The benefits of globalization are not limited to foreign companies; many U.S. companies are also getting in on the action. The NBA's popularity in China is a significant reason for Nike's revenue growth in that country, which rose 22% in 2009.

Many sports are using advances in technology to expand, driving an increase in opportunities for advertisers and sponsors. Because international games are so easily accessed, they reach more people in more countries than ever before. Sponsors and advertisers are no longer limited to local markets or traditional forms of advertising and should explore different markets and media to reach as many "local" sports fans as possible.

3. Tax Planning for Pro Athletes

A hit from an NFL linebacker pales in comparison to the pain a professional athlete may feel from the "tax man." With federal tax rates approaching 40% and state tax rates as high as 10%, professional athletes, who generally derive income from contract salary, endorsements, outside businesses and investments, face a "taxing" situation. Proactive planning and expert counsel can help reduce the tax an athlete may have to pay, as well as reduce the likelihood of a tax audit. *

Federal Income Taxes. A person's income is generally subject to federal tax when they receive it, but there are several techniques that can possibly reduce, eliminate or defer federal taxes. One technique is to defer the receipt of income, but this must be put in place before the income is ever received and therefore should be part of contract negotiations. Another technique is establishing qualified retirement plans for the athlete, his spouse and, quite possibly, his children.

State Income Taxes. Commonly referred to as the "jock tax," professional athletes are subject to tax in every state in which they render services. Because of their high incomes, this is potentially very costly for professional athletes. For example, a player with the Florida Marlins may think he will not have to pay state income tax on his salary because Florida does not have a state income tax. However, when the athlete plays a game in another state that does have an income tax, that state will tax a pro rata share of the athlete's salary.

Another issue, which may be a relevant factor in contract negotiations, is the state tax of the player's home team. For example, if Lebron James had joined the New York Knicks and made New York City his home, he would have had to pay New York State and City tax on his entire salary, regardless of where the games were played. He would also have been subject to those taxes on all other sources of income. So if his annual contract paid him $10 million, playing for the Knicks would have likely resulted in an additional $600,000 or more a year in taxes. Instead, James chose to take his talents to Miami, where he will pay tax only on the games he plays in other states. Why did James turn down the bright lights of Broadway? Not paying state income tax on more than half of his NBA salary (or on his other income (see below)) is likely part of the answer.

Deciding where to reside (not just where to play) is also important. A professional athlete who plays for the Knicks is not necessarily a tax resident of New York. This is important because the other sources of income (e.g., endorsements, other businesses, investments, etc.) and wages allocated to games outside of the state are not taxed in the state where the player's team is located, but instead taxed (if there is a tax) in the state where the player resides. Therefore, if Lebron James played for the Knicks, but resided in Florida, he would pay New York tax only on the pro rata share of his NBA salary based on the games played in New York. A word of caution—athletes must plan carefully to ensure that the tax residency declaration is respected.

Today's professional athlete trains extensively to excel on the field. Athletes must pay similar attention to their finances if they want to excel financially once their playing days are over. Professional athletes' advisors should make tax planning a significant part of the athlete's financial game plan to maximize wealth. Careful planning and attention will help shield the professional athlete from a tax audit.

4. Bankruptcy Auction of the Texas Rangers: Creditors Finish in First Place

The Texas Rangers were sold in an August bankruptcy auction to a syndicate headed by former baseball great Nolan Ryan and attorney Chuck Greenberg. The final purchase price was $608 million—nearly $100 million more than the original offer for the team—and is a great example of how lenders can use the bankruptcy process to maximize the value of an asset.

In bankruptcy, most sales of assets or businesses are held via public auction under the bankruptcy court's rules Auctions expose the assets to the market and encourage qualified bidders to put forth their "highest and best bids." The Rangers' auction is a good example of this—the difference between the approximately $500 million initial bid and the final $608 million purchase price is substantial. And when an auction results in a price increase, creditors' of course, benefit.

The Ryan-Greenberg group had been negotiating a Rangers purchase since 2009, but the lenders never agreed to the deal, taking the position that the Rangers had not been fully shopped and insisting on conducting a traditional bankruptcy auction. In the bankruptcy case, the Rangers originally sought to have the first Ryan-Greenberg transaction approved, but the objecting bank creditors continued to press for a bankruptcy auction and complained that the deal that the Rangers' management and ownership were pushing was tainted by conflicts of interest. MLB initially asserted that it would approve a sale only to the Ryan-Greenberg group, but ultimately it halted its objections to the auction process. The bankruptcy court eventually appointed an independent fiduciary, who determined that pursuing a traditional bankruptcy auction and re-opening the bidding process was in the best interests of creditors. This determination led to spirited bidding for the team by a group headed by Dallas Mavericks owner Mark Cuban. Though unsuccessful, Cuban's bid helped increase the overall purchase price. The additional $100 million that the bankruptcy estate received validates the wisdom of open auctions for distressed assets and illustrates the value of a bankruptcy auction to creditors in the professional sports team context.

5. The Benefits of Public and Private Cooperation in Financing Stadium Projects

Modern stadium projects typically involve a collaborative partnership between public and private interests. This has not always been the case. Throughout the nineteenth century and into the early twentieth century, team ownership almost exclusively financed professional sports stadiums. The era of public stadium finance began with the opening of the Los Angeles Coliseum in 1923. Erected in a bid for the Olympic Games, the Coliseum was the first wholly publicly funded professional stadium in the United States and initiated a shift toward public participation in stadium construction and development.

Most public stadium finance takes the form of municipal bond issues, with proceeds used to finance stadium construction and maintenance costs. In a bond issue, the local government issuing the bond directly subsidizes stadium construction, and the federal government—through uncollected tax revenue—indirectly subsidizes it. The public may also elect to subsidize a stadium through infrastructure development projects and/or property tax exemptions.

Private contributions to stadium development may include proceeds from stadium naming rights, income from personal seat licenses, pouring rights, concessionaire arrangements and/or loans or donations from the owner or team. If the stadium is on land exempt from local property taxes, and if municipal bonds were used in support of stadium development, private interests may elect to make payments in lieu of property taxes to help finance debt service on those bonds.

While public money has become an important part of stadium finance, it has its critics. Opponents claim that sports stadiums used and operated by private interests fall foul of the "public purpose doctrine" enshrined in many state constitutions, and do not serve a public good. State courts throughout the U.S., however, have consistently held that sports stadiums fulfill a public purpose (with public benefits including national media exposure and civic pride and camaraderie) and that public funding of stadiums is constitutional. Critics also argue that new stadiums do not provide sufficient economic benefits for the communities in which they are built, and that most financial gains from a new stadium flow to team ownership. Though teams do benefit from stadium projects, communities also stand to gain. Economists have established that total economic activity in a community generally rises by a multiple of any increase in public spending in that community. Stadium projects also create community economic growth and new jobs and engender civic pride.

Professional franchises seeking to update existing facilities or construct new venues should be aware of the means available to finance stadium construction and the issues involved.

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Herrick Highlights

Leaders in the field: Matthew Pace was appointed as Co-Chair of the Sports Law Committee of the New York State Bar Association's Entertainment, Arts and Sports Law Section. He also spoke on the "Pay-Per-View and Subscription Models in the Entertainment and Sports Industries" panel at the ABA Entertainment and Sports Industries Conference in Las Vegas on October 8, 2010.

Players in the sports industry: Irwin Kishner was quoted in the article "Ready for Action," which appeared in a special New Meadowlands Stadium section of the SportsBusiness Journal. In it, he mentions various projects Herrick's Sports Law Practice is working on, including serving as lead counsel for matters related to the new Yankee Stadium.

Bringing new life to sports history: We represented a company jointly owned by the New York Giants and New York Jets in the entry into a memorabilia sales agreement with Steiner Sports. Under the memorabilia sales agreement, Steiner Sports was granted the right to effect sales of stadium seats, signage, field goal netting and other Giants Stadium memorabilia.

Accomplishing goals: We represented the New York Cosmos in the relaunch of the New York Cosmos Soccer Club and all related business opportunities.

For more information on these and other sports law issues, please contact Irwin A. Kishner, Esq. at (212) 592-1435 or ikishner@herrick.com or Matthew D. Pace, Esq. at (212) 592-1481 or mpace@herrick.com.

To learn how we can help you succeed in the sports business, including information on our team, their experience, and our events and media appearances, visit www.herrick.com/sports.

* Note, discussion herein assumes the professional athlete is a tax resident of the United States.