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The Official Newsletter of the National Sports Law Institute

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Martin Greenberg

Sleeping in Seattle—Good-bye NBA

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For some time, owners of the Seattle Sonics have sought to develop a new multi-purpose arena in the greater Seattle area to replace the KeyArena. The KeyArena at Seattle Center is located on the grounds of the site of the 1962 Century 21 Exposition, a World's Fair. The Seattle Center Coliseum was opened in 1962. Substantial renovations to the Coliseum began on June 16, 1994. The City of Seattle contributed \$74.5 million and the Seattle Super Sonics contributed approximately \$21 million to the renovation. The Coliseum reopened on October 26, 1995. After the renovation, the Coliseum was renamed the KeyArena. KeyBank paid \$15.1 million for a 15-year naming rights deal in 1995. The arena seats 17,072 for basketball, which is the second smallest capacity in the NBA other than the Miami Heat (16,500). The facility has 58 luxury suites, 1,702 club seats, and is one of the oldest arenas in the NBA. The facility is owned by the City and is also home to the Seattle Thunderbirds (WHL), and Seattle Storm (WNBA).¹

According to team ownership, under the NBA's current economic model, KeyArena is outdated and economically obsolete.² In a recent Forbes NBA Valuation report, the Sonics were valued at \$269 million, 28th among 30 teams in the NBA. But more importantly, the Sonics were the lowest revenue-generating team in the NBA with \$81 million in revenue,

¹ Howard Bloom, *Welcome to Franchise Relocation Hell – the Seattle Sonics*, SPORTS BUS NEWS, Nov. 5, 2007; *Key Arena*, available at <http://basketball.ballparks.com/NBA/SeattleSonics/index.htm>; *NBA Team's Arenas*, HOOPSCORNER.COM, http://www.hoopscorner.com/links/team_arenas.html.

² Mike Lewis, *Nothin' But Profit: Winning no longer key to new NBA*, SEATTLE POST-INTELLIGENCER, May 15, 2006.

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followed by the Portland Trailblazers - \$82 million, and the Milwaukee Bucks - \$88 million.³

KeyArena is the smallest NBA arena, barely one-half the average size of other NBA facilities. Ownership contended that the limited square footage was economically crippling and its size and configuration made it impossible to offer enough premium seating alternatives. As a result, the Sonics' premium seating revenues were among the lowest in the NBA.⁴ The arena's small size also limited point-of-sale opportunities for food, beverages, and merchandise. A number of NBA venues offer (and profit from) a variety of restaurant-type dining alternatives. As a comparison, Toyota Center (Houston) has 13,500 square feet of restaurant/club space, AT&T Center (San Antonio) has 11,400, and Fed Ex Forum (Memphis) has 6,000 square feet. KeyArena has only 1,300 square feet of restaurant/club space.

In addition, the opportunities for a large "team store" like the Mariners Team Store at Safeco Field are also limited. In fact, the Sonics Team Store is not even in KeyArena. Instead, it is in a separate building away from the flow of patrons in and out of the arena.

Starbucks founder Howard Schultz purchased the Sonics in 2001 for a reported \$200 million.⁵ On July 18, 2006, Schultz sold the Sonics and Seattle Storm to an Oklahoma City group, Professional Baseball Club, LLC, led by Clay Bennett for a reported \$350 million.⁶ Immediately, there were rumors that Clay purchased the Sonics with the intention to relocate the Sonics to a new state-of-the-art facility called the Ford Center in Oklahoma City which was previously occupied as the temporary home of the New Orleans Hornets. Bennett said that the "KeyArena is not a viable NBA arena. A renovated KeyArena is not a viable NBA arena. We cannot stay in the KeyArena."⁷ However, studies show that the Sonics have a limited economic impact on Seattle, and that most money spent at pro-sports games is discretionary and would otherwise be spent elsewhere in our region.⁸

For some time, owners of the Seattle Sonics have sought to develop a new multi-purpose arena in the greater Seattle area to replace the KeyArena.

Bennett proposed a \$500 million facility in the neighboring city of Renton, Washington, on a 21-acre parcel owned by the Boeing Company.⁹ On February 13, 2007, Bennett appeared before the Washington Legislature asking for passage of Senate Bill 5986. This legislation would have extended several taxes which are currently used to pay off existing sports stadiums, to fund a new arena, arts groups and stadium maintenance, including:

- Sales taxes: A 0.017% sales tax for Safeco Field debt extended by 17 years, to 2029, and a separate 0.016 percent sales tax for Qwest Field debt extended by eight years, to 2029. Total = \$227 million.

3. *NBA Team Valuations*, available at http://www.forbes.com/lists/2007/32/biz_07nba_NBA-Team-Valuations_Rank.html.

4. Chris McGann, *NBA Chief Backs Sonics Arena Plea*, SEATTLE POST-INTELLIGENCER, Feb. 24, 2006.

5. Craig Harris, *Oklahoma Group Buys Sonics, Storm*, SEATTLE POST-INTELLIGENCER, July 19, 2006.

6. *Howard Schultz Filing Suit To Rescind Sale Of Sonics To Bennett*, SPORTS BUS. DAILY, Apr. 15, 2008

7. *Sonics Look For Way Out of KeyArena Lease*, REVENUES FROM SPORTS VENUES (NEWSLETTER), Sept. 27, 2007.

8. Bloom, *supra* note 1

9. Tim Booth, *Sonics to be in Seattle for 2007-08 Season*, USA TODAY, Feb. 23, 2007.

- Restaurant Tax: A 0.5% tax on restaurant meals and drinks to pay off Safeco Field debt would remain until 2015, three years longer than previously projected. Total = \$75 million.
- Car rental taxes: A 2% car-rental tax for Safeco Field debt extended until 2015. Another 0.75% car-rental tax for Kingdome debt also would continue. Total = \$40 million.¹⁰

The total amount for a new Sonics arena to be financed under the bill would have been \$423 million. Bennett was ready to contribute \$100 million, the source of which would probably be from a new naming rights package. His proposal for the facility was soundly rejected by the state legislature.¹¹ In addition, Bennett placed a time limit of October 31, 2007 to receive an acceptable proposal for a new facility, or he would seek to relocate the team.¹²

On November 7, 2006, Seattle voters approved Initiative 91 which required a guaranteed minimum return to the city on par with a 30-year treasury bond on any public investment in city-owned facilities. As a result of this Initiative, the construction cost of a new facility could be dramatically increased and it would be unlikely that the team would stay inside the city limits. The Initiative was approved with 74.08% of the vote. The Official Voters Pamphlet urged voters to approve the Initiative.¹³

As a result of Bennett's inability to get the State of Washington or the City to fund or create a new facility, Bennett issued a relocation statement on November 2, 2007:

On behalf of the owners of the Seattle SuperSonics and Seattle Storm, I am disappointed that our efforts over the last fifteen months to foster the development of a new multi-purpose arena in the Greater Seattle area were not successful. From the beginning, it has been my absolute hope and expectation that we would be able to secure the necessary governmental commitments to build a successor venue to KeyArena. Even though our proposal for a new state-of-the-art multi-purpose facility to be built in Renton was thoughtfully developed by a world-class team, was financially reasonable and was realistically attainable, we were unable to persuade the Washington Legislature to vote on our bill. The region is still in need of a modern building, not just for the Sonics and Storm, but also for the broad commercial and quality of life benefits such facilities provide. We now understand and respect that there is very limited public support for such a public investment. As we stated on July 18, 2006, and have stated on many occasions thereafter, KeyArena is not a viable modern venue for the NBA and if a successor facility is not identified by October 31, 2007, we would evaluate our options, which would include relocation. Given the clear lack of public, political, and business support for a new multi-purpose arena, plus the enactment of Initiative 91 as a City of Seattle ordinance following a public vote authorized by the Seattle City Council itself, and the significant operating losses the businesses are now incurring, we have no option but to commence the NBA relocation process.¹⁴

Given Bennett's hint at possible relocation it is interesting to note that over the last 30 years, few NBA teams have switched cities:

10. Bloom, *supra* note 1.

11. *Id.*

12. *Sonics Say Departure Won't Have Impact*, REVENUES FROM SPORTS VENUES (NEWSLETTER), Jan. 24, 2008.

13. Bloom, *supra* note 1

14. *Sonics Say Departure Won't Have Impact*, *supra* note 11.

Franchise Relocations:

<u>Year/Team</u>	<u>Old City</u>	<u>New City</u>
2002 Hornets	Charlotte	New Orleans
2001 Grizzlies	Vancouver	Memphis
1985 Kings	Kansas City	Sacramento
1984 Clippers	San Diego	Los Angeles
1979 Jazz	New Orleans	Salt Lake City
1978 Clippers	Buffalo	San Diego ¹⁵

In fact, since David Stern was appointed NBA commissioner in 1984, only two franchises have relocated; the Grizzlies in 2001, and the Hornets after the 2002 season.¹⁶

The City immediately took a strong adversary position to that taken by Bennett, “The issues with the Sonics’ profitability at KeyArena have less to do with KeyArena than perhaps the Sonics’ ability to defend the high pick-and-roll,” according to city attorney Tom Carr.¹⁷ “Good teams, competitive teams, have done well here. People of the city of Seattle have loved the SuperSonics for 40 years. For us to be at this stage is a very sad thing in that relationship.”¹⁸

In response, the Sonics owners stated that they would live up to their financial responsibility for the duration of the lease but did not believe they were legally bound to continue playing at an outdated facility.¹⁹

The Sonics’ use of KeyArena is governed by the KeyArena Agreement.²⁰ The Agreement began in 1995 and runs through September 30, 2010. The rent is set forth in Section VIII of the Agreement:

- Base rent: The base rent is \$1,170,300.32 for the 2007-2008 season. Per a CPI (consumer price index) adjustment formula, it will be increased for the 2008-2009 and 2009-2010 seasons.²¹
- Additional rent:
 - Ticket sales revenue sharing: 8-1/2% of preseason and playoff ticket sales²²
 - Other revenue sharing: Fixed percentages of gross receipts from concessions, suites and other sources; and²³
- Expense Reimbursement: Reimbursement of certain out-of-pocket expenses incurred by the City related to KeyArena.²⁴

15. *Sonics Tell NBA of Intent to Move SuperSonics to Oklahoma*, ESPN.COM, <http://sports.espn.go.com/nba/news/story?id=3091416>.

16. Bloom, *supra* note 1.

17. *Id.*

18. *Id.*

19. *Id.*

20. Arbitration Demand, p. 4, available at <http://seattletimes.nwsourc.com/ABPub/2007/09/21/2003895617.pdf>.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

The City received between \$3.5 million to \$6 million a year from the Sonics, including \$1.2 million in KeyArena rent, according to a city official.²⁵

Given the shortcomings of KeyArena, it is not surprising that the Sonics have incurred losses every year since 1999. In the past five years, the Sonics lost over \$55 million. The loss for the fiscal year ending September 30, 2007, was over \$17 million, and it is estimated that the loss for fiscal year 2008 will be approximately \$32 million. These losses continue to mount even as the Sonics share of suite revenues increased from 20 to 40%, club revenues went from 40 to 60 percent, and non-Sonic event concessions increased from 60 to 70%.²⁶

On January 8, 2007, Seattle-based Force 10 Hoops, LLC, led by former Seattle Deputy Mayor Anne Levinson, offered to buy the WNBA Storm from Sonics owner Clay Bennett for \$10 million. The Storm's lease is a year-to-year lease and expired after the 2008 season.²⁷ In February 2008, the purchase of the Storm was finalized keeping the team in Seattle.

Given the shortcomings of KeyArena, it is not surprising that the Sonics have incurred losses every year since 1999.

In addition, on September 10, 2007, by an 8 to 0 vote, the Seattle City Council approved an ordinance demanding that the City enforce the KeyArena lease pursuant to its terms and block any efforts by Bennett to escape the team's lease before it expires at the end of September 2010.²⁸

In response to the common council vote, Bennett made an arbitration demand to the American Arbitration Association dated September 19, 2007, and filed September 21. He sought a determination that under Sections XXVI and XXVII of the Sonics' Lease Agreement, specific performance was not available to force the Sonics to play the 2008, 2009 and 2010 NBA seasons in KeyArena. Bennett maintained that the City was instead entitled to the traditional remedy, the monetary consideration it bargained for under the Lease Agreement.²⁹

In essence, what Bennett was asking for was an arbitrator to decide, under the arbitration clause of the Lease, that the Sonics should be allowed to pay a monetary settlement to Seattle instead of playing out the remainder of its KeyArena lease.

In response, the city argued that while the Lease requires most disputes between the City and the Sonics to be resolved through arbitration, disputes about the length and termination of the lease were not subject to arbitration.³⁰

25. *Sonics Look For Way Out of Lease*, REVENUES FROM SPORTS VENUES (NEWSLETTER), Sept. 27, 2007.

26. *With Deadline Looming, Sonics Seeking Arbitration For Key Arena Lease*, ESPN.COM, <http://sports.espn.go.com/nba/news/story?id=3030622>; *KeyArena Subcommittee Final Report and Recommendations*, Feb. 15, 2006, at 27, available at <http://www.citizensformoreimportantthings.org/KAS%20FINAL%20REPORT%202-15-06.pdf>.

27. *Seattle –Based Force 10 Hoops Buying WNBA Storm For \$10M*, SPORTS BUS. DAILY, Jan. 9, 2008.

28. Jim Brunner, *Council Votes 8-0 to enforce Sonics lease*, SEATTLE TIMES, Sept. 11, 2007.

29. *Arbitration Demand*, available at <http://seattletimes.nwsource.com/ABPub/2007/09/21/2003895617.pdf>.

30. *See City of Seattle v. Prof'l Basketball Club, LLC*, No. C07-1620RSM, 2007 WL 3217556, at *1 (W.D. Wash., Oct. 29, 2007).

Shortly after Bennett's demand for arbitration, the City filed a complaint for declaratory relief in the Superior Court of the State of Washington for King County.³¹

In Article II of the Lease, the Sonics promised to "play all home games... exclusively in the KeyArena through September 30, 2010."³² The City claimed that the 15-year lease term was an essential element of the Lease and a principal incentive for the Seattle Common Council to approve the Lease.³³ In order to insure that the Sonics would play all of their home games in KeyArena through the duration of the lease, the lease included a specific performance clause.³⁴ This clause was necessary in part due to the fact that the Sonics are a wholly unique tenant and asset to the City that would be impossible to replace.³⁵ The City requested a declaratory judgment that Article II of the Lease was enforceable through specific performance and that the rights and obligations thereunder were not subject to arbitration.³⁶

On October 29, 2007, United States District Judge Ricardo Martinez found that this dispute related to Article II of the lease and that disputes relating to Article II are excluded from arbitration.³⁷

Soon after, during a press conference at the NBA All-Star Game, NBA Commissioner David Stern labeled the Sonics relocation to Oklahoma City as an inevitability. "It's apparent to all who are watching that the Sonics are heading out of Seattle. There's not going to be a new arena. There's not going to be a public contribution, and that's everyone's right."³⁸

Stern also revealed that Sonics ownership had attempted to buy out the final two years of the lease and pay off the remaining bond at the KeyArena. A letter dated February 14, 2008 from Clay Bennett's law firm, McAfee & Taft, stated that it would offer Seattle about \$7.27 million to cover the two years of rent to KeyArena and a payment of about \$19.3 million to cover the current estimated bond due for the previous repairs to the arena.³⁹

In the meantime, on March 4, 2008, in anticipation of a move, Oklahoma City voters approved a one cent sales tax extension which will pay for a \$20 million practice facility and about \$101 million in improvements to the Ford Center to make it a better venue for an NBA franchise.⁴⁰ In addition, Oklahoma City officials and Sonics ownership reached a lease agreement for Ford Center. The 15-year lease, with options to renew, would require the Sonics to pay \$1.6 million in annual rent for the Ford Center and \$100,000 annually for a practice facility. The team and Oklahoma City would share revenues from concessions, clubs, and restaurants, and would have the right to terminate the agreement after six years if ticket revenues for two consecutive years dropped below 85% of ticket revenues generated during the first two full seasons following completion of arena renovations.⁴¹

31. *Id.* at *3.

32. *Id.* at *4.

33. *Id.* at *4.

34. *Compl.* § 17.

35. *City of Seattle v. Prof'l Basketball Club*, 2007 WL 3217556, at *4.

36. *Id.* at *3.

37. *Id.* at *1.

38. *Trade Deadline: Stern Calls Sonics' Relocation an Inevitability*, SPORTS BUS. DAILY, Feb. 19, 2008.

39. *Id.*

40. *Sonics Draft Lease In OKC*, REVENUES FROM SPORTS VENUES (NEWSLETTER), Mar. 20, 2008.

41. *Sonics, Oklahoma City Officials Frame Ford Center Lease Deal*, SPORTS BUS. DAILY, Mar. 17, 2008.

On April 18, 2008, by a 28 to 2 vote, NBA owners approved Clay Bennett's proposal to move the franchise to Oklahoma City "pending the resolution of a federal lawsuit by the City of Seattle that aims to keep the Sonics [in town] at least until their KeyArena lease expires in 2010."⁴² A \$30 million relocation fee is required as part of the franchise move.

To make things more complicated, on April 26, 2008, Starbucks chair and CEO Howard Schultz, former owner of the Sonics, filed a suit seeking to rescind Schultz's July 2006 sale of the Sonics to Bennett. Schulz argued breach of contract and that Bennett's Oklahoma City based ownership group committed fraud or negligent misrepresentation in misleading Schultz and the Seattle based partnership by promising they would make good faith efforts to keep the team in Seattle. Schultz claimed that in August of 2006, approximately two weeks after the sale, Sonic investors Tom Ward and Aubrey McClendon sent a series of emails about moving the team to Oklahoma City as soon as possible.⁴³

On July 9, 2008, the NBA filed a motion seeking to intervene in the Schultz lawsuit to bring the Sonics back to Seattle maintaining that any ownership changes should be the league's decision.⁴⁴

In exchange for permission to leave Seattle before the KeyArena lease expires, Bennett agreed to pay \$45 million to the City immediately. He is also required to contribute another \$30 million in the event that Seattle is unable to secure another NBA team by 2013.

The trial of the case commenced before U.S. District Judge Marsha Pechman on June 16, 2008. The key issue in the case was whether the Sonics should be forced to fulfill the remainder of its lease under the specific performance clause of the lease rather than paying money damages for an early departure.

Prior to the issuance of a decision by Judge Pechman, the parties settled.⁴⁵ In exchange for permission to leave Seattle before the KeyArena lease expires, Bennett agreed to pay \$45 million to the City immediately. He is also required to contribute another \$30 million in the event that Seattle is unable to secure another NBA team by 2013, and that payment is further dependent upon the Washington state legislature giving Seattle or King County the authority to raise \$75 million in public money to help pay for a \$300 million KeyArena renovation. The legislature must act by the end of 2009.⁴⁶

Aside from the cash, Oklahoma City's new basketball team will also leave behind the Sonics name, the team's green and gold colors, and all memorabilia collected by the franchise since the first Sonics team tipped off in 1967.⁴⁷

The settlement included no provision regarding the pending lawsuit by Schultz who is seeking to regain control of the team through rescission. If Bennett's group is prevented from bringing the team to Oklahoma City during the next two years because of the Schultz lawsuit, the City of Seattle will be required to repay the Bennett group \$22.5 million for each season. If the team is required to play in KeyArena for these two seasons, Bennett's group is released from the additional \$30 million it would owe the City.⁴⁸

42. *NBA BOG Approves Sonics Relocation To Oklahoma City*, SPORTS BUS. DAILY, Apr. 21, 2008.

43. *Howard Schultz Filing Suit to Rescind Sale of Sonics to Bennett*, SPORTS BUS. DAILY, Apr. 15, 2008.

44. *NBA Files Motion Seeking Intervention In Schultz' Sonics Suit*, SPORTS BUS. DAILY, JULY, 10, 2008.

45. Sharon Pian Chan & Jim Brunner, *Sonics, City Reach Settlement*, SEATTLE TIMES, July 3, 2008

46. *The \$45 million Goodbye for the Sonics*, THE NEWS TRIBUNE, July 3, 2008.

47. *Id.*

48. *Id.*

The NBA agreed to work with Seattle to obtain a new team, but refused to guarantee a team or promise that the next team available through either expansion or sale would head to Seattle. Commissioner Stern indicated that public funding needs to occur by the end of 2009 in order for there to be any chance for the NBA to return to Seattle within the next five years. He further indicated that a renovated KeyArena could be an acceptable solution.⁴⁹

While there are lessons to be learned from the Seattle Sonics controversy, unfortunately we were not given the benefit of Judge Pechman's decision, i.e. whether the landlord, City, could force the Sonics to stay to the end of its lease by virtue of a specific performance clause, or whether the City was entitled instead to the traditional remedy of the monetary consideration that was bargained for under the lease agreement, i.e. money damages for breach of contract.

A similar issue was raised in 2002 when Major League Baseball was considering contraction, with the Minnesota Twins legal obligation to play its future home games in the Metrodome throughout the duration of its lease. In *Metropolitan Sports Facilities Commission v. Minnesota Twins Partnership*, the Minnesota Court of Appeals concluded that the relationship between the parties was more than a typical landlord and tenant lease.⁵⁰ The lease agreement between the parties specifically authorized the use of remedies available at law and at equity including injunctive relief.⁵¹ The court found that the relationship provides non-monetary benefits, including the Twins' promise to play their home games at the Metrodome for the duration of their lease.⁵² Money damages may be insufficient to compensate for the harm suffered by a community for the loss of a professional team because there are a number of intangible benefits that communities receive by hosting professional sports franchises.⁵³ Therefore, a greater relationship may exist than that created by a commercial lease by virtue of the fact that (1) a baseball franchise is a valuable and limited right that is controlled entirely by the league; (2) the value of a having a sports franchise is greater than simply rent paid or revenues produced and paid to the landlord; (3) sports facilities are largely financed with public dollars; (4) despite most of the financing being provided by the public, the team is normally given management control over the facility; and (5) the ownership of the facility is usually in a governmental unit and as a result, the tenant obtains the benefit of government credit.

While there are lessons to be learned from the Seattle Sonics controversy, unfortunately we were not given the benefit of Judge Pechman's decision

Similar language in other leases has been used as leverage by the local governmental unit owning a publicly financed sports facility.⁵⁴ Art Modell, who wanted to move the Cleveland NFL franchise to Baltimore in the mid 90s, was subject to a lease which contained an injunctive relief clause requiring the team to play the remaining three seasons at Cleveland Municipal Stadium. A settlement between permitted the team to move to Baltimore, but the NFL guaranteed Cleveland an expansion franchise that kept the Browns name.⁵⁵

49. *Id.*

50. 638 N.W. 2d 214, 221.

51. *Id.* at 227.

52. *Id.* at 223.

53. *Id.* at 224.

54. *Monday Bullets*, available at <http://myespn.go.com/blogs/truehoop/0-27-106/Monday-Bullets.html?post=true>.

55. *Id.*; See also Ragan G. Reeves, *Franchise Blackmail and the NFL*, 5 TEX. ENT. SPORTS L. J. 6 (1996).

In 1996 King County Washington relied on similar language in the Seahawks’ Kingdome lease to halt then owner Ken Behring’s plans to move the team to California. The County obtained a temporary injunction to prevent the Seahawks from leaving before the team’s 10-year stadium lease expired. The team subsequently was sold to Paul Allen, and a new stadium deal was devised.⁵⁹

In summary, the lessons to be learned from the Seattle Sonics situation are as follows:

1. Cities must play the “stadium game” and work with franchises to maximize the revenues that both parties receive, or the franchise has an economic incentive to seek to relocate to another community with greater revenue generating potential.
2. The fact that a city has hosted a franchise for many years may not matter if it is unable to create a venue that is economically competitive, and supported in substantial part by public dollars.
3. Cities must remember that public subsidization of a private sports franchise does not provide an ownership interest in the club, whose owner has substantial autonomy, limited only by contract regarding where it operates.
4. The electorate ultimately has the choice, through its political representatives, whether the expenditure of tax dollars is worth the direct and indirect benefits that a franchise’s presence may provide within a community.
5. A short-term lease with a franchise that does not include a commitment to stay for the entire term of the lease can lead to trouble in the future as the franchise may try to leave before the full term expires.
6. Money counts. If a city does not have a “palace” for a team, one that will produce bottom line bucks for the team, the franchise may lose money and may consider relocating.
7. The idea that cities can build a playing facility and subsequently attract a team to relocate to it is usually foolhardy — except for the unique circumstances surrounding the Seattle Sonics move to Oklahoma City.

59. *Id.*

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Carla Varriale



Randy Wingate

Technology Leads to Improvements in Venue Safety and Security, Lessening Legal Exposure

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Whether it is a fan getting hit by a line drive or a spectator suffering a heart attack at a football game, American sports are increasingly littered with examples of incidents that befall spectators at sporting events.

Appropriately, there is significant concern any time you bring large numbers of people together for an

event. That is particularly true when you add the sale of alcohol to the mix. Heeding those concerns, stadiums and arenas have instituted an array of procedures designed to improve the safety and security of spectators, workers and the athletes. These include searches of people entering the gates, portable radios tuned to security bands in the hands of everyone from ushers to on-duty police, networks of video surveillance cameras and command centers, where information on developing emergencies is collected and responders are dispatched.

These measures are not only the right thing to do from an ethical standpoint, but also from a legal perspective. Generally speaking, venue owners and operators owe a duty of reasonable care under the circumstances to their patrons, as business invitees, to detect and to avoid foreseeable harm at the premises. In order to avoid potential liability associated with a personal injury lawsuit, a venue owner or operator needs to show that he or she instituted reasonable procedures in response to the risks that they were aware of, or should have been aware of. Harnessing the power of technology may make it easier to discharge that duty of care and to demonstrate that the procedures are adequate.

However, utilizing and benefitting from technology is far from a slam dunk. In many sports arenas, for example, staff may lack radios, unable to quickly communicate the nature and location of an emergency to dispatchers and responders. Other venue personnel may be using antiquated communications devices.

In addition to these inefficiencies, venues of all types may still rely on handwritten paper records for collecting critical information such as incident descriptions and response times. Others use excel spreadsheets, but lack appropriate methods for analyzing the spreadsheets. These inefficient data collection methods create time lags, encourage incompleteness, and hinder analysis of event records.

Change is on the way, however, at at least one venue. McAfee Coliseum and ORACLE Arena in Oakland, California have been participating in the testing and development of a new hardware and software platform for bringing stadium and arena security into the 21st Century. This home-grown technology solution enables staff faced with an emergency to quickly and accurately summon help, while greatly improving the command and control exerted by those overseeing stadium security.

On the front lines, this technology comes in the form of simple, easy-to-use, pocket communications devices, which allow ushers and others to press a single button in order to accurately communicate the nature and location of an emergency to dispatchers and field managers. Using a Wi-Fi network, the devices instantly communicate to everyone where the incident is occurring, using RFID technology.

The arena's network of digital video cameras also receive the alerts and are programmed to automatically point and focus directly on the location specified by the alert. This provides safety and security executives with unmatched video records of what is occurring on the scene.

The system greatly improves the speed of response when an incident occurs. It also produces a great deal of information that can help further improve the speed of response by enabling data-driven training. For instance, response times can be accurately calculated in real world and training scenarios, enabling safety and security officials to know how quickly teams are responding, and the effect on response times of tweaks in the configuration of the security setup.

By coming at the challenge of responding to emergencies from both ends – during an actual incident and during training – such technology promises to greatly reduce delays. It will also improve the quality of the response by, for instance, allowing dispatchers to quickly send appropriate medical personnel based on the nature of the emergency and on what they discern on video monitors.

Advances in technology are all the more important because of the negative publicity that can arise from litigation. Media reports of injuries, illnesses, deaths, and dangerous situations in stadiums and arenas receive a great deal of attention. These situations are helped along by the plaintiffs' bar, which recognizes the leverage that the prospect of negative media coverage can have on the defendant venue. The perception that it is not safe to attend a sporting event at a venue can be financially devastating in terms of lost ticket, concession, parking, and other revenues.

By using data to identify security and safety weaknesses, improve training to remedy shortfalls, reduce response times and accelerate the quality and quantity of records of incidents, security technology promises to cut the number of such incidents while also reducing the visibility of those that do occur. Bad PR, any stadium executive's nightmare, becomes less likely as this occurs.

The implementation of the next generation of stadium and arena safety and security technology is still only in its infancy. Many stadium security officials are satisfied with decades-old familiar technology, and see little value in trying new approaches. These executives, unfortunately, will have to learn the hard way.

The recently unveiled details of a 1982 incident at a soccer match at a Moscow stadium, where an estimated 340 fans were crushed, offers an example of how technology could have made a difference. Reports revealed that fans leaving the stadium early turned to go back when crowd noise alerted them to a potentially game-changing play. Poorly trained security guards blocked their way, the crowd surged, and consequently hundreds were trampled to death. If anyone had had a full view of the developing scenario and some way to communicate with the misguided guards, the world's worst stadium catastrophe might have been averted.

At the very least, new technology may have aided the venue operator in proving that it did everything in its power to prevent the incident or mitigate its effects.

New technologies should be applied in ways that will ultimately benefit spectators, employees, and the venue operator. Fortunately, such tools are now on the horizon.



National Sports Law Institute Resources Website

The National Sports Law Institute's website provides information about resources held by the NSLI including:

- College Coaching Contracts
(including a database comparing the terms of over 200 contracts)
- General Sports Law Research
- International Sports Law Resources
- League Agreements
- Lease Agreements

The site is available to the public on the NSLI's website (<http://law.marquette.edu/jw/nsli>) and can be accessed directly at <http://law.marquette.edu/jw/resources>.

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