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Pacquiao and Mayweather Bob and Weave Past Litigation over "Fight of the Century"

On August 25th, 2017, in a convincing knockout, a federal judge in Los Angeles dismissed dozens of lawsuits against Manny Pacquiao and Floyd Mayweather alleging Pacquiao's concealed shoulder injury impacted the quality of their highly anticipated May 2015 "Fight of the Century." Judge R. Gary Klausner dismissed each and every complaint in this multi-district litigation, ruling that disappointed viewers who had paid for the fight failed to state a claim based on a cognizable injury to a legally protected right or interest. (*In Re: Pacquiao-Mayweather Boxing Match Pay-Per-View Litigation*, No. 15-ml-02639 (C.D. Cal. Aug. 25, 2017)). The big fight drew tremendous TV viewership, with consumers paying as much as $99.95 to watch the bout, and brought in over $400 million for HBO and Showtime in pay-per-view revenue. After losing the fight in a 12-round decision, Pacquiao revealed that he had torn his rotator cuff a month before the fight during training and was "not really 100%" in the ring. The day before the fight, however, Pacquiao and his personal advisor completed and signed a Nevada State Athletic Commission (NSAC) Pre-Fight Medical Questionnaire attesting that he had not suffered any shoulder injury and did not have any serious medical illnesses or conditions of any kind. On the day of the fight, three hours before the start of the match, Pacquiao's team disclosed the injury to NSAC and its physicians in hopes of receiving an anti-inflammatory cortisone injection (the request was denied, and NSAC physicians cleared Pacquiao to fight).

After the final bell had sounded, the litigation battle ensued. Various plaintiffs brought a flurry of lawsuits against the boxers and their promoters, among others, alleging that the defendants concealed the shoulder injury to maintain the pre-fight hype and increase pay-per-view subscriptions, and advanced claims including fraudulent concealment, statutory consumer fraud and conspiracy to commit consumer fraud.

The various lawsuits arising out of the concealment of Pacquiao's rotator cuff injury were all consolidated on August 17, 2015, leading to a multidistrict litigation comprising 26 individual actions and 15 consolidated complaints (*In Re: Pacquiao-Mayweather Boxing Match Pay-Per-View Litigation).* In one corner were the plaintiffs, which included pay-per-view purchasers, ticket-holding plaintiffs and commercial entities that purchased closed-circuit distribution rights for the fight. In the other corner were the defendants, who, in essence, argued that even if the fight was not a scintillating, epic bout, viewers obtained the full benefit of the expected bargain and did not suffer any recoverable damages.

The court began its analysis by noting the underlying tension in this litigation: that is, judicial reticence to recognize "disappointed-fan injuries" balanced with the court's role in interpreting "robust" consumer protection laws. In examining whether the plaintiffs suffered any cognizable injuries, the court stated that ticketholders and pay-per-view subscribers received "nothing more than a revocable license" to view whatever transpired at the event, "regardless of prior promises or representations about the performance."

In dismissing the case, the court delivered the ultimate blow when it stated that recognizing plaintiffs' claims would disrupt the nature and integrity of competitive sports – that the outcome of a sporting match is always uncertain, performances unpredictable and pre-event statements unreliable. In the court's mind, any remedy for the claimed unscrupulous behavior outlined in plaintiffs' complaint was not a legal one, but more of a problem to be fixed through lobbying the legislative or state athletic commissions. In scoring this decision in favor of the defendants, the court stated that the plaintiffs ultimately received what they paid for, namely the right to view a sanctioned boxing match, and "plaintiffs had no legally protected interest or right to see an exciting fight, a fight between two totally healthy and fully prepared boxers or a fight that lived up to the significant pre-fight hype." Following the court's dismissal of the complaint, the plaintiffs filed a notice of appeal with the Ninth Circuit, so it seems like there will be a rematch.

For plaintiffs, although the loss in the early round of this litigation added insult to their alleged injury of not seeing anything close to the Fight of the Century in the ring, it certainly provided them a lesson in the old adage, Caveat emptor.

May the Force Be with Them: Western Force Battles for a Post-Super Rugby Future

For avid rugby fans, there's been a bit of a shake-up Down Under. Super Rugby – an international rugby competition overseen by SANZAR (South Africa New Zealand Australia Rugby, and now, following the inclusion of Argentina, SANZAAR) – is being reduced from eighteen teams to fifteen teams for the 2018 season, eliminating one Australian team and two South African teams in the process. The Australian Rugby Union ("ARU"), the governing rugby body, which is made up of eight member unions from different Australian territories, was charged with selecting the Australian team to be eliminated from the competition. It initially announced that it would be shrinking the number of Australian teams in Super Rugby from five to four in April of 2017, and eventually chose to cut the

Western Force, citing "falling revenues and fan interest." The ARU's decision has been the subject of criticism since first announced, with loyal fans expressing their disappointment and blindsided stakeholders emphasizing the ARU's lack of transparency, taking the battle off the field and into the courtroom.

The Western Force (the "Force"), based in Perth, Western Australia, was formed by the Western Australia Rugby Union (RugbyWA) to participate in the Super Rugby competition. It received its license from SANZAR in 2004 and began participating in the competition in 2006. Originally part of RugbyWA, the Force suffered some financial difficulties and became part of the ARU in June 2016, pursuant to an Alliance Agreement which transferred ownership of the team from RugbyWA to the ARU and created a partnership of sorts.

After the ARU publically identified the Force as the Australian team on the chopping block, the Force attempted to legally block this play. Proceeding with arbitration, RugbyWA argued that the ARU could not legally cut the Force due to the Alliance Agreement between RugbyWA and the ARU, which guarantees the Force's license, and participation in Super Rugby, through 2020. The legal question revolved around the term of the Alliance Agreement. While linked to existing underlying SANZAR Broadcasting Agreements set to expire in 2020, the definition of the term allowed for this date to change if such agreements were renegotiated. Unfortunately for the Force, that's exactly what transpired. RugbyWA disagreed with this broad reading of the definition, arguing that the Alliance could be terminated only if the expiry date of the Broadcast Agreement was renegotiated to an earlier date, but the arbitrator found in favor of the ARU and confirmed the ARU's decision to cut the Force. RugbyWA appealed this decision to the Supreme Court of New South Wales, which dismissed the appeal on September 5, 2017 (*Western Australian Rugby Union v. Australian Rugby Union Ltd*, [2017] NSWSC 1174 (filed Sept. 5, 2017)). The court found that the reference in the definition of the agreement's term to the SANZAR Broadcast Agreements did not "confine the subject matter of the renegotiation to any particular topic" and if the parties wanted to limit the term of the Alliance in any specific way, they could have spelled it out in the contract.

The Force's legal options have now likely run their course. While it is still possible that the Force will pursue an appeal to the New South Wales Court of Appeal or the High Court of Australia, Force fans should not be optimistic about their odds of grappling in court. However, the Force may yet have another try.

While the Western Force's legal remedies may be exhausted, thanks to billionaire mining magnate Andrew Forrest, its future is still in play. Forrest, who has been funding the Force's legal challenges, has promised to keep fighting for the Force's future. To this end, Forrest initially suggested that he would create a "rebel competition" comprised of teams from the Indo-Pacific region. Press reports suggested that his newly conceived competition would likely consist of six teams, potentially including Fiji, Samoa, New Zealand, Tonga and, of course, Australia. However, it is unclear whether or not the Force, as it exists now, will be intact to participate. Players and coaches may well be poached by other teams still active in the ARU in the interim.

More recently, Forrest articulated his vision of an international Indo-Pacific Rugby Championship that would complement the ARU instead of competing against it for both players and viewers. On September 13, 2017, Forrest officially unveiled the new competition and outlined that it will be ten rounds and begin in

the early fall of 2018. The real question is whether Forrest and the ARU can overlook past enmity and somehow carry the ball forward together. If the ARU refuses to endorse the Indo-Pacific Rugby Championship, then "the IPRC will effectively be a rebel competition" and players will be forced to choose between participating in Australia's established rugby league (or other European or Asian teams) and Forrest's brainchild. While the mechanics and specifics of such a plan are still in flux, given Forrest's innovative vision for rugby in the Indo-Pacific region and his newly found cooperation and collaboration with the ARU, Force fans may well have cause to be optimistic as they find their way out of the scrum and into the future of international Australian rugby.

Marathon Organizers Face Post-Race Blues (and Class Action Complaint) after Cancelling Race without Full Refunds

Following news that the 2017 Vancouver USA Marathon in Vancouver, Washington was cancelled, marathon hopefuls who were denied the opportunity to receive a finisher's medal for all of their training may still receive a consolation prize. Registrants were notified on August 18, 2017 that the race would be canceled, just weeks before the runners were set to hit the starting line on September 17. Runners also were told that they would not receive full refunds of their registration fees. Instead of starting his cooldown early, Cory Bradley, a registered participant for the race, filed a putative class action suit the day after the announcement on behalf of all registrants (Bradley v. Energy Events LLC, No. 17-01291 (D. Or. Amended Complaint filed Aug. 28, 2017)). The complaint alleged, among other things, that Energy Events LLC ("Energy Events") and its sole owner and operator, Brian Davis, intentionally misled consumers by promoting advertising materials promising a fun, run-filled weekend in exchange for their registration fees, even as the race organizers knew that they would never be able to fulfill such a promise.

The Vancouver USA Marathon has been an organized event hosted by Energy Events LLC since 2010, featuring a range of events and distances, including full and half-marathon courses, and a three-day beer festival, which attract around 3,000 participants every year. The events have been held along the Columbia River and historic parks and sights of Vancouver, Washington.

One of the reasons for this year's low registration and cancellation may have been related to a snafu that chafed many prior competitors. In the race's sixth year, runners may have noticed that they set a new PR (or "personal record"). Unfortunately, this may have been because the 2016 Vancouver USA Marathon course was 1,126 feet short of a full-marathondistance course. In practical terms, this meant that the race did not count towards qualification for other more well-known marathons, such as the Boston Marathon.

Each year, thousands of marathon racers dream of qualifying for the Boston Marathon by satisfying the course's infamous qualifying times based on age and sex. As the Boston Athletic Association notes on its website, only "certified full-marathon distance [courses] will be accepted for qualifying." Three months after runners crossed the finish line of the 2016 Vancouver USA Marathon, many runners were told by Boston Marathon organizers that their finishing times would not count towards qualification. And if a runner hadn't completed another marathon within the one-year window that ended that September, there was now no way for them to qualify for the 2017 Boston Marathon. Moreover, runners looking to complete their first marathon may have been left feeling as if they still hadn't really achieved that goal; those who wanted to add another marathon medal to their collection left the course without any runner's high, and not surprisingly, many asked for refunds, perhaps because a "25.9867424" sticker just doesn't look as impressive on the back window of a car as a "26.2" sticker. Runners were not granted refunds, but instead were offered free registration for the 2017 Vancouver USA Marathon.

Of course, the 2017 Vancouver USA Marathon never happened. Race organizers cited low pre-race registration numbers and a review of their finances as the cause of cancelation, and communicated that they planned only to issue partial refunds to those who had registered because much of the funds had already been used for "marketing, deposits and operational overhead." This left many racers "rungry" for retribution, including our plaintiff, Cory Bradley. Bradley filed suit against Energy Events the very next day claiming that the defendants' marathon was "materially under-funded" and "similar to a Ponzi scheme."

The complaint alleges that Energy Events's advertisements, which stated that runners who paid the registration fee could race in the 2017 events, were intentionally misleading. Energy Events allegedly failed to disclose that the distance blunder of 2016 had damaged the credibility of the event so much that they knew pre-race registration numbers would be low, and that the event would be underfunded. The complaint further alleges that these facts were known at the time registration became "live," and Energy Events knew or should have known that they could not provide their promised race services. The plaintiff claimed that these facts were material to determining whether or not to register for the 2017 Vancouver USA Marathon events in response to the advertisements. As a result, the complaint asserts claims under the Oregon consumer protection statute, based upon the defendant's alleged unlawful trade practices and false marketing representations. The plaintiffs seek various forms of relief, including actual, statutory and punitive damages, interest and reimbursement of fees and costs, which the complaint argues resulted from the hastily canceled event and the lack of full refunds issued to registrants.

It remains to be seen whether this litigation will be successful in reaching the finish line, or whether it will hit the wall before mile 20. It's also unclear if the runners will ever win a recoverable judgment—the complaint notes that defendant and sole operator of Energy Events recently filed for personal Chapter 7 bankruptcy. Whatever happens, whether continued litigation or future runs, the plaintiffs have a long road ahead of them and should be sure to pack their endurance chews.

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