Ninth Circuit Knocks Out Boxing Fan Class Action Over Mayweather-Pacquiao Fight

By Bethany Rabe, Mark Tratos, and Ruth Bahe-Jachna

The Ninth Circuit has issued an opinion on a matter of first impression in that circuit: whether a spectator disappointed by a sporting event has legal recourse against the athletes, promoters, and others associated with the event. In accordance with two other circuits and several other cases addressing similar issues, the Ninth Circuit held that such consumers suffered no legally cognizable injury, affirming the district court's dismissal of the putative class action complaints with prejudice. In re: Pacquiao-Mayweather Boxing Match Pay-Per-View Litigation, No. 17-56366 (Nov. 21, 2019).

The matter arose out of the 2015 boxing match between Manny Pacquiao and Floyd Mayweather. The match was hyped by the media and promoted by HBO as "the biggest event in boxing history," and "the Fight of the Century." However, Mr. Pacquiao suffered a torn rotator cuff injury during training several weeks before the fight; this fact was not disclosed to the public. Instead, his promoter, trainer, and manager continued to make statements that Mr. Pacquiao was in great shape and prepared for the fight.

Each athlete was medically cleared to fight by the regulating body, the Nevada State Athletic Commission, prior to the event. The fight went twelve rounds, with the judges awarding Mr. Mayweather the victory by unanimous decision. However, some media outlets described the fight as boring, and after the fight, Mr. Pacquiao revealed publicly that he had not been 100% due to the injury.

The plaintiffs brought putative class actions in numerous jurisdictions, primarily focused on consumer fraud allegations, against a variety of defendants. The plaintiffs named a number of people and entities associated with Mr. Pacquiao, including the promoter and his manager. The plaintiffs also named HBO, which had produced a documentary about the fight, as a defendant. Finally, the plaintiffs named Mr. Pacquiao's opponent, Mr. Mayweather, as well as Mr. Mayweather's promotions company, Mayweather Promotions, on the grounds that they allegedly had a "mole" in the camp and therefore knew of the injury. The plaintiffs alleged that all defendants knew of the injury yet failed to disclose it, depriving the plaintiffs of the opportunity to make an informed purchasing decision. The plaintiffs contended that they were led to believe that "they were purchasing the right to see a contest between healthy athletes in peak physical condition and not suffering from any disability or serious injury."

More than 40 putative class actions were consolidated as a Multi-District Litigation ("MDL"), with the Central District of California serving as the transferee court. After motion practice under Rule 12(b)(6), the district court dismissed all complaints with prejudice on the grounds

that the plaintiffs suffered no cognizable injury to a legally protected interest. The plaintiffs appealed.

Several previous cases had held that disappointed fans had no recourse in the courts. *See, e.g.*, *Mayer v. Belichick*, 605 F.3d 223, 225 (3d Cir. 2010) (affirming dismissal of putative class action brought by ticketholder against the New England Patriots as a result of the "Spygate" controversy); *Bowers v. Federation Internationale de l'Automobile*, 489 F.3d 316, 319 (7th Cir. 2007) (affirming dismissal of putative class action of racing fans after fourteen cars withdrew from a race that was expected to have twenty cars); *Le Mon v. National Football League*, 277 So. 3d 1166 (La. 2019) (season ticketholders had no right of action to challenge a referee's missed call during NFC Championship game); *Castillo v. Tyson*, 701 N.Y.S.2d 423 (N.Y. App. Div. 2000) (affirming dismissal of putative class action arising out of boxing match in which boxer Mike Tyson was disqualified after biting off part of his opponent's ear).

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Here plaintiffs attempted to characterize themselves as "defrauded consumers" instead of "disappointed fans." The plaintiffs relied on a series of cases involving season ticketholders. The Ninth Circuit rejected this argument, noting that none of those cases involved evaluation of the actual athletic performance, but instead involved the location of the team or similar issues.

Viewing the case as analogous to the disappointed fan cases, the court noted that the "license approach" – which generally holds that a ticket provides a fan only a license to view whatever event transpires – had been referenced in those cases to deny relief to disappointed spectators. Although the Ninth Circuit did not specifically adopt the license approach, it held, consistent with that approach, that "Plaintiffs essentially got what they paid for – a full-length regulation fight between…two boxing legends." The court explained that "[w]hatever subjective

expectations Plaintiffs had before the match did not negate the very real possibility that the match would not, for one reason or another, live up to those expectations."

The court distinguished the case from a more typical consumer fraud situation where, for example, a car is advertised to have a sunroof, but does not. Specifically, the court noted that the "human drama of athletic competition" plays a role, as well as fans' varied expectations. The court went on to note that from a policy perspective, the plaintiffs' theory of liability was "potentially boundless" and unworkable, and would "fundamentally alter the nature of competitive sports." Accordingly, the Ninth Circuit affirmed the dismissal.

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