Can't get into Super Bowl? See you in court, NFL

By Randy Mundell | Jan 31, 2021

The television audience for Sunday's Super Bowl LIV between the San Francisco 49ers and Kansas City Chiefs is expected to hover around 100 million. Many fans would prefer to take in the game from Inside Hard Rock Stadium in Miami. But when it comes to the biggest sporting event of the year, getting in the building has always been challenging.

For some, the frustration proved too much. They went to court.

In Fishkin v. National Football League (2019), the Third U.S. Circuit Court of Appeals (with a stop along the way at the New Jersey Supreme Court), addressed whether the NFL's policy of selling just 1% of the tickets for the 2014 Super Bowl to the public violated a Garden State consumer protection law.

The law was designed to keep too many tickets from entering the market from being withheld from the general public. While virtually every ticket went to NFL teams, networks, sponsors and big-ticket buyers, the court concluded that the law was not violated since those tickets were never destined to be part of a public sale.

Another dispute over the distribution of Super Bowl tickets occurred in Louis v. National Football League (2002). A Florida federal court ruled in 2001 that the NFL's Super Bowl ticket lottery systems violated the Americans with Disabilities Act because it placed them in a disadvantage in securing seats. But the court declined to throw a penalty flag. The ADA was never violated, the court concluded, only if the NFL denied the plaintiff an opportunity to participate in the lottery.

Super Bowl XLV involved a floaco when a large number of temporary seats built for the 2011 game at Cowboys Stadium. In Arlington, Texas, were not ready by Sunday. Some ticket holders had no seats, and others were moved to less desirable spots.

Most fans settled with the NFL. But some disgruntled ticket holders filed lawsuits, leading to a battle at a level not seen in Texas since the Alamo. A jury awarded each plaintiff between $1,560 and $2,000 for breach of contract. The Fifth U.S. Circuit Court of Appeals concluded in 2001 that the trial court was correct to deny the ticket holders the right to also pursue a certain fraud theory.

And it is not just fans being denied access to the Super Bowl that has led to litigation. A well-known minor pass interference penalty in the 2019 NFC Championship Game, on a New Orleans Saints player, led some fans and victims to believe that they did have a shot at a big game. "Angry Saints fans went machete into Combat."

However, Louisiana's top court held in Le Moy's National Football League (2019) that disappointed fans could not maintain claims that the NFL and referees engaged in a conspiracy and committed fraud and deceptive trade practices in conjunction with the botched call.

Lawsuits over NFL tickets are not new. In Conigli v. Highwood Services, Inc., a federal U.S. Circuit Court of Appeals held that it was not a violation of anti-trust law for an NFL team to require a person to buy tickets to pre-season games in order to purchase season tickets. In reaching its decision, the court made an observation that has widened the "whenever": "Whether she might be said about professional football in the United States, it does seem to breed a hardy group of fans who do not fear litigation combat."

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