RECENT CASES

NLRB Administrative Law Judge rules that dual dues structure of Actors Equity violates federal labor law

A complaint issued against Actors' Equity Association by the General Counsel of the National Labor Relations Board (based on a charge filed by John Clark, the husband of actress Lynn Redgrave) alleged that Equity's requirement that non-resident aliens maintain membership in Equity as a condition of employment, coupled with separate dues scales for resident and alien members, violated Sections 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act. Although Administrative Law Judge David Davidson found that Redgrave's claim was time-barred, he nevertheless held that the practices complained of violated Equity's duty of fair representation of its alien members and constituted an unfair labor practice. Judge Davidson therefore ordered Equity to cease and desist from requiring the payment of higher dues by alien members and recommended that Equity reimburse its alien members the higher dues they have paid.

The bylaws in question provide that resident members pay dues according to a sliding scale based on gross income, but not more than $400 a year regardless of income. Alien members admitted to the United States for the purpose of performing in theatrical productions were required to pay dues of 5% of their compensation for such performances. There was no upper limit on the amount of dues which alien members might have to pay in a year. The extent of the disparity in dues payments that might occur was demonstrated by Judge Davidson's reference to alien member Yul Brynner's payment to

Equity of $45,000 during a one-year period. Alien members also do not have voting rights and cannot serve in any executive capacity with Equity. Lynn Redgrave was an alien member of Equity for nine years until 1976 when she was granted resident alien status.

Equity has agreements with various theater leagues representing significant numbers of producers of live theatrical events. The agreements contain provisions requiring membership by performers in Equity as a condition of employment (union security) and also give Equity some control over the employment of aliens.

In his decision, Judge Davidson explained that Section 8(b)(1)(A) of the National Labor Relations Act prohibits labor organizations from taking action against any employee upon considerations or classifications which are irrelevant, invidious or unfair. And Section 8(b)(2) prohibits labor organizations from causing employers to discriminate against employees on the basis of union membership (except for an employee's failure to pay the uniformly required dues), Any distinctions among members must be based on "reasonable general classifications."

Judge Davidson rejected the contention that the existence of the dual dues structure and the union security contracts were per se violations of the Act. But he pointed out that since "discrimination based on alienage is inherently suspect," Equity had to demonstrate that its distinction between aliens and resident members was reasonable and served valid business considerations.

Equity argued that the provision for alien dues served the purpose of protecting American actors from competition from foreign actors. However, the Judge noted that while an original purpose of the 5% dues in the 1920s may have been to protect against unfair labor competition from those British actors who might work for substandard wages in the United States, the enactment of the McCarran Act in 1952 ended the free immigration of alien actors and imposed certain restrictions in connection with the issuance of visas. Furthermore, in 1964, the U.S. Labor Department indicated that it would consult with Equity on applications of actors seeking to enter the United States. And a 1968 agreement with the League of New York Theaters provided that a producer would not apply to the Immigration and Naturalization Service for admission of an alien actor unless such admission were approved by the League and Equity. Judge Davidson concluded that these factors "have virtually eliminated the need for a special dues structure to deter non-resident aliens from seeking employment on the American stage."

Equity's contention that the dues differential also served to deter British Equity from taking restrictive action against American actors was not supported by the evidence, according to Judge Davidson.

Judge Davidson therefore concluded that Equity had failed to establish any purpose for the 5% dues requirement, other than producing revenues.

Equity also claimed that the complaint was timebarred. Judge Davidson noted that there had been instances of enforcement of the bylaw in question during the 6 month period before the charge was filed, because at least one alien had signed a standard production contract during that period and therefore had come under the contractual union security provisions and had been required to pay alien dues. But Lynn Redgrave's claim was timebarred since Equity had taken no action to enforce the alien dues provision against Redgrave in the 6 months preceding the filing of the charge.

In addition to ordering that Equity cease and desist from requiring aliens to pay greater dues than other members, Judge Davidson recommended that Equity be ordered to reimburse all alien members who worked as employees under union security agreements since April of 1976 for the difference between the amounts they paid as dues to Equity and the amounts they would have paid if considered resident members.

It should be noted that this decision did not apply to alien members working as members of unit companies; that is, complete performing companies which enter the country for limited engagements, such as the D'Oyly Carte Company. Members of such companies are required to pay dues of 2% of their gross earnings during their employment in the United States.

The National Labor Relations Board affirmed the decision of the Administrative Law Judge

Actors' Equity Association and John Clark and League of Resident Theatres, National Labor Relations Board, Division of Judges, Case 2-CB-6436 (June 29, 1979); Actors' Equity Association and John Clark and League of Resident Theatres, National Labor Relations Board, Case 2-CB-6436, 247 NLRB No.172 (Feb.19,1980) [ELR 1:7:1]

BMI obtains summary judgment against disco operator because of unauthorized public performance of copyrighted songs

BMI filed a copyright infringement lawsuit against the operator of a disco known as Grant's Cabin, because of the unauthorized performance of a half dozen songs, including "Love to Love You Baby," in the disco during 1976 and 1977. A Federal District Court in Missouri has entered summary judgment for BMI and against Grant's Cabin. The court's opinion discusses procedural issues of interest to those involved in litigation of this nature.

First, Grant's Cabin asserted as an affirmative defense to BMI's infringement claims that BMI and the owners of the copyrighted songs in question conspired to fix prices in restraint of trade by means of BMI's use of blanket licenses. Though recently published, the court's opinion was rendered prior to the decision of the United States Supreme Court in BMI v. CBS (ELR 1:1:1). Nevertheless, the court in the Grant's Cabin case — perhaps anticipating the result that was to come in BMI v. CBS — ruled that "blanket licenses, issued by licensing agencies such as BMI and ASCAP, are justifiable as a market necessity for the purposes of licensing nondramatic performance of music in restaurants, night clubs, skating rinks and radio shows. Because of this market necessity, the issuance of blanket licenses does not violate the antitrust laws."

Second, BMI had supported its motion for summary judgment by submitting affidavits of two people who stated that they were familiar with music, that they were present at Grant's Cabin on specific evenings, and that they heard and made a written record of songs played by a disc jockey or performed live by a band. Grant's Cabin contended that BMI's affidavits were insufficient, because expertise is needed to identify copyrighted music and the affidavits did not establish any such expertise. The court held, however, that familiarity with music is sufficient, because the test in a copyright infringement case is "whether the allegedly infringing work is recognizable by ordinary observation as having been pirated from the copyrighted source."

Under the Copyright Act of 1909, which controlled this case, BMI was entitled to an injunction, which the court awarded, and actual damages, or in lieu of actual damages and profits, an amount between $250 and $5,000 per infringement, the exact amount being whatever appears just to the court in the particular case. In this case, no actual damages were shown. Accordingly, the court awarded "in lieu" damages which it fixed at $250 per infringement or a total of $1,500 for the six infringements.

Although the Copyright Act of 1909 authorized an award of attorney's fees to the prevailing party, the court declined to award BMI attorney's fees in this case "because of the insignificant amount involved and the insignificance of the occurrence."

Broadcast Music, Inc. v. Grant's Cabin, Inc., CCH Copyright Law Reports, Para.25,074 (E.D.Mo. 1979) [ELR 1:7:2]

NBC held liable for common law copyright infringement as a result of its broadcast of British production The Parenthood Game

While on a photographic safari in East Africa, Dr. C. Brian Burke filmed an unusual and dramatic fight between a zebra mare and a lioness. This footage interested a European naturalist, Professor Bernhard Grzimek; and at his request, Burke sent a copy of the film to Grzimek for him to use in lectures and for broadcast on German public television. Grzimek later gave the film to a British company which included it in a production entitled “The Parenthood Game,” a nature program dealing with animal parenthood.

NBC purchased the “The Parenthood Game” and broadcast it in this country in January of 1977. Thereafter, Dr. Burke sued NBC, alleging that its broadcast of the program constituted an infringement of his common law copyright to his film footage.

Since January 1, 1978, the effective date of the current Copyright Act, “common law” copyright no longer exists, and all copyright protection is afforded by federal statute. However, prior to the effective date of the current Copyright Act, the creator of a literary or artistic work had the common law right to copy and profit from that work, and could distribute or show it to a limited class of persons for a limited purpose without losing that right. The common law copyright continued until the creator allowed a "general" publication of the work to occur. At that time the work passed into the public domain and anyone could copy, distribute or sell it for his own benefit, unless the creator had complied with the statutory requirements necessary to obtain a federal statutory copyright.

Burke had never applied for a federal statutory copyright, and thus, his case was based on common law copyright only. NBC argued that Dr. Burke had lost his common law copyright because he had permitted a general publication of his film when he sent it to Grzimek with permission for Grzimek to use it on German public television.

However, a Federal Court of Appeals has held that Burke did not permit a general publication of his film, because Grzimek had requested use of the film only in connection with his own lectures and on noncommercial television — purposes which the Court of Appeals found to be specific and limited. Under the Copyright Act of 1909, a limited publication to a limited class of persons for a limited purpose did not cause the loss of common law copyright. And, under both prior law and the current Copyright Act, television broadcasting alone does not constitute a "publication" at all. Thus, the fact that Dr. Burke knew that his film would be used by Grzimek on German public television did not establish that Burke had permitted a general publication.

Accordingly, the Court of Appeals sent the case back to the trial court with instructions that judgment be entered in favor of Dr. Burke and against NBC and with instructions that the District Court determine Dr. Burke's damages.

The United States Supreme Court denied NBC's petition for certiorari.

Burke v. National Broadcasting Company, CCH Copyright Law Reports, Para. 25,075 (1st Cir. 1979) [ELR 1:7:3]

Book about Monet painting held not to infringe copyright of Monet biography, despite similarities of facts and phraseology

Charles Merrill Mount is the author of a book entitled "Monet," a biography which examined the life of the famous painter. Following publication of Mount's biography of Monet, Joel Isaacson wrote a book published by Viking Press entitled "Monet: Le Dejuner sur l'Herbe." Isaacson's book was devoted specifically to one of Monet's paintings.

Historical facts reported in Isaacson's book were the same as some of the historical facts reported in Mount's book, and, apparently, some of the language used by Isaacson to express both facts and opinions was similar to language used by Mount. Isaacson's access to Mount's book was not denied. Indeed, Isaacson even cited Mount's biography of Monet in Isaacson's own book.

Despite the sameness of the facts reported and the similarity of the phraseology used by Isaacson, a Federal District Court in New York City entered judgment against Mount and in favor of Isaacson and the Viking Press; and that judgment has been affirmed by a Federal Court of Appeals.

The Court of Appeals held that in a case such as this, where one book is devoted to the examination of the entire life of all artist and another book is devoted specifically to one of that artist's paintings, plagiarism is difficult to show. Said the court, "The essential historical facts are necessarily the same, and the contents of the two books will necessarily and lawfully resemble one another at certain points, and the language used to express both the facts and the author's opinions on such matters is more or less stereotyped language."

Mount v. The Viking Press, Inc., CCH Copyright Law Reports, Para. 25,073 (2d Cir. 1979) [ELR 1:7:3]

Illegality of old National Football League player draft affirmed by Federal Court of Appeals

James McCoy ("Yazoo") Smith, an All-American from the University of Oregon, was drafted by the Washington Redskins in the first round following his graduation in 1968. After several months of negotiations, during which Smith was represented by an agent, Smith signed a one-year NFL Standard Player Contract providing for a $23,000 "signing bonus," an additional $5,000 if he made the team, and $22,000 in salary.

Smith did make the team and performed well as defensive back until he suffered a serious neck injury in the final game of the 1968 season, an injury which ended his professional football career.

Two years after his injury, Smith filed a federal antitrust lawsuit alleging that the National Football league draft, as it existed in 1968, constituted an illegal "group boycott." Smith contended that had it not been for the draft, he would have negotiated a longer, more lucrative contract which would have contained "injury protection" provisions, that is, provisions guaranteeing him payment even in the event of a disabling injury.

Smith won the trial. A Federal District Court in Washington, D.C., held that the NFL draft, as it existed in 1968, constituted a "group boycott" which was per se illegal under the Sherman Act. Alternatively, the District Court held that the draft was an unreasonable restraint of trade, because it was "significantly more restrictive than necessary." The District Court also agreed with Smith that but for the draft he would have negotiated a more lucrative contract including injury protection provisions. Accordingly, the District Court awarded Smith treble damages totaling $276,600. Smith v. Pro Football Inc., 420 F.Supp 738 (D.D.C. 1976).

Thereafter, the National Football League and the NFL Players Association entered into a new Collective Bargaining Agreement which substantially modified the NFL player draft. Thus, the draft now used by the

National Football League is not the same as the one at issue in the Yazoo Smith case.

The Federal Court of Appeals in Washington, D.C. has affirmed the District Court's decision that the old NFL draft was illegal, though the Court of Appeals did so for reasons that were different than those relied upon by the District Court. The Court of Appeals disagreed with the District Court's conclusion that the old NFL draft constituted a per se violation of the antitrust laws. (Under the antitrust laws, certain practices are deemed to be so anticompetitive that they are considered to be illegal n all instances, completely without regard to whether they arguably may be justified in a particular case. Such practices are said to be "per se" illegal.) The Court of Appeals held that "the NFL player draft is not properly characterized as a `group boycott' — at least not the type of boycott that traditionally has been held illegal per se — and that the draft, regardless of how it is characterized, should more appropriately be tested under the rule of reason." (Anti-competitive practices which are not per se illegal may nevertheless be illegal, if it is shown in a particular case that they impose an unreasonable restraint on trade. This is known as the "rule of reason.")

However, the Court of Appeals agreed with the District Court's alternative conclusion that the NFL draft, as it existed in 1968, constituted an unreasonable restraint of trade, because it restricted competition among NFL, teams for the services of graduating college players. The NFL asserted that the purpose of the draft was to evenly distribute talented players among all of the teams in the league. The Court of Appeals, however, agreed with the District Court that the old NFL draft was more restrictive than necessary to do this.

Although the Court of Appeals affirmed the decision that the old NFL player draft violated federal antitrust law, the Court of Appeals reversed the District Court's award of damages to Smith. The District Court had found that had it not been for the draft, Smith would have negotiated a three-year "fully guaranteed" contract worth $92,200 more than Smith had actually been paid by the Redskins (which amount was trebled to $276,600 in accordance with the antitrust laws).

However, the Court of Appeals held that there was simply no evidence to support the District Court's finding that Smith, absent the draft, would have been able to negotiate a contract containing a guarantee of three years' full salary, regardless of injury. No such guarantee had been negotiated by Pat Fischer, the veteran player whose salary the District Court used to determine what Smith would have been paid had there been no draft; and no such guarantee had ever been negotiated by any Redskins first-round draft choice, or by any defensive back at any time in NFL history. Accordingly, the Court of Appeals sent the case back to the District Court for recomputation of damages.

In a similar though unrelated case, Rick Hayes alleged that the NFL draft, as it existed in 1974, and the NFL's use of Standard Player Contract forms, violated federal antitrust law and deprived him of an opportunity to bargain for his true market value and for adequate injury protection. Hayes was selected by the Los Angeles Rams in the 11th round of the 1974 draft, and was placed on waivers in August of that year.

After denying a motion by Hayes that he disqualify himself for prejudice, Federal District Court Judge A. Andrew Hauk found that no league policy or practice prevented players from negotiating modifications or supplements to the NFL Standard Player Contract and that modifications and supplements were in fact common, but that at no time during negotiations with the Rams did Hayes or his lawyer ask for any change in the injury protection provision or any other change which he did not receive. Thus, Judge Hauk held that any damage suffered by Hayes was not the result of any alleged anti-trust violation, but rather was the result of Hayes' failure to ask for contract terms different from those he received.

Smith v. Pro Football, Inc., 593 F.2d 1173 (D.C. Cir. 1979); Hayes v. National Football League, 469 F.Supp. 252, 1979-1 CCH Trade Cases, Para. 62,686 & 62,687 (C.D. Cal. 1979) [ELR 1:7:4]

U.S. Supreme Court holds that scientist and alleged spy were not public figures

The U.S. Supreme Court has held that Ilya Wolston, named as a Soviet agent in the book "KGB, The Secret

Work of Soviet Agents," was not a public figure and therefore did not have to establish actual malice in order to recover in his libel action against the book's author and publisher.

Wolston had become the subject of newspaper coverage for approximately six weeks in 1958. During that time, he failed to appear before a grand jury investigating Soviet espionage, and he subsequently pleaded guilty to a contempt charge. Thereafter, according to the Court, the "flurry of publicity subsided" and Wolston returned to relative obscurity. He was never indicted for espionage, as was stated in "KGB."

The Supreme Court, in reversing the decisions of the lower federal courts, briefly reviewed the development of the standard set forth in New York Times Co. v. Sullivan, 376 U.S. 254 (1964). In New York Times, the Court held that the First and Fourteenth Amendments "prohibit a public official from recovering damages for a defamatory falsehood relating to his official conduct absent proof that the statement was made with `actual malice.'" The actual malice standard was extended to public figures, but in Gertz v. Robert Welch, Inc., 418 U.S.323 (1974), the Court decided that a showing of actual malice was not required in defamation actions brought by private individuals. The Court pointed out that public figures usually have access to communications media and thus have a greater opportunity to "counter criticism and expose the falsehood and fallacies of defamatory statements" than do private individuals. The Court also stated that public officials and public figures have "voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them" and therefore deserve less protection than private individuals. The ways in which a person might become a public figure were set forth by the Court in Gertz as follows: "For the most part those who attain this status have assumed roles of especial prominence in tile affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved."

Wolston's failure to comply with the grand jury's subpoena invited public attention and comment regarding his connection with Soviet espionage in the 1940s and 1950s, according to the lower courts. But the Supreme Court disagreed. The Supreme Court noted that Wolston "was dragged unwillingly into the controversy." He never discussed his actions with the press and he played only a "minor role in whatever public controversy arose over the espionage investigation." The Court held that his citation for contempt did not make Wolston a public figure and that the newsworthiness of his actions also was not conclusive in determining whether he was a public figure since "A private individual is not automatically transformed into a public figure just by becoming involved in or associated with a matter that attracts public attention. . . . A libel defendant must show more than mere newsworthiness to justify application of the demanding burden of New York Times."

The Court pointed out that Wolston had not used the contempt citation to provoke public discussion about, or to exercise any influence over, the charges against him or the issues raised in the investigation. The defendants' contention that "any person who engages in criminal conduct automatically becomes a public figure" in connection with issues relating to his conviction was also rejected by the Court.

In a separate case decided by the U.S. Supreme Court on the same day as Wolston, Ronald Hutchinson, a scientist whose federally funded research was the object of one of Senator William Proxmire's "Golden Fleece" awards as an example of wasteful government spending, sued the Senator and his legislative assistant for defamation, alleging damage to his professional and academic standing.

The Court found that Hutchinson had not been a public figure prior to the controversy that arose over the award. The Court therefore held that he did not have to meet the New York Times actual malice standard and reversed the lower courts' decision awarding summary judgment to the defendants. The Court pointed out that Hutchinson had not taken a prominent position on any particular controversy about public expenditures. Further, the Court ruled that "Neither his applications for federa] grants nor his publications in professional journals can be said to have invited that degree of public attention and comment on his receipt of federal grants essential to meet the public figure level."

In addition, the scientist's access to the media was not regular and continuing but rather was limited to responding to the announcement of the Golden Fleece Award. Citing Wolston, the Court stated, "Clearly, those charged with defamation cannot, by their own conduct, create their own defense by making the claimant a public figure."

The Court also held that the publication of the allegedly defamatory material by Senator Proxmire in press releases and newsletters was not protected by the Speech or Debate Clause of the Constitution (Article 1, Section 6). Although a speech by Senator Proxmire in the Senate about the award would have been immune against lawsuits, the press releases and newsletters were not essential to the "deliberative process" of the Senate, according to the Court, and therefore were not so protected.

Wolston v. Reader's Digest Association, Inc. Docket No. 78-5414, June 26, 1979; Hutchinson v. Proxmire, Docket No. 78-680, June 26, 1979 [ELR 1:7:5]

California Supreme Court to determine whether a television performer may bring an action against his producer s storage company for loss or destruction of the video-tapes of his shows

Jed Allan, the announcer and master of ceremonies of the television series "Celebrity Bowling," brought an action for damages against Bekins Archival Service for the loss or destruction of "Celebrity Bowling" video-tapes that had been stored with Bekins pursuant to an agreement with the series' producer. The trial court sustained Bekins' pretrial motion to dismiss the case on the grounds that Bekins did not owe a duty of care to Allan and on the grounds that Allan, not being a party to the storage contract, lacked standing to enforce it.

The Court of Appeal reversed. It held that the loss of residual income by a television performer from the destruction of the tapes of his shows was a foreseeable harm. Bekins thus owed Allan "a duty to exercise reasonable care in the storage and preservation of the tapes." The Court of Appeal also held that Allan's interest in residuals from the show created a third party beneficiary contract, which Bekins may have breached. However, the Court of Appeal noted that a storage company's liability for breach of duty and breach of contract should extend only to "principals or stars of a show, as distinguished from bit participants and those actors without residuals."

The California Supreme Court granted a hearing to consider these issues again. Thus, by California law, the decision of the Court of Appeal was been vacated.

Thereafter, the California Supreme Court the case to the Court of Appeal for reconsideration.

Allan v. Bekins Archival Service, Inc., 91 C.A.3d 835 (1979) [ELR 1:7:6]

Owners of entertainment facilities do not have to warn patrons about obvious dangers; whether accumulated litter is an obvious danger is a question for the jury to decide

The duty of care owed to patrons by the owner of an entertainment facility is the subject of two recent decisions. In Gray v. Mobile Greyhound Park, Ltd, the plaintiff, who slipped and fell in the grandstand area of the defendant's dog track, appealed an adverse jury verdict on the grounds that the trial court's jury instructions were in error. The trial judge had instructed the jury that there was no duty to warn or protect patrons against open and obvious dangers. The Supreme Court of Alabama rejected the plaintiffs contention and found the littered condition of the floor in the dog track's grandstand area to be an obvious danger, about which the owner had no duty to warn: "At such places of public amusement as race tracks, dog tracks, ball parks, stadiums and the like, an accumulation of debris upon the walkways during the course of the event is not unlike the buildup of rain water on a storekeeper's floor during storms. In both cases, the accumulation may adversely affect foot traffic — a fact with which the invitee is or should be aware." The court also concluded that "it would be unreasonable to require the owners-operators of public amusement facilities to keep their walkways completely free from litter during the course of an amusement event."

In Jenkins v. Stewart & Everett Theatres, Inc., the plaintiff, who slipped and fell in the defendant's movie theater on Coke and popcorn littered by a previous audience, appealed an adverse summary judgment decision. In reversing the lower court's ruling, the Court of Appeals of North Carolina recognized that the duty of care owed to patrons by the owner of an entertainment facility was to keep his premises in a reasonably safe condition and to warn only of any hidden perils or unsafe conditions that he knew or should have known existed on the premises. According to the court, however, "The degree of care required, under the particular circumstances, to measure up to the standard is for the jury to decide."

From these two decisions, it is apparent that the owner of an entertainment facility owes no duty to his patrons to warn against obvious dangers. But whether accumulated litter qualifies as an obvious danger should not be resolved by summary judgment, rather, it is a question for the jury to answer in light of the facts and circumstances of each case.

Gray v. Mobile Greyhound Park, Ltd, 370 So.2d 1384 (Ala.S.Ct. 1979) Jenkins v. Stewart & Everett Theatres, Inc., 254 S.E.2d 776 (N.C.App. 1979) [ELR 1:7:6]

Briefly Noted:

Tax.

Federal District Court Judge John Sirica has held that Big Mama Rag, a feminist organization whose major activity is the publication of a monthly newspaper concerning issues of importance to women, does not qualify as a tax-exempt educational organization, because its newspaper does not present a "full and fair exposition" of the issues it discusses, nor does it provide the factual basis from which it draws its conclusions.

Big Mama Rag, Inc. v. U.S., 79-1 USTC Para. 9362 (D.D.C. 1979) [ELR 1:7:7]

Tax.

Miami Valley Broadcasting Corporation received various assets from the liquidation of one of its subsidiaries in 1964. Among those assets were a leasehold interest in the facilities of television station KTVU in Oakland, California and contract rights to televise 6 regular season baseball games between the San Francisco Giants and the Los Angeles Dodgers. In order to amortize these assets, their values had to be determined. The Tax Court determined that the lease was worth $350,000 and the right to televise the baseball games was worth $25,000, amounts which Miami Valley appealed as too low. A Federal Court of Appeals has reversed the lease valuation, because the difference between actual rent to be paid over the 14-year term of the lease and the fair market rental for that period was at least $957,667, and the Tax Court had not explained what discount factor it had used in reducing that figure to $350,000. The Tax Court, however, had adequately explained its valuation of the baseball game telecast rights, and therefore the Court of Appeals affirmed that valuation.

Miami Valley Broadcasting Corp. v. Commissioner of Internal Revenue, 594 F.2d 556 (6th Cir. 1979) [ELR 1:7:7]

Trademark.

Pepsico, Inc. contended that tennis player Arthur Ashes use of the name “Advantage Ashe” in connection with a line of eyeglasses for tennis players infringed its trademark “Advantage” which served to identify tennis rackets and golf equipment distributed by Wilson Sporting Goods, a division of Pepsico. The Federal District Court in New York upheld Ashes claim that it, rather than an Illinois Federal court in which Pepsico had filed its complaint, should decide the matter. Although the Wilson division was located in Illinois, Pepsico’s principal place of business was located in New York. Ashe had minimal contacts with Illinois, and other factors such as the location of business records determined that New York would be the most convenient forum.

Ashe v. Pepsico, Inc. 201 USPQ 765 (S.D.N.Y. 1977) [ELR 1:7:7]

Sports.

A linesman who was injured by a player during a hockey game at which he was officiating was not excluded from coverage under a comprehensive general liability insurance policy carried by the plaintiff hockey club. The policy provided that the insurance did not apply to bodily injury to "any person while practicing for or participating in any contest or exhibition of an athletic or sports nature" sponsored by the plaintiff. But the court found that the linesman had an "uninvolved role" and "was responsible only for the application of the rules to the contest."

The defendant therefore was obligated to defend the hockey club in the linesman's action.

Hockey Club of Saginaw, Inc. v. Insurance Compan of North America, 468 F.Supp. 101 (1979) [ELR 1:7:7]

Theater.

A limited partner in a theatrical production venture contended that the limited partnership suffered financial loss due to a provision in a collective bargaining agreement between Local 802 of the American Federation of Musicians and the League of New York Theatres and Producers, Inc. The provision requires that a minimum number of musicians be employed in musical productions. The plaintiff alleged that "a requirement that a fixed number of musicians be hired and paid irrespective of whether or not they actually work" violated the common law and New York's General Business Law. The union argued that the National Labor Relations Board possessed sole jurisdiction over the matter. The court held that where the action had some basis in common law tort, and where money damages were sought, or where there were significant state interests present, there existed at least concurrent state court jurisdiction. The court also held that the limited partner was entitled to maintain the action on behalf of the partnership under New York law since the general partners were requested to bring suit but refused to do so, However, the court denied partial summary judgment since issues of fact remained to be resolved.

Wien v. Chelsea Theater Center of Brooklyn, 1979-1 CCH Trade Cases, Para. 62,626 (1977) [ELR 1:7:7]

DEPARTMENTS

In the Law Reviews:

The Four Horsemen Ride Again: Cable Communications and Collegiate Athletics by Philip R. Hochberg, 5 Journal of College and University Law 43-54 (1979)
Constitutional Regulation of Televised violence by James A. Albert, 64 Virginia Law Review 1299-1345 (December 1978)

Recent Developments in Cable Television Law by William M. Marticorena, 6 Orange County Bar Journal 152176 (Summer 1979)

A New Approach to the Regulation of Broadcast Programming: The Public Nuisance Doctrine, 28 American University Law Review 239-277 (Winter 1979)

Televised Violence: First Amendment Principles and Social Science Theory by L. A. Powe, 64 Virginia Law Review 1123-1297 (December 1978)
[ELR 1:7:8]