

# Corporate Sponsorships of Sports and Entertainment Events: Considerations in Drafting a Sponsorship Management Agreement

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# **CORPORATE SPONSORSHIPS OF SPORTS AND ENTERTAINMENT EVENTS: CONSIDERATIONS IN DRAFTING A SPONSORSHIP MANAGEMENT AGREEMENT**

BY GREGORY J. HELLER & JEFFERY A. HECHTMAN<sup>1</sup>

## **I. INTRODUCTION**

### *A. Overview of Corporate Sponsorships in the Sports and Entertainment Industry*

As we enter a new millennium, corporations are continuously looking for ways to effectively reach their target markets. One method of access that has exploded in popularity in recent years is the sponsorship of sports and entertainment events. With broad demographics and well-known personalities, corporate sponsorships of sports and entertainment events are at an all-time high, as growth in sponsorship was estimated to continue at a double-digit pace in 1999.<sup>2</sup> It was projected that North American companies would spend \$7.6 billion on the sponsorship of sports and entertainment events in 1999, while worldwide spending was projected to be \$19.2 billion, 12% and 11% increases, respectively, from 1998.<sup>3</sup>

The projected breakdown of North American companies' sponsorship spending on sports and entertainment events for 1999 was as follows: (i) \$5.1 billion on sports events, representing 67% of the projected total sponsorship spending for 1999; (ii) \$756 million on entertainment tours and events, representing 10% of the projected total sponsorship spending for 1999; (iii) \$685 million on festivals, fairs and annual events, representing 9% of the projected total sponsorship spending for 1999; (iv) \$630 million on "cause" marketing events, representing 8% of the projected total sponsorship spending for 1999; and (v) \$460 million on

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2. *1999 Sponsorship Spending: \$7.6 Billion*, IEG SPONSORSHIP REP. (IEG, Inc., Chi., Ill.), Dec. 21, 1998, at 1.

3. *Id.* at 1, 4.

the arts, representing 6% of the projected total sponsorship spending for 1999.<sup>4</sup>

Some of the largest corporations in the world make significant investments in sports or entertainment properties. There are sixty-one United States-based companies which have spent more than \$10 million on the sponsorship of sports and entertainment events.<sup>5</sup> Included among the organizations spending significant dollars on the sponsorship of sports and entertainment events are well-known companies such as Philip Morris, Coca-Cola, McDonald's, and General Motors and lesser-known companies such as Mars, Inc., Bausch & Lomb, Inc., and Thomson Consumer Electronics.<sup>6</sup>

### *B. Recent Sponsorships in the Sports and Entertainment Industry*

Corporate sponsorships of sports and entertainment events occur in a wide-range of events for varying amounts of investment. Examples include AFC Enterprises (Church's Chicken) recently paying in excess of \$750,000 to be the presenting sponsor of the Kirk Franklin gospel tour; Levi Strauss & Co. paying in excess of \$250,000 to be the title sponsor of the snowboarding Sno-core tour; and American Express paying in excess of \$500,000 to be the official card of the National Collegiate Athletic Association.<sup>7</sup> In contrast, for as little as \$1500, a company can be a corporate sponsor of the Independence Bowl, an annual college football game,<sup>8</sup> while companies such as Anheuser-Busch spent as much as \$10 million to be the co-sponsor of the Federation Internationale Football Association World Cup,<sup>9</sup> and Pittsburgh-based PNC Bank entered into a naming rights agreement with the Pittsburgh Pirates for \$30 million dollars.<sup>10</sup> Even utility companies are entering the sponsorship field, as Sempra Energy recently announced a \$20 million deal with the Los Angeles Staples Center, home to the National Hockey League's Los Angeles Kings and the National Basketball Association's Los Angeles Clippers and Los Angeles Lakers.<sup>11</sup>

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4. *Id.* at 4.

5. *Id.*

6. *Id.*

7. *New Deals*, IEG SPONSORSHIP REP. (IEG, Inc., Chi., Ill.), Dec. 21, 1998, at 7.

8. Independence Bowl, *Corporate Sponsorships*, at <http://www.independencebowl.org/sponsor.html> (last visited Sept. 16, 2000).

9. *New Deals*, *supra* note 7, at 7.

10. *PNC Ponies Up \$30M for Naming Rights to Pirates' New Park*, SPORTS BUS. DAILY (Street & Smith's Sports Group, South Norwalk, Conn.), Aug. 7, 1998, at 10.

11. *Utilities Tie More Power Into Their Deals*, IEG SPONSORSHIP REPORT (IEG, Inc., Chi., Ill.), Dec. 21, 1998, at 6.

### *C. Corporate Sponsors and Event Management Firms*

As previously mentioned, there are a large number of companies in the United States investing millions of dollars in the sponsorship of sports and entertainment events. With so many dollars at stake in connection with the investment involved in sponsoring a sports or entertainment event, a corporate sponsor ("Sponsor") should ensure that the event is managed, coordinated and promoted with great care and expertise. As a result, there are great opportunities for sports and entertainment event management firms ("EMF") to provide services for Sponsors in this multi-billion dollar industry. A number of different EMFs conduct business in the sports and entertainment industry today. EMFs range from large, well-known companies such as the Cleveland-based International Management Group ("IMG"), to smaller, lesser-known companies such as Ryno Sports located in Carlsbad, California.<sup>12</sup> As Sponsors and EMFs approach the management of a particular sponsorship, both the Sponsor and the EMF should be cognizant of their respective rights and responsibilities regarding the EMF's management and implementation of a sports or entertainment event. With so much at stake, a well-thought-out Sponsorship Management Agreement ("SMA") is essential.

This article sets forth a variety of considerations in preparing a SMA for the Sponsor and the EMF and suggests ways to deal with specific issues involved in the SMA. Part II addresses considerations in the management services provided by an EMF for a Sponsor in managing and coordinating an event. Part III addresses contractual provisions relating to the management fees and expenses of such management services. Part IV discusses term, cancellation and exclusivity provisions to be considered in the SMA, while Part V sets forth considerations relating to intellectual property rights of the Sponsor and EMF. Finally, Part VI discusses a variety of miscellaneous provisions which should be included in the SMA.

## II. MANAGEMENT SERVICES

### *A. Overview*

Many issues should be addressed in structuring and drafting the SMA. The SMA must clearly set forth the sponsorship management services to be provided by the EMF. A Sponsor should be concerned with an EMF's ability and commitment to make available and provide the

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12. Ryno Sports, *About Us*, at <http://www.rynosports.com> (last visited Sept. 16, 2000).

personnel, materials, services and functions necessary to ensure the success of its sponsorship of an event. Conversely, an EMF needs to have a clear understanding of its responsibilities, tasks and authority in order to manage a successful event and fulfill its client's best interests. Nevertheless, the management of an event entails so many variables that certain issues may arise during the course of the event that are not addressed in the SMA, such as a cancellation by a performer or the unavailability of a venue. The SMA should be flexible in order to deal with these situations. A sample provision addressing this issue is as follows: "Client acknowledges that the nature of the event is such that it is impossible to list all of the responsibilities of the EMF. Nonetheless, the EMF shall be generally responsible for the coordination of the event management and implementation."

### *B. Types of Services*

EMFs across the country offer a wide range of services. Examples include: (i) Harper Entertainment, located in Gallatin, Tennessee, which "specializes in creating and implementing entertainment, sports, and media-driven promotions, and corporate sponsorship programs;"<sup>13</sup> (ii) Executive Sports International, located in North Palm Beach, Florida, which provides services including event management, on-site surveys, sponsorship sales and sports marketing consultations;<sup>14</sup> and (iii) National Media Group, located in New York, New York, which provides services such as creating and implementing sports and entertainment programs and representing talent and organizations.<sup>15</sup> The SMA should set forth the types of services the EMF will provide for the Sponsor in connection with the event, as well as the Sponsor's expectations, requirements and limitations on the EMF's authority. In general, the SMA should state that the EMF is responsible for the overall coordination, management and implementation of the event.

There are a variety of other services that an EMF could also provide, such as: (i) sponsorship sales; (ii) researching and analyzing potential markets and venues; (iii) assigning an event manager to coordinate logistics at the venue for access, shipping, merchandising and other administrative matters; (iv) coordinating with artists, athletes or their agents for

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13. Harper Entm't Group, at <http://www.harpergroup.com> (last visited Sept. 16, 2000).

14. Executive Sports Int'l, at <http://www.nicklaus.com/executivesports> (last visited Sept. 16, 2000).

15. Nat'l Media Group, at <http://www.nmgsports.com/about.htm> (last visited Sept. 16, 2000).

their participation in the event; (v) establishing and negotiating marketing and sales programs; (vi) providing advance coordination, management and implementation of sponsorship activities, including arranging for signage displays, promotional displays, artists' or athletes' "meet and greets," hospitality rooms, ticketing needs, merchant visits, and the distribution of promotional merchandise; (vii) developing radio trade for mention in advance of the event; (viii) negotiating and coordinating television rights; (ix) providing event information to both the Sponsor and key personnel of the Sponsor, such as event dates, venues, venue sites, and any other information the Sponsor may request; (x) providing a summary and analysis of each event for the Sponsor, including a summary of the Sponsor's visibility and exposure at the venue and surrounding merchants, a summary of media coverage, and a summary of signage placement; (xi) filling vacant seats for the event for which the Sponsor has provided tickets; (xii) providing Sponsor with materials that require Sponsor's consent, including artwork or advertisements; and (xiii) sourcing and securing all items such as signage and promotional materials.

With so many possible services to be provided by an EMF, both the Sponsor and the EMF should ensure that the SMA clearly identifies the services to be provided and a time frame in which the services should be completed. The SMA could contain provisions detailing the services to be provided by the EMF similar to the following: "The EMF shall provide to Client all event sponsorship management and implementation services described in *Exhibit A*, attached hereto, and any other services referred to in this Agreement. The EMF and Client may agree, in writing, to change the list of services set forth in *Exhibit A*."

### *C. Specific Considerations*

#### 1. EMF's Considerations

The EMF should pay particular attention to the services description in drafting and negotiating the SMA. It is important for the EMF to have clarification from a Sponsor with respect to a Sponsor's expectations. At the same time, the EMF should get an affirmative acknowledgement from a Sponsor that the nature of the event may make it impossible to list all of the EMF's duties, allowing the EMF to go beyond the scope of the services listed when necessary to successfully perform its duties for the event. In addition, the EMF should negotiate a provision in the SMA that protects the EMF's rights if the EMF is required to perform services outside of the scope of the SMA, or if the Sponsor alters the nature of the event for which the management services are to be provided. The EMF could protect its rights by securing a

provision which states that it will be entitled to adjust its management fee if the scope of the services it is required to provide is altered.

Another key to the EMF's success in managing the event is accessibility to the Sponsor, athletes or artists involved in the event, and knowledge of the marketing objectives of the Sponsor. The EMF should negotiate an accessibility provision into the services section of the SMA that contains a provision allowing the EMF's representative access to the Sponsor, artist and/or athletes and their representatives with respect to the Sponsor's marketing objectives for the event. Additionally, the SMA should require that the EMF's representative be informed and aware of all promotional activities connected with the event, including photo appearances and public appearances, and that the EMF representative be allowed to participate in the coordination of these activities. Also, the SMA should allow the EMF's representative to be afforded all clearances and privileges usually provided to a staff member of the event and/or an athlete's or artist's agent.

Another beneficial provision for the EMF is an acknowledgment from the Sponsor that a majority of the services are provided to the Sponsor in the planning and preparation of the event, which take place before the start of the event. This provision enables the EMF to better establish and prove that it is entitled to all or a large portion of its management fee if the event or events which make up the event are cancelled.

Finally, the EMF should secure a provision which protects its rights to: (i) continue to develop creative and unique programs and provide services to other clients for other events; and (ii) include references in its promotional materials and the event's promotional materials that it has provided services for a particular Sponsor or for a specific event. A sample provision from a SMA which addresses these rights is as follows: "Client acknowledges and agrees that nothing contained in this Agreement shall prohibit the EMF from providing services similar to the services provided pursuant to this Agreement to a third party, so long as such engagement does not violate the exclusivity provisions set forth herein."

## 2. Sponsor's Considerations

A Sponsor has a great deal of time, money and effort at stake in connection with its sponsorship of an event. Therefore, it should carefully scrutinize the management services section of the SMA. For example, a Sponsor should typically secure a covenant from the EMF that the EMF will perform its services using reasonable care and being subject to

the highest industry standards. In addition, a Sponsor must be cognizant to limit its liability in an event and insert provisions relating to the EMF's employees or independent contractors.

First, a Sponsor must be aware of the qualifications of individuals an EMF employs in providing its services. To protect against potential illegal labor claims, a Sponsor should negotiate a provision in the SMA whereby the EMF will perform its services in accordance with all laws, including, without limitation, the Child Labor Act and the Immigration Reform and Control Act of 1986.<sup>16</sup> To protect itself from a breach of this provision by the EMF, the Sponsor should secure a veto right allowing it to prohibit an employee or independent contractor of the EMF from working an event if such employee or independent contractor does not meet the Sponsor's requirement for qualification or was hired in violation of the law. While a veto right is a beneficial provision for a Sponsor to retain, it must also be careful to specifically delineate that the EMF is an independent contractor of the Sponsor and that employees of the EMF are not employees of the Sponsor. The Sponsor should ensure that this critical factor is clearly spelled out. Failure to do so could potentially result in worker's compensation, unemployment and tax liability to the Sponsor. A sample independent contractor provision is as follows: "The parties shall be and act as independent contractors, and under no circumstances shall this Agreement be construed as creating an agency, partnership, joint venture or employment between the parties."

The Sponsor must also be cognizant of the materials being created by the EMF on behalf of the Sponsor for the event. With this in mind, the Sponsor should seek to secure an agreement from the EMF that all materials created by the EMF in connection with an event will be "works made for hire" within the meaning of the Copyright Act of 1976,<sup>17</sup> as amended, and are the sole and exclusive property of the Sponsor. A sample "works made for hire" provision is as follows: "As part of the services provided hereunder, EMF will propose and deliver, as applicable, EMF's original concepts, designs, mechanicals, layouts, etc. for the Event which shall be deemed 'works made for hire' and Sponsor shall be considered the 'author' of such works." Additionally, the Sponsor may include in the SMA a provision that at the conclusion of the event or termination of the SMA, the EMF will, at the option of the Sponsor, destroy all promotional materials or return all such materials to the Sponsor.

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16. *See generally* 8 U.S.C. §§ 1101-1525 (1994).

17. 17 U.S.C. § 101 (1994).



The Sponsor should also secure the right to modify the timing and nature of the event in order to ensure flexibility to make the event successful. A sample provision securing this right is as follows: "The parties acknowledge that the schedule of events may change from time to time and that Sponsor will use its best efforts to notify the EMF of such changes." This is of particular importance when there are a number of events involved at a wide range of venues in many different markets. Typically, the Sponsor and EMF will agree that there will be a certain number of events at particular venues in a specific number of markets. If a particular venue or market is not achieving the results the Sponsor desires, the retention of a right to modify the location or nature of the event will allow the Sponsor to address this concern.

Finally, the Sponsor should ensure that the SMA contains a provision requiring the EMF to provide an analysis of all market activities of the event, in order to measure its success, and provide quantitative documentation of such analysis, updated on a periodic basis, throughout the duration of the event. A sample provision securing this right is as follows: "EMF shall provide Sponsor with documentation of all management services and an analysis of all market activities and such other detail and quantitative reporting as is generally provided in the industry and as may from time to time be agreed upon by EMF and Sponsor."

### III. MANAGEMENT FEES AND EXPENSES

#### A. Overview

While the services to be provided by the EMF are important to successfully drafting a SMA, the provisions relating to the EMF's fees and expenses in connection with the event are of equal importance. The EMF wants fair compensation and timely reimbursement for expenses, while a Sponsor wants to ensure that payments are in accordance with the nature of the services being provided, as well as the ability to control the manner and type of expenses for the event. Management fees for a sports or entertainment event can run from thousands to millions of dollars depending on the nature and length of the event. The city of Sacramento, California paid the Wilkinson Group, a San Francisco-based EMF, \$90,000 over a six-month period plus 15% commission on any corporate sponsorships for local sports events it sold on behalf of the city.<sup>18</sup> Recently, Cleveland-based IMG received approximately \$6.6 million from New Millennium Experience Co., in connection with IMG's sale of

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18. Mark Larson, *What's in a Name? Big Bucks*, *Bus. J.* (Sacramento), Sept. 11, 1998, at 3.

sponsorships for the United Kingdom's Millennium Dance.<sup>19</sup> Disputes over fees and expenses can also lead to a Sponsor's decision to end its relationship with an event. Computer giant IBM's decision to no longer sponsor the Olympics was based in part on the inability of IBM and the International Olympic Committee ("IOC") to agree on how much local organizers should pay in connection with IBM's sponsorship of the event.<sup>20</sup>

### *B. EMF's Considerations*

An EMF is obviously concerned with how and when it will be paid. In setting forth the management fees the Sponsor must pay in connection with the EMF's management of an event, the EMF will typically attempt to secure in advance as much of its fee as possible and provide for timely reimbursement of, or an advance on, its expenses. The start-up time, planning and implementation that go into the successful management of an event may cause the EMF to incur a great deal of cost and expense prior to the start of an event. By securing a large portion of the management fee upon the execution of the SMA, the EMF is better able to withstand this initial impact of time and money. The SMA should spell out exactly how and when the management fee is earned, whether it is on an event-by-event basis, hourly basis, or for achieving certain results or milestones. With this in mind, the EMF should secure an acknowledgment from the Sponsor that the Sponsor realizes a great deal of the management services are provided before the first event, and that all, or a certain portion, of the management fee is non-refundable and in no event will it be reduced. A sample provision of this acknowledgment is as follows: "Based upon the nature of the event, including, but not limited to, EMF's investment in front-end development, creative and planning work and the allocation of EMF's resources for the entire project, 50% of EMF's management fee is non-refundable notwithstanding the number of events completed."

The EMF must also be cognizant of the occurrence of additional events or the Sponsor's substitution of new events for the events that the EMF agreed to manage and implement. In order to maintain flexibility and continue to provide services, the EMF should negotiate a provision that allows it to adjust its management fee in the event of additional or

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19. *Working with Sales Agents: A Guide for Agencies and Properties*, IEG SPONSORSHIP REP. (IEG, Inc., Chi., Ill.), Jan. 11, 1999, at 4.

20. *Big Blue's Olympic Burnout*, SPORTS BUS. DAILY (Street & Smith's Sports Group, South Norwalk, Conn.), Aug. 7, 1998, at 1.

substituted events. An EMF must also protect itself from a situation in which it allocates a great deal of time and money and the Sponsor abruptly cancels the event. Payment of the majority of the fee up-front can reduce the risk of this occurring and the EMF being impacted negatively.

EMFs should also be concerned with the expenses the EMF will incur in connection with providing management services. The parties should agree to a budget and allow for an adjustment from time to time, by written agreement, between the Sponsor and the EMF. The EMF should negotiate a provision which allows it to reallocate budgeted items that do not alter the total budgeted amount. In addition, as costs and expenses with the management and implementation of an event can be quite high, the EMF should negotiate the reimbursement of its expenses within a timely period or require the Sponsor to advance funds for certain expenses or pay vendors directly. Finally, an EMF may also attempt to negotiate a provision which allows the EMF to mark-up certain items such as banners, event announcements and event merchandise which require the EMF's time to source and develop.

### *C. Sponsor's Considerations*

A Sponsor has a great deal to consider as well with respect to the management fees and expenses section of the SMA. As previously discussed, it is the Sponsor who is funding the event and expending great amounts of time and money. It is important for the Sponsor to require the EMF to commit to a budget and receive an acknowledgment from the EMF that the budget agreed to by the parties is a reasonable projection of what the EMF expects it will cost to successfully manage and implement the event. From the Sponsor's perspective, it is more appealing to pay the EMF its fees after the event has occurred, or for a sports or entertainment event which consists of multiple events, on a per event basis. In addition, the Sponsor should negotiate a provision allowing it to substitute different types of events, and/or add additional events, at no additional cost. With respect to the budget and expenses, the Sponsor should include provisions which require the EMF to strictly adhere to the budget and obtain the Sponsor's prior approval for budgeted items in excess of a nominal amount. Also, the Sponsor should also require the EMF to submit invoices of all expenses that will be reimbursed, paying only actual costs for the production of materials. Finally, the Sponsor should secure the right to audit the books and records of the EMF for an extended period after the conclusion of the event. A sample audit provision is as follows: "Upon reasonable prior notice, Sponsor shall have the right during the term of this Agreement and for six

months thereafter to inspect and review the books and records of EMF relating to this Agreement.”

#### IV. TERM, CANCELLATION, AND EXCLUSIVITY PROVISIONS

##### A. Overview

As discussed above, both the Sponsor and EMF have a great deal at stake in connection with a Sponsor's sponsorship of a sports or entertainment event. As such, the duration of the SMA, the ability to cancel an event and the right to ensure that an EMF's services are exclusive to a particular Sponsor are of particular importance to both a Sponsor and an EMF. Term and cancellation provisions of the SMA set forth the nature of the Sponsor's and EMF's ability to ensure a commitment to the event and allow flexibility to cancel the event upon a realization that it will not be successful. The term provision of the SMA sets forth the length of time the Sponsor and EMF expect to conduct business with each other. The term of the SMA could be as short as a few weeks or as long as several years. Conversely, cancellation provisions allow a Sponsor or an EMF to terminate the arrangement between the Sponsor and/or the EMF. Cancellation provisions may be “at-will” and require no prior notice or may be lengthy and require certain conditions be met. Exclusivity provisions set forth the extent of the EMF's performance of services for other Sponsors and/or the Sponsor's right to retain other EMFs to provide services to the Sponsor. Exclusivity rights are desirable to prevent a quality EMF from performing the same service or type of event for a competitor of a Sponsor. Conversely, an EMF would benefit tremendously if it retained the right to be the exclusive provider of services for a Sponsor. Bank One Louisiana's sponsorship of Louisiana State University (“LSU”) athletes prohibits LSU from allowing other financial institutions to use LSU sports' logos to market products.<sup>21</sup> Additionally, it was reported in 1998 that IBM, a previous sponsor of the Olympic Games, based its decision to terminate its long-standing relationship with the Olympics in part on the IOC's decision to seek separate sponsorship deals for handling the Olympics' Internet service and web sites.<sup>22</sup>

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21. Peter Shinkle, *Banking on the Tigers*, ADVOCATE (Baton Rouge), Aug. 25, 1998, at 1C.

22. *Big Blue's Olympic Burnout*, *supra* note 20, at 1.

*B. EMF's Considerations*

In light of today's competitive marketplace among EMFs, it is most likely in the EMF's best interest to secure a long-term arrangement with a Sponsor. A long-term arrangement allows an EMF the security of steady workflow as its business continues to grow. As a strategy to contractually require or encourage a Sponsor to enter into a long-term relationship, the EMF should secure a provision in the SMA which states that if the event is extended beyond its anticipated completion date, or a similar agreement is entered into by the Sponsor to sponsor the event or a similar event beyond the completion date, then the SMA will be extended for each additional extension of the agreement on the same terms and conditions. In connection with this extension, the EMF should secure an acknowledgement that the parties will negotiate the EMF's management fee and expenses in good faith, consistent with industry standards, and that such fees and expenses may not be decreased.

The EMF should also be cognizant of securing rights to provide services for future events of the Sponsor. The EMF should secure a right of first refusal from the Sponsor which would allow the EMF to manage additional events sponsored by the Sponsor that are similar to the events for which the EMF has already been retained. The following is a sample right of first refusal provision:

In the event that the Sponsor elects to conduct or sponsor an event similar to or the same as the event being sponsored pursuant to this Agreement (the "Additional Event"), and Sponsor receives an offer (the "Offer") from a third party event management firm (the "Competitive EMF") to manage and implement the sponsorship of the Additional Event, Sponsor shall provide the EMF a copy of the Offer received by the Competitive EMF. The EMF shall have the right, but not the obligation, to provide the Sponsor written notice of its intent to match the Offer for the management of the Additional Event, upon terms no less favorable than the Offer. If the EMF has rejected the Offer, the Sponsor may retain the Competitive EMF to manage the Additional Event. Sponsor shall give EMF written notice of its intention to sponsor an Additional Event.

The EMF should also negotiate an alternative provision which states that if the Sponsor decides to sponsor additional events the parties will negotiate in good faith to provide that the EMF be permitted to bid on the management and implementation of such event.

While an EMF is most likely interested in securing a long-term arrangement with a Sponsor, there are certain instances in which an EMF should secure the right to cancel its participation in the event. The most

obvious circumstance under which the EMF should secure a cancellation right is when the Sponsor fails to pay the EMF its fees and expenses under the SMA. A second scenario for which the EMF should negotiate a cancellation right is when the Sponsor breaches a material term of the SMA. Finally, an EMF should protect itself by securing a cancellation right in a situation where the Sponsor's image and/or philosophy is no longer consistent or compatible with the EMF. An example of this occurrence is when the Sponsor is found to have violated the law and an EMF no longer wants to be associated with the Sponsor. A cancellation right under this example would permit the EMF to discontinue its relationship with the Sponsor.

After securing a term that the EMF is comfortable with, and providing the necessary cancellation provisions for its protection, the EMF should also negotiate a provision indicating that it is the exclusive manager of the Sponsor's event. Consistent with the exclusivity provision, the EMF should secure the right to provide services for other Sponsors of other events. A sample exclusivity provision is as follows: "EMF shall be Sponsor's exclusive sponsorship manager of the Event."

### *C. Sponsor's Considerations*

While the EMF has a great deal at stake in negotiating acceptable provisions with regarding the term, cancellation and exclusivity provisions of the SMA, these provisions are even more important for the Sponsor to consider. With its name and a great deal of time and money invested in a particular event, the Sponsor should ensure that it is in control of the duration of its involvement with a particular sports or entertainment event. With this in mind, it is unlikely that a Sponsor will be willing to enter into a multi-year sponsorship management agreement for a particular event. Rather, the Sponsor is more likely to negotiate the right to terminate the SMA at any time, in its sole discretion, if the Sponsor does not feel that the event is creating the publicity and economic return that the Sponsor deems necessary to continue the event.

A Sponsor will typically secure a termination provision that allows it to terminate the SMA and retain another EMF if the Sponsor is not satisfied with the current EMF services being provided. This is typically referred to as a "for cause" termination right. Examples of "for cause" include an EMF's failure to follow a Sponsor's guidelines and rules for implementing the event, failure to deliver adequate analysis, and poor promotion of an event. Another potential "for cause" situation of concern to a Sponsor when negotiating the cancellation rights is the ability to cancel the event, and terminate the EMF, if the EMF is found to have

violated any laws including, without limitation, any laws which deal with child labor, immigration and/or the use of illegal aliens. Conversely, the EMF will most likely try to negotiate a provision which would allow it to cure any failure or breach of a "for cause" provision. A sample cancellation provision is as follows:

Sponsor shall have the right to terminate this Agreement upon thirty days prior written notice if EMF has failed to perform its obligations under this Agreement in accordance with customary industry standards, provided any performance failures identified by Sponsor in such notice have not been cured within said thirty days.

As mentioned earlier, the Sponsor will also desire the ability to cancel the event and terminate the SMA if the event is no longer profitable, desirable or no longer fits into the Sponsor's marketing plan. Examples of this include situations in which the athletes and/or artists involved in the event committed an act that a Sponsor considered detrimental to the Sponsor and/or was regarded as an act of bad moral character damaging to the name and reputation of the Sponsor. Pepsi encountered this situation after signing a \$70 million deal with Michael Jackson who was accused of improper behavior.<sup>23</sup>

Finally, when retaining an EMF, a Sponsor should try to negotiate a provision which restricts the EMF's ability to provide the same types of services to a company which is competitive with, or in the same industry as, the Sponsor. An exclusivity provision such as this allows the Sponsor to prevent the EMF from creating programs similar to the Sponsor's event for a competitor of the Sponsor and diluting the Sponsor's goodwill and investment in a particular event. Additionally, most Sponsors would not want to label an EMF as its exclusive manager of a particular type of event as the sponsor may require multiple EMFs to provide the services necessary to ensure the success of that particular event.

## V. INTELLECTUAL PROPERTY RIGHTS

### A. Overview

Another important aspect of the SMA deals with the intellectual property rights that are exchanged in connection with the sponsorship of a sports or entertainment event. Bank One Louisiana recently agreed to a sponsorship deal with LSU that will pay the LSU Athletic Department

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23. Emily Bell, *Media Guardian: Nike Don't Put the Boot In*, GUARDIAN (London), Jan. 30, 1995, at T17.

\$3.65 million over five years.<sup>24</sup> Bank One officials indicate that they will spend more than \$5 million to use LSU logos and carry out a variety of promotional activities.<sup>25</sup> As evident by the time and expense invested in the sponsorship of a particular event, in addition to the expense associated with securing trademark protection, both the Sponsor and the EMF have a great deal at stake in protecting their respective intellectual property rights in connection with the sponsorship of sports and entertainment events.

### *B. EMF's Considerations*

One of the most important aspects of the EMF's ability to successfully promote, coordinate and implement the event on behalf of the Sponsor is the use of the Sponsor's, athlete's and/or artist's intellectual property rights in connection with the event. With this in mind, the EMF should negotiate an acknowledgement from the Sponsor that the EMF is granted the right to use all of the Sponsor's intellectual property rights, including trademarks, trade names, trade dress and copyrights in its promotion and management of the event. A sample provision securing this right is as follows: "Sponsor grants to EMF a non-exclusive license to use any trademark or other intellectual property rights of Sponsor in connection with EMF's providing the management services set forth herein." Additionally, the EMF should secure the right to use the Sponsor's intellectual property rights in the promotion of its own business.

Also of importance is the ability of the EMF to use the name and likeness of athletes and/or artists involved in the particular event in order to effectively ensure the event's success. As such, the EMF should also negotiate a representation and acknowledgement from the Sponsor that the Sponsor has the right to use the athlete's and/or artist's intellectual property rights in connection with the EMF's management and promotion of the event. The EMF should also require that the Sponsor provide evidence of those rights and indemnify the EMF for any failure of the Sponsor to obtain such rights. As an example, an EMF cannot effectively promote the XYZ Company's sponsorship of the John Doe Music Tour if the EMF does not know that it has the right to use both XYZ's and John Doe's trademarks, tradenames and images in promoting the event. The SMA should identify the circumstances under which an EMF may use the Sponsor's, athlete's and/or artist's intellectual prop-

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24. Shinkle, *supra* note 21, at 1C.

25. *Id.*



erty rights. Alternatively, the Sponsor may be retaining the EMF to secure such rights of an athlete or an artist on behalf of the Sponsor for a particular event. Finally, the EMF should also ensure that its own intellectual property rights are protected pursuant to the SMA by providing that its own intellectual property rights will remain the sole and exclusive property of the EMF.

### *C. Sponsor's Considerations*

While it is important for the EMF to have the ability to use the intellectual property rights of the Sponsor, athletes and/or artists, in its implementation and management of an event, a Sponsor has even more at stake in negotiating this section of the SMA. Companies such as Alltel, McDonald's and Quaker Oats have invested a great deal of time and money in developing and protecting their intellectual property rights.<sup>26</sup> With this in mind, while the Sponsor may grant the EMF a non-exclusive license to use such intellectual property, it is essential that the Sponsor secure an acknowledgment from the EMF that such intellectual property will remain the sole and exclusive property of the Sponsor and/or the artists and athletes. In addition, the Sponsor should negotiate provisions which restrict the parameters in which the EMF can use such intellectual property, such as retaining the right to approve certain usage of trademarks and tradenames. To further protect its intellectual property rights, the Sponsor should also require in the SMA that an EMF will promptly notify the Sponsor of any infringement of the Sponsor's intellectual property rights, and retain the right to prosecute and protect its intellectual property rights in case of infringement.

## VI. MISCELLANEOUS PROVISIONS

### *A. Overview*

There are a number of miscellaneous provisions which should be included in the SMA, including provisions dealing with indemnification, insurance and confidentiality. These provisions are necessary for the protection of both the EMF and the Sponsor and should be carefully drafted and negotiated.

### *B. Indemnification and Insurance Provisions*

Both the EMF and the Sponsor have a great deal at stake in connection with the management and sponsorship of a sports or entertainment

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26. 1999 Sponsorship Spending: \$7.6 Billion, *supra* note 2, at 4-5.

event. With this in mind, both the Sponsor and the EMF should negotiate a provision in the SMA which provides that one party will indemnify and hold the other party harmless from certain events. An indemnification provision allows a Sponsor or an EMF that suffers a loss to look to the other party to reimburse or protect such party from that loss. Typical events from which a Sponsor or EMF would negotiate indemnification include a breach of the terms of the SMA by the other party, negligent or intentional acts of a party and the violation by a party of a third party's intellectual property rights. A sample indemnification provision is as follows:

Sponsor will indemnify and hold harmless EMF and its shareholders, affiliates, officers, directors and employees from and against all claims, expenses, suits and judgments arising from or connected with (i) any alleged or actual breach by Sponsor of any provision of this Agreement, (ii) any negligent or intentional acts of Sponsor in connection with the Event or (iii) any violation of any intellectual property rights of any third parties caused by the use of Sponsor's trademarks.

An EMF should negotiate an exception to its indemnification obligations in the event a breach of the SMA by an EMF is a result of the EMF's acting pursuant to a Sponsor's directive.

Related to an EMF's and Sponsor's indemnification obligations, both the EMF and Sponsor should also require the other party to provide a certificate of insurance evidencing such party's insurance coverage in an amount acceptable to both parties. Insurance provisions typically include requirements of commercial general liability insurance and should include coverage for death, bodily injury and property damage. The parties may also negotiate a provision that they will be named additional insureds on the other party's insurance policy in addition to securing the right of being notified of any change or cancellation of the other party's insurance coverage.

### *C. Confidentiality*

In connection with a Sponsor's retention of an EMF to manage and coordinate a sports or entertainment event, both parties are likely to provide the other party access to and disclosure of proprietary information. This information could include items such as marketing plans, financial information, client lists and sales information. It is in both the EMF's and Sponsor's best interests to include a provision in the SMA which provides that each party will keep the other party's proprietary

information confidential and provide for the return of such information to the other party at the end of the event.

#### *D. Press Releases*

As discussed above, while it is important for both an EMF and a Sponsor to protect its respective proprietary information, an EMF may be desirous of making announcements to the public of its affiliation with a Sponsor and/or athlete or artist. This may prove useful to the EMF in marketing its services to other Sponsors. The SMA should contain a provision which provides for a joint press release announcing and describing the event. Joint participation in the press release allows the Sponsor some control over the details of the event which are described, while permitting the EMF to promote its own business in the process.

### VII. CONCLUSION

As the sponsorship of sports and entertainment events continues to grow in this century, both Sponsors and EMFs have a great deal at stake in this multi-billion dollar industry. With so many dollars at stake, it is important for both the Sponsor and EMF to clearly set forth their respective rights and responsibilities in connection with an EMF's management and coordination of an event. A well-drafted SMA is essential to a successful Sponsor/EMF arrangement and a successful event. The considerations set forth in this article should provide insight into some of the more important provisions that should be considered in drafting a SMA for corporate sponsorships of sports and entertainment events.