

Sports Litigation Alert

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New York's High Court Ends Marathon Television Rights Valuation Dispute

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An April 2023 decision from the Court of Appeals of New York has brought an end to the decade-long valuation dispute over telecast fees involving the Washington Nationals, Baltimore Orioles, and their broadcasting network. After several years of arbitration within MLB's internal forum—and several more of litigation in New York state courts disputing the validity of that arbitration process—New York's highest court upheld MLB's internal arbitration procedures and confirmed the resulting award. By making this decision, published as *TCR Sports Broadcasting Holding, LLP v WN Partner, LLC*, 2023 N.Y. Slip Op. 02090, 2023 WL 3061481, (2023), New York's highest court further establishes that sophisticated, counseled parties—including private sports leagues—will be held to the terms of their contracts.

Nationals Enter D.C. Market, Ruffling Orioles' Feathers

The decision concerns a television broadcasting rights valuation dispute between MLB, TCR Sports Broadcasting Holding, LLC (“TCR”), the Orioles and the Nationals. The conflict arose over the National's entrance to MLB's Mid-Atlantic region, previously exclusively occupied by the Orioles. The Nationals, formerly the Montreal Expos, were purchased by MLB, re-branded, and relocated to Washington, D.C.—a territory squarely within the Orioles' Mid-Atlantic territory. The Orioles, apprehensive about the entrance of a new MLB team in a city that accounted for a significant portion of their fan base and revenue, objected to the plan, launching the dispute.

The Parties Strike a Settlement Agreement

Ultimately, under a 2005 settlement agreement, the parties agreed that TCR—which had previously co-founded the Orioles' Television Network with

the Orioles—would convert to a two-team regional sports network named Mid-Atlantic Sports Network (“MASN”) that would enjoy the exclusive right to televise most of the Orioles' and Nationals' games in the Mid-Atlantic territory.¹ To soothe the Orioles' qualms over the Nationals' entrance to their market, the Orioles were granted a bigger stake in MASN (and, accordingly, a larger share of its profits).²

The settlement agreement also required MASN to pay the Orioles and Nationals an annual fee for the right to telecast their games. From 2007 on, the teams were to be paid the same amount for those rights. These fees are MASN's largest expense and directly impact its profitability, incentivizing the Orioles—who receive the lion's share of the profits—to seek lower fees. Conversely, the setup led the Nationals to seek higher fees. The settlement agreement set fees through 2011, but when the parties sought to negotiate fees for the 2012-2016 period, they failed to reach agreement.

The Parties Turn to Their Agreed-To Arbitration Procedure

The parties had negotiated a dispute resolution process in the event of precisely such a failure. Per the settlement agreement, after the 30-day mandatory negotiation period lapsed without resolution, the parties were obligated to enter into non-binding mediation in one of two designated forums. If mediation failed, MLB's Revenue Sharing Definitions Committee (“RSDC”) would determine the fair market value

¹ MASN would not televise those games that were retained by MLB's national rights agreements.

² The Orioles owned an initial stake in MASN of 90%, with the Nationals owning 10%. Beginning in 2010, the Orioles' stake would decrease by 1% (and the Nationals' stake would commensurately increase) per year until it reached 67%.

of the telecast fees. The RSCD is a standing committee that comprises three regularly-rotating members made up of representatives of MLB teams, with an established methodology for valuing telecast rights. Under the settlement agreement, the RSDC's determination would be final and binding, limiting the parties' rights to seek to vacate the award to grounds of corruption, fraud, and a few other grounds.

The Parties Attempt a First Arbitration

The parties exercised an option to waive the mediation process, proceeding directly to arbitration before the RSDC. The RSDC's members were representatives of the Tampa Bay Rays, Pittsburgh Pirates, and New York Mets, appointed by then-MLB Commissioner Bud Selig. The arbitration was administered by then-Executive Vice President (and current MLB Commissioner) Robert D. Manfred, Jr., who also provided legal and analytical assistance to the RSDC. The Nationals retained their negotiation counsel throughout the arbitration over the continuing objection of the Orioles and MASN—who objected based on the Nationals' counsel's past and ongoing unrelated work for the Rays, Pirates, and Mets, as well as their concurrent representation of MLB. The RSDC held a one-day hearing and determined, a few months later, that the Nationals' telecast rights would be \$53 million for 2012 and increase by \$3 million per year through 2016. The RSDC did not issue a decision, however, as Selig was attempting to negotiate a broader settlement between the parties.

About a year later, while those negotiations continued, MLB advanced the Nationals approximately \$25 million to encourage the Nationals' continued participation in negotiations—the difference between the RSDC's pending award and the amount actually paid by MASN to the Nationals. If the parties failed to settle, MLB would be repaid with proceeds from the arbitration award. Ultimately, the settlement negotiations failed, and the RSDC issued a June 2014

decision in line with its previous determination.

The Court Vacates the First Arbitration Award

MASN and the Orioles commenced an Article 75 proceeding in New York state court against the Nationals and MLB, seeking to vacate the RSDC award under the Federal Arbitration Act ("FAA"). MASN argued, among other things, that (1) the RSDC failed to fully disclose and remedy the Nationals' counsel's alleged conflicts of interest; (2) the \$25 million advance gave MLB an impermissible stake in the outcome of the arbitration process; and (3) MLB improperly controlled the arbitration process. MASN and the Orioles requested the dispute be remanded for a second arbitration in a forum unaffiliated with MLB. The Nationals cross-moved to confirm the arbitration award.

In November 2015, the New York Supreme Court granted MASN and the Orioles a partial win and denied the Nationals' cross-motion. The Supreme Court rejected the contention that the \$25 million advance gave the RSDC or MLB an "impermissible interest in the award," but agreed that the conflicts of interest were not adequately addressed, which demonstrated "evident partiality" and justified vacating the award. The matter was remanded for a second arbitration, though not to an unaffiliated arbitral forum, as doing so would require the court to re-write the settlement agreement—a remedy it recognized as beyond its authority to grant. The parties filed respective appeals and New York's Appellate Division affirmed the lower court's 2014 order.

The Parties Arbitrate a Second Time

Before the second RSDC arbitration commenced, the parties attempted to resolve many of the previously-contested elements. The Nationals retained their originally controversial counsel, but the RSDC appointed a new panel made up of representatives from neutral teams: the Milwaukee Brewers, the Seattle

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Mariners, and the Toronto Blue Jays. The RSDC also retained independent counsel. Separately, MLB and the Nationals agreed that the \$25 million advance would be repaid at least 10 days prior to the start of the second arbitration. MASN and the Orioles continued to object to the RSDC as the arbitral forum, requesting the RSDC recuse itself and demanding copies of communications between the RSDC and MLB concerning the dispute. The RSDC refused both requests and the second arbitration proceeded.

Ultimately, the RSDC determined that the Nationals' rights should be valued at approximately \$55 million in 2012, rising to about \$62.5 million in 2016—an increase from its prior determination. The RSDC stopped short of entering a judgment or awarding prejudgment interest, concluding that it lacked authority to do so.

The Courts Uphold the Second Arbitration Award

The Nationals moved to confirm the award and for prejudgment interest in the New York Supreme Court. MASN and the Orioles opposed the motion, again seeking to vacate the award based on the RSDC's partiality—evidenced by the RSDC's refusal to recuse itself or produce the requested documents, as well as statements by then-MLB Commissioner

Manfred, who had been quoted as stating he thought that the settlement agreement made clear that “the RSDC was empowered to set rights fees.” MASN and the Orioles again requested the dispute be remanded to an unaffiliated forum and contended that the court lacked authority to grant the Nationals a money judgment or prejudgment interest.

The New York Supreme Court confirmed the award and directed the parties to an inquest to determine the amount of prejudgment interest. The court

found that MASN and the Orioles failed to establish partiality and entered judgment in favor of the Nationals for over \$105 million—including \$6 million in prejudgment interest. The Appellate Division affirmed the judgment.

On appeal to the Court of Appeals of New York, the parties agreed the FAA governed the dispute. The Court recognized the FAA's primary purpose

of ensuring private arbitration agreements, like contracts, would be enforced according to their terms—which the courts will not rewrite. The Court further recognized that parties to an arbitration agreement typically enjoy the right to negotiate the arbitration agreement to name the arbitrator(s) and choose the manner they are selected.

The Court disregarded the arguments for an im-

The Court disregarded the arguments for an impartial forum based on the RSDC's purported partiality, reasoning that the alleged conflict of interest was remedied before the commencement of the second arbitration by RSDC retaining new counsel and replacing the panel members.

1 McKelvey, S. & Longley, N. (2015) Event-specific ambush marketing legislation for mega-sporting events: An economics perspective. *International Journal of Sport Marketing & Sponsorship*, 16(5), 349-364.

2 In the New Orleans lawsuit (Ciccarone v. City of New Orleans, 2013 U.S. Dist. LEXIS 32270, (United States District Court for the Eastern District of Louisiana March 8, 2013, Filed), the American Civil Liberties Union sued the city on behalf of a preacher and a political activist. The city removed the restrictions as part of settlement of the lawsuit and agreed not to restrict most forms of commercial and non-commercial speech, such as local businesses having a sign advertising their wares, but the city could still prohibit off-site and mobile advertising near the French Quarter, such as signs attached to a vehicle or worn by a person, according to the court filing.

3 Williams v. City of Arlington, No. 4:11-CV-093-Y (N.D. Tex. Oct. 11, 2011). Despite filing the lawsuit, the Super Bowl that year went by without any issues or challenges as it related to the clean-

zone ordinances, except for some confusion about how the ordinance would be enforced, according to Sliffman, *infra* note endnote iv, discussing fn 15.

4Ari J. Sliffman, Unconstitutional Hosting of the Super Bowl: Anti-Ambush Marketing Clean Zones' Violation of the First Amendment, 22 Marq. Sports L. Rev. 257 (2011), at 277.

5 Paulin v. Gallego et al., CV 2023-000409 (Superior Court of Arizona, Maricopa County. Feb 2, 2023).

6 Id. at page 2, citing to Phoenix Newspapers, Inc. v. Otis, 243 Ariz. 491, 495 (App. 2018).

7 See Nash v. Nash, 232 Ariz. 473, 481-82 (App. 2013)

8For excellent legal analysis of the application of the commercial speech doctrine to clean zone ordinances, see Sliffman, *infra* endnote iv.

9 Paulin v. Gallego et al., p 5.

10Paulin v. Gallego et al., p. 3 citing Emmett McLoughlin Realty, Inc. v. Puma City, 203 Ariz. 557, 559 (App. 2002).

11 Id.

partial forum based on the RSDC’s purported partiality, reasoning that the alleged conflict of interest was remedied before the commencement of the second arbitration by RSDC retaining new counsel and replacing the panel members. Similarly, the Court disregarded the notion that the \$25 million advance rendered the RSDC an improper forum, noting that it was made prior to the RSDC’s first, informal arbitration determination and remained unchanged for the duration of negotiations. There was no evidence that MLB or Manfred had any undisclosed influence on the second arbitration’s panel members beyond what was already negotiated for in the settlement agreement, and the Court determined Manfred’s statements fell short of being a directive to the RSDC panel and didn’t demonstrate partiality.

The Court confirmed that remanding the matter to the RSDC furthered the FAA’s purpose by ensuring the arbitration agreement was enforced according to its terms—in this case, the term requiring the parties to arbitrate telecast rights fee disputes before the RSDC. MASN and the Orioles agreed to the settlement agreement knowing that MLB determined the makeup of the RSDC panel and knew the panel would be composed of MLB insiders. Moreover, the parties specifically agreed to RSDC arbitration due to its specialized knowledge concerning telecast rights valuations and did so with the understanding of the MLB Commissioner’s involvement. The Court declined to re-write the contracts to grant MASN and the Orioles a different bargain than the one they struck. The high court affirmed the confirmation of the second arbitration award.

However, the Court of Appeals did modify the order to the extent it awarded prejudgment interest and a money judgment, finding that the relief was outside of the RSDC’s arbitral scope. The RSDC was empowered only to determine the fair market value of the telecast rights fees—not to resolve disputes over nonpayment of those fees. The Court grounded this determination, again, in the language of the settlement agreement itself, which outlined specific dispute resolution procedures for such nonpayment. The parties were guided to resolve the nonpayment dispute by the contract’s terms.

Conclusion

The Court’s consistent referral to the plain language of the contract demonstrates an inherent respect for the counseled parties’ abilities to negotiate their rights and select their remedies, including their preferred arbitral forum. The Court also evidenced its respect for MLB’s specialized telecast rights fee valuation knowledge, which rendered it a proper forum for this valuation dispute. The Court’s reluctance to interfere with the parties’ contracts, including their informed selection of an industry insider-controlled procedure, raises the question of the degree to which private sports leagues can influence their internal dispute resolution processes. This decision underscores the importance of carefully negotiating arbitration and dispute resolution procedures. There’s no crying in baseball, and where the parties have carefully negotiated an arbitration agreement—there may be no crying to the courts.



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