

# Sports Litigation Alert

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## How Teams Can Mitigate Risk of Ticket Broker Suits

By **Andrew Louis and Daniel Paluch**

Ticket brokers — many a fan's go-to for season passes or hard-to-get tickets for playoff games — have for decades played an integral role in the ticket supply chain. In some cases they have even enjoyed close, informal, and long-lasting relationships with teams across the country. But more recently they have become a source of litigation risk for teams that revoked the brokers' access to season passes. As described below, some of this risk can be mitigated by formalizing the relationships with written contracts that include certain protective features.

On March 28, 2018, a group of independent secondary season ticket brokers filed suit against the Los Angeles Dodgers and certain affiliated companies.<sup>1</sup> The brokers, who claim to have loyally purchased bulk tickets for resale for the past 15 years, allege that the Dodgers improperly cut them out at the beginning of the 2018 season and replaced them, and hundreds of other secondary ticket brokers, with a single ticket broker with no pre-existing relationship with the Dodgers. According to the plaintiff ticket brokers, the Dodgers breached implied-in-fact and implied-in-law contracts with the plaintiffs when they failed to make 2018 season tickets available to the plaintiffs. As a result of these alleged breaches, the ticket brokers are seeking, among other things, monetary damages, a constructive trust over any profits the Dodgers realized when they sold season tickets to their new broker partner, and injunctive relief preventing the sale or distribution of season tickets that were allegedly promised to plaintiffs.

The Dodgers are only the most recent high-profile target of this type of litigation. This March, a broker sued the New York Yankees for revoking the 52 sea-

son tickets the broker bought in November 2017.<sup>2</sup> In February 2017, a ticket broker sued the Chicago Cubs after they started a multi-year initiative to consolidate the ranks of secondary ticket brokers selling Cubs season tickets.<sup>3</sup> Similarly, Madison Square Garden Co.<sup>4</sup> and the Indianapolis Colts<sup>5</sup> became the targets of ticket broker lawsuits in 2016, after they allegedly refused to offer brokers the right to purchase tickets because of new policies imposing resale and pricing restrictions on season ticket sales.

Given the recent series of cases against the Yankees, Cubs, Madison Square Garden, Colts, and Dodgers, what can teams do to reduce litigation risk? Formalizing a team's relationships with its secondary ticket brokers, including certain explicit protective measures

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<sup>2</sup> *ASC Ticket Co., LLC, et al. v. New York Yankees Partnership*, Supreme Court of New York, Bronx County, Case No. 2259/2018.

<sup>3</sup> *Frager v. Chicago Cubs Baseball Club, LLC*, Illinois Circuit Court, Cook County, Case No. 2017-CH-1622.

<sup>4</sup> *Smile For Kids, Inc., et al. v. The Madison Square Garden Co.*, Supreme Court of New York, New York County, Case No. 652416/2016.

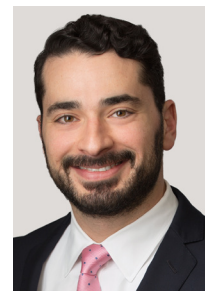
<sup>5</sup> *Frager v. Indianapolis Colts, Inc.*, S.D. Ind., Case No. 16-cv-632-WTL-DML.

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<sup>1</sup> *Renaissance Ventures, LLC, et al. v. Los Angeles Dodgers, LLC, et al.*, Los Angeles Superior Court, Case No. BC699721

in contracts, is one significant tool available to reduce this risk. Specifically, teams should consider the following three steps:

*First*, litigation risk associated with secondary broker relationships can be reduced on a going-forward basis by conducting an audit of existing secondary broker relationships to determine whether any are being conducted pursuant to an unwritten agreement. For example, the plaintiffs suing the Dodgers have no claim for breach of a written agreement—all of the alleged breaches involve oral, implied-in-fact, and implied-in-law contracts. Unwritten contracts, whether explicit or implied, may increase litigation risk because the terms of the agreement are often uncertain, making it more difficult to determine whether any party has complied with or breached the agreement. Having more clarity on each party's rights and responsibilities by memorializing the broker relationship in a written agreement reduces this risk, and may prevent future broker lawsuits based on more informal agreements.

*Second*, to the extent possible, teams may want to avoid entering into broker relationships that are not explicitly time-limited. Many brokers expect to have the opportunity to buy season tickets every year. Some brokers have alleged that teams foster that expectation by cultivating open-ended relationships that resemble partnerships.<sup>6</sup> Including contract provisions in season ticket invoices or contracts that grant the team the right to reject any renewal, and that impose strict time limitations on season ticket transfers, can help eliminate any expectation interest a broker may have.<sup>7</sup> While these contract measures may not prevent all litigation, they can make it easier for teams to dispose of lawsuits quickly, and at the pleadings stage.<sup>8</sup>

*Finally*, teams should consider including liqui-

<sup>6</sup> See, e.g., *Renaissance Ventures, LLC*, Complaint at ¶ 22.

<sup>7</sup> See, e.g., *Fragger v. Indianapolis Colts, Inc.*, Entry on Defendant's Motion to Dismiss, DE 19 at pp. 2–5.

<sup>8</sup> See *id.*

dated damages clauses in contracts with their brokers. Liquidated damages clauses can provide protections to both teams and brokers. Teams are protected, because the liquidated damages clause can cap damages and provide more certainty about potential exposure in the event of a lawsuit. Brokers are protected, because a liquidated damages clause will not leave them empty-handed if a team decides to sever ties with them. However, especially from a team perspective, a liquidated damages clause can serve as an additional escape hatch to get out of undesired broker relationships. Teams that have a liquidated damages clause in a written contract have more certainty about their potential litigation risk exposure before they decide to sever ties with old brokers and enter into agreements with new brokers, for example. Liquidated damages clauses also give teams the flexibility to pay their existing brokers the liquidated damages amounts upfront, which can head off litigation completely.

Of course, even the most careful contract management and drafting may not prevent litigious brokers from filing suit, particularly when they stand to gain much from selling season tickets for a playoff-caliber team. But defensive measures such as those outlined above nearly always reduce litigation risk and exposure if employed correctly.

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