

**COUNTY OF LUZERNE
200 North River Street
Wilkes-Barre, PA 18711,**

Plaintiff,

v.

**THE MULTI-PURPOSE
STADIUM AUTHORITY OF
LACKAWANNA COUNTY
235 Montage Mountain Road
Moosic, PA 18507,**

and

**COUNTY OF LACKAWANNA
Administration Building
200 Adams Avenue
6th Floor
Scranton, PA 18503,**

Defendants.

: **IN THE COURT OF COMMON PLEAS**
 : **OF LACKAWANNA COUNTY**
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 : **NO.**
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 : **JURY TRIAL DEMANDED**
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NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lawyer Referral Service
 Lackawanna Bar Association
 338 North Washington Avenue
 Scranton, PA 18503
 (570) 969-9600

Northeastern Pennsylvania Legal Services, Inc.
 507 Linden Street; Suite 300
 Scranton, PA 18503
 (570) 983-3075

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COMPLAINT

Plaintiff County of Luzerne (“Luzerne County”), by and through undersigned counsel, hereby brings this action against The Multi-Purpose Stadium Authority of Lackawanna County (“MPSA”) and the County of Lackawanna (“Lackawanna County”) and, in support thereof, avers as follows:

NATURE OF ACTION

1. Luzerne County seeks, inter alia, a determination that MPSA’s interest in the gross proceeds of any disposition of its right to operate a AAA baseball franchise is limited to \$345,000 and that Luzerne County is entitled to one-half of the balance of the gross proceeds

of such sale or disposition without any further deduction. In the alternative, Luzerne County seeks an award of damages.

PARTIES

2. Plaintiff Luzerne County is a political subdivision of the Commonwealth of Pennsylvania and is a county of the third class. Its principal place of business is 200 North River Street, Wilkes-Barre, Pennsylvania 18711. The chief governing body of Luzerne County is its Board of Commissioners. The Board of Commissioners has authorized the filing of this suit in order to protect the interests of the citizens of Luzerne County and to secure the benefits to which Luzerne County is entitled flowing from a contract that, for its part, it has performed in full, in good faith, and at significant cost.

3. Defendant MPSA is a municipal authority of the Commonwealth of Pennsylvania duly organized and existing under the Constitution and laws of the Commonwealth of Pennsylvania, including, without limitation, the Municipality Authorities Act, 53 Pa. C.S. § 5601 et seq., with its principal place of business located at Lackawanna County Stadium, Lackawanna County Plaza, 235 Montage Mountain Road, Moosic, Lackawanna County, Pennsylvania 18507. MPSA is a party to the contract Luzerne County seeks to enforce, has received the full benefit of Luzerne County's performance under that contract, and has now repudiated its own obligations to Luzerne County under that contract.

4. Defendant Lackawanna County is a political subdivision of the Commonwealth of Pennsylvania and is a county of the third class. Its principal place of business is 200 Adams Avenue, Scranton, Pennsylvania 18503. The chief governing body of Lackawanna County is its Board of Commissioners. Lackawanna County is a party to the

contract Luzerne County seeks to enforce and is the only other entity with an interest in the proceeds of the sale or disposition of the AAA baseball franchise referred to in paragraph 1 above.

VENUE

5. Venue in Lackawanna County is proper under Rule 2103(b) of the Pennsylvania Rules of Civil Procedure.

FACTUAL BACKGROUND

6. MPSA owns and operates a multi-purpose stadium located at Lackawanna County Plaza, 235 Montage Mountain Road, Moosic, Lackawanna County, Pennsylvania 18507, and was formed on or about April 25, 1985, for the purpose of building that stadium.

7. MPSA was (and is) authorized by law to, inter alia, acquire, own, hold, manage, maintain, lease, and operate a multi-purpose stadium and any other asset deemed appropriate by the MPSA to generate revenue and to incur debt and secure funds for such purposes.

8. MPSA also owns the operational rights to a AAA baseball franchise, which it received from Northeast Baseball, Inc. ("NBI") in October 1986.

9. By way of background, NBI is a Pennsylvania non-profit, non-stock corporation that was formed in October of 1984.

10. NBI's governing board was comprised of private individuals from Luzerne and Lackawanna Counties who desired to bring professional baseball to Northeast Pennsylvania.

11. After raising monies through the sale of season tickets (for a team that did not yet exist to play in a stadium not yet built), NBI acquired an Eastern League class AA franchise.

12. Thereafter, MPSA commenced construction of the stadium. Construction was completed in 1989.

13. In September of 1986, NBI entered into a deal to purchase the operational rights to a class AAA baseball franchise from Jordan Korbitz, then owner of the Maine Guides – a team in the International League of Professional Baseball Clubs.

14. The purchase price for the operational right was approximately two million dollars (\$2,000,000). In addition to the monetary payment, NBI agreed to transfer its ownership interest in the class AA Eastern League franchise to Mr. Korbitz.

15. NBI approached both Luzerne and Lackawanna Counties to come up with the monies necessary to complete the purchase.

16. Luzerne and Lackawanna Counties agreed to fund the purchase provided that they shared equally in the economic benefits to be generated by the operation of such franchise as well as the gross proceeds of any future sale of the franchise.

17. Luzerne County provided financing for the AAA baseball franchise based, in part, on a determination that the financing and acquisition of a AAA baseball franchise would, among other things, enhance economic development and social conditions in Luzerne County and throughout the region.

18. To effectuate the funding, a new non-profit corporation was formed – Northeastern Pennsylvania Sports Development Corporation (“NEPSDC”).

19. Lackawanna and Luzerne Counties each owned 50% of the shares (or one (1) share each) of NEPSDC.

20. NEPSDC issued notes in the amounts of \$1,225,876.48 and \$950,000, respectively, to First Eastern Bank, NA and Northeastern Bank of Pennsylvania (collectively, the “1986 Notes”). Luzerne and Lackawanna Counties each guaranteed up to 50% of NEPSDC’s obligation under the 1986 Notes and agreed to annually provide amounts sufficient to retire the annual debt service.

21. The monies raised by NEPSDC through the issuance of the 1986 Notes was granted to – and then used by – NBI for the purpose of purchasing the AAA baseball franchise.

22. To maintain the tax-exempt status of bonds issued in connection with the construction of the stadium, NBI transferred ownership of the AAA baseball franchise operational right to MPSA in October of 1986.

23. In connection with the forgoing, a meeting was held in August of 1986 which was attended by the majority commissioners of Luzerne and Lackawanna Counties as well as John J. McGee, Esquire, and the late Charles J. Bufalino, Jr., Esquire.

24. At that time, the participants discussed what consideration Luzerne County would receive in exchange for its contribution of \$1,000,000 toward the purchase price of \$2,000,000.

25. The participants agreed that, if the AAA baseball franchise were sold or disposed of in the future, MPSA would only be entitled to the first \$345,000 of the gross proceeds and that Luzerne County and Lackawanna County would each receive 50% of the balance of the gross proceeds of the sale or disposition.

26. At that meeting, the parties discussed whether MPSA would be entitled to deduct any of its debt (or any other obligation it might have) from the gross proceeds before the required distribution to Luzerne and Lackawanna Counties. This was rejected and it was expressly agreed that there would be no netting out of MPSA debt (or any other obligation it might have) before distribution of the proceeds to the parties.

27. Accordingly, on or about September 2, 1986, Luzerne County entered into a Memorandum of Agreement with Lackawanna County, NBI, MPSA, and the Economic Development Council of Northeastern Pennsylvania.

28. A true and correct copy of the September 2, 1986 Memorandum of Agreement is attached hereto as Exhibit "A."

29. Consistent with the understanding that had been reached, the Memorandum of Agreement provides that MPSA is entitled to no more than \$345,000 of the gross proceeds of the sale or disposition of the AAA baseball franchise and that Luzerne County is entitled to 50% of the balance of the gross proceeds:

In the event that the professional baseball franchise described above is sold, exchanged other than in a transaction which results in the reorganization of the International League, or otherwise disposed of in any manner which results in a distribution of any kind, LA [Lackawanna County] and LU [Luzerne County] shall share equally in the distribution of any such proceeds after MPSA receives cash or cash equivalents of Three Hundred Forty-Five Thousand dollars (\$345,000.00) which represents the cost of NBI's Eastern League franchise being transferred as part of the consideration for the acquisition of the International League franchise.

See Memorandum of Agreement (Ex. A) ¶ 5.

30. In short, for example, MPSA and Lackawanna agreed that Luzerne County would be entitled to \$6,327,500 in the event the rights to the AAA baseball franchise were to be sold for \$13,000,000.

31. Thereafter, on October 20, 1986, and as contemplated by the Memorandum of Agreement, NBI and MPSA entered into an Agreement whereby NBI transferred its rights to the AAA baseball franchise.

32. A true and correct copy of the October 20, 1986 Agreement is attached hereto as Exhibit "B."

33. The October 20, 1986 Agreement required – and MPSA and Lackawanna County expressly agreed – that Luzerne County receive 50% of the gross proceeds of any future sale or disposition of the AAA baseball franchise over and above \$345,000:

In the event that the professional baseball franchise described above is sold, exchanged other than in a transaction which results in the reorganization of the International League, or otherwise disposed of in any manner which results in a distribution of any kind, LA [Lackawanna County] and LU [Luzerne County] shall share equally in the distribution of any such proceeds after MPSA receives cash or cash equivalents of Three Hundred Forty-Five Thousand dollars (\$345,000.00) which represents the cost of NBI's Eastern League franchise being transferred as part of the consideration for the acquisition of the International League franchise for the purpose of playing in Scranton-Wilkes-Barre.

See October 20, 1986 Agreement (Ex. B) ¶ 7.

34. Luzerne County made payments to the holders of the 1986 Notes starting January 20, 1988; the 1986 Notes have been paid in full. Accordingly, Luzerne County has fully and completely lived up to its side of the bargain.

35. On or about April 5, 2007, MPSA entered into a Management Agreement with the SWB Yankees, LLC (“SWB”), an agreement negotiated by the Chair of the Commissioners of Lackawanna County.

36. A true and correct copy of the Management Agreement is attached hereto as Exhibit “C.”

37. Section 2.9 of the Management Agreement provides, in pertinent part, that SWB would pay MPSA a minimum of \$125,000 for each fiscal year starting with 2007:

Manager shall cause, within ninety (90) days following the end of each Fiscal Year included within the Term, a payment to be made to Owner in an amount equal to one-third (1/3) of the Collected Net Income attributable to such Fiscal Year (the "Annual Payment"); provided, however, that the amount of each Annual Payment shall not be less than One Hundred Twenty-Five Thousand Dollars (\$125,000). . . . Manager shall cause a payment on account of the Annual Payment due for the 2007 Fiscal Year in the amount of One Hundred Twenty-Five Thousand Dollars (\$125,000) to be made to Owner on or before August 1, 2007.

See Management Agreement (Ex. C) § 2.9.

38. On or about April 5, 2007, MPSA also entered into an Option Agreement with the SWB, an agreement negotiated by the Chair of the Commissioners of Lackawanna County.

39. A true and correct copy of the Option Agreement is attached hereto as Exhibit "D."

40. The Option Agreement grants SWB the right to purchase the operational right to the AAA baseball franchise for \$13,000,000, if the option is exercised during the "initial term" as defined in the Management Agreement. See Option Agreement (Ex. D) § 1.2 (a)(i).

41. The initial term, as defined by the Management Agreement, ends on October 1, 2010. See Management Agreement (Ex. C) § 3.1.

42. Notwithstanding the provisions of the Memorandum of Agreement and the October 20, 1986 Agreement, the Option Agreement purports to further provide that "Seller [i.e., MPSA] hereby covenants to Purchaser that it shall cause up to Ten Million Dollars

(\$10,000,000.00) of the Purchase Price proceeds to be used to repay or otherwise satisfy the outstanding indebtedness or other obligations of, or relating to, the Team as Seller, . . . shall determine.” See Option Agreement (Ex. D) § 1.1(c).

43. The earmarking of ten million dollars (\$10,000,000) to pay debt or other obligations of or relating to the team is a blatant violation of the Memorandum of Agreement and the October 20, 1986 Agreement.

44. For its part, Lackawanna County takes the position that the earmarking of ten million dollars (\$10,000,000) to pay MPSA debt or other obligations, including debt owed to Lackawanna County, is not a violation of the Memorandum of Agreement to which it agreed.

45. In short, both MPSA and Lackawanna County have taken the position that MPSA debt and obligations, including any debt owed Lackawanna County, should be paid off out of the proceeds of any sale or disposition of the AAA baseball franchise first and before any distribution to the parties, and that at most Luzerne County is entitled only to half of the “net” proceeds.

46. No one consulted with Luzerne County concerning the Management Agreement or the Option Agreement – despite its interest in the franchise.

47. Luzerne County was never given notice nor asked to approve or acknowledge the Management Agreement or the Option Agreement – despite its interest in the franchise.

48. Luzerne County has protested the terms of the Option Agreement.

However, MPSA has failed to acknowledge, affirm, or provide any assurances that it would

perform its obligations to Luzerne County under the Memorandum of Agreement and the October 2, 1986 Agreement.

49. More recently, on December 17, 2009, MPSA entered into a Loan Agreement to fund repairs to its stadium and, in doing so, covenanted and agreed that all proceeds from any sale of the AAA baseball franchise would be applied either to the improvement of the stadium or the construction of a new stadium:

In the event that the Authority sells its interest in any baseball franchise associated with the Project Facilities, (i) the proceeds of such sale shall either be applied by the Authority to the improvement of the Project Facilities or to the cost of construction of a new replacement stadium facility, which replacement stadium facility will be owned by the Authority, and (ii) the Authority shall have entered into a long term lease with a major league baseball franchise and/or its minor league affiliate prior to such sale of the existing baseball franchise.

See Loan Agreement attached hereto as Exhibit “E” at § 4.01(I).

50. MPSA’s agreement to the language in Section 4.01(I) of the Loan Agreement is a further violation – and unequivocal and absolute repudiation – of the Memorandum of Agreement and the October 20, 1986 Agreement.

51. No one consulted with Luzerne County concerning Section 4.01(I) of the Loan Agreement – despite its interest in the franchise.

52. Luzerne County was never given notice nor asked to approve or acknowledge Section 4.01(I) of the Loan Agreement – despite its interest in the franchise.

53. The Memorandum of Agreement has never been amended, rescinded, returned or modified.

54. The October 20, 1986 Agreement has never been amended, rescinded, returned or modified.

55. While Luzerne County's ultimate goal would be to keep baseball in Northeastern Pennsylvania thereby maintaining for this region the economic, social, and other benefits that flow from the operation of a AAA baseball franchise, Luzerne County brings this lawsuit to ensure that the rights of its citizens are protected.

COUNT I -- ACTION FOR DECLARATORY JUDGMENT
(Luzerne County v. MPSA and Lackawanna County)

56. Paragraphs 1 through 55 of this Complaint are incorporated by reference as if set forth fully herein.

57. This is an action for a declaratory judgment pursuant to the Declaratory Judgments Act, 42 Pa. C.S.A. §§ 7531-7541.

58. Luzerne County's interest in this matter is direct, substantial, and present; an actual controversy exists which threatens Luzerne County's legal rights under the Memorandum of Agreement and the October 20, 1986 Agreement.

59. Luzerne County is entitled to a declaration of its rights under the Memorandum of Agreement and the October 20, 1986 Agreement.

60. Specifically, Luzerne County is entitled to a declaration that the proceeds of any sale or disposition of the AAA baseball franchise may not be used to retire debt or for any other purpose prior to the required distribution under the Memorandum of Agreement, that MPSA's interest in the gross proceeds of any sale or disposition of the AAA baseball franchise is limited to \$345,000 only, and that Luzerne County and Lackawanna County are each entitled to 50% of the balance of the gross proceeds of such sale or disposition.

WHEREFORE, Plaintiff Luzerne County respectfully requests (a) declaration that the proceeds of any sale or disposition of the AAA baseball franchise may not be used to retire debt or for any other purpose prior to the required distribution under the Memorandum of Agreement, that MPSA's interest in the gross proceeds of any sale or disposition of the AAA baseball franchise is limited to \$345,000 only, and that Luzerne County and Lackawanna County are each entitled to 50% of the balance of the gross proceeds of such sale or disposition. and (b) that the Court grant such further and additional relief as the Court deems fit or as may be necessary to protect the interests of Luzerne County and its citizens.

COUNT II -- BREACH OF CONTRACT
(Luzerne County v. MPSA)

61. Paragraphs 1 through 60 of this Complaint are incorporated by reference as if set forth fully herein.

62. Luzerne County has, in good faith, fully performed its obligations under the Memorandum of Agreement.

63. MPSA's bad faith conduct in absolutely and unequivocally repudiating – and purporting to render itself incapable of performing – its obligations under the Memorandum

of Agreement and the October 2, 1986 Agreement has substantially impaired or destroyed the value of the contract to Luzerne County and constitutes a breach of contract entitling Luzerne County to recover from MPSA as damages in an amount equal to 50% of the value of the AAA baseball franchise over and above \$345,000.

WHEREFORE, Plaintiff Luzerne County respectfully requests that judgment be entered in its favor and against Defendant the Multi-Purpose Stadium of Lackawanna County (a) in an amount reflecting one-half the value of the AAA baseball franchise over and above \$345,000 and (b) granting such further and additional relief as the Court deems fit or as is necessary to protect the interests of Luzerne County and its citizens.

COUNT III -- BREACH OF CONTRACT
(Luzerne County v. MPSA)

64. Paragraphs 1 through 63 of this Complaint are incorporated by reference as if set forth fully herein.

65. The Memorandum of Agreement provides, in part, that “LA [Lackawanna County] and LU [Luzerne County] have been assured by all interested parties that each shall share equally to the extent possible in the economic benefits to be generated by the operation of such franchise. . . .” See Memorandum of Agreement (Ex. A) ¶ 6.

66. The Memorandum of Agreement acknowledged that, at that time, “all revenues of the franchise in excess of expenses have been pledged to retire the debt of MPSA in connection with the financing of the Multi-Purpose Stadium Project.” See Memorandum of Agreement (Ex. A) ¶ 6.

67. As of the time MPSA entered into the Management Agreement with SWB, the debt incurred in financing the Multi-Purpose Stadium Project had been retired, freeing up the net income from the operation of the franchise for distribution to Luzerne County and Lackawanna County.

68. Under the Management Agreement, MPSA is to receive an Annual Amount of one-third of the collected net income of the team, or a minimum \$125,000.00. See Management Agreement (Ex. C) § 2.9.

69. Upon information and belief, MPSA received \$238,084 under Section 2.9 of the Management Agreement for the year 2007, \$265,858 for 2008, and \$125,000 for 2009.

70. In accordance with paragraph 6 of the Memorandum of Agreement, Luzerne County was (and is) entitled to one-half of any Annual Amount distributed to the MPSA under the Management Agreement.

71. MPSA has not remitted one-half of said payments to Luzerne County and, accordingly, is in breach of the terms of the Memorandum of Agreement.

WHEREFORE, Plaintiff Luzerne County respectfully requests that judgment be entered in its favor and against Defendant the Multi-Purpose Stadium of Lackawanna County and that this Court (a) find that Luzerne County is entitled to one-half of the Annual Amount for the years 2007-2009 and going forward, (b) order an accounting be done of all financial transactions and dealings between the SWB and MPSA from April 5, 2007 to the present, and (c) granting such further and additional relief as the Court deems fit or as is necessary to protect the interests of Luzerne County and its citizens.

JURY DEMAND

Plaintiff County of Luzerne demands a jury trial on all issues so triable.

Respectfully submitted,

REED SMITH LLP

Henry F. Reichner

Identification No. 46486

Nipun J. Patel

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2500 One Liberty Place

1650 Market Street

Philadelphia, PA 19103

(215) 851-8100

Attorneys for Plaintiff

County of Luzerne

Date: August 30, 2010

VERIFICATION

I, Maryanne C. Petrilla, am Chariman of the Luzerne County Board of Commissioners, am authorized to make this Verification, and state that the facts set forth in the foregoing pleading are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Maryanne C. Petrilla