

Legally Speaking

Developments That Will Affect Your Team in 2011

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- I. Anheuser-Busch, Inc. v. Major League Baseball Properties, Inc. ("MLBP")
- II. Health Care Reform
- III. Ballpark Liability

Anheuser-Busch, Inc. v. MLBP, Inc.

□ *Anheuser-Busch, Inc. v. MLBP*, United States District Court, Southern District of New York, Case No. 1- CIV 8513

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Anheuser-Busch, Inc. v. MLBP, Inc. (cont.)

- Allegations in the complaint:
 - Current promotional rights agreement grants Anheuser-Busch, Inc. ("A-B") the exclusive right to negotiate the terms of an exclusive renewal agreement.
 - Current agreement expires in 2010.
 - As of April 23, 2010, each party had signed the renewal agreement. A-B alleges that the renewal agreement is binding.

Anheuser-Busch, Inc. v. MLBP, Inc. (cont.)

- MLBP called the renewal agreement a letter of intent.
- The letter of intent called for a long form contract. MLBP offered to prepare the contract but never did so. A-B drafted the contract and sent it to MLBP on Sept. 3, 2010.

Anheuser-Busch, Inc. v. MLBP, Inc. (cont.)

- MLBP replied that the letter of intent was not binding on MLBP and that MLBP would offer the sponsorship rights to A-B's competitors.
- A-B wrote to its competitors on Oct. 8, 2010 to put them on notice about A-B's rights under the current agreement.

Anheuser-Busch, Inc. v. MLBP, Inc. (cont.)

- A-B's legal claims:
 - The letter of intent is binding. The long form contract is a ministerial act that does not change the binding nature of the letter of intent.
 - MLBP does not have the right to negotiate with any competitors of A-B.

Anheuser-Busch, Inc. v. MLB, Inc. (cont.)

- Despite MLB's position that the marketplace changed when A-B acquired the NFL sponsorship, A-B and MLB have a deal, and the court should enforce it.

Anheuser-Busch, Inc. v. MLB, Inc. (cont.)

- A-B's alleged injuries:
 - A-B has suffered irreparable harm that cannot be remedied through money damages.
 - A-B will lose significant competitive advantage.
 - A-B will lose goodwill with baseball fans.

Anheuser-Busch, Inc. v. MLBP, Inc. (cont.)

- A-B demands:
 - The court should declare that the letter of intent is a valid and enforceable contract.
 - The binding contract provides A-B with multi-year exclusive sponsorship rights.
 - The court should reward “other relief as the court deems just and proper under the circumstances.”

Anheuser-Busch, Inc. v. MLBP, Inc. (cont.)

- Note that A-B is not suing for money damages, just enforcement of its alleged contract.

Anheuser-Busch, Inc. v. MLBP, Inc. (cont.)

□ Basic legal principle

- Contract law says that a court will enforce the terms of a contract that is clear on its face.
- However, if the terms are not clear, then the court may look to other evidence – letters, memos, emails, and even oral statements – to determine the intent of the parties.

Anheuser-Busch, Inc. v. MLBP, Inc. (cont.)

- Letter of intent.
- Clear on its face?
- Binding or non-binding?
- Extrinsic evidence — emails, conversations.

Anheuser-Busch, Inc. v. MLBP, Inc. (cont.)

- Exclusive renewal rights.
- Clear on its face?
- Satisfied by the parties?

Anheuser-Busch, Inc. v. MLBP, Inc. (cont.)

- What lessons do we learn?
 - Clearly state whether the letter of intent is binding or non-binding.
 - Carefully draft and review the contract with regard to exclusive renewal rights. What is the window for exclusive negotiation? How much negotiation is enough to call it quits? When is the renewal binding?

Anheuser-Busch, Inc. v. MLBP, Inc. (cont.)

- Where will the parties go from here?
 - Pleadings, motions, discovery, depositions, more motions, trial.
 - Time spent by executives that might be more productively spent.
 - Lawyers and more lawyers.
 - Mediation? Arbitration?

Health Care Reform

- How will Health Care Reform affect your team?
 - The political climate has changed, but the 2010-2011 provisions will apply.
 - The 2014 provisions will have great impact if they survive the new US Congress.

Health Care Reform

- ❑ What does your team need to know?
 - Keep your current plan in place until you carefully study the effects of any changes.
 - Consult with an insurance professional who knows how the laws and regulations will affect small businesses.

Health Care Reform

- The Patient Protection and Affordable Care Act was signed into law and made effective on March 23, 2010, with certain provisions phased in through January 1, 2018 ("PPACA"). PPACA was subsequently amended on March 31, 2010 by the Health Care and Education Reconciliation Act ("HCERA").

Health Care Reform – All Plans No Grandfathering

- The PPACA requires that plans that provide dependent coverage make coverage available to dependent children until age 26, effective for plan years beginning on or after September 23, 2010.

Health Care Reform – All Plans No Grandfathering

- Plans are prohibited from imposing lifetime dollar limits on essential benefits, effective for plan years beginning on or after September 23, 2010.
- Through 2014, only certain restricted annual dollar limits on essential benefits are permitted. Beginning in 2014, all annual dollar limits are prohibited.

Health Care Reform – All Plans No Grandfathering

- Plans may not rescind coverage except in cases of fraud or intentional misrepresentation.
- Plans may not refuse coverage based on pre-existing conditions for participants under age 19. Beginning in 2014, this prohibition applies to all ages.

Health Care Reform – All Plans No Grandfathering

- Starting with the first plan year beginning on or after January 2014, no plan may impose a waiting period for coverage of more than 90 days.

Health Care Reform – OK to Grandfather

- The law requires additional changes to be made for plan years beginning on or after September 23, 2010, however, these changes may be delayed if a plan meets certain “grandfather status” requirements. These changes, which apply to *any* group health plan, include:

Health Care Reform – OK to Grandfather

- Plans must provide certain preventative care and immunization with no cost-sharing by the participant.
- Plans must provide patient protections including choice of primary care physician or pediatrician in network, direct access to an OB-GYN without a referral, coverage of emergency services without pre-authorization, and out-of-network emergency services covered at essentially the same level as in-network.

Health Care Reform – OK to Grandfather

- Plans must provide an enhanced claims appeals process for claim denials.
- Plans must make claim denial information, claim payment policies, financial disclosures and disenrollment data public. Plans must also report quality of care to the Department of Health and Human Services.

Health Care Reform – Grandfathering Status May Be Lost If. . .

- Grandfathering permits those group health care plans to delay changes that would be otherwise required, so long as the plans remain essentially unchanged in key ways. A plan may lose its grandfather status if it does any of the following:
 - Changes its insurance policy, certificate, or contract of insurance.

Health Care Reform – Grandfathering Status May Be Lost If. . .

- Eliminates all or substantially all of the benefits used to diagnose or treat a particular condition.
- Decreases the employer contribution rate for any tier of coverage by more than 5% below the March 23rd contribution rate.
- Increases a fixed amount co-payment above the March 23rd amount by more than \$5.00 or medical inflation plus 15% as measured from March 23rd.

Health Care Reform – Grandfathering Status May Be Lost If. . .

- Increases the deductible or out-of-pocket limit above the March 23rd amount by more than medical inflation plus 15% as measured from March 23rd.
- Increases the percentage of a cost-sharing requirement above the March 23rd level.
- Decreases or imposes a new annual limit on the dollar value of benefits payable.

Health Care Reform – Grandfathering Status May Be Lost If. . .

- Grandfathered status is determined on a package-by-package basis. There are some changes a plan may make without losing grandfathered status.
- The most important is that a plan may raise overall premiums, so long as this does not shift an impermissible share of the burden of that increase to the employees.
- A plan may also enroll new participants and family members.

Health Care Reform – Grandfathering Status May Be Lost If. . .

- The law also permits a plan to make changes to comply with federal or state legal requirements, including changes to comply with the PPACA without jeopardizing grandfathered status.
- Plans that maintain grandfathered status get to put off making changes that are projected to increase plan costs.

Health Care Reform – Small Employers

- The PPACA also includes special incentives for small employers to provide health insurance for their employees. A small employer is defined by the law as having no more than 25 full time employees and average annual wages of less than \$50,000.

Health Care Reform – Small Employers

- In 2010 small employers who contribute at least 50% of the cost of single coverage toward buying health insurance for employees are eligible to receive a tax credit of up to 35% of the employer's contribution starting this year. A full premium credit will be available to very small employers (i.e., less than 10 employees with average annual wages less than \$25,000).

Health Care Reform – Looking Ahead — 2014

- The PPACA requires employers with 50 or more employees who do not offer coverage to their full-time employees to pay \$2,000 annually for each full time employee over the first 30 as long as one of their employees receives a premium tax credit. It also requires employers who offer coverage but whose employees receive premium tax credits to pay \$3,000 for each worker receiving a tax credit up to an aggregate cap of \$2,000 per full time employee.

Health Care Reform – Looking Ahead — 2014

- Premium tax credits are available to individuals who have household incomes of less than 400% of the federal poverty level or if the individual's employer-sponsored coverage requires an employee contribution of more than 9.5% of household income or covers only 60% of the total allowed cost of benefits under the plan. Therefore, a large employer will be subject to penalties/fees if it does not offer health care or does not offer affordable health care for all its employees.

Health Care Reform — Looking Ahead — 2014

- Implements the second phase of the small business tax credit for qualified small employers of up to 50% of the employer's contribution toward the employee's health insurance premium if the employer contributes at least 50% of the total premium cost. The credit will be available for 2 years.
- The full credit (100%) will be available to employers with 10 or less employees and average annual wages of less than \$25,000.

Ballpark Liability Update

- Here are two court cases for your consideration.
 - Edward C. and Janis C., et al. vs. City of Albuquerque, et al., Supreme Court of New Mexico, 2010 WL 4058665 (Sept. 3, 2010)
 - Wolfe vs. Bison Baseball, Inc., Court of Appeals of Ohio, 10th District, 2010 WL 1254597 (March 31, 2010)

Ballpark Liability Update

□ *Albuquerque case*

- A four-year-old boy and his family were at the Isotopes ballpark in a picnic area behind the left field fence, within the foul line, for a Little League function. Batting practice started, without warning, and a ball struck the boy in the skull. He and the family sued.
- The trial court applied the Baseball Rule. The court of appeals reversed in part.

Ballpark Liability Update

- The NM Supreme Court went in a different direction than either lower court. After a lengthy examination of the history of ballpark liability, it reversed and remanded.

Ballpark Liability Update

- Holding: An owner/occupant of a commercial baseball stadium owes a duty that is symmetrical to the duty of the spectator. Spectators must exercise ordinary care to protect themselves from the inherent risk of being hit by a projectile that leaves the field of play and the owner/occupant must exercise ordinary care not to increase the inherent risk.

Ballpark Liability Update

- Key quotation: “[W]hen a stadium owner or occupant has done something to increase the risks beyond those necessary or inherent to the game, or to impede a fan’s ability to protect himself or herself, the courts have generally, and we believe correctly, allowed claims to proceed for a jury to determine whether the duty was breached.”

Ballpark Liability Update

- Why a significant holding?

Ballpark Liability Update

- Classic Baseball Rule:

[W]here a proprietor of a ball park furnishes screening for the area of the field behind home plate where the danger of being struck by a ball is the greatest and that screening is of sufficient extent to provide adequate protection for as many spectators as may reasonably be expected to desire such seating in the course of an ordinary game, the proprietor fulfills the duty of care imposed by law and, therefore, cannot be liable in negligence.

Ballpark Liability Update

□ *Bison Baseball* case:

- This is an opinion from the Ohio court of appeals, 10th district, Franklin County, Columbus.
- Plaintiff worked as a freelance TV crew manager. She was directing pre-game interviews before a game between the Columbus Clippers and the visiting Buffalo Bisons on Apr. 13, 2007.

Ballpark Liability Update

- While the Bisons took infield practice, the third baseman threw a ball toward first base that struck her in the head, causing four skull fractures, loss of sight in her left eye, and other dental and facial injury.
- Plaintiff sued the Bisons, the third baseman, and the Cleveland Indians (at that time, the Bisons affiliate).

Ballpark Liability Update

- The trial court granted summary judgment based upon primary assumption of the risk as well as the open and obvious doctrine.
- Note that the Baseball Rule does not apply because plaintiff was not a paying spectator.

Ballpark Liability Update

- The court found that plaintiff “had been on a baseball field, in similar situations, enough times to know and fully appreciate the obvious risks involved. Because she was fully aware of those risks, and proceeded anyway, she is presumed to have assumed the risk of injury.”
- The court refused to extend the doctrine of open and obvious to flying objects.

Ballpark Liability Update

- Plaintiff knew the risks, so the court applied the primary assumption of risk rule, thus eliminating any duty of care that the defendants may have owed to plaintiff.
- The court affirmed summary judgment for defendants.



See you
at the
ballpark!