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Class-action lawsuit by DFS users against MLB may signal what's on deck for leagues that are affiliated with the budding sports betting industry

By Christopher Queenin, Brian Kelly, and Matthew McLaughlin

A class-action complaint filed in federal court in New York yesterday against Major League Baseball, the Houston Astros, and the Boston Red Sox related to daily fantasy sports (DFS) may be an indication of how plaintiffs' lawyers will try to bring "sports betting" claims following on-the-field controversies and scandals.

The complaint in *Kristopher R. Olson v. Major League Baseball, et al.* seeks monetary damages from MLB and the teams on behalf of DFS users who participated in MLB DFS contests when the teams were allegedly involved in electronic sign-stealing, which is not permitted under MLB's rules. The primary claim is that the defendants violated numerous states' consumer protection laws.

In DFS contests, which most states expressly define as a game of skill that is not gambling, users compete against one another by building a roster of professional athletes and earning points based on the actual statistical performance of those athletes. The complaint alleges that "[b]ecause electronic sign stealing directly affects player performance statistics, teams and players that violate MLB's prohibition directly compromise the fairness and integrity" of DFS contests. According to the complaint, MLB was aware of the sign-stealing while it was happening and did not take reasonable steps to stop or disclose the rule violations, and had plaintiff known about the sign-stealing, plaintiff would not have participated in the MLB DFS contests.

The DFS users, however, appear to lack privity, and had no significant contact or relationship with MLB or any team. The plaintiff tries to address this issue by asserting that MLB invested in and was a "partner" with the DFS operator and marketed its services. Because of this purported arrangement, according to the complaint, MLB and its constituent teams had a financial stake in DFS competitions. However, most state consumer protection statutes—including Massachusetts, where the named plaintiff resides—require that the plaintiff and defendant be engaged in more than some minor or insignificant business relationship. Here, the relationship between the DFS users and the league appears tenuous at best.

This complaint is likely a preview of the types of lawsuits that will come as sports betting proliferates across the country and as sports leagues affiliate with sports betting operators. Just this

week, the NBA named theScore as the authorized sports betting operator of the NBA, which means theScore will gain access to official NBA statistical data. When the next sports controversy erupts—whether it be a scandal based on cheating, a significant blown call, or match fixing—opportunistic plaintiffs who placed bets will likely point to these types of business arrangements as a basis of recovery against the leagues and teams.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- Christopher Queenin at cqueenin@nixonpeabody.com or 617-345-1080
 - Brian Kelly at bkelly@nixonpeabody.com or 617-345-1065
 - Matthew McLaughlin at mmclaughlin@nixonpeabody.com or 617-345-6154
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