Leadership Message

Greetings from the Nonprofit Organizations Committee Chair

We are looking forward to a very exciting summer meeting for the Nonprofit Organizations Committee in San Francisco on August 9-11, 2013. This will be the last Business Law Section Summer Meeting held in conjunction with the American Bar Association’s Annual Meeting. For a tentative schedule of events, check out the Schedule of Committees and Subcommittees and Special Events and Dinners.

Look for postings to the Nonprofit Organizations Committee listserve with more details about specific events as we get closer to the date. San Francisco really knows how to put on a party, so a good time will be had by all who attend, who will also get top-notch continuing legal education and networking opportunities. In the Committee social front, we will continue with our successful no-host dinner format, and will hold our second brown-bag, roundtable discussion lunch on current issues affecting our practices. As a preview for coming years, the Business Law Section will be holding a stand-alone September meeting, starting in Chicago in 2015.

Nonprofit Organizations should be a hot ticket at the annual meeting this year. In addition to a double-header CLE program with the Government Relations Committee on implementation issues relating to the Affordable Care Act, we will continue to present substantive programming at our subcommittee meetings. As many of you know, 501(c)(4) civic and social welfare organizations have come under increasing scrutiny recently because of the frequent use of that tax classification for entities engaged in political advertising since the Citizens United case. The Internal Revenue Service chose an ABA Tax Section meeting in May to disclose the targeting of exemption applications from tea party and other similar groups. Both the Current Events Subcommittee Meeting and the full Committee Meeting should be able to devote some time to these issues. Undoubtedly, with all this attention to the nonprofit sector, our Committee’s summer meeting will provide a great way to keep up with new developments affecting nonprofits.

Michael E. Malamut
Chair, Nonprofit Organizations Committee

Subcommittee Spotlight - Nonprofit Athletic & Recreation Organizations

The Nonprofit Athletic & Recreation Organizations Subcommittee recognizes that "sports law" has become a legal specialty unto itself. Those attorneys involved in the nonprofit sector of sports and recreational organizations often face a different universe of legal issues than counsel for professional athletes, team and leagues.

With that in mind, our Subcommittee’s goal (no pun intended) is to advance knowledge of the significant body of codified and case law defining the legal parameters of regulating sports and participants; and to develop awareness of sport specific regulation as applied to interrelated areas of the law, including...
torts, contracts, administrative procedures, associations and corporations, antitrust, labor law, intellectual property, taxation, and criminal law.

The legal high hurdles of representing nonprofit sports organizations, governing bodies, leagues, municipal recreation agencies, school athletic departments and related organizations present unique challenges to attorneys who may not be conversant with the environment of sports entities. To help meet these challenges, our Subcommittee plans to build upon past programs and develop new programs at both Annual and Spring Section meetings. You can join our sports law "team" today. Contact Al Goldberger, Chair at 973-376-0909 or alan@Reflaw.com.

Larry Beaser to Receive Lifetime Achievement Award!

Larry Beaser, partner at Blank Rome LLP, long-time member of the Nonprofit Organizations Committee, and Chair of the Model Nonprofit Corporation Act Subcommittee has been selected to receive a "Lifetime Achievement Award" by The Legal Intelligencer. To mark its 170th anniversary, The Legal Intelligencer set out "to honor the great history of the legal profession in Pennsylvania." Larry and twenty-six others, including Supreme Court Justice Samuel Alito, Jr., were named as "some of the most important members of the legal community." The publication concluded that these select individuals "represent the figures who have helped to shape the law in Pennsylvania," "represent the best the Pennsylvania legal community has to offer," and "have collectively moved forward the legal profession in the state, helped foster the legal education of younger attorneys and stood as examples of some of the best virtues of Pennsylvania attorneys." Larry, along with the other honorees of this first time award, will be profiled in an upcoming special anniversary issue and will be honored at a reception on June 27. We congratulate our colleague and friend on his much deserved honor.

IN DEFENSE OF SPORTS: THE DIFFERENCE BETWEEN "SPORTS LAW" AND "ENTERTAINMENT LAW" - AND WHY IT MATTERS

By Alan S. Goldberger

Nowhere than in the legal profession is the ancient Chinese proverb more relevant: "A Problem Well Stated is Half Solved." For example, the "problem" of representing a defendant in a claim arising out of a collegiate, interscholastic or recreation organization sponsored sports event, well stated, is "solved" by reference to precedent, codified law and administrative rules specifically dealing with nonprofessional sports. This body of law is well developed and fairly comprehensive. Hence, "sports law" has emerged as a free-standing specialty.

Conversely, the "problem" of representing a defendant involved in professional sports may be well stated by reference to "entertainment law" principles and precedent. These principles and precedent are, for the most part, separate and distinct from case law and codified law specific to sport. Although, historically, anecdotal evidence seems to suggest that the substantive law of "sports" is the equivalent of the substantive law of "entertainment" - and vice versa, that the two areas of the law should be inextricably linked represents the thinking of earlier, less complicated legal times. Still, legal commentators and bar associations typically maintain that sports law and entertainment law are indistinguishable. When continuing legal education courses and conferences turn their focus on sports, entertainment issues are not far behind - and vice versa. Tradition has it,
then, that legal issues involving sports and entertainment go hand in hand as a single area of "the law."

Undoubtedly, much of the rationale for equating "sports law" to "entertainment law" has its roots in the significant body of case and codified law dealing with professional sports. Anyone who owns a television can readily see that the goals (so to speak) of professional sports are to provide a product that entertains. And, since pro athletes, coaches and officials are paid employees whose activities are recorded and played out before tens of thousands in a stadium or arena, and often millions more on television, the internet and radio, the professional sports industry begets legal issues in a number of areas, including intellectual property, antitrust and contracts, and labor law. Indeed, At least one major bar association's "Sports and Entertainment Law" committee has a check off box on its membership application: "Labor" or "Management."

While professional sports is, without a doubt, bound to the "entertainment" side of the law, the "law" of sports is much more than the labor law, contracts and intellectual property aspects of the legal relationships created for entertainers and professional athletes.

Those attorneys involved in defending claims arising out of college, scholastic, youth and recreational sports programs often face a vastly different universe of legal issues than counsel for professional athletes, team and leagues. While pro sports and nonprofessional sports both have their share of labor law, I. P., negligence, and contract issues, amateur sports presents markedly different legal challenges for defense counsel.

These challenges are highlighted by the now ubiquitous presence of panoply of state statutes relating specifically to educational, government sponsored and proprietary entity sponsored sport programs and activities. While the realm of the athlete's "agent" has been invaded by both an act of Congress and sports agent legislation in all but a few states, the nonprofessional sports segment has witnessed the proliferation of codified law in any number of substantive areas, including at least the following:

- Tort: federal and state volunteer immunity legislation, immunity legislation for coaches and certain volunteer officials, state volunteer tort immunity statutes for licensed sports officials;
- Administrative: mandated criminal background checks for coaches, officials and volunteers; statutorily authorized athletic code of conduct legislation and regulations;
- Health issues legislation, including athletic trainer licensing in most states; and numerous state statutes relating to concussion in sport.
- Criminal: statutes providing for enhanced criminal penalties for assaults on officials and coaches, anti-hazing legislation, and penal sanctions for those disrupting sports events.

Claims arising out of college, high school and recreational organization sponsored sports events dot the legal landscape: allegations of negligently inflicted bodily injuries; violent acts in athletic competition; administrator, coach and official liability; defamation; governing body sanctions; and legal challenges to disciplinary actions are a few examples. The defense of these claims requires knowledge of the growing body of both emerging case and codified law specific to sports and athletics in most jurisdictions.

Codified law, administrative law and case law all contribute to the evolution of "Sports Law" as a freestanding specialty area of the law - independent of the "Sports and Entertainment Law" amalgam of employment contracts, player unions and licensing and media rights.

The interplay of state and local government with voluntary participation in athletics, statutory immunity, and sport specific statutes all point to a welter of litigation issues for defense attorneys. Thus, the demographics of the entity client in sports law change dramatically when the focus shifts from the professional sports industry to the nonprofit segment.

**Governing Bodies and Their Authority**

Counsel representing athletes and other participants should be aware of some basics: amateur sport for school and college athletes is subject to the pervasive influence of two national organizations: the National Collegiate Athletic Association (NCAA) and the National Federation of State High School...
Related subgroups, chapters, conferences, and constituent organizations impact the legal rights and obligations of the majority of amateur athletes and sports entities in the United States. Some organizations exercise their authority along geographical or participant classification lines. These include, among many others, Amateur Softball Association, American Amateur Racquetball Association, Disabled Sports USA, Little League Baseball, Inc., Pony League, Pop Warner Football, and Special Olympics International. Congress has recognized the desirability of statutorily authorized “national governing bodies” whose focus is sport-specific and whose authority takes up where the academic institutions and lower-level sports organizations leave off.

Superimposed across the national structure of the various governing bodies that embraces and regulates competition among high schools and colleges are any number of college and high school and adult conferences, leagues and other sponsoring entities.

**Limits of Power**

In practice, each of these conferences, leagues and other organizations constitutes its own form of governing body that regulates the athletes involved and is itself subject to be sued; and able to bring affirmative claims where legal rights are being asserted.

Attorneys for these entities must be aware not only of the rules, regulations, and by-laws of the groups to which their schools belong, but also to the procedures by which rules are enforced. For it is often in the enforcement that the denial of procedural due process or violation of the contract rights of the athlete or institution will invalidate what would otherwise be an enforceable rule, regulation, or by-law.

And, while Constitutional issues are frequently raised by sports plaintiffs, “state action” is by no means an absolute prerequisite for aggrieved parties to vindicate their rights in court when associations fail to abide by their own rules in imposing sanctions or penalties. Similarly, when an association’s rules run afoul of the concept of conscionability, enforcement may be denied by the courts.

Although courts are generally reluctant to interfere in the internal affairs of associations, they will take action if a right is lost because an association has disregarded its own rules. Although such lapses may not be grounded in Constitutional law, they nevertheless can spell the difference between a governing body that is able to enforce its actions and one that weakens itself by making rules and breaking them. And, while courts generally require that an aggrieved party exhaust an association’s procedures for redressing a wrong or appealing an unfavorable decision before bringing suit, in appropriate cases, challenges to association action have met with success.

To be sure, both amateur and professional sports are the subject of a significant body of codified and case law. Sport specific statutes and a mounting docket of case law spans a number of interrelated areas of the law, including torts, contracts, administrative procedures, associations and corporations, antitrust, labor law, intellectual property, taxation, and criminal law. As one state’s Chief Justice observed:

Anyone who has ventured beyond the confines of the courthouse knows what sport, even amateur sport has become. On the best days it is inspirational. On its worst days...it is a reflection of how uncivil and violent our society can be. In the heat of competition, otherwise sensible adults can lose all sense of proportion. Tempers flare. Mayhem can spread in an instant. The unhappy truth is that violence in youth sports has become commonplace. The era of friendly pickup games and sandlot ball where kids made the rules and adults seldom modeled bad behavior. A century of off-field battles and even homicides

Further, in recent times, more than one state supreme court has dealt with claims seeking damages for personal injuries as well as claims for injunctive relief regarding an "on field" or administrative ruling.

In the years to come, defense counsel will need to deal with a number of considerations in handling sports related claims:

- the interplay of tort claims acts, immunity legislation, volunteer protection acts, athletic codes of conduct, and common law defenses;
- the critical mass of defending multiple defendants: how not to help the plaintiff proof his case;
- defending eligibility claims seeking injunctive relief and dismantling plaintiffs' assertions of irreparable harm.

**CONCLUSION: THE END OF "ENTERTAINMENT & SPORTS LAW"**

The legal parameters of regulating athletes, coaches, officials, administrators, health care providers, sports governing bodies, teams, leagues, and related organizations present unique challenges to attorneys representing nonprofessional sports organizations, municipal and county recreation agencies, and educational institutions. As legal commentators gravitate to recognizing sports law as a specialty unto itself, practice in this area will be enhanced.

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**National Updates**

*Megan A. Christensen, Blank Rome LLP, Washington, DC*

1. **IRS Issues Proposed Regulations on Community Health Needs Assessment Requirement for Charitable Hospitals.**
   
   On April 3, the IRS issued proposed regulations regarding the community health needs assessment (CHNA) requirements under Section 501(r)(3) of the Internal Revenue Code. The proposed regulations are generally consistent with the previous guidelines provided by the IRS in Notice 2011-52 and include some clarifications concerning the related excise tax, reporting requirements for charitable hospitals, and the consequences resulting from failure to fulfill the requirements of Section 501(r). A facility must pay an excise tax of $50,000 for failure to conduct a CHNA, and this tax may apply even if the failure is excused for other purposes. The proposed regulations also revise the definitions for "hospital facility" and "hospital organization," provide additional information for operating a hospital facility through a joint venture or limited-liability company, and clarify the requirements for making the CHNA and other documents widely available to the public.

2. **IRS Publishes Final Report on Tax-Exempt Colleges and Universities Compliance Project.**

   The IRS released its final report summarizing audit results from the IRS' multi-year study of colleges and universities. The report primarily examines colleges' and universities' reporting of business taxable income and compensation, including employment tax and retirement plan issues. In addition, the report identifies significant problems with compliance and emphasizes the need for colleges and universities to accurately report unrelated business income and provide appropriate executive compensation.

3. **IRS Remains in the Spotlight over 501(c)(4) Scandal.**

   A report released in May by the Treasury Inspector General for Tax Administration reveals that in evaluating applications for 501(c)(4) tax-exempt status, the IRS targeted tea party organizations and other groups focused on government spending and the federal debt. As investigations continue, the Acting Commissioner of Internal Revenue, Daniel Werfel, has vowed to hold those responsible for the scandal accountable and to implement new controls on spending for traveling and training.
State Updates

Emily Chan, NEO Law Group, San Francisco, CA

1. Florida
   On April 5, 2013, Florida State Governor Rick Scott signed into law House Bill 155, a bill intended to shut down Internet sweepstakes cafes in Florida that followed on the heels of an alleged illegal gambling operation run by a 501(c)(3) tax-exempt nonprofit, Allied Veterans of the World. HB 155, entitled "Prohibition of Electronic Gaming Devices," amends the Florida Game Promotion Statute to clarify that game promotions may only be conducted by for-profit commercial entities on a "limited and occasional basis as an advertising and marketing tool in connection with and incidental to the bona fide sales of consumer products or services." It further provides "non-profit entities and charitable organizations may not operate a game promotion." Certain groups are currently seeking clarification as to whether HB 155 prohibits gaming promotions in a cause-related marketing campaign. The law became effective April 10, 2013.

2. New York
   On April 17, 2013, the New York Department of State published a Notice of Revised Rule Making revising its proposed rule to require certain nonprofits to disclose information regarding election advocacy. The proposed rule was first issued by Attorney General Eric T. Schneiderman in December 2012.

   On May 14, 2013, Attorney General Schneiderman and Senators Michael Ranzenhofer and Carl Marcellino and Assembly Members Jim Brennan, Helene Weinstein, and Steve Englebright proposed the Nonprofit Revitalization Act and the Executive Compensation Reform Act. The Nonprofit Revitalization Act intends to reform two main areas: (1) enhancing nonprofit governance and oversight to prevent fraud and improve public trust; and (2) reducing unnecessary and outdated burdens on nonprofits. The Executive Compensation Reform Act intends to: (1) rein in excessive compensation by requiring boards of directors to review and approve CEO compensation; and (2) require additional oversight at large organizations. The proposed Acts would be the first major reforms in over 40 years to New York's charities laws.

3. Pennsylvania
   On March 20, 2013, Pittsburgh Mayor Luke Ravenstahl filed suit in the U.S. District Court in the Western District of Pennsylvania challenging the tax-exempt status of University of Pittsburgh Medical Center (UPMC), Pennsylvania's largest employer, under the 2012 state Supreme Court case, Mesivtah Eitz Chaim of Bobov v. Pike County Board of Assessment Appeals. The city is seeking to compel payroll taxes dating back to 2007. On April 18, 2013, UPMC filed suit against the city of Pittsburgh and Mayor Ravenstahl claiming the lawsuit violated UPMC's constitutional rights such as the right to due process.

4. Utah
   On April 2, 2013, Utah State Governor Gary Herbert signed into law House Bill 43. HB 43 requires corporations, including nonprofit corporations that spend $750 or more in a calendar year on political expenditures to disclose the name and address of every donor. Donor is broadly defined in the bill as "a person that gives money, including a fee, due, or assessment for membership in the corporation, to a corporation without receiving full and adequate consideration for the money." Nonprofit groups such as the National Rifle Association (NRA) and Americans Civil Liberties Union (ACLU) had opposed the bill. The law became effective May 14, 2013.