

# CPM Client City of San Jose Prevails on Motion to Expedite Federal Appeal Against MLB

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Federal Court of Appeal Allows City to Hasten Outdated Antitrust Ruling  
02.20.2014

On February 20, 2014, a federal appeals court granted the City of San José's Motion to Expedite its Federal Appeal in the City's antitrust case against Major League Baseball and Commissioner Bud Selig. In granting the Motion, the Ninth Circuit Court of Appeals in San Francisco, paved the way for speedy review of the trial court's order dismissing the City's antitrust and unfair competition claims. The City's opening brief is due March 5, 2014.

Counsel for the City of San José, **Philip Gregory** of Cotchett, Pitre & McCarthy, stated: "The Court of Appeal clearly recognizes the urgency of determining San José's antitrust claims that MLB and Commissioner Selig are preventing relocation of the A's to San José. As Judge Ronald W. Whyte ruled in Federal 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 opposing the City's Motion to Expedite, MLB had argued that the Option Agreement was "an invalid contract between San José and the Athletics." To contradict MLB's assertion, the City submitted a January 30, 2014 letter to the City from Lew Wolff, owner of the A's, clearly 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.

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, who decided MLB was exempt from federal and state antitrust laws. "Judge Whyte determined

## Attorneys

Anne Marie Murphy

## Practice Areas

Antitrust & Global Competition

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our antitrust claims fall under the antitrust exemption for the business of baseball,” stated **Joseph Cotchett**. “We look forward to testing the continuing validity of this exemption with the Court of Appeals. On behalf of the citizens of San José, we are excited that the Court of Appeals agreed with us and is placing the case on the next available calendar after completion of briefing.” The district court previously held that the court was bound by a Supreme Court case, but questioned the continued validity of that case.

The City of San José also has claims for tortious interference against MLB and Commissioner Selig. The City recently made allegations concerning a secret letter, allegedly sent to Lew Wolff (managing partner of the A’s) by Commissioner Selig on June 17, 2013. According to the City’s complaint, MLB claims Commissioner Selig secretly denied the A’s request to relocate to San José. Mr. Gregory stated: “The City has not seen this purportedly secret denial and MLB refuses to release the contents of the letter to the City or the public.”

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.

Click on the link below to view the Order granting the Motion to Expedite.