



NFL Deflategate Suit: Paving The Way For Forum Shopping in Federal Court

August 17, 2015

When a plaintiff decides to bring a lawsuit, one of the most crucial decisions he has to make is which judicial forum the case should be brought in. Many people only distinguish between state and federal courts. However, significant differences exist between the federal courts themselves. These differences can affect not only the parties' litigation strategies but also the ultimate decision. Just this past month, forum shopping became a critical issue in the "Deflategate Suit" brought by the National Football League Management Council ("NFL") against the National Football League Players Association ("NFLPA"). The outcome of this forum dispute could prove detrimental to the NFLPA and the New England Patriots.

In January 2015, after the AFC Championship Game, controversy erupted as some of the New England Patriots' game balls arguably tested below mandated air pressure levels. Following a purported investigation, on May 11, 2015, the NFL suspended Patriot's quarterback Tom Brady, without pay, for the first four games of the 2015 NFL regular season. On May 14, 2015, pursuant to the controlling collective bargaining agreement, the NFLPA, the exclusive representative of all NFL players, appealed Brady's suspension, obtaining a hearing on the issue. This hearing took place on June 23, 2015, before Roger Goodell, the NFL Commissioner (the "Commissioner"). On July 28, 2015, the Commissioner issued a final written decision denying the appeal and upholding the suspension. Just a few hours later, in an intriguing and calculated move, the NFL used its knowledge of the release of the Commissioner's decision to file suit in the United States District Court for the Southern District of New York for a judicial order confirming the Commissioner's decision. Historically, the Southern District of New York has been very deferential to arbitration awards and to processes established by collective bargaining agreements, making it favorable to the NFL's legal position.

On the following day, the NFLPA filed suit in a Minnesota federal court in an attempt to move the case to a more "player-friendly" venue. Just this past year, the Minnesota district court overruled the NFL's disciplinary decision in the Adrian Peterson child abuse case. This time around, however, Judge Richard H. Kyle "perceive[d] no reason for th[e] action to proceed in Minnesota" and, without affording either side a hearing on the issue, denied the NFLPA's attempt to file based on the "first-to-file rule." The first-to-file rule generally gives priority to the first action filed over a subsequent action addressing similar issues. As a result, the NFLPA is now forced to litigate as a defendant in the Southern District of New York.

Whether the NFL's decision to use its prior notice of the Commissioner's decision to file first was an excellent or underhanded legal tactic is up for debate. Since Brady's suspension is for the first four games of the season, the

NFLPA needs to resolve the issue as quickly as possible. As such, it is unlikely that the venue issue will be disputed in spite of the fact that the NFLPA may have a valid argument based on the “anticipatory suit exception” to the first-to-file rule. The idea behind this exception is that a party should not lose its choice of venue because the other party anticipated the impending suit and preemptively filed first in a different court, resulting in injustice to the second-to-file party. With the unlikelihood of this issue being litigated, parties who anticipate obtaining an arbitration award in the near future should, especially in time-sensitive situations, prepare papers to file in the court of their choosing (assuming proper jurisdiction) in well advance to the release of the arbitration decision. Being the first to file could mean the difference between winning and losing.

If you have any questions about choice-of-venue, the first-to-file rule, the anticipatory suit exception, or are looking to confirm an arbitration award, please contact James G. Ryan at jryan@cullenanddykman.com or at 516-357-3750.

A special thank you to Cecilia Ehresman, a law clerk at Cullen and Dykman, for her assistance with this blog post.