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David Boies Could Be Cowboys Owner Jerry Jones' Hail Mary

By **Ed Beeson**

Law360, New York (November 17, 2017, 10:32 PM EST) -- Dallas Cowboys owner Jerry Jones appears to have few legal options in his boiling feud with NFL Commissioner Roger Goodell, but with star litigator David Boies on his team, he has a shot at scoring points for his cause — and defending himself against possible sanctions for his outbursts, lawyers tell Law360.

The saga, which has been playing out in sports media in recent weeks to breathless attention, has seen Jones reportedly taking the lead in challenging Goodell's pending contract extension. While his grievance is said to be over the luxuriant terms of Goodell's proposed new deal, many outside commentators, including lawyers, see his complaints grounded more in the **commissioner's decision to suspend** the Cowboys' top running back, Ezekiel Elliott, for six games over domestic violence allegations by a former girlfriend.

Lately, though, the matter has moved from complaints on conference calls to actual threats of legal pain against those working on the deal for the league's commissioner. According to The New York Times, Jones has threatened to sue his fellow team owners on the league's compensation committee if they don't end or delay plans to renew Goodell's contract for another five years. No such lawsuit has been filed, but to punctuate his seriousness, Jones reportedly let it be known that he's hired Boies to be his advocate.

Several sports lawyers told Law360 that despite Boies' pedigree, they don't see how Jones could bring a viable suit over the terms of Goodell's contract, at least based on what's publicly reported about them. Nor did they think Boies would sign his name to a potentially frivolous claim, even if just to please his famously feisty billionaire client. But they said Boies could prove his worth in other ways, carrying the big stick in backroom negotiations while keeping Jones shielded from potential retaliatory claims from his fellow co-owners or the league itself.

By hiring Boies, "I think this is Jones messaging to the NFL and to Goodell, 'I'm not messing around. I'm coming out with guns blazing,'" said Glen A. Rothstein of Rothstein Law APC.

The chairman of Boies Schiller & Flexner LLP, who's lately been in the news over his **troubled representation** of fallen Hollywood mogul Harvey Weinstein, has long had an admired but fearsome reputation as the premier attorney for high-stakes courtroom battles that may ultimately change the course of legal history. But whether he can breathe life into Jones' threats to sue fellow team owners remains to be seen.

Lawyers said they struggled to think of a colorable claim that the Cowboys' owner could have over the league's contract talks with Goodell based on what's been reported over its terms.

While the in-the-works deal has made headlines over rumors that, at least at one point, it carried a \$50 million-a-year price tag and lifetime access to a private jet, some lawyers said even this wouldn't seem to form the basis for a breach of fiduciary duty claim, given that the reported terms, if true, are not too far off from what Goodell's current pay package is believed to be.

Also standing in the way of a claim is the fact that Jones voted with his fellow team owners this past spring in favor of renewing Goodell's contract, lawyers noted. It's possible, however, he could allege

he was fraudulently induced to support the new deal, or that the negotiations have gone beyond what was authorized by the rest of the team owners.

"There is a little bit of wiggle room," said Mary K. Braza, co-chair of the sports industry team at Foley & Lardner LLP. She added that Jones could look to file such a claim in a friendly venue, such as the Eastern District of Texas, in the hopes of winning a temporary injunction. But even this wouldn't be a permanent victory, she added.

Others noted that courts are loath to pry into internal deliberations of a corporate enterprise.

"When you think of it as a board of directors having an internal spat over the payment of a CEO, why would a court get involved?" said Alan Milstein of Sherman Silverstein Kohl Rose & Podolsky PA.

While Jones has sued the NFL in the past — two decades ago over licensing issues — this matter appears to be something different entirely, said Joseph Hanna, chair of the sports and entertainment practice at Goldberg Segalla.

"This is a direct assault on the commissioner of the league and the compensation committee," he said.

"It would be a nuclear option to bring a suit against the league," Hanna added. "This is a road Jerry Jones doesn't want to go down because it's not a fight he can win."

A representative for the Dallas Cowboys and spokesman for Boies Schiller didn't return messages seeking comment.

If a legal battle may not be in the cards, where Boies may also come in handy is helping Jones gain leverage over other owners in the league in an effort to rally them to his side.

Peter R. Ginsberg, a former federal prosecutor who's represented coaches and players in disputes with the NFL through his New York boutique, said Boies could be digging into Goodell's relationship with other team owners on the compensation committee, as well as their own histories.

"There are certainly ghosts that are in some of the owners' closets," Ginsberg said. Among other things, there may be private business dealings, buried facts from last decade's Spygate scandal over the Patriots' secret videotaping, or other matters they wouldn't want public, he said.

"I don't think Jones is in a position to out some of his co-owners," said Ginsberg, "but that doesn't mean he's not willing to threaten it."

Threats, of course, cut both ways. It's been widely reported that the NFL's outside counsel recently sent Boies a letter urging his client to stop his "misguided litigation threats and media campaign."

"Your client's antics, whatever their motivation, are damaging the League and reflect conduct detrimental to the League's best interests," said a copy of the letter published by CNBC.

In light of Jones' "antics," reports have swirled that some members of the league could be looking to sanction him in some fashion — and perhaps even strip him of his beloved Cowboys franchise.

Lawyers don't think it would come to this. If anything, an attempt to dethrone the football legend would only lead to years and years of litigation and the airing of even more dirty laundry about the league's inner workings, said Daniel Wallach, a shareholder at Becker & Poliakoff.

"I think ultimately cooler heads will prevail," he said. "It's in no one's interest to put the pedal to metal."

And it may be up to Boies to help cool things down with his client.

"He's probably talking him off the ledge a bit," noted Rothstein, who represents athletes through his boutique in Santa Monica, California. "Do you really want to risk losing your franchise over a six-game suspension?"

"To me," Rothstein added, "Boies' greatest challenge is, when you're dealing with billionaire tycoons, they're not used to hearing 'No.'"

--Editing by Kat Laskowski and Pamela Wilkinson.

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