

Competition Close-Up

Minor League Players Strike Out with First Circuit Wage-Fixing Appeal

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Minor League Baseball players lost their First Circuit appeal, ending their bid to overturn century-old Supreme Court precedent establishing baseball as exempt from the antitrust laws. While the players hoped to upend longstanding precedent, the First Circuit's decision was not based on interpretation of substantive law, but the players' failure to preserve their appeal rights. See *Concepcion v. Office of the Commissioner of Baseball*, Case No. 23-1558, -- Slip Op. -- (First Cir. May 19, 2025); *Fed. Baseball Club of Baltimore v. Nat'l League of Pro. Base Ball Clubs*, 259 U.S. 200 (1922).

The players challenged Major League Baseball under Section 1 of the Sherman Act. The players alleged the MLB is an illegal cartel artificially holding down pay for minor league players in Puerto Rico. The players hoped to overturn a longstanding (and anachronistic) quirk of antitrust law that has held the business of baseball is one of "purely state affairs." See *Fed. Baseball*, 259 U.S. at 209 (challenging a conspiracy to buy up or destroy a rival baseball league). This characterization by Justice Oliver Wendell Holmes places the sport outside the reach of the antitrust laws which prohibits restraints of trade **among** the several states. No other sport has a similar exception which the Court has affirmed as a question for Congress to correct. *Radovich v. Nat'l Football League*, 352 U.S. 445, 451-52 (1957) (finding that Football was not entitled to the same exemption); *Toolson v. New York Yankees, Inc.*, 346 U.S. 356, 74 S. Ct. 78, 98 L. Ed. 64 (1953) (reaffirming *Fed. Baseball* and noting that any changes to its holding should come from Congress); *Flood v. Kuhn*, 407 U.S. 258, 285 (1972) (denying a challenge to baseball's reserve clause which at the time allowed teams nearly unchecked control over which team a player was on and how much they were paid and reiterating any "loophole" was for Congress to close). In 1998, Congress passed the Curt Flood Act—named posthumously for the center fielder—and finally limited the antitrust exception. However, it did so only with respect to the rights and obligations between major league players and owners. The exception remains intact for minor league players and for other issues of competition such as the number of major and minor league teams, broadcast rights, and merchandising. Curt Flood Act of 1998, Pub. L. No. 105-297, § 2, 112 Stat.

The District Court referred the League's motion to dismiss to a magistrate judge for proposed findings and recommendations. Magistrate judges play a large role in the federal judiciary and are perceived as vital to the timely and effective disposition of cases. They are particularly common in complex cases such as antitrust. Pursuant to 28 U.S. Code § 636(c), district courts may refer matters to a magistrate judge for proposed findings and recommendations which the district court may then accept, reject, or modify, in whole or in part, upon the filing of written objections. While the district court's review of the magistrate's report and recommendation (R&R) is *de novo*, as a practical matter many R&Rs are accepted.

In this case, the magistrate judge recommended dismissal of the players' complaint, based solely on issues of law. The R&R stated that failure to file specific objections would be a waiver of the right to appellate review. The players' did not object to the R&R, which was then nevertheless reviewed *sua sponte* by the district court and accepted on a finding that it was well reasoned and free of plain error. Before the First Circuit, the players' argued that any objections to the R&R to the district court would have been "futile" and a "waste of time" for both the parties and the court, because the dismissal was based solely on issues of law to which the district court was bound and therefore could not

reject or modify. They sought to invoke an equitable doctrine that excuses the waiver of the right to appeal under the circumstances and in light of the importance of the legal question at issue. The First Circuit disagreed, emphasizing in particular that waiver should not be excused in circumstances where important issues of statutory interpretation require adequate briefs at all levels.

The fate of this latest attempt to attack baseball's longstanding antitrust exemption is a reminder to practitioners and clients that while some acts in litigation may appear to be futile and waste time or money, they can be crucial at preserving rights down the line.