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July Madness? Seventh Circuit Revives Class Action Calling NCAA Ticket Application Process an Illegal Lottery

By Victor Li

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The runner-up Butler Bulldogs may have been the surprise darlings of the 2010 NCAA men's basketball tournament, but it's time for Butler to move over: There's a new NCAA Cinderella story taking shape.

On Friday, in a 14-page, 2-to-1 ruling, the U.S. Court of Appeals for the Seventh Circuit revived a seemingly quixotic class action by potential ticket buyers who claim the National Collegiate Athletic Association is running an illegal lottery for basketball tournament tickets. [Hat tip: *Courthouse News.*] The Seventh Circuit panel overturned a lower court's dismissal of the suit, ruling that because customers pay a nonrefundable \$6 service charge for tickets whose value far exceeds their nominal cost, the ticket purchase process can be construed under Indiana state law as an illegal lottery. The majority also found that the class pled sufficient facts to allege that the process resulted in unjust enrichment for the NCAA. (Chicago federal district court judge John Darrah, sitting by designation, wrote the opinion for himself and Seventh Circuit judge Michael Kanne; Senior Judge Richard Cudahy dissented, writing that there is no distinction between this case and *Leshner v. Baltimore Football Club*, a 1986 ruling that upheld an application process for Indianapolis Colts tickets.)

The majority concluded that Indiana federal district court judge William Lawrence erred when he found that the plaintiffs were knowing participants in the allegedly illegal lottery, and thus barred their suit on in pari delicto grounds.

Class counsel Robert Carey of Hagens Berman told us he's looking forward to discovery in the case. "The fundamental thing is that consumers [who] go on a website aren't knowingly participating in a gambling enterprise," Carey said. "The trial court had found that they were equally culpable and weren't entitled to relief. However, the appellate court conducted a thorough analysis of all the elements of what constitutes a lottery and found that the NCAA's process would have violated Indiana law."

Carey said other sports associations that use an online application process for highly desirable tickets refund service charges for unlucky customers. "If [the NCAA] had just returned the service charges, then it would have been completely legal," Carey told us. "You can't have losers paying for the winners. You also can't have the NCAA make unearned profits from gambling." (The NCAA has since changed its ticket application process to a first-come-first-served system.)

The NCAA was represented at the Seventh Circuit by Michael Mallow of Loeb & Loeb, who declined our request for comment. The association put out a statement on the ruling: "The NCAA is disappointed by and disagrees with the court's decision and we are considering our options," said spokesman Erik Christianson. "The NCAA provides an appropriate, fair, and legal mechanism to distribute tickets that gives fans the opportunity to participate in championship events."

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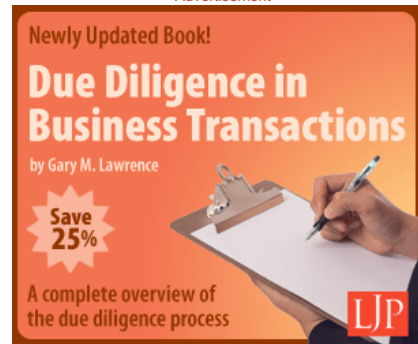
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