Sports Litigation Alert

Citi Field: What's In A Name?

By Ben Mulcahy and Gina Reif Ilardi

When Citigroup ("Citi") announced its unprecedented $400 million dollar deal for naming rights to the new Mets Stadium in late 2006, sports marketing experts assumed that Citi was breaking new ground in naming rights deals for sports venues. Shortly after Citi announced its deal for "Citi Field," British banking giant Barclays agreed to pay a reported $400 million dollars over twenty years for naming rights to the future home of the New Jersey Nets, and experts predicted that companies would offer even more for the naming rights to the new Cowboys and Giants stadiums.

In recent weeks, however, Citi has accepted $45 billion dollars in funding from the Troubled Asset Relief Program ("TARP"). As a result, Citi's deal with the Mets has undergone intense scrutiny, with certain members of Congress proclaiming that Citi should be forced to back out of its deal with the Mets. Although there is some visceral appeal to that position, requiring Citi to back out of its deal would have far-reaching financial implications for the entire sports industry and would raise complex legal issues under the Contracts Clause and the Takings Clause of the United States Constitution.

I. A Forbidden Interference

Article I, Section 10 of the Constitution provides that no state shall enact a law that impairs the obligation of contracts. Known as the "Contracts Clause," the framers included this clause in the Constitution to prohibit legislatures from passing bills relieving influential persons of their contractual obligations. If Congress were to condition Citi's receipt or continued use of TARP funds on its termination of the naming rights deal for Citi Field, Citi might argue that Congress is impairing its contractual obligation to the Mets in violation of the Contracts Clause.

The Contracts Clause has been invoked during previous times of economic turmoil. For example, during the New Deal era, Minnesota enacted a law that temporarily restricted the ability of a mortgage holder to foreclose. Home Building & Loan Association v. Blaisdell, 290 U.S. 398 (1934). The law in question was enacted to prevent foreclosures during a time of great economic hardship, not unlike today. The Supreme Court upheld the law in the face of a Contracts Clause challenge, finding that the law was a valid exercise of Minnesota's police power. The Court stated that the temporary nature of the contract modification and the gravity of the country's economic situation justified the law.

Since then, the Supreme Court has refined the idea that the government may interfere with private contractual obligations without violating the Contracts Clause. See, e.g., Energy Reserves Group v. Kansas Power & Light, 489 U.S. 400 (1983). In determining whether contractual interference is valid under the Contracts Clause, three factors must be considered: (1) whether the regulation substantially violates a contractual relationship; (2) whether there is a "significant and legitimate purpose behind the regulation, such as the remedying of a broad and general social or economic problem"; and (3) whether the law is reasonable and appropriate for its intended purpose. Id. at 411-13.

Applying this test to Citi's current situation, requiring Citi to withdraw completely from its deal with the Mets would indeed constitute a substantial disruption of a contractual relationship. As such, the government would need to show, among other things, that forcing Citi to do so is part of a reasonable effort to remedy the current economic crisis. In the scheme of a multi-hundred billion dollar bailout plan, it's debatable that Citi's deal with the Mets, which amounts to $20 million dollars per year and is estimated to be less than ten percent of Citi's annual media outlays, would satisfy that test, at least standing alone.

II. An Unfair "Taking" From America's Favorite Pastime

But even if the government were able to effectuate a termination without violating the Contracts Clause, what about

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the role of the Mets in this scenario? Would the sports team itself have any sort of legal recourse against the government in the event Citi is forced to withdraw from its naming rights deal? Although heavily nuanced, the gist of the "Takings Clause" of the Fifth Amendment provides that "just compensation" be paid if private property is taken for public use. To be considered a taking under the Takings Clause, the property taken does not actually need to be used by the public; rather, it must be disposed of in such a manner as to benefit the public welfare or interest, which is among the reasons being used to justify a call for Citi to terminate its naming rights deal. Citi's naming rights deal with the Mets helped cover the costs of building Citi Field. If the Mets lost its naming rights deal, the Mets might be able to convince a court that, by forcing Citi to terminate its contract, the government is taking private property from the Mets without any just compensation. And the value of the property taken might arguably exceed the $400 million dollar price tag on the deal itself if Citi's withdrawal were to create a domino effect on other investors or financiers and leave the Mets with an unfinished stadium.

III. The Bigger Picture

There can, and probably should, be a vigorous debate about whether companies should be allowed to use TARP funds to pay for advertising and marketing expenditures that have not yet been agreed to, with some saying that federal interference in Citi's marketing strategy will make things worse, not better, and others flatly saying such funds should not be used for those purposes. In a recent report posted on Citi's website, Citi publicly recognized those criticisms, stating that its TARP funds will not be used for "compensation or bonuses, dividend payments, lobbying or government relations activities, or marketing, advertising or corporate sponsorship activities." The debate over expenditures that have not yet been committed to will continue, but disrupting existing agreements would have far-reaching implications, largely because Citi is not the only TARP recipient currently paying for the right to have its name on the side of a sports stadium. Bank of America, JP Morgan Chase, Wells Fargo, Chrysler Corp, PNC Financial Services, Capital One and U.S. Banccorp, some of which are TARP recipients, all have naming rights deals on the table. For example, Bank of America, the recipient of $45 million dollars of bailout money, reportedly pays $7 million dollars per year for Bank of America Stadium, home to the Carolina Panthers. And GM, the recipient of $13.4 billion dollars in government loans, has its name on the stadium of the Vancouver Canucks. To drive the much needed sales in this economy, many TARP recipients will need to continue to spend large amounts on marketing and advertising, and will at least indirectly be using TARP funds in order to do so. If TARP recipients are forced to withdraw from existing naming rights agreements or terminate other marketing or advertising commitments that have already been made, the affected sports teams, stadiums, networks and other media outlets will be left with significant deficits to deal with. And those parties, hurting from the economy themselves, will need to consider how to shift those losses, which under a successful Takings Clause argument, may end up being borne by the taxpayers, the very constituency the government is seeking to relieve of that burden in the first place.