

# Standing Admitted In Pacquiao-Mayweather Fight MDL

By **Shayna Posses**

Law360, New York (November 15, 2016, 7:59 PM EST) -- Floyd Mayweather, Manny Pacquiao and others accused of hiding the latter boxer's shoulder injury to boost pay-per-view sales of their highly anticipated 2015 fight conceded Monday that fans and bars have standing to pursue their multidistrict litigation, an admission they said doesn't change the fact that the allegations fail for other reasons.

Before making a decision on pending motions to toss the suits folded into a California MDL, U.S. District Judge R. Gary Klausner asked the parties earlier this month to weigh in on whether the fans and bars even have standing to bring claims that the boxers, Home Box Office Inc. and others duped them into shelling out big bucks for what turned out to be a lackluster bout by concealing that Pacquiao had suffered an injury beforehand.

Everybody answered in the affirmative Monday, even the defendants, who said in two separate briefs that the fans and bars do meet Article III's injury-in-fact requirement based on their claims of economic injury. But, the defendants said, that doesn't mean the claims they brought are viable, standing by their **September dismissal motions**.

"As absurd as plaintiffs' claims may be, they do not fail for lack of Article III standing because plaintiffs do allege a concrete, particularized, and actual injury," Mayweather and his company, Mayweather Productions LLC, said in their brief. "Plaintiffs allege that they each paid money to view or show the fight, and they want that money, or some portion of it, back. Further, plaintiffs allege that their purported injuries are traceable to the Mayweather defendants' actions and, if this court were to so find, this court could redress the injury by awarding money damages."

The so-called Mayweather defendants continued, "That plaintiffs are dead wrong about their ability to recover is of no moment during this Article III standing inquiry."

Pacquiao, his adviser Michael Koncz, HBO, promoter Top Rank Inc. and two of its executives made similar arguments in their response brief, contending that economic injury claims like those raised by the plaintiffs are a classic form of an injury-in-fact for Article III standing purposes. However, they said, the existence of standing merely means the fans and viewers have the right to pursue their claims, which still fail on the merits.

Of course, the fans and bars also told the judge that they have standing, highlighting in their response allegations that they purchased the pay-per-view or tickets to the fight based on the defendants' deceit and wouldn't have done so had they known the truth. The Ninth Circuit has held that this sort of situation constitutes an injury-in-fact, they said.

Viewers from 12 states, including New York, Florida, Texas, California and Tennessee, plus Puerto Rico, have sued under those jurisdictions' consumer fraud statutes and filed other claims including unjust enrichment or even conspiracy, saying they wouldn't have bought premium-priced tickets

for the event or paid about \$100 to watch the match on TV if they'd known Pacquiao had suffered an injury beforehand.

The 26 suits were consolidated into 15 complaints and **grouped in California** in August 2015.

But the defendants moved to toss the litigation in September. In their brief, the Pacquiao defendants slammed the sprawling MDL as a "disappointed fan" case, arguing that they got exactly what they paid for, the full sporting event, so regardless of whether they were satisfied with the quality of the fight, they can plead no legally cognizable injury.

They drew comparisons between the MDL and a handful of dismissed fan-refund suits, including actions by pay-per-view purchasers of the infamous 1997 fight in which Mike Tyson was disqualified for biting off part of Evander Holyfield's ear, viewers who alleged that football games between the New England Patriots and New York Jets weren't fair because of the Patriots' alleged taping of the Jets' signals and viewers of a Formula One race in which most cars dropped out on race day over a safety concern.

The plaintiffs **shredded those comparisons** in October, saying none of these suits included anything like the fraudulent inducement claimed in the MDL. The fans instead said their case has more in common with a fan suit over the Los Angeles Rams' 1995 move to St. Louis. In that case, a California state judge allowed claims the team committed fraud by hiding that it was planning a move.

The bottom line is that their suit is anything but meritless, the bars and fans argued, saying the defendants staged a sham fight knowing that to come clean would mean missing out on a \$500 million payday.

Mark G. Tratos, who represents the Mayweather defendants, told Law360 on Tuesday that their position is articulated in their pleadings. Representatives for the other parties didn't immediately return request for comment.

The plaintiffs are represented by Hart Robinovitch and Caleb Marker of Zimmerman Reed, Paul B. Derby of Skiermont Derby LLP, Laurence D. King and Matthew B. George of Kaplan Fox & Kilsheimer LLP, and Marc Adam Goldich of Axler Goldich LLC.

Pacquiao, Koncz, HBO, Top Rank and the executives are represented by Daniel Petrocelli, Jeffrey Barker, David Marroso and Esteban Rodriguez of O'Melveny & Myers LLP. Mayweather and Mayweather Promotions are represented by Ruth A. Bahe-Jachna and Mark G. Tratos of Greenberg Traurig LLP.

The case is In Re: Pacquiao-Mayweather Boxing Match Pay-Per-View Litigation, case number 2:15-ml-02639, in the U.S. District Court for the Central District of California, Western Division, Los Angeles.

--Additional reporting by Braden Campbell and Suevon Lee. Editing by Orlando Lorenzo.