

BFA Publishes California Lawyers Association Article on Sunday Ticket Class Action

Sunday Ticket, a putative antitrust class action by commercial and residential DirecTV subscribers (hereinafter, the "Plaintiffs") on appeal to the Ninth Circuit from the Central District of California's dismissal, alleges that the out-of-market game telecasting arrangements between the National Football League ("NFL"), the individual teams ("NFL Teams"), and DirecTV—working together—suppress competition for the sale of live telecasts of NFL games in violation of Sections 1 and 2 of the Sherman Act, resulting in decreased choice and increased costs to consumers.

The panel, comprised of Circuit Judges Sandra S. Ikuta and N. Randy Smith and George Caram Steeh III, United States District Judge for the Eastern District of Michigan, reversed the district court's dismissal.

Judge Ikuta, writing for the panel, held that the Plaintiffs described *prima facie* antitrust violations: "[b]ecause the complaint alleges that the interlocking agreements in this case involve the same sorts of restrictions that *NCAA v. University of Oklahoma* concluded constituted an injury to competition." (*Sunday Ticket* at *9.), suggesting but not stating that a quick look approach to the rule of reason analysis might apply. The Ninth Circuit also concluded that the Plaintiffs were not required to establish a relevant market "because the alleged restrictions on the production and sale of telecasts constitute[d] 'a naked restriction' on the number of telecasts available for broadcasters and consumers ..." (*Id.*) Likewise, the majority concluded that the Plaintiffs had standing to challenge the agreements between the NFL Teams and the NFL under the co-conspirator exception to the standing limitation set forth in *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977): "if the direct purchaser conspires to limit the output that will ultimately be available to the plaintiffs, then the plaintiffs are directly impacted by the output limitation and have standing to sue." (*Sunday Ticket* at *13, citing *Apple Inc. v. Pepper, et al.*, Case No. 17-204 (May 13, 2019).) Judge Smith dissented on the issue of standing, writing that under Supreme Court and Ninth Circuit precedent, indirect purchasers like the Plaintiffs cannot use a pass-on theory of antitrust injury, and that the co-conspirator exception does not apply to an output-restriction conspiracy. (*Id.* Dissent at *15.)