

CPM Client San Jose Files Argument in Federal Appeals Court Against MLB

City Asks Federal Court of Appeal to Limit MLB's Antitrust Exemption
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The City of San José filed its opening brief with the federal appeals court in the City's antitrust case against Major League Baseball and Commissioner Bud Selig. In its brief before the Ninth Circuit Court of Appeals in San Francisco, San José argued 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.' In its brief, San José asserted that, pursuant to this 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 exclusive territorial rights to San José.

As stated in the 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."

Counsel for the City of San José, **Philip Gregory of Cotchett, Pitre & McCarthy, LLP**, stated: "We believe the Court of Appeal will recognize that baseball's supposed exemption does not apply here and should not allow MLB to prevent 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.'"

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Practice Areas

Antitrust & Global Competition

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On **February 20, 2014**, this same federal appeals court granted San José's Motion to Expedite its Federal Appeal. In granting the Motion, the Ninth Circuit Court of Appeals in San Francisco paved the way for speedy review of the trial court's ruling on the City's antitrust and unfair competition claims. In opposing the City's Motion to Expedite, MLB argued that the Option Agreement was "an *invalid contract* between San José and the Athletics." To contradict MLB's assertion, San José 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.**

In **June 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 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 delighted that the Court of Appeals 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."

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. A copy of the cover page of the Opening Brief is attached.

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 Opening Brief.