

Should Investors be Wary of Esports Arenas? Traditional Stadium Litigation Hints at Risk

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By Erick Orantes and Benjamin Eastburn

As esports have remained resilient during the pandemic, investors have shown a commitment to leveling up esports infrastructure. Historically, esports contests have been held in retrofitted convention centers, casinos and clubs. The accelerated growth of esports, however, has led to billions of dollars in investments, including a focus on esports-specific stadium construction and other capital expenditures. Indeed, dozens of esports arenas have been built, including one in Arlington, Texas. Another esports arena is currently being built in Philadelphia by an ownership group that has several entities in its portfolio, including the Philadelphia Flyers and Wells Fargo Center. But with slow returns and rising construction costs, esports investors, like their traditional sports counterparts, need to consider the additional risk of litigation when putting their money into esports arenas.

ADA LITIGATION IN STADIUMS

The Americans with Disabilities Act (ADA) is a law that was passed to provide a national mandate and consistent standards for individuals with disabilities. The ADA is frequently invoked in litigation against stadium owners, operators and lessees, and therefore it should be a consideration in the construction of arenas. As an example of potential liability, Levi's Stadium, the home of the San Francisco 49ers professional football team, was the subject of recent ADA litigation. In that action, a class of plaintiffs alleged multiple ADA violations at the stadium, including: (i) being unable to locate the elevators; (ii) that the stadium lacked accessible stadium seating; and (iii) the security checkpoints were not large enough for wheelchair access. After almost four years of litigation, the court approved a historic settlement that required the defendants to pay over \$24 million to the class. Because of the risk of protracted litigation, esports arenas should consider whether they are in compliance with the ADA, and take reasonable action to meet standards set forth by state and federal law.

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COMPLIANCE WITH LOCAL AND STATE RULES

Litigation frequently occurs when zoning and constructing planning does not comply with local and state rules. Accordingly, it is prudent that esports-specific construction take into consideration this regulatory framework before proceeding. For example, Major League Soccer's Nashville Soccer Club encountered a dispute surrounding the construction of their new stadium near the fairgrounds in Nashville. In that action, a group of plaintiffs made multiple claims against the City of Nashville and halted the construction of the stadium. Specifically, the dispute centered around whether the City of Nashville complied with the city charter, and whether those city officials abided by the rules when they approved a 30,000 seat stadium for Nashville SC. After months of litigation, the City of Nashville complied with city requirements by holding another vote that was consistent with local and state rules and regulations. After the vote, construction was allowed to proceed.

STADIUM CONSTRUCTION DEFECT LITIGATION

Many new stadiums contain state-of-the-art building materials, processes or designs, which almost inevitably lead to design or construction-defect claims. U.S. Bank Stadium, home of the Minnesota Vikings, was constructed with faulty nails that caused massive leaks, requiring an additional \$21 million to repair.¹⁰ In another instance, Atlanta's Mercedes-Benz Stadium, home to both the Atlanta Falcons and the Atlanta United, required millions in repair costs because of its defective cellular distributed antenna systems (DAS). IBM, the contractor responsible for the DAS, sued a subcontractor for its "botched" design, after IBM purchased over \$20 million in equipment and materials to build the DAS. Both Minnesota and Atlanta placed the bills on the companies and contractors rather than the taxpayers for faulty construction equipment, but luckily avoided costly litigation that may have exposed investors to more risk and delays in return. Thus far, the esports construction disputes have not resulted in extensive litigation. There are, however, numerous plans to build world class arenas for esports. As exciting as these developments are, it would be naive to believe that esports are somehow exempt from these litigation pitfalls. As the esports industry grows and invests in capital expenditures, it should learn from their traditional-sports counterparts and engage legal counsel early and often to head off potentially costly errors.

This article is part of the fall 2020 Esports, Sports Technology & Wagering [newsletter update](#).

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