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Filling the Seats for Stadium Financings

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COVID-19 has materially impacted arena and stadium financings. How have professional sports leagues been able to form bubbles in spite of contractual obligations of teams to play home games at their home venues? Are there restrictions on further bubbles? Can leagues require bubbles for another season?

We have all followed the news during the pandemic to see how major professional sports would come together. Bubble or no bubble? Which cities would be the hub cities? 30 teams or 22 teams? What will a 60-game pennant race look like? And now that play has resumed in the NBA, the NHL, MLS and MLB, sports feel different. The lack of fans at games has been more than noticeable, and we are yearning for the time when the seats at arenas and stadiums are filled again.

COVID-19 has impacted the business of sports in ways similar to other businesses. Revenues are down, yet bills continue to come due. The clubs have shown their resilience and have found ways to press forward and manage. Arenas and stadiums continue to be financed, but the scene has changed. In the “Filling the Seats for Stadium Financings” webinar, our panel will highlight observations in the arena/stadium debt financing markets prior to and during COVID-19 and what we anticipate moving forward. This article focuses on one specific issue — how leagues can form bubbles in spite of contractual obligations of teams to play home games at their home venues, and how long leagues can continue requiring games to be played in bubbles.

In arena and stadium financings, one critical tool for a debt financing provider is a mortgage of the club’s rights (e.g., ownership or leasehold) in the home venue. A club will often hold its rights to its home venue in one entity and its rights to the team in a separate entity. As a result of this bifurcation, an equally critical tool to a debt financing provider is the non-relocation agreement, which requires the team (as the primary tenant driving the revenue of the applicable arena or stadium) to play all of its home games at its home venue, save for some exceptions. This requirement covers more than just a complete relocation of the team as the name implies. If the team played too few home games at its home venue, then revenues from season and game-day tickets, suite licenses, sponsorships, concessions and parking are, of course, significantly impacted. This decline in revenues not only impacts the financial wherewithal of the borrower, but also the value of the security for the debt financing provider.

Now that each of the NBA, the NHL and MLS have adopted a bubble to resume play, the question becomes, how have these bubbles been possible in light of the non-relocation agreements securing arena/stadium debt financings? And more importantly, are bubbles for future seasons limited by non-relocation agreements?

In most cases, teams have been able to contractually participate in bubbles based on two exceptions generally found in non-relocation agreements — force majeure and discretion granted to the leagues. At least one of these exceptions may also permit the leagues to implement bubbles in future seasons, whether related to the COVID-19 pandemic or future pandemics.

The first clause is force majeure, which would arguably excuse the team from its obligation to play the required number of home games at its home venue. The force majeure event must render the home venue not reasonably fit to play home games in accordance with league rules. COVID-19 and the governmental response arguably fall within the general definition of force majeure because both are outside the team's reasonable control. In addition, many non-relocation agreements include two spot-on examples of force majeure preventing a team from being able to use its home venue for home games — “epidemic” and/or “extraordinary security measures taken by a public entity (such as martial law or quarantine of the area in which the home venue is located).” Because the team's obligation would be excused only during the existence of the force majeure, there could be factual questions relating to when is the end of the epidemic (e.g., significant decline in COVID-19 cases, development of a vaccine, wide distribution of a vaccine, etc.). Furthermore, as we have seen, states are approaching COVID-19 with differing restrictions. In future seasons, states may allow fans to be present at different capacities, which could cause complex issues surrounding whether force majeure still exists with respect to all or particular arenas and stadiums.

The second reason why teams are able to play home games outside of their home venue is due to language sometimes found in non-relocation agreements. Leagues can mandate the playing of home games at alternative venues, provided that the league rules are consistently applied and/or that substantially all regular season home games are played at its home venue. The NBA and the NHL seasons were far enough along that the bubbles arguably do not run afoul of this latter limitation. If bubbles are implemented in future seasons and a team's non-relocation agreement includes this latter limitation, then the team may need to wholly rely on the force majeure exception discussed above to avoid breaching its non-relocation covenant. Note that games of teams at the “MLS is Back Tournament” are additionally excluded from the non-relocation agreement obligations because they constitute tournament games, and thus are not home games of the teams.

Katten's understanding of the complex nature of arena and stadium financings (both prior to and during COVID-19) allow us to strategically advocate for our client's interests. Attorneys in Katten's nationally recognized Sports and Sports Facilities practice have provided legal services to a wide array of participants in connection with stadium/arena developments, financings, sponsorship agreements, media rights deals, ticketing arrangements, event agreements, concession deals, suite licenses, employee agreements, intellectual property, purchases and sales of sports franchises, compliance issues and litigation.

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