THE COMING REVENUE REVOLUTION IN SPORTS

JACK F. WILLIAMS*

* Professor, Georgia State University College of Law, Atlanta, Georgia, jwilliams@gsu.edu; Resident Scholar, Association of Insolvency and Restructuring Advisors, Medford, Oregon. I must thank my research assistant Luke Fleming (Georgia State University College of Law Class of 2006) and my invaluable colleague Susan Seabury (Special Counsel, BDO Seidman, LLP) for their thoughts, comments, and insight in the preparation of this article. That which you read that you liked was most certainly influenced by all of them; that which you read and do not like was my work alone. Of course, this is my work alone and does not necessarily reflect the views of those institutions of which I am associated. Finally, a special thanks to the Willamette Law Review staff for their hospitality and to my fellow presenters and attendees for their valuable questions and comments.

> Along with the U.S. population, [sports'] fanbase has grown enormously in the last half century, as new professional leagues sprouted, media mushroomed, and professional sports became thoroughly assimilated into the entertainment industry. Fans are the geese who have laid the golden eggs for pro athletes, team owners, sports broadcasters. Meanwhile, that same flow of cash has altered the relationship between spectators and the contests. A newfound distance, which can verge on alienation, separates the audience from athletes and teams. Choices made within the sports and political establishments over the next few years may determine whether pro sports' dizzy growth continues, or if those golden orbs will turn into goose eggs.[1]

Sports as a business has matured at an accelerating pace in the past two decades.[2] During this time period, participants in the business of sports have aggressively pursued alternative sources of revenue in an effort to drive earnings. These new sources are sought both to grow and stabilize revenue.[3] In large part, technology has

1. Craig Lambert, *Has Winning on the Field Become Simply a Corporate Triumph?*, HARV. MAG., Oct. 2001, *available at* http://www.harvardmagazine.com/on-line/09014.html.

2. *Id.* The reader will notice that in this article, the National Hockey League (NHL) has been left out. This is intentional. The NHL broke my heart when it discontinued play and missed a season and some over labor disputes. While as an adult I understand such things happen, the child in me was, well, let's just say "upset." So, my admittedly feeble but nonetheless heart-felt response to wasted ice time is to ignore the NHL, at least for the time being.

3. Sports teams also provide an opportunity for state and local taxing authorities to grow their respective tax bases. For example, in a financial report prepared for the Minnesota State Legislature on sports activity conducted at the Metrodome (NFL Minnesota Vikings, MLB Minnesota Twins, and Big Ten University of Minnesota Gophers football), the following taxes are collected: (1) sales tax on food and alcohol; (2) 10% ticket tax (including complimentary tickets) and 6.5% state sales tax on tickets (in addition to the 10% ticket tax); (3) 6.5% gross receipts tax on merchandise licensed by professional and collegiate sports teams; (4) personal income tax paid by visiting teams; (5) lottery games with a sports theme; and (6) tax on rental vehicles in the Metro area. *See* Paul Wilson & Mary Jane Hedstrom, *Appendix C: Summary of Revenue Sources*, Minn. Leg. (January 31, 2002) (on file with author). *See also* I.R.S.,

been at the vanguard of the revenue revolution, allowing a level of fan interaction that has changed how we think about sports and the successful sports business plan. Traditionally, the sports market consists of gate revenues for live sporting events; rights fees paid by broadcast and cable television networks and TV stations to cover those events; merchandising, which includes the selling of products with team or player logos; sponsorships, which include naming rights and payments to have a product associated with a team or league; and concessions. Currently, other revenue streams such as internet, satellite, or mobile phone subscriptions to sports events or programming are transforming sports into programming content designed as a means to secure greater revenue. These new sources bring with them a host of legal, financial, and business issues that will challenge our understanding about fundamental aspects of property law, privacy, publicity, and value. This paper will discuss both traditional and non-traditional revenue sources, the legal and business implications they create, and the need for a new business paradigm to address these issues and harness the new synergies the leveraging of existing and future technologies present.

I. STATE OF THE BUSINESS OF SPORTS

Sports is big business.[4] Its present structures and attributes are well known.[5] The sports industry includes: (1) sports entertainment, (2) sports products, and (3) sports support organizations. The focus in this article is on the sports entertainment sector. That sector includes professional and amateur sports teams and tournament sports. This article will focus on sports teams within leagues and will not address directly tournament sports, which provide similar but significantly different issues and challenges in this area. The sports entertainment sector is comprised of various firms (i.e., clubs) that join together in leagues to provide similar, well-defined products and services (i.e.,

Sports Franchises, Market Segment Specialization Program Training 3123-005 (8-99); TPDS No. 839831 (on file with author).

4. Sports is big business in the United States and internationally. *The Sports Industry*, Bus. & Econ. Research Advisor (BERA) (2005), http://www.loc.gov/rr/business/BERA/issue3/issue3_main.html.

5. To say that the sector is well known is not to suggest that the sector is static. On the contrary, the sports sector is dynamic. For an excellent book on the evolution of the modern sports industry that includes discussions on sponsorships, franchise relocation, radio and television, stadium issues, and endorsements, see PHIL SCHAAF, SPORTS, INC.: 100 YEARS OF SPORTS BUSINESS (2004). *See also* THE ECONOMICS OF SPORT VOLUME I (Andrew Zimbalist ed., 2001) (covering many aspects of the business of sports).

some form of competition, media, merchandise, etc.) through similar production methods (i.e., play the game).[6]

Sports is among the largest and fastest growing industries both in the United States and abroad. An excellent source that taps into the pulse of the industry as a whole is the Street & Smith's Sports Business Journal Annual Survey.[7] In the S&S Annual Survey one finds some eye-popping numbers. For example, the sports business industry generated over approximately $213 billion in revenue.[8] That makes the sports industry twice the size of the automobile industry.[9] The S&S Annual Survey further breaks down the source of revenues. These sources include advertising at $27.43 billion; endorsements at $897 million; sporting goods at $35.62 billion; facility construction at $2.48 billion; internet at 239.1 million; licensed goods at $10.50 billion; media broadcast rights at $6.99 billion; professional services at $15.25 billion; spectator spending at $26.17 billion; sponsorships at $6.4 billion; medical spending at $12.6 billion; travel at $16.06 billion; multimedia at $2.12 billion; gambling at $18.90 billion; and operating expenses (other than travel) at $22.98 billion.[10]

Although not the focus of this article, the manufacture and sale of sports equipment and clothing shares a symbiotic existence with sports entertainment. Thus, sales of sports equipment and clothing may serve as a reasonable barometer of sports enthusiasm. That enthusiasm, if captured effectively and efficiently by the various professional leagues, may translate into revenues. According to the National Sporting Goods Association, sales for all athletic and sports clothing for 2002 were almost $10 billion.[11] Additionally, sales for athletic and sports equipment were over $21 billion.[12] Moreover, receipts from spectator sports events for 2002 were over $1.5 billion.[13] These numbers, among other data, suggest that large

6. *See generally* WILKOFSKEY GRUEN ASSOC., GLOBAL ENTERTAINMENT AND MEDIA OUTLOOK: 2005-2009: FORECASTS AND ANALYSIS OF 14 INDUSTRY SEGMENTS (6th ed. 2005).

7. Street & Smith's Sports Business Journal, http://www.sportsbusinessjournal.com/index.cfm?fuseaction=page.feature&featureId=43 (last visited May 31, 2006).

8. *Id.*

9. *Id.*

10. *Id.*

11. *Sporting Goods Sales by Product Category: 1999-2002*, Statistical Abstract of the United States at Table 1247 (U.S. Census Bureau 2004) (on file with author).

12. *Id.*

13. *Arts, Entertainment, and Recreation – Nonemployer Establishments and Receipts by*

pockets of potential revenue have yet to be tapped.

II. TRADITIONAL SOURCES OF REVENUE

Traditionally, revenue platforms in the sports sector consist of: (1) gate revenues for live sporting events; (2) rights fees paid by broadcast and cable television networks and TV stations to cover those events; (3) merchandising, which includes the selling of products with team or player logos; (4) sponsorships, which include naming rights and payments to have a product associated with a team or league; (5) actual team ownership; and (6) concessions.[14] Following is a discussion of how those revenue platforms play out in the context of three professional sports leagues—the National Football League, Major League Baseball, and the National Basketball Association.

A. National Football League (NFL)[15]

Established in 1920, the National Football League (NFL) has emerged as the most stable of professional sports when it comes to controlled growth, revenue, and financial success.[16] Originally established as an eight team league, the NFL grew through a merger with the American Football League and expansion to a present-day thirty-two teams.[17] Teams in the NFL play a regular season schedule of sixteen games. The division champions[18] and the next two teams in each conference with the best won-lost records[19] advance to the play-offs. A series of play-off games determines the two conference champions.[20] These teams then play for the National Football League title in the Super Bowl.[21]

Kind of Business: 1997-2002, Statistical Abstract of the United States at Table 1247 (U.S. Census Bureau 2004).

14. I.R.S., *supra* note 3.

15. *See* National Football League website, www.nfl.com (last visited May 31, 2006).

16. *The Business of Professional Football*, Bus. & Econ. Research Advisor (BERA) (2005), http://www.loc.gov/rr/business/issue3/football.html.

17. *Id.*

18. The divisions include the National Football Conference East, North, South and West Divisions and the American Football Conference East, North, South, and West Divisions.

19. These are the so-called "wild-cards."

20. There are ten play-off games (five in each conference) that lead to the Super Bowl. 2003 SPORTS ILLUSTRATED ALMANAC 125 (2002).

21. The first Super Bowl was played between the champions of the National Football League and the American Football League in 1967. The Green Bay Packers defeated the Kansas City Chiefs 35-10 in Los Angles. *Id.* at 149.