

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CITY OF SEATTLE, a first-class charter  
city,

Plaintiff,

v.

THE PROFESSIONAL BASKETBALL  
CLUB, LLC, an Oklahoma limited liability  
company,

Defendant.

No. 07-1620 MJP

THE CITY OF SEATTLE'S REPLY IN  
SUPPORT OF ITS MOTION IN  
LIMINE TO EXCLUDE EVIDENCE  
RELATED TO SURVEY RESULTS

**Note on Motion Calendar:**

**June 6, 2008**

The Court made clear during the Pretrial Conference that the Professional Basketball Club, LLC ("PBC") had to establish why its survey of public opinion is any more relevant to this dispute than the opinions of a random sampling of people at the grocery store.

Declaration of Michelle Jensen in Support of the City of Seattle's Replies to Motions in Limine ("Jensen Decl."), Ex. E, p. 21 (Transcript of Pretrial Conference Excerpts, January 29, 2008). PBC's counsel responded to the Court's questioning by stating: "I would encourage you to wait until you have a little more developed briefing on what the criteria are that you consider under some of the case law that has addressed the issue of specific performance."

THE CITY OF SEATTLE'S  
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TO SURVEY RESULTS - 1

Case No. 07-1620 MJP

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1 *Id.*, p. 21. Indeed, PBC asserted at the time that “[w]hether or not you think survey evidence  
2 is an appropriate way to get at that criteria or not is the issue for another day.” *Id.*, p. 22.  
3 Now, more than four months later, that day has come. Given an opportunity to provide “a  
4 little more developed briefing,” PBC has failed to produce any legal authority that establishes  
5 the relevance of the Field Survey. In fact, PBC does not include citation to a single statute,  
6 case, secondary source, or other legal authority in its opposition to the City of Seattle’s  
7 (“City’s”) motion in limine.

8 PBC’s response offers nothing more than confusion regarding two distinct questions.  
9 The first question is whether the Sonics bring intangible benefits to the City. This question is  
10 relevant to the City’s benefit of the bargain and informs the injury that PBC’s promised  
11 breach inflicts on the City. *See Metro. Sports Facilities Comm’n v. Minn. Twins P’ship*, 638  
12 N.W.2d 214, 223-25 (Minn. Ct. App. 2002) (granting equitable relief based on the intangible  
13 benefits a sports team brings to a city). The second question is whether a random sampling of  
14 the public thought they would be “impacted” if the Sonics left Seattle on a certain date. This  
15 question, the one PBC seeks to admit into evidence, is simply a public opinion poll on an  
16 issue irrelevant to the City’s intangible benefits. Because the Field Survey deals only with the  
17 latter issue it is irrelevant and should be excluded.

18 Instead of relying on any legal authority to support its arguments, PBC tries to  
19 establish the relevance of its survey by comparing it to the expert opinions that the City’s  
20 expert economist Andrew Zimbalist will offer. PBC can only draw this specious comparison  
21 by ignoring the actual nature of Professor Zimbalist’s opinions. Specifically, PBC quotes a  
22 few lines from one section of Professor Zimbalist’s report in which he generally discussed the  
23 benefits of sports to communities, and then states: “Zimbalist is an economist, and it is not  
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26 THE CITY OF SEATTLE’S  
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1 entirely clear what expertise an economist brings to such matters — but that is what the City  
2 intends to put forth from him.” PBC’s Opposition to Motion in Limine to Exclude Evidence  
3 Related to Survey Results (Dkt. No. 74) (“PBC Resp.”), at 2. Before making this assertion,  
4 PBC would have been well-served to read the next two sections of Professor Zimbalist’s  
5 report, titled “Economic Theory and Modeling of the Intangible Benefits of Spectator Sports”  
6 (Declaration of Paul R. Taylor in Support of Defendant’s Oppositions to Plaintiff’s Motions  
7 in Limine (Dkt. No. 79), Ex. 2 at 9-18), and “The Intangible Benefits of Spectator Sports are  
8 Real but Difficult to Quantify” (*id.* at 18-21). These sections explain exactly what expertise  
9 an economist brings to such matters, and illustrate the recognized economic principles that  
10 support his conclusions. There is an obvious distinction between the analysis and conclusions  
11 of a highly regarded expert in the field of sports economics on the issue of intangible benefits  
12 to a community from the presence of a sports franchise (an issue that is squarely and  
13 indisputably relevant to the issue of whether specific performance should be ordered), and a  
14 public opinion poll on a question that has no relevance to that issue.  
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16

17 Finally, PBC incorrectly asserts that the City’s motion goes to the Field Survey’s  
18 methodology and therefore its weight. PBC Resp. at 3. In this motion, the City challenges  
19 the admissibility of the Field Survey based on relevance – not its validity. *See Clicks*  
20 *Billiards, Inc. v. Sixshooters, Inc.*, 251 F.3d 1252, 1263 (9th Cir. 2001) (analyzing survey in  
21 two-step process - first issues of admissibility followed by methodology and design). The  
22 City reserved the opportunity to challenge the Field Survey on other issues in the event the  
23 Court denies this motion. The City respectfully requests that this Court grant its motion in  
24 limine and exclude evidence related to the Field Survey.  
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26 THE CITY OF SEATTLE'S  
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1 DATED this 4th day of June, 2008.

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26 THE CITY OF SEATTLE'S  
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2  
3 CERTIFICATE OF SERVICE  
4

5 I hereby certify that on June 4, 2008, I electronically filed the foregoing with the Clerk  
6 of the Court using the CM/ECF system which will send notification of such filing to the  
7 following:

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