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Bally Sports' Ch. 11 Fight May Strike Out Local Cable

By **Vince Sullivan**

Law360 (May 26, 2023, 4:24 PM EDT) -- A television contract dispute between the bankrupt operator of Bally Sports' regional sports network and Major League Baseball could be the battle that breaks local sports coverage out of the legacy cable model, experts say, and it's happening on the unlikeliest of playing fields: a Houston bankruptcy courtroom.

When Diamond Sports Group filed for Chapter 11 protection in March, it said its 19 regional sports networks, or RSNs, had lost about a third of their cable subscribers in the last four years, so it must adopt a direct-to-consumer streaming model to survive. But MLB and the 14 of its teams that partner with the debtor aren't eager to give up those rights.

"This is the culmination of 20 years of cord-cutting and every possible resistance to that," Jeremy VanEtten, bankruptcy consultant and senior director at Gavin/Solmonese told Law360. "The final showdown is in bankruptcy court."

Consumers are leaving cable in droves, as evidenced by Diamond Sports' loss of 20 million subscribers since the company was formed in 2019. The debtor is looking to secure streaming rights to the 14 MLB teams whose games it broadcasts on its RSNs to bolster its bottom line.

Diamond Sports has already made deals with its partners in the National Basketball Association and the National Hockey League, but baseball is another story, as the league has been resistant to granting the streaming rights to the debtor. MLB has said it stands ready to take all the telecast rights back in-house and find new broadcast partners if Diamond Sports is unwilling or unable to make contractual payments.

Believing that it is overpaying MLB teams for the television rights, Diamond Sports stopped making payments to several teams, such as the Arizona Diamondbacks, Minnesota Twins, Cleveland Guardians and Texas Rangers, in the run-up to its bankruptcy filing as well as after its petition date, using the protection of the automatic stay to prevent termination of the deals.

"By filing the Chapter 11 bankruptcy, they are in effect trying to force the teams to maneuver through the bankruptcy court system in order to get those rights pulled back, renegotiated or transferred," Angela C. de Cespedes, an attorney in the Miami office of Saul Ewing LLP, told Law360.

U.S. Bankruptcy Judge Christopher M. Lopez ordered Diamond Sports to make 50% of the contracted payments to its MLB partners in advance of a May 31 hearing, where he will hear legal arguments on whether the debtor can be compelled to reject the telecast contracts. Evidentiary proceedings will commence if Judge Lopez determines the fight represents more than a straight call of balls or strikes with respect to the law and he needs to weigh in on the actual value of these deals.

"There's no such thing as a free lunch, and that's exactly what Diamond Sports was getting here: a free lunch," de Cespedes said of the debtor's non-payment on the contracts with certain MLB teams while still being able to broadcast their games. "Judge Lopez clearly ruled that Diamond Sports isn't entitled to a free lunch, but he's making everybody go Dutch for the time being."

The parties have found themselves in this situation because of the outdated models for sports broadcasting that have left Diamond Sports with contractual obligations it says are no longer commensurate with the value it is receiving from the teams. This is a pickle that is unique to baseball because of the large number of games compared to other professional sports, along with the lack of an overarching national broadcast contract like the one that governs National Football League broadcasts.

"It's a broken bundle model," de Cespedes said. "Diamond claims its problems emanate from the need to have rights to stream games online to make up for declining cable subscriptions, and that's a trend that is only going to increase, not decrease."

These existing contracts, some of them long-term deals, make less and less sense to a broadcaster like Diamond Sports as more and more consumers flee cable for streaming, she said. Because it is the largest RSN operator in the country, its exposure to the trend is magnified.

VanEtten said local sports broadcasts are often the only hook keeping customers subscribed to cable providers, which are the entities from which RSNs like Diamond Sports reap their revenue in exchange for providing the game coverage on their networks. Instead of seeing dollar signs when thinking of the value of these telecast rights agreements, RSNs are now seeing question marks.

Enter the bankruptcy system to serve as arbiter and umpire.

In one dugout, there is Diamond Sports taking the position that without streaming rights, the telecast deals are worth far less than what it is locked into paying the MLB teams.

In the other, there is Major League Baseball, which is arguing that if Diamond Sports is unable or unwilling to pay the contractual obligations to which it agreed, then it is ready to terminate the deals and go it alone for as long as is required.

Hanging in the balance is a sport whose teams derive huge chunks of their revenue from these deals and which is fighting annually to maintain its position as America's pastime.

"We're talking about serious numbers here," de Cespedes said. "We're looking at numbers ranging from 15 to 20 percent of these teams' total revenue not being available to them."

Prof. Paul H. Haagen, co-director of the Duke University School of Law's Center for Sports Law and Policy, said the outcome of the bankruptcy court battle over the contracts in the case of Diamond Sports could have a far-reaching effect on the sports broadcasting space.

"If they get themselves in a position in which they're stuck, or elements of them are stuck, some group of baseball teams or some group of NBA teams are stuck in long-term agreements with providers that don't work," he said. "That's going to be really very significant."

The outcome of the bankruptcy dispute could result in an acceleration of the shift to streaming, too. Since Diamond Sports commenced its Chapter 11 case, one of its NBA partners — the Phoenix Suns — announced a new broadcast contract with an over-the-air network that comes with a paid streaming option with a third party.

Judge Lopez halted that new contract earlier this month, though, saying the Suns violated the automatic stay because Diamond Sports retained certain exclusive negotiating rights even though its deal with the team had expired in late 2022.

Haagen said Judge Lopez's ruling could set the stage for future deals of that nature.

"If the bankruptcy court basically treats the bankruptcy itself as a violation of the contract and of the duties of the rights holder, then yes, it will massively speed this shift up," he said.

In that case, the leagues and teams will likely be fine as far as their bottom lines go, because they will be free to find new partners and contracts on terms that work for them.

Although it's unusual for a bankruptcy court to be the venue where cultural and societal questions are answered, VanEtten said it makes sense for these issues to be hashed out in Chapter 11 because of the focus on determining the real value for assets, and judges there have experience making those decisions.

"What's cool about a bankruptcy sale is things tend to go for what they're actually worth and not what people or experts want to say they're worth," he said. "It comes down to brass tacks really quickly in bankruptcy."

Determining value today, however, runs the risk of the parties finding themselves in this same situation down the road when another cultural shift renders current valuation models extinct, de Cespedes said.

"There's going to be some foresight that has to be taken into consideration here," she said. "They all have to figure out what the market is going to look like five, 10 or 20 years down the road."

--Editing by Adam LoBelia.