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What Happens When the Sweepstakes Goes Wrong?

SPEAKERS

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In this episode of [No Infringement Intended](#), [Austin Padgett](#) and [Rusty Close](#) venture outside traditional IP law and into promotions and sweepstakes, using a Milwaukee Brewers charity raffle gone wrong as their guide. They break down what separates a legal sweepstakes from an illegal lottery, why “no purchase necessary” is never just a formality, and then dig into *Flynn v. Brewers Community Foundation*, where lifelong fans Annette and Matt Flynn won a \$13,000 raffle, sprinted through the concourse, got misdirected by stadium staff, and arrived at the prize table 67 seconds too late. Austin and Rusty examine how a single “sole discretion” clause in the official rules became the foundation’s legal shield, why the court gave the foundation “a limited right to be wrong,” and whether the Brewers’ quiet rule change afterward was a fix or an admission.

Transcript

Podcast: *No Infringement Intended*

Episode: What Happens When the Sweepstakes Goes Wrong?

Hosts: Austin Padgett and Rusty Close

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Austin Padgett (00:13):

Come one and come all. It's time for gavels and gravy. Welcome to *No Infringement Intended*, an intellectual property podcast of our law firm, Troutman Pepper Locke. Hosted by the true-blue bad boys of intellectual property, Rusty Close and me, Austin Padgett. In today's episode, we've got a substitute teacher calling a Major League Baseball game on live radio. We've got \$13,000 vanishing in 67 seconds, and a legal battle that asks when the fine print says the house always wins, is there anything you can even do about it? You're not going to want to miss a minute. It's all coming to you right after these messages. The sponsor of today's episode is “*No Infringement Intended*”, the podcast. The universally beloved IP podcast that critics are calling “fine” and “surprisingly not terrible”. Are you tired of podcasts that respect your time? Then *No Infringement Intended* is for you. Subscribe today and receive two guys with microphones and an alarming amount of confidence. Use promo code GOLDENGLOBES at checkout for 0% off. So, make sure you're subscribed and then smash those five stars for your boys while you're at it. Keep those ratings fresh. Now back to the show. Welcome back. Let's get into the mailbag. First up, Doug writes, “Guys, I just listened to the monkey selfie episode. Do you care to comment about the recent news about the macaque intelligence?” Rusty, have you heard this news?

Rusty Close (01:36):

Really, all I'm trying to do right now is stifle my giggles, so why don't you fill us in? What's been going on in the monkey intelligence world?

Austin Padgett (01:44):

Happy to do it. For our listeners who don't know yet, I'm sure there are only a few of you, there's a study that just dropped in July in the Proceedings of the National Academy of Sciences out of Carnegie Mellon. Researchers had the macaques and olive baboons perform geometric shape matching tasks alongside preschool children and adults. The monkeys could recognize that an object was the same even when its angles or size were altered. Now they understand symmetry, parallel sides, right angles, just the basic geometry. The researchers said geometric intuition may have evolved in a common ancestor long before modern humans. An MIT neuroscientist who wasn't involved in the study told the New York Times this: "Humans tend to overestimate themselves as something special." So, Rusty, think back to our monkey selfie episode. If Naruto, and it was just a few episodes ago, if Naruto could already take a selfie and now we know macaques understand geometry, does that change anything for you?

Rusty Close (02:46):

Well, I do tend to agree with the MIT professor that humans do tend to overestimate themselves as something special. But I don't know that understanding geometry by playing around with different shapes and blocks and things of that nature would necessarily lead me to believe that we could characterize these monkeys as humans. I'm still not sure that they should be able to have their copyright registrations for the photos they took.

Austin Padgett (03:15):

Hot takes. Well, just a shout out to my geometry teacher in 10th grade, Coach Short. Great teacher, great coach. Shout out.

Rusty Close (03:22):

I'm sure he's proud.

Austin Padgett (03:23):

I hope he listens. I have to go back and look. I believe he's the principal of the school, my high school now.

Rusty Close (03:28):

Okay. He's on a come up.

Austin Padgett (03:30):

Yeah, yeah. Huge escalation in the administrative portion. But I hate to see people leave the classroom too, who are that gifted. But that happens.

Rusty Close (03:39):

What is it, the Peter Principle or whatever it is where you get promoted beyond what you're actually good at?

Austin Padgett (03:44):

Yeah. Though that guy's good at a lot of things.

Rusty Close (03:46):

He's a good principal too. Yeah. Let's not discredit him there.

Austin Padgett (03:48):

He's a great basketball coach as well, and so managing people, I could see him being very natural at. This wasn't ever in the script, so I'll get back to our script here, but shout out to Coach Short, Principal Short, whatever we want to call him these days. Anyway, second mailbag question. Carrie writes in and asks, "Does the curse of Austinio still stand?" I should tell you, this comes as a personal reference, Rusty, as you might be able – Austinio was one of the nicknames I had as a kid. Basically, this is a blast from the past. There was a show, you may remember, called The Arsenio Hall Show, kind of famous for having Bill Clinton play the sax on it. That's weird, kind of like one of the big cool moments of the early '90s.

Rusty Close (04:31):

Really, the '90s were a really happening time.

Austin Padgett (04:33):

What a time to be alive. No doubt. Particularly the early '90s. We had this bingo game we were playing in school. This was elementary school, probably somewhere around that time. I won, and I hardly ever won anything like that. Luck doesn't fall. But this guy goes, Arsenio, had this main call out he would do, "Arsenio!" Everybody would kind of root and pound their fists around their ears and stuff. He'd hold out the O. My buddy Tim Carter was like, "Austinio!" Since that moment, I don't think I've won any sort of game of luck ever since then.

Rusty Close (05:12):

Well, sounds like you went out on a high, right? You just... You won the most important game and you retired from there.

Austin Padgett (05:19):

Yeah, I'm sure it was some sort of important principles that we were learning in the school classroom, but that's when I hypothesized there's a curse. We're talking like even basic cakewalks. You're not going to find me sitting in the winning chair or whatever at the end. The curse still goes on. Speaking of kind of winning things, Rusty, have you seen the video of the guy who got to call an inning for the Phillies this season?

Rusty Close (05:42):

I did see a little bit about that and heard some of the audio, and it was shocking how much the guy just sounded like he'd been doing it his entire life. If you hadn't known, you would have thought, "Okay, yeah, this is just the normal radio announcer for the Phillies."

Austin Padgett (05:58):

Oh yeah, he was unbelievable. For those who haven't heard, August 7th, 2026, Philadelphia Phillies are playing a regular season game, and in the radio booth for the top of the third inning, in comes 73-year-old substitute teacher from New Jersey named Lewis Kalb. How did he get there? Well, he won an auction prize. He bid what has been reported to be \$22,000 in a charity fundraiser for the opportunity to call one inning of a Phillies game on radio, which is an amazing prize to be able to even bid on. I don't know how you feel, Rusty.

Rusty Close (06:35):

It seems like a steep price, but if it's something you're passionate about, who am I to put a price on it?

Austin Padgett (06:42):

Yeah. I mean, the other aspect of this is when you offer that up as a prize, it could be a disaster.

Rusty Close (06:48):

100%.

Austin Padgett (06:48):

You're putting a random fan on a live broadcast, and I can think about a lot of ways that goes wrong. Not even just... It could depend on who it is, first of all, but just the circumstances of even that inning of what happens. I'm sure with... They had the color guy doing the color announcements as well in there, so you've got some buffer of how bad could this be for one inning? But he could freeze up, he could ramble, he'd say something the FCC notices. But as you mentioned, Lewis Kalb does great. He just crushes it. It turns out that this guy has called over 3,000 recreation league games over the past 30 years. Little League, softball, you name it, he's done it. He's polished, he was prepared, and he goes viral for all the right reasons. Here's the quote that got me, Rusty. He says, "For the rest of my life, I'm always able to say I was a big league announcer for the Philadelphia Phillies. Nobody knows whether it was one inning."

Rusty Close (07:48):

What it reminds me of is sort of the old adage about being a stand-up comedian. You can go do an open mic at a coffee house and you're a stand-up comedian now. You don't have to be Chris Rock. You're sort of part of the club if you want to say you're part of the club.

Austin Padgett (08:02):

Yeah, no doubt about it. Well, today we're going to venture off a little off course from traditional intellectual property and into another area that I practice in of advertising law and talk about promotions. I like to think that it intersects particularly with what I do quite a bit because I'm trying to help people sell stuff. But it's an interesting area of the law because it's state by state and it's always interesting to hear what people are coming up with as a way to drive eyes to their products and things like that. Before we get to our main story, Rusty, let me give you and the listeners a quick crash course on how – we'll call it promotions law or sweepstakes law – works. I'll try to keep this tight. The foundational concept is that lotteries are run by the state. To have a lottery, you need prize plus chance plus consideration is what we call it. I usually say it in this way: Did you require consideration or something, it's usually money or payment, but it can be something like, did you require a complex task? Did you require consideration for a chance to win a prize? If you don't have the state's permission, which is typically very limited to get, you're running an illegal lottery under state gambling laws. What we do to try to get around this is we eliminate one of those elements, typically either chance or consideration. If you eliminate the prize, I don't think you have anything to worry about anyway. Nobody cares. Right? But that would be a novel way to do it.

Rusty Close (09:29):

In the traditional context, people think of the lottery. You pay your \$2 for your ticket. That's the consideration. You get a series of numbers, that's your chance. And you, I guess as of today, I think the jackpot is sitting around a billion dollars. So, that's your prize.

Austin Padgett (09:45):

It's a nice big wad of cash right there.

Rusty Close (09:47):

If one of us hits it, is this the last episode of *No Infringement Intended* or do we keep it going?

Austin Padgett (09:55):

Never. It only gets better because we start doing daily episodes.

Rusty Close (09:58):

It only gets better. That's right. We up our production budget. We've got effects, we've got all kinds of new stuff.

Austin Padgett (10:04):

Listen, you and I aren't bothered by anything else in this world then.

Rusty Close (10:08):

No more constraints.

Austin Padgett (10:09):

Yeah, we can really focus in on this. The bills are paid.

Rusty Close (10:12):

Yeah, yeah. There will be no more edits to these episodes if we hit this jackpot.

Austin Padgett (10:16):

That's exactly right. Yeah. No one to answer to. If we go back and we're going to eliminate just one of the... Let's say you've got a sweepstakes. That's going to be chance based. We're keeping the chance involved. There's going to be some sort of drawing or some sort of element that is chance. Not everybody's going to be able to win or based on a skill or judge or something like that. You've got chance in there. You've got to eliminate consideration. That's why you often see... Well, one, state regulation requires a "no purchase necessary." But oftentimes if there was a purchase where you had to... You've got to buy a meal to get the ticket to enter to see if you win, you've got to have a free way of doing that. In the rules, if you ever read them, you'll see, "Oh, there's a free method of entry," because if you had to pay for an entry, you've got to have this alternative method that's free.

Rusty Close (11:05):

Is this, if we think about like, McDonald's Monopoly game, are you saying there's typically a free, "you don't have to buy a meal" option to get into that?

Austin Padgett (11:14):

Brother, I guarantee you there is.

Rusty Close (11:16):

Nice. Okay, so if we just look at the fine print, we'll figure that part out.

Austin Padgett (11:19):

Yeah, yeah. Not to venture too far downfield, those entries have to be treated with what's called equal dignity to paid entries. That's part of like when clients come in and they've got a paid method entry, we've got to figure out, okay, how are we going to treat the other entry – one, how are we going to do other entries? Because you may have something where it's really complex where you buy a product of a certain type or these types, you get 50 entries for these and 100 entries for these. Well, what if somebody sends in a free entry? How many entries do they get? Usually, it's like we're trying to put some practical constraints on it. A limit of entries is really helpful.

Rusty Close (12:01):

Sure.

Austin Padgett (12:02):

Because then you can just say, okay, if they mail something in, let's just either do 50 or 100 or whatever is kind of a reasonable approach that we would expect most people to do and get. That's what we'll do for the free entry.

Rusty Close (12:13):

We just don't want it to be well known that there is a free option.

Austin Padgett (12:18):

Typically not. That's right. Unless – most promotions that we do aren't paid promotions. When I'm drafting rules, a lot of times it's just, "Hey, sign up for our newsletter." There are privacy concerns that come in with that and some other.

Rusty Close (12:31):

I was going to say, even that you would think could be considered consideration because you've given them your information. They are then going to use it to almost 100% market to you and offer you other stuff. So, it's consideration in its own way. It's just not paid.

Austin Padgett (12:48):

Yeah, yeah, could be. You make some determinations; one based on kind of the Attorneys General have some sets of opinions that they put out about what is consideration. A lot of this goes back to the 1970s, so it doesn't really contemplate email.

Rusty Close (13:04):

Sure.

Austin Padgett (13:05):

You're just trying to derive some sense of what consideration means. Usually, it's definitely money. It's definitely having to do a major task. A lot of times if you require people to come in-store to enter and it's paid or even if it's just you have to go somewhere to enter, I'm getting a little nervous that we're starting to enter consideration territory, particularly where that place is. If it's at your place of business, you're making them come all the way somewhere and to visit a location. They can enter for free there, but it's kind of but you're advertising it online and all these sorts of things. You've got to think through it and what risks you're going to take. It's not a heavily policed area or enforced area, but it comes up every once in a while, and sometimes it can give way, particularly

when it goes bad, and we'll talk about this as we go on, to consumer complaints.

Rusty Close (13:59):

Sure. Yeah.

Austin Padgett (14:01):

That's really almost as important as the rules, and maybe even more important in some ways, is the actual operation of sweepstakes. I can give you the best set of rules, but if you don't have any discipline, we're hanging out there without any real shield anyway.

Rusty Close (14:15):

Sure. Okay.

Austin Padgett (14:16):

Free method of entry is how you do a sweepstakes. Adjust for that. If you want to have a skill-based competition, you can eliminate chance as well and require something be skill, and then you just have a judging panel judge on some objective criteria, not random selection, like a singing contest or a writing contest or something like that. You're going to award a winner a prize. It won't be an illegal lottery.

Rusty Close (14:43):

What about... We're big football fans, halftime of the bowl games, you got the people that have the contest, you throw the footballs into the soda bottles. That seems... That's a contest, right? You enter for free, your name gets drawn, and then it's a game of skill, right?

Austin Padgett (15:00):

I think that would totally be a game of skill. I think a lot of this comes down to just theoretical arguments of just law student type stuff sitting around dreaming situations up and wondering how you'd handle it. But if it was such a bizarre act, kind of like these trick shot videos you see people doing online, you're only going to make 1 in 400 attempts of shooting a basketball from off the top of a stadium into a basket at midfield or something like that. I could see where that could be a game of chance. It would take immense skill, but really even the most skilled are only, I don't know that you'd have enough skill to really hit that in any sort of meaningful way. We'll leave those arguments to the professional academics, I guess, because that kind of stuff just doesn't come up in practice.

Rusty Close (15:45):

Well, I'm thinking of the one where they've got the two 10-foot-tall soda bottles and the people are throwing the foot... You got one person on the left, one person on the right. Who gets the most in their bottle, wins the game. Or you got to kick a 20-yard field goal or whatever it is.

Austin Padgett (15:59):

A lot of times the big thing that you have to do on skill is setting up the rules. Because if you look at the soda bottle football throw, people are not actually throwing a football.

Rusty Close (16:08):

Right. They're chest passing it.

Austin Padgett (16:09):

They're chest passing it. Yeah, it's basketball chest passing because that's the fastest way to move your arms back and forth.

Rusty Close (16:13):

Not me. I'd be dropping three-step drop and just lasering that thing in there.

Austin Padgett (16:18):

Yeah, I'm five-step, brother. I'm running the pistol the whole day.

Rusty Close (16:21):

Probably knocking the bottle over with the velocity, so they're going to have to account for that.

Austin Padgett (16:25):

Yeah, exactly. I might not win, but I'm going to show the scouts something. I'm going to put some film.

Rusty Close (16:30):

I may not win the day, but win the war kind of thing.

Austin Padgett (16:33):

I'm going to put some tape out on this arm I've got. Yeah, no doubt about it.

Rusty Close (16:35):

Yeah.

Austin Padgett (16:37):

So, those are the two sweepstakes contests. There's another kind of category of raffles where, I mean, it's a sweepstakes, but you're not doing a free method of entry. It kind of comes up all the time. You keep all three elements, but you operate under one of these specific statutory exemptions that's provided if your state has any. Some states don't. Georgia has a charitable raffle exception that allows you to set up raffles. You have to register them at the county sheriff level, and you can only have so many a year, but it's permitted, and that's how you do raffles. That said, a lot of people don't register with the sheriff. You know what I'm saying? It's not a heavily enforced area, but it could be, particularly where things go wrong.

Rusty Close (17:24):

Sure. Always. It's not a problem until it's a problem.

Austin Padgett (17:26):

That's exactly right. The official rules of any promotion form the binding contract between sponsor and entrant. This is key for our story, because what the rules say is how much discretion did they give the sponsor? How much is left to the entrant? That's going to matter enormously, it turns out. Some quick footnotes on promotions as well, just so we're covering everything, or at least the hot topics. Florida, New York, Rhode Island have some registration and bonding for sweepstakes of certain types over certain prize values. Think \$5,000, exceeding \$5,000, at least for Florida and New York. If you're running a national promotion, those states are usually your

compliance headaches, or can be. And it's also why you'll sometimes see Floridians and New York not allowed to participate. It excludes them. The reason is because they require registration and bonding, and it's more paperwork for a promotion. If the brand's not that worried about it, we'll just run it without those people involved because we don't have time to do all that.

Rusty Close (18:27):

Okay. Yeah, that makes sense. Because I've certainly seen that before and wondered why those states... They just don't like them. But, okay, there's more red tape to go through.

Austin Padgett (18:36):

Right. It's not all that much, but, I mean, going and getting a bond, you've got to talk to your insurance broker. You've got to get it in in time, which is usually the big point about it. That particularly Florida requires that you get it in seven days before your promotion starts. Dude, I mean, every promotion I work on pretty much runs up to the wire of launch, and we're adjusting rules or adjusting prize values and stuff like that. But with that filing, you've got to have your final rules and all your documents in a row to make that filing. It's either make it late and they penalize you or just drop those states out. It's just a practical question.

Rusty Close (19:15):

Yeah. Okay.

Austin Padgett (19:16):

Let's talk about a promotion that didn't go as expected. Or at least for some people, didn't go as expected. Rusty, before we get there, what do you know about the Milwaukee Brewers?

Rusty Close (19:31):

Well, I mean, born and bred in Atlanta, so I'm a lifelong Braves fan, but the Braves were formerly the Milwaukee Braves.

Austin Padgett (19:39):

That's right.

Rusty Close (19:40):

We sort of have a tie-in there. Hank Aaron, after he finished up his career with the Braves, I think he retired as a Brewer.

Austin Padgett (19:48):

He did. He was a designated hitter. Yeah.

Rusty Close (19:50):

I always just associate them with Miller beer, to be honest. I mean, their logo, their mascot. I think he slides down a slide into it.

Austin Padgett (20:02):

That's correct.

Rusty Close (20:02):

What I think of as a vat of beer. So, yeah, all those things.

Austin Padgett (20:05):

Yeah. Yeah, storied program. Has not won the pennant.

Rusty Close (20:09):

Okay.

Austin Padgett (20:10):

One of five teams to not have won a series. There's only one that hasn't played for a series.

Rusty Close (20:18):

That is Seattle.

Austin Padgett (20:19):

The Mariners. That's right.

Rusty Close (20:20):

Yeah. Okay.

Austin Padgett (20:21):

The Brewers actually started in Seattle.

Rusty Close (20:24):

Oh, they were the Pilots.

Austin Padgett (20:26):

Yeah, the one year of the Pilots. If you ever read Ball Four, it's kind of a wild documentary kind of book, hot takes and personal diary of a player and the ball club.

Rusty Close (20:37):

Right, right, right.

Austin Padgett (20:38):

That's a great read.

Rusty Close (20:39):

That's a classic sports book, for sure.

Austin Padgett (20:41):

No doubt about it. Let me tell you about this case of Flynn v. Brewers Community Foundation, Inc. in Milwaukee County. Annette Flynn and her husband Matthew are lifelong Brewers fans. They've been to roughly 100 games over the years. Rusty, 100 games, what does that tell you about their fandom?

Rusty Close (21:04):

This is probably self-serving, but I don't typically use game attendance to equate with true fandom. It's likely because I just don't get to go to that many and consider myself a true fan. So, 100 games seems like a lot to me over the years.

Austin Padgett (21:19):

Yeah, no doubt about it. Particularly as the price of eggs continues to go up or whatever, those tickets become pricey. It'd be interesting to know how many games over what scope of time are we talking? I don't have these folks' age, but that may come into play in just a few minutes here too.

Rusty Close (21:35):

I mean, if you're a season ticket holder, that's 81 games a year. But I'm guessing these guys aren't season ticket holders. Even at four to five games a year, that's 20 to 25 years.

Austin Padgett (21:45):

Yeah, yeah, no doubt. I mean, that's still a healthy clip compared to your normal resident. So, on July 7, 2023, they're tailgating outside of American Family Field as they'd done dozens of times before. Probably around 100 times before.

Rusty Close (22:02):

Somewhere in that ballpark, yeah.

Austin Padgett (22:05):

Yeah, if they're tailgating and ball gaming at the same time. I didn't appreciate that there was a lot of tailgate activity at professional baseball games, but I guess in Milwaukee, they just do things different.

Rusty Close (22:15):

Sure. I mean, if they're not fortunate enough to have the Battery like we do, just pop the trunk and open the cooler.

Austin Padgett (22:21):

That's right. Yeah. A vendor in an orange vest approaches Annette in the parking lot and says, "Would you like to buy a raffle ticket?" She buys 10 tickets for 20 bucks. This is a charity, assuming we've got a completely legal exemption here, etcetera, etcetera. Now, here's the important detail. Annette had bought raffle tickets at a prior game but had never seen the winning numbers come up. This time, she specifically asks the vendor and says, "Hey, how is this winner announced?" She's told it will be posted on the scoreboard after the sixth inning sausage race. Which is always a fun detail to add. Do you know about the sausage race?

Rusty Close (23:05):

Yeah. I mean, again, to tie it back to the Braves, we have the tool race. We've got the bucket, the paintbrush, the hammer, and the drill. Always a highlight when we take the kids to the game. Those guys are crashing into each other and acting crazy. It's always a highlight.

Austin Padgett (23:24):

Oh, absolutely. In Milwaukee, they do sausages, which is its own thing.

Rusty Close (23:27):

So, it's like a kielbasa and a hot dog and a bratwurst.

Austin Padgett (23:31):

Yeah, yeah. I would tell you they're not necessarily perfectly identifiable from the uniforms as they're running around, but you get the idea.

Rusty Close (23:40):

Yeah. You're going to need a name tag to know if this is the bratwurst or the Polish sausage.

Austin Padgett (23:45):

That's right. That's right. Outside of the sausage race, here's the problem. Annette and Matt are seated in section 234, which is under Bernie Brewer's slide, the slide you referenced earlier.

Rusty Close (23:56):

Oh, okay. The one we just mentioned. Yeah.

Austin Padgett (23:58):

Yeah. The scoreboard is actually behind them, which is why she's never seen these numbers come up, is because they're behind her and she's not... She's watching the game because she's a super fan.

Rusty Close (24:08):

Super fan, yeah.

Austin Padgett (24:09):

Yeah. I mean, she's guessing which pitch is coming or what it was or what's coming next.

Rusty Close (24:14):

Yeah, right, right. You think she or her husband takes the book to keep score for each game?

Austin Padgett (24:20):

I think we're going to find out pretty quickly here that Annette's really doing the work here. We'll find that out in just a second. I'll give you a detail that might shed a little light on that. Scoreboard's behind them. She can't see it, and there's nothing to hear. A nearby fan tips her off as they're talking about these raffle tickets, says, "Hey, you should check the website." She pulls up the Brewers' site on her phone and her ticket number, which is 5632027. It's the winner. It's listed as the winner on the website. One of her tickets is. The fan warns her and says, "You have until the end of the top of the seventh inning to claim the prize at the 50/50 table on the loge level." The clock is now ticking on Annette.

Rusty Close (25:05):

Oh man, so she has what, half an inning roughly to get up there?

Austin Padgett (25:08):

That's what it sounds like.

Rusty Close (25:09):

Yeah, okay.

Austin Padgett (25:10):

Turns out these innings are going to go quick.

Rusty Close (25:12):

Sure. Pitch clock.

Austin Padgett (25:14):

Annette takes off sprinting through the concourse. Matt follows behind walking. Now, I don't know Matt's situation, so there could be a lot of reasons, but Annette's got the spirit in her and she's going to like, she's going to get that money.

Rusty Close (25:29):

Matt does not run for \$13,000.

Austin Padgett (25:31):

No.

Rusty Close (25:32):

You got to up it if you want to see Matt run.

Austin Padgett (25:34):

That's right, and that is the pot: \$13,000. You follow me so far?

Rusty Close (25:38):

I'm with you. I'm with you.

Austin Padgett (25:39):

She's running. She finds an usher and asks, "Where do I go?" The usher directs her to guest services behind home plate, which is twice as far as necessary from the actual 50/50 table. She goes by a sheriff's deputy and the deputy confirms that she's heading in the right direction, and so she just keeps going. From the sound of the story, you would think this ballpark is just this morass. This giant hole that can never be...

Rusty Close (26:10):

Traversed. Yeah.

Austin Padgett (26:11):

Traversed, that's the word I'm looking for. She reaches guest services completely out of breath and she tells the staffer, "I won the 50/50, I'm here." The staffer tells her to calm down, which is a note... Which I'm like, first of all,

we probably shouldn't do that. But the staffer directs her up another 57 stairs to the actual 50/50 desk on the loge level. She walks this final stretch, which might be, this might be a conditioning thing as well. I mean, she's a regular, she's not a ball player.

Rusty Close (26:43):

Sure. I mean, she's put out a lot of effort. Yeah.

Austin Padgett (26:46):

She's gone a long way from section 234 all the way behind home plate, and now she's going to go up the stairs and claim. She thinks also that she's already won the thing. It's kind of already cooked. She goes up these 57 stairs to this actual 50/50 desk, and she thinks she's already made it because she made it to guest services in time. When she arrives at the 50/50 desk, they say, "Sorry, ma'am, you're late. We called another number." According to the foundation's timeline, she's 67 seconds too late.

Rusty Close (27:20):

Oh wow. Okay.

Austin Padgett (27:21):

Rusty, 67 seconds and she's misdirected by some folks, the first one worked there.

Rusty Close (27:29):

Sure.

Austin Padgett (27:30):

What do you think?

Rusty Close (27:31):

Obviously not the kind of law we practice, but if I'm her lawyer and she approaches me with this story, I'm thinking this is beautiful. We've got some amazing facts on our side.

Austin Padgett (27:42):

That's right.

Rusty Close (27:43):

Yeah.

Austin Padgett (27:46):

Yeah. Lifelong fans doing it for charity.

Rusty Close (27:51):

I'm picturing myself giving my closing argument to the jury.

Austin Padgett (27:55):

I love it. Yes. Now imagine yourself in those seats. Oh man.

Rusty Close (27:57):

Yes. It's your hundredth game.

Austin Padgett (28:10):

Right, exactly. The centennial. The Flynn's contacted the Brewers management that night and a representative promised to review the footage. I should say all these facts mainly come from the Flynn's' side.

Rusty Close (28:10):

Sure. Yeah.

Austin Padgett (28:12):

Take these with a little bit of grain of salt here.

Rusty Close (28:15):

A grain the size of salt you would find on a pretzel at a Milwaukee Brewers game.

Austin Padgett (28:20):

That's right, exactly. Wrapping up a sausage to take down with the best Milwaukee has to offer. A representative promises to review the footage and call the next day, but the call never comes. After multiple follow-up attempts, they retain a Kenosha attorney, and the attorney sends a demand letter and asks to preserve the video from July 13th. Weeks later, the Brewers show the Flynn's selected surveillance videos in a closed-door meeting on a small laptop. There's no recording allowed and from all accounts, the timestamps are unreadable and they don't include the full sprint footage.

Rusty Close (29:02):

You're saying the Brewers didn't piece together a video, camera by camera by camera?

Austin Padgett (29:08):

Yeah, it turns out this isn't a grassy knoll type of incident. But I mean, to these folks, \$13,000 would have been a nice prize, it sounds like.

Rusty Close (29:18):

Well, there's also principle involved here. You know what I mean?

Austin Padgett (29:20):

Yeah, absolutely. Always. The Brewers offer the Flynn's what is described as a couple of grand and some tickets, and they rejected it. Matt says, "We've asked for the video that proves either way if we were there or not. If we didn't make it, we don't want the money."

Rusty Close (29:39):

Yeah, okay.

Austin Padgett (29:40):

At this point, if I'm the attorney, I'm saying take the money. But it's the principle of the matter, they want to know

if they made it. I don't know if the dispute is whether they made it to the 50/50 table or to the guest services table, because the arguments still come in that, you know, what counts.

Rusty Close (29:55):

Yeah, I think maybe if I'm the wife here, I might smack Matt on the hand and say, "Keep your mouth shut. It's not a matter of did we make it or not, because we don't even know where we're supposed to make it to."

Austin Padgett (30:05):

Yeah, you were walking, Matt. I was running.

Rusty Close (30:08):

Yeah, yeah, that's right. You just stay back there and keep your mouth shut.

Austin Padgett (30:11):

That's right. That's right. There's a lot of jokes. I wish I knew more about the situation here.

Rusty Close (30:16):

I know, I know.

Austin Padgett (30:17):

Yeah. So, on March 12, 2025, the Flynn's filed suit in Milwaukee County Small Claims Court seeking \$10,000 grand, which is the jurisdictional cap for that particular court, while the actual prize was, of course, \$13,000. Circuit Court Judge Carolina Stark granted summary judgment to the foundation, and here's why.

Rusty Close (30:40):

Oof, okay.

Austin Padgett (30:40):

It's because the official rules vested the foundation with, quote, "sole discretion to determine whether a participant with a winning raffle ticket is the official winner," end quote.

Rusty Close (30:50):

Ouch.

Austin Padgett (30:51):

The rules stated that failure to claim by the stated time results in disqualification and forfeiture. Under those terms, the court said it didn't matter whether the Flynn's could dispute the video timeline because the foundation had contractual authority to make the call themselves. That's the sole discretion part. What do you think of that?

Rusty Close (31:09):

Unbelievable. Unbelievable.

Austin Padgett (31:10):

It's one of the reasons I include, when I do rules, I include a lot of sole discretion at the sponsor's discretion to

make determinations on basically everything in the promotion, because if it comes up to, like, who gets to choose, I want it to be us. You know, because I want it to run the way we want it to run. I have this saying that I always go into these types of exercises with, and that's people ruin everything.

Rusty Close (31:35):

Very true.

Austin Padgett (31:37):

What I mean by that, of course, is that there are some people that manipulate the system and game everything. You can go into things with the best of intentions, and I've got a list of examples that I have for a presentation that I regularly give clients just to remind them that, like, you could go in with the best of intentions, but some people will come in and just ruin it.

Rusty Close (31:56):

Yeah, of course. They're going to take advantage however they can. They're going to look for every little loophole in the rules and how you didn't live up to what you said you were going to do, all those types of things.

Austin Padgett (32:05):

Yeah, yeah, exactly. This goes up on appeal. The Court of Appeals affirms it on May 19, 2026. The key holding is even if the Flynn's could cast doubt on the video evidence timeline, it wouldn't matter because the rules gave the foundation exclusive discretion.

Rusty Close (32:22):

Man.

Austin Padgett (32:23):

The court calls this, quote, "a limited right to be wrong," which is a great, that's a great one.

Rusty Close (32:28):

I live by that. I live by that.

Austin Padgett (32:30):

Absolutely. I exercise that right all the time.

Rusty Close (32:33):

It's my parenting style.

Austin Padgett (32:34):

Absolutely. The Flynn's' statutory argument that the foundation's rules conflicted with Wisconsin's raffle statutes was forfeited for not being raised below. I'm not sure exactly what their complaint was, but they never get to it. As you might expect out of small claims court and up on appeal, you don't get a wealth of documentation from the courts on this. They're pretty straightforward decisions.

Rusty Close (32:58):

Right, sure.

Austin Padgett (32:58):

Alright, Rusty, we'll get into this in just a few minutes. I've got several angles. I want some gut reactions to it. First, there's a rule change that's involved. After this incident, it looks like the Brewers relatively quietly changed the claim window from the end of the top of the seventh inning to 30 days out. Winners can now claim, make the claim until the ballpark closes or call this hotline that they've set up within 30 days. The argument from the Flynn's' attorney was that's a tacit admission that the one-inning rule was unreasonable. Any thoughts on that?

Rusty Close (33:35):

Yeah, 30 days seems like quite a maybe overcorrection. I could even imagine it being till the end of the game or something like that. The half-inning thing seemed a little unreasonable. You know what it kind of reminds me of is when the pizza would be guaranteed in 30 minutes or less.

Austin Padgett (33:52):

Oh, yeah.

Rusty Close (33:52):

You can imagine a scenario where...

Austin Padgett (33:55):

The incentive structures.

Rusty Close (33:57):

Yeah, somebody... Oh my gosh, they're trying to find it, they slip and fall, they tear up their knee, whatever it is, and then now you've got a claim going the other way because you put this sort of arbitrary half-inning cap on it.

Austin Padgett (34:07):

Yeah, yeah, \$13,000 prize turns into a major slip and fall.

Rusty Close (34:10):

Right.

Austin Padgett (34:11):

Yeah, or they wreck into some other people and...

Rusty Close (34:13):

Sure.

Austin Padgett (34:14):

All the innocents involved. Think of the kids.

Rusty Close (34:16):

Oh, the innocents, yeah. The loss of innocence.

Austin Padgett (34:19):

That's right. That's right. Here's another one for you. I thought this was interesting. This is a good argument, I think. Not because it's going to win the day, but because it's interesting. The MLB implements a pitch clock change in 2023. This is the same season as this game comes in. The innings got shorter. The time between when a winning number is displayed and when the top of the seventh ends is compressed. But nobody thinks about the raffle rules when the rule change takes place. That's the argument.

Rusty Close (34:50):

It makes total sense to me. It has done miracles for shortening games and making them more watchable.

Austin Padgett (34:53):

Wildly more watchable.

Rusty Close (34:57):

But certainly didn't help the Flynn's.

Austin Padgett (34:58):

No, no, not in this instance. Not at all. The other one is there's been a lot of discussion about this case in connection kind of with the... If you ever did the points on the soft drink cap case, there was a Harrier jet that was in a commercial. There's a great documentary called, Where's My Jet? Or something like that on Netflix.

Rusty Close (35:17):

Right, right.

Austin Padgett (35:19):

There's a lot of comparisons to that, though I would tell you the scheming that had to be done for the Harrier jet was much more impressive than the fast hustle down behind home plate.

Rusty Close (35:30):

Sure, yeah.

Austin Padgett (35:31):

Just wanted to flag that. I think that's where we'll end it today. I've got some more kind of interesting promotions we can always talk about later, but I think with time, we'll kind of wrap it up at that. Anything you wanted to talk about, Rusty, or you just now deciding you're going to put sole discretion in a bunch of your agreements?

Rusty Close (35:50):

It makes me think there has to be a point at which the sole discretion stuff becomes too much because to its logical conclusion is, in their sole discretion, there's never a winner for whatever reason. I suppose there is some point where you just have to stop. It can't apply to everything. But it is interesting, and being in the position of the Flynn's where you're on the losing side of that, it's got to be so frustrating. The other thing, we talk a lot about how the stuff we do at work, it isn't a law school exam, right? We're people trying to do business, we're trying to help them do business. What I don't understand is it's \$13,000. Why wouldn't they just pay them? Why take this crazy stance of, "Well, we'll offer you a little bit of money. You were 67 seconds late. You were obviously trying to

get here, but sorry, too late for you.” The bad publicity, the bad will, all of that stuff, even if you’re legally right, just doesn’t make a lot of sense to me.

Austin Padgett (36:54):

Yeah, it’s interesting you bring that up because I would tell you the... At least the comments, I looked at some social media posts about this event at the time, and this may just be internet but the comments kind of go both ways. “They should just pay her. She was real close,” versus “The rules are the rules.”

Rusty Close (37:13):

The rules are the rules. Yeah.

Austin Padgett (37:15):

Type of stuff.

Rusty Close (37:16):

Yeah. Those are the people that I guarantee they just don’t go one mile above the speed limit. They’re “rules is rules” people.

Austin Padgett (37:21):

But they’re all talking about the Brewers at the same time. So, is there any bad publicity anymore? I don’t want to be the one to test that theory. It is a question. I don’t know the financials or what’s going to go in because it’s the foundation, not the team itself.

Rusty Close (37:35):

Well, that’s what I was going to say. Yeah. The foundation can stick to their rules, and the Brewers can step in and they get the goodwill and the good publicity because they say, “Look, these guys have been fans. They’ve been to a hundred games. These are the people we want to support.”

Austin Padgett (37:53):

Dude. Even a local business. Because I forget when the last time, it was fairly recently, when the Brewers have 12 wins in a row, there’s some burger place that gives everybody free burgers for a day.

Rusty Close (38:06):

Oh, wow. Okay. Yeah.

Austin Padgett (38:07):

It happened relatively recently. They were on their 11th game, they’re going into 12, and people are... They’re salivating, getting ready for that free burger. I remember seeing pictures, like, people holding up “Burger Time” once the win comes in.

Rusty Close (38:21):

God, people love free stuff.

Austin Padgett (38:22):

It's great. I should mention, one of the other aspects of sweepstakes is when you have that alternative method of entry that's free. I've run a lot of promotions for folks, just kind of doing the legal, but then also just kind of handling the operational aspect of it, collecting all the entries, doing drawings and stuff like that, just to make sure everything is up to snuff. One thing I didn't anticipate when I first started doing that work are there are services out there where people pay on a per-entry basis and they just flood the free entries.

Rusty Close (38:52):

Oh, wow. Okay.

Austin Padgett (38:53):

Yeah. If there's a postcard, you have to keep it in mind, because they are usually sending postcards. If you're requiring a handwritten entry, they're usually doing a 3x5 postcard. If you can do something where you're like, "It's 4x6," or it has a handwritten letter, trying to do something to try to manage, people trying to game the system, because you will get... If you're giving away a prize of real value, like a trip, a car, anything like that, you're going to get flooded with these free things, because there are these services online that are searching around for these and just doing free entries. But we'll save that for another day.

Rusty Close (39:28):

Yeah, for sure.

Austin Padgett (39:29):

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