



Olympics Ticket Co. Escapes Customers' COVID Refund Suit

By **Carla Baranauckas**

Law360 (October 24, 2023, 6:33 PM EDT) -- A New Jersey federal judge on Tuesday tossed customers' breach of contract suit against a company that secured their tickets to the most recent Tokyo Olympics, which they couldn't attend due to the COVID-19 pandemic, ruling that the releases the customers signed were enforceable and precluded their claims.

U.S. District Judge Zahid N. Quraishi noted in his opinion that when the four named plaintiffs in the class claim purchased their tickets and travel arrangements, they signed an agreement stating that Garden State-based CoSport, the ticket seller, was not responsible in circumstances that "may make it inconvenient or impossible" for the customer to travel or use the products. The waiver specifically cited "acts of governments or other authorities" and "epidemics."

In addition, three of the four customers signed a release along with their refund requests that said if they accepted a 75% refund they would discharge CoSport from "any and all claims" arising from their order. The three customers contended that they were pressured to sign the release because they feared losing 100% of the money they paid for the tickets.

Quoting from a New Jersey federal court decision in *Cooper v. Borough of Wenonah* in 1997 and the state Supreme Court's opinion in *Peter W. Kero Inc. v. Terminal Const. Corp.* in 1951, the judge said that signed releases are "entitled to a presumption of validity."

On the customers' argument that the release with the refund request did not provide consideration for the new conditions, the judge found that the 75% refund as opposed to the 0% refund under the initial agreement was a consideration. He said that the plaintiffs failed to argue that 75% was not enough consideration.

The fourth customer did not sign the release. She argued in the complaint that the purpose for the event tickets and travel package "was so frustrated as to render the contracts impossible to perform."

Judge Quraishi found that CoSport had warned the customers of the exact risks that they encountered and had advised them to purchase insurance.

The proposed class action was filed in April with the plaintiffs contending that CoSport did not have the right to offer refunds of only 75% after the 2020 Olympics in Tokyo were postponed until 2021 and then Japan barred international travelers because of the COVID-19 pandemic. They sought 100% refunds.

CoSport, the selected U.S. provider of tickets for the Tokyo Olympics, asked the court in July to dismiss the class claims, blasting the suit as a "shakedown" for unwarranted extra dollars. The company said that it had already provided partial refunds totaling more than \$23.2 million and that its terms and conditions did not mandate the full refunds sought in the amended complaint.

CoSport asserted that it could not be held liable for the overseas spectator ban and that its agreement with customers only provided for refunds in other unrelated circumstances.

Following the ban on international spectators, CoSport offered customers a cash refund of 75% or a full credit refund, according to the company's brief. CoSport indicated that it offered similar refunds after the 2020 Olympics were postponed to the summer of 2021.

"CoSport is satisfied with the ruling and appreciates the court's thoughtful analysis of the issues presented," said the company's attorney, Matthew A. Goldberg of DLA Piper.

Counsel for the plaintiffs did not immediately respond to requests for comment Tuesday.

The plaintiffs are represented by Jacob M. Polakoff and E. Michelle Drake of Berger Montague PC and Brian W. Warwick and Janet R. Varnell of Varnell & Warwick PA.

CoSport is represented by Matthew A. Goldberg of DLA Piper.

The case is *Caruso et al. v. Jet Set Sports LLC dba CoSport*, case number 3:21-cv-09665, in the U.S. District Court for the District of New Jersey.

--Additional reporting by Joyce Hanson and Bill Wichert. Editing by Andrew Cohen.