



Fantasy baseball players can rest easy – at least for now – thanks to the U.S. Supreme Court’s denial of Major League Baseball’s petition to hear an appeal on the so-called Fantasy Sports Case.

The decision affects not only fantasy baseball, but fantasy sports of every genre. According to the Fantasy Sports Trade Association, there are 7 to 8 million fantasy baseball players in the country, but more than 19 million people in the U.S. and Canada participate in a fantasy sports league of some sort. Little wonder that the NBA, NFL, and NHL, along with NASCAR, all filed briefs in support of baseball’s appeal.

Five years ago, MLB paid the Major League Baseball Players Association \$50 million for the exclusive right to license player names and statistics. The MLBPA had been licensing creators of fantasy baseball games and leagues, but with MLB’s resources and infrastructure, the parties believed the concept could be more profitable. MLB’s approach to generating revenue was three-fold: charge fees to those who had been using the statistics for free, increase licensing fees for those with a license, and limit the number of licenses in order to justify the increased fees.

MLB also prohibited fantasy sports leagues from creating their own games, requiring them to run MLB’s version of fantasy baseball. A number of fantasy game operators, including ESPN, CBS Sportsline, Fox Sports and Yahoo, complied.

C.B.C. Distribution and Marketing, Inc., the parent company of CDM Fantasy Sports, had a licensing agreement with the players union from 1995-2004. But when the company failed to agree on a licensing fee with MLB in 2005, they brought suit in federal court. CDM claimed that player names and stats were in the public domain, couldn’t be copyrighted, and under the First

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Amendment, anyone could use such information without a license.

In a September 2006 decision, the Federal District court agreed with CDM. MLB appealed to the U.S. Court of Appeals for the 8th Circuit, which affirmed the lower court ruling. MLB then petitioned the Supreme Court to hear the case. The Supreme Court declined, which effectively allowed the lower court decision to stand.

To anyone who has followed the case, the Supreme Court's decision was hardly surprising. Indeed, Bob Bowman, head of MLB Advanced Media, the internet arm of Major League Baseball, conceded as much in an interview with CNBC's Darren Rovell. "I don't think our reaction was one of great surprise," said Bowman.

Then why appeal after MLB lost the case in two lower courts? The answer is simple: Money, and lots of it. Players are charged fees to join fantasy sports leagues, plus additional fees for making trades. By MLB's own estimates, the fantasy sports business generates billions of dollars per year.

By refusing to hear the case, the Supreme Court sent a good news not-so-good news message to fantasy sports aficionados. A refusal to hear a case is not the equivalent of affirming the decision, which would have made the ruling the law of the land. In effect, the lower court decision is the law in the 8<sup>th</sup> Circuit, which consists of Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota and South Dakota, but not anywhere else.

Nothing prohibits MLB, or any other professional sports league, from pursuing another case on the same subject matter in any of the other ten geographic circuits in the country. Bowman intimated as much when he inaccurately said, "Until further action, that (the decision in the Fantasy Sports Case) is the law of the land...Further action may occur."

Additional fallout from the Fantasy Sports Case can be expected. MLB licensees will almost certainly refuse to make payments on their contracts and MLB will seek a revision of its agreement with the MLBPA. With nothing to license, and no revenue streams, it is unlikely that MLB will continue making payments to the union.

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With so much money at stake, it's understandable that MLB pressed on in the face of overwhelming odds against it, even at the risk of alienating its fans. Nor would it be surprising to see them wade back into court in the future. But for now, the costs to deliver – and play - fantasy sports should remain stable.

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**Jordan Kobritz** is a regular contributor to the [Business of Sports Network](#) . He is a former attorney, CPA, and Minor League Baseball team owner. He is an Assistant Professor of Sport Management at Eastern New Mexico University and teaches the Business of Sports at the University of Wyoming. Jordan can be reached at [jkobritz@mindspring.com](mailto:jkobritz@mindspring.com).

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