

Appeals Court Decides that Only the U.S. Supreme Court Can Overrule the Antitrust Exemption in CPM Client San José's Lawsuit Against Major League Baseball

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Today a three judge panel of the Ninth Circuit Court of Appeals in San Francisco said it is up to the U.S. Supreme Court to determine whether baseball's antitrust exemption has "continued vitality." The decision was issued in the City of San José's antitrust case against Major League Baseball and Commissioner Bud Selig. In its lawsuit, San José asserts that, pursuant to an illegal exclusive territorial rights agreement, MLB has refused to permit the A's to relocate from Oakland to San José, purportedly because the San Francisco Giants "own" the territorial rights to San José.

For the past five years, the A's have been pushing Major League Baseball for permission to move to San José, over objections by the Giants, who consider the Santa Clara County part of their territory. As a result of the Giants' territorial rights, MLB has prevented the A's from exercising an Option Agreement with the City of San José and refused to grant permission for the A's to move to Silicon Valley.

Counsel for the City of San José, **Joseph Cotchett**, stated: "We argued to the Ninth Circuit Court of Appeals that, no matter which way they held, this case was going to the Supreme Court. We believe the Supreme Court will treat baseball like any other business in America and find MLB's supposed exemption does not apply to the A's proposed move. The A's should be allowed to relocate to San José."

The Ninth Circuit primarily relied on a U.S. Supreme Court decision, *Flood v. Kuhn*. That case was brought by St. Louis Cardinals' outfielder, Curt Flood, seeking to overturn MLB's then-existing reserve system. In

Attorneys

Anne Marie Murphy

Practice Areas

Antitrust & Global Competition

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today's decision, the Ninth Circuit panel wrote: "San Jose is ... asking us to deem *Flood* [v. *Kuhn*] wrongly decided, and that we cannot do. Only Congress and the Supreme Court are empowered to question *Flood*'s continued vitality, and with it, the fate of baseball's singular and historic exemption from the antitrust laws."

As Judge Ronald W. Whyte had ruled in the District Court, "[T]he A's are unable to exercise the option due to MLB's delay in conducting the vote to approve or deny relocation ... MLB [was] aware of the Option Contract and has engaged in acts ... indicating an intent to frustrate the contract."

In commenting on the Ninth Circuit's decision, Philip Gregory noted: "Even the Ninth Circuit recognized that this exemption is 'one of federal law's most enduring anomalies.' They even went so far as to find that not "all antitrust suits that touch on the baseball industry are barred.' Yet the Ninth Circuit determined our claims fall under the antitrust exemption for the business of baseball. On behalf of the citizens of San José, we look forward to testing the continuing validity of this exemption with the Supreme Court."

In its brief, San José had argued that baseball should no longer have an antitrust exemption or limit the exemption to player issues under the "reserve clause": "MLB has operated and continues to openly operate in violation of American antitrust laws based on 1922 legal authority that is currently unsupported." As the City stated in its Opening Brief, "MLB has conducted business in violation of the antitrust laws of the United States since the United States Supreme Court decision in *Federal Baseball Club*, a decision that was dubious in 1922 and indefensible in 2014. Major League Baseball as a sport emphasizes competition. Yet Major League Baseball as a business refuses to believe it is subject to the same antitrust rules that apply to all other sports."

On **June 18, 2013**, the City sued MLB in federal court for antitrust violations and interference with the City's Option Agreement with the A's. The appeal is from the order by Judge Whyte, deciding MLB was exempt from federal and state antitrust laws. The City of San José also has a separate lawsuit bringing claims for tortious interference against MLB and Commissioner Selig.

In **February 2014**, San José asked to expedite its Federal Appeal. To support its motion, San José submitted a **January 30, 2014** letter from Lew Wolff, managing partner of the A's, stating: **The A's consider "the Option Agreement to be a valid and enforceable agreement" and expect "that the Option Agreement will be honored" by the City.**

MLB has made allegations concerning a previously undisclosed letter, allegedly sent to Lew Wolff from Commissioner Selig on **June 17, 2013**. According to MLB, Commissioner Selig **secretly denied** the A's request to relocate to San José because "he was not satisfied with the club's relocation proposal."

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“Major League Baseball claims there is a June 17, 2013 letter denying the A’s request to relocate to San Jose,” said **San José City Attorney, Richard Doyle**. “Yet MLB refuses to produce the June 17th letter. What is so secret? The citizens of San José are entitled to know what pressure MLB is putting on the A’s to stay in Oakland.”

The case is *City of San José, et al. v. Office of the Commissioner of Baseball, et al.*, Case No. 14-15139, in the Ninth Circuit Court of Appeals. **Cotchett, Pitre & McCarthy, LLP**, along with the **Office of the City Attorney**, represent Plaintiffs the City of San José and the San José Diridon Development Authority.