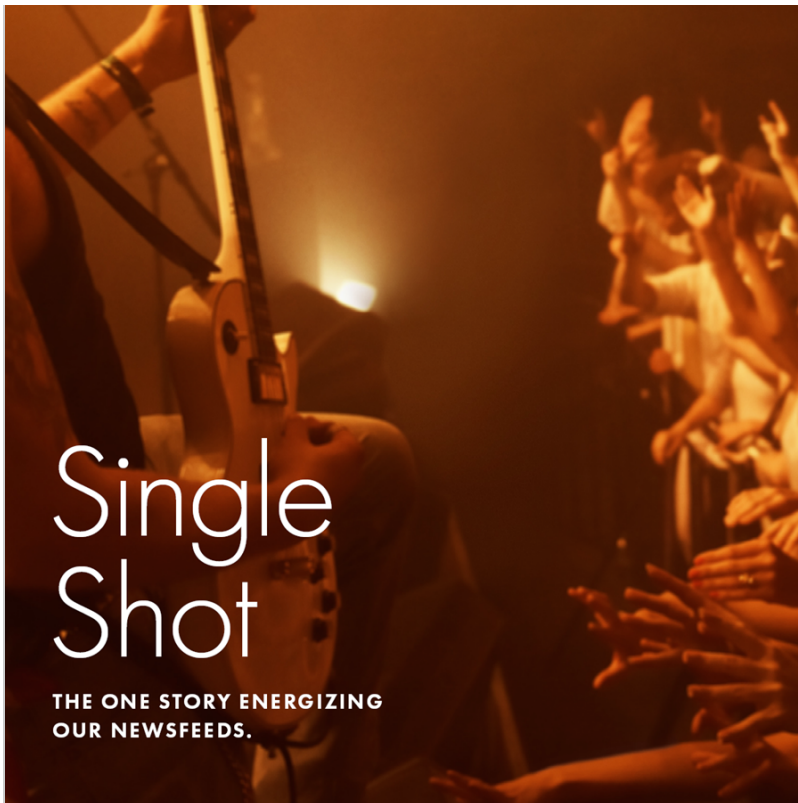




Rise and Shine

June 2021 is shaping up to be filled with hope—vaccines are rolling out, mask and crowd mandates are lifting and we are venturing back into the normalcy that we've craved for over a year. People are more comfortably returning to restaurants, going to sporting events and enjoying the exhilaration of rock concerts again. This month also holds within its long, sunny days an official start to summer, a celebration of Pride and a day of commemoration for the ending of slavery in the United States. Today we explore the effects COVID-19 cancellations had on rock bands, investigate the impacts of voting laws on Major League Baseball and celebrate Juneteenth, which is officially one step closer to becoming a national holiday.

FEATURE



Single Shot

THE ONE STORY ENERGIZING
OUR NEWSFEEDS.

Unspecified Damages, Inc.: Will Metallica's Insurance Suit Set a Legal Trend Among Musicians?

By Justin Smulison

It's sad, but true: Against the backdrop of declining album sales and a reliance on streaming sites, musicians and bands rely significantly on an ability to tour.

One such group is Metallica, who had plans for a six-date run in Chile, Argentina and Brazil in April 2020. Those performances had to be cancelled due to the public health risks posed by COVID-19.

On June 7, 2021 the iconic heavy metal quartet filed a lawsuit in Los Angeles Superior Court against Lloyd's of London. The multiplatinum-selling band is seeking unspecified damages and claims their insurer committed breach of contract by denying them compensation for the cancelled performances.

According to the band's court filing, Metallica purchased a "cancellation, abandonment and non-appearance insurance" policy prior to the tour in case of any potential postponement or cancellations. The suit states that Lloyd's cited the policy's communicable disease exclusion and refused to reimburse the band for their losses, "based on an unreasonably restrictive interpretation of the policy."

Courts have seen a rise in COVID-19 coverage litigation claims effectively seeking coverage for COVID-19 closures as a *force majeure*, which *Black's Law Dictionary* defines as an "event or effect that can be neither anticipated nor controlled."

"Many litigants are attempting to argue that COVID-19's effects have been so wide-reaching that they cannot be considered to neatly fall into one or two traditional, and often excluded, risk categories," said Evan Bolla, a partner and general counsel for the law firm of Harris St. Laurent & Wechsler LLP who handles insurance litigation claims and is not involved in the Metallica suit.

"Metallica's claim seems to rely on a precise reading of the exclusion and a claim that the pandemic's effects are not solely attributable to the communicable disease. Such exclusions are usually read narrowly in favor of the insured, so it will be interesting to see it play out," Bolla said. "Insurance litigators typically are in a much better position arguing around an exclusion rather than into a coverage clause."

Considering that the average night with Metallica takes place at a sold-out arena—potentially generating millions in ticket sales and merchandise alone—one can assume losses associated with the six performances are large enough to warrant litigation.

But even if Metallica's lawyers are ultimately the heroes of the day in court, Bolla said it is doubtful that the same level of justice would be served for all

the musicians whose shows were cancelled due to COVID-19.

“The reality is that the majority of filed COVID-19 insurance claims since last year have been dismissed or found in favor of the insurers,” Bolla noted. “Just to bring a suit, the numbers need to work for the claimant—the size of the loss, deductible and liability limit are all key. For smaller bands, the numbers may not allow them to fight the uphill battle these COVID-19 claims have become.”

LOOKING BACK



In The Rearview

Summaries of Recent Cases

By Rebecca Blackwell

Save the bees! No, really, save them. Because for as misunderstood as the flying, fuzzy creatures are, their importance should not be understated. Sure, they can be a nuisance at summer barbecues. But that’s the thing about nuisances—despite our best efforts to avoid them, we encounter them every day. Bugs, trains and taxes don’t have much in common, but they are important and unavoidable, nonetheless.

Yawn v. Dorchester County – Docket: 20-1584

Mitch Yawn and Juanita Stanley's property, Flowertown Bee Farm and Supplies, was sprayed with pesticide by Dorchester County in an effort to kill off the mosquitos. This unfortunately resulted in the death of many of the bees living at the farm. Mitch and Juanita contend that the death of these bees amounted to the taking of their private property. The Fourth Circuit affirmed, stating that the loss of the bees was an accidental consequence. While they note that this is a tragic outcome, there was no conclusion that this was the intended result when the pesticides were sprayed. The appellants did not receive compensation. Read the court documents [here](#).

Skidmore v. Norfolk Southern Railway Co – Docket: 19-2482

Tammy Skidmore lives in West Virginia, in a home roughly 70-80 feet west of a railroad track run by Norfolk Southern. Twenty years ago, the railroad company put in a ditch to help drain surface water from the train tracks. It was meant to divert water into Loop Creek, near Tammy's home. However, Tammy has stated that water running from the ditch has caused soil around her property to erode and threaten her home's foundation. She sued Norfolk for negligence, private nuisance and trespass. Norfolk acquired documents that disclosed that in 1908, they obtained the right of way extending across the creek, which was part of the land on which Tammy's house sits. Read how this affected the outcome of the lawsuit [here](#).

Vestal v. Department of the Treasury – Docket 20-1771

Sarah Vestal worked for the IRS as an agent, often having access to personal taxpayer information and receiving annual training regarding privacy and protection of this information. She received a notice in 2018 of suspension for "displaying discourteous and unprofessional conduct." While she was

preparing a defense, she sent a record to her attorney that included the very taxpayer information she was trained to keep private. She failed to make any redactions or seek advice from legal counsel and her attorney had no authorization to view this document. She was removed from service. Find out more about the consequences [here](#).

LEGAL CHATTER



Juneteenth Officially Recognized as National Holiday

By Gregory Sirico

On Tuesday, June 15, 2021, the Senate unanimously voted to officially recognize Juneteenth as a national holiday, partially steering history's course in the right direction after both a year of heightened racial tension and a national history shrouded by racial oppression. Juneteenth, a holiday celebrated every year on June 19, started being recognized informally in 1865 when enslaved people in Texas, the last Confederate state to stop practicing slavery, learned the results of the Civil War and of their eventual freedom, which had been signed into law three years earlier.

The signing of the Emancipation Proclamation by President Lincoln in 1862 outlawed the practice of slavery in all 34 of the U.S. states that existed at the time, eventually leading to the secession of the South, the formation of the Confederacy and the start of the Civil War itself. The current recognition and signing of Juneteenth into law as a national holiday has come as a result of the tireless efforts of civil rights activists, past and present, who've always aimed to bring the history of racial oppression into the broader American conversation.

"Making Juneteenth a federal holiday is a major step forward to recognize the wrongs of the past, but we must continue to work to ensure equal justice and fulfill the promise of the Emancipation Proclamation and our Constitution," stated Senate Majority Leader Chuck Schumer, as reported by NPR.

Despite racial tensions as of late, amplified further by recent division in the House and Senate over the scope of U.S. history being taught in schools, this declaration is a leap forward. It honors a groundbreaking day in history and gives reason to celebrate the hard-fought freedom and end to slavery.

LEX SPORTIVA



America's Favorite Pastime: The Talk of the Town and the Courtroom

By MaKenli Ladd

America's favorite pastime—Baseball. Stadiums roaring with fans indulging in hotdogs and beer, generations filled with nostalgia for their “hometown team” and, as of late, politically charged lawsuit verdicts. This past April, Major League Baseball (MLB) decided to move the annual All-Star game from Atlanta, Georgia to Denver, Colorado after the former passed legislation deemed as “voter suppression” by both MLB and player organizations within the league.

A lawsuit was filed by nonprofit law group The Job Creators Network [on the basis that](#) MLB was intimidating Georgia lawmakers and taking [\\$100 million](#) of revenue away from not only the peach state, but small businesses, many of which are minority-owned, in Atlanta.

[Case 1:21-cv-04818](#) was officially filed on May 31 and was subsequently rebuked by U.S. District Judge Valerie E. Caproni, citing that there were no grounds for the suit nor a leg for the prosecution to stand on. Prior to delivering the verdict on June 10, [Judge Caproni poked holes](#) in the basis of attorney Howard Kleinhendler's claims and explained that MLB was not “intimidating” the state as moving the game was punishment to a law already passed.

This recent litigation raises multiple questions: Will we see a new wave of businesses and organizations “punishing” states for passing laws not aligned with their company values? Will we see more states retaliating with similar lawsuits?

One thing Judge Caproni's ruling exposed is that any state looking to put forth a similar suit will need

to flush out a legal strategy that can accurately establish a “victim” to identify reputable damages. If this trend does continue and more states react similarly, will we see a battle of litigation comparable to the Roman Colosseum as lawyers throw their take on a defense into the pit until one is deemed victorious?

GOOD VIBES



Nutter Chair Paul Ayoub Appointed Co-Chair of the 2021 IWBI Health Equity Advisory

Nutter Chair Paul J. Ayoub was appointed to serve as a co-chair of the 2021 IWBI Health Equity Advisory by the International WELL Building Institute (IWBI). Ayoub joins a select group of leading industry professionals who will help address health inequities in buildings, businesses, and communities around the world.

“I look forward to working alongside global leaders on how to make healthier places available and accessible to all individuals,” said Ayoub. “The Advisory’s mission to promote equitable access to

healthier places by addressing the needs or marginalized and underrepresented populations around the world dovetails with my dedication to prioritizing equity, diversity and inclusion throughout my career.”

Over the course of 2021, the Advisory will identify strategic opportunities to make healthier places available and accessible to all individuals, no matter their identity, location, background or level of ability. With the aim to support equitable access to health as its outcome, and diversity and inclusion as the ways to achieve this goal, the Advisory will recommend key metrics and indicators for measuring and evaluating progress; identify considerations for promoting health equity at the organizational level; and provide expertise on the localization of strategies across regions and sectors.

As an initial Steering Committee member of Small Business Strong, Ayoub supported the launch and development of this nonprofit created to assist minority- and women-owned small businesses, without cost, in navigating the pandemic’s devastating impact, and continues to serve in this capacity as SBS passes its one-year anniversary having served almost 1,500 companies. In addition, Ayoub serves on the national board of directors of St. Jude Children’s Research Hospital and ALSAC, the fundraising and awareness organization for St. Jude. He is currently the vice-chair of the St. Jude Board of Governors and previously served as chair of the ALSAC board.

*[Paul J. Ayoub](#) was selected by his peers for inclusion in the 2021 edition of *The Best Lawyers in America*© for Real Estate Law.*



Best Lawyers®
Proudly Announces the Inaugural
Edition of
The Best Lawyers® Employment Law Issue.

[Read the Digital Edition](#)

Single Shot: iStock/PeopleImages, Looking Back: iStock/PeopleImages, Legal Chatter: Unsplash/Nathan Dumlao, Good Vibes: iStock/George Peters, America's Favorite Pastime: Unplash/Lesly Juarez





BL Rankings, LLC
801 Broad St. Suite 950 | Augusta, GA 30901

You have requested to receive the Best Lawyers
newsletter.

Copyright © 2021 Best Lawyers. All rights reserved.

[Preferences](#) | [Unsubscribe](#)