

## 8th Circ. Revives NFL Salary Cap Antitrust Saga

By **Aaron Vehling**

*Law360, New York (June 20, 2014, 6:03 PM ET)* -- The Eighth Circuit on Friday revived the NFL Players Association's claims that the league and team owners conspired to set a secret \$123 million salary cap during the uncapped 2010 year, ruling that the players should be allowed to proceed with their suit alleging a settlement with the league was fraudulently obtained.

A Minnesota federal court had dismissed the players' bid to set aside a stipulated dismissal of antitrust claims stemming from a 1993 class action. The appeals court affirmed that court's decision to toss the players' claims that the settlement was invalid because the court had never approved it, but it reversed that court's decision to toss out the players' invalidation bid on grounds it was procured through misrepresentation, fraud or misconduct.

"The [NFLPA] bears a heavy burden in attempting to convince the district court that the dismissal was fraudulently procured," the appeals court said in its opinion. "We hold only that the [NFLPA] should be given the opportunity to meet this burden."

The NFL said in a statement on Friday that the decision was "entirely procedural in nature.

"Far from validating the union's claim, the court specifically highlighted the heavy burden that the NFLPA faces in establishing this claim, and we remain highly confident that the claim will be dismissed yet again," the NFL said.

The NFLPA, in its own Friday statement, said it was pleased with the ruling.

"Through discovery and a hearing, we can understand how collusion took place," it said. "We have notified the NFL of its obligations to preserve all relevant documents and communications."

The players had asked the appeals court in May 2013 to resurrect their case, after the lower court sacked it in December 2012 on grounds that the players waived their rights when they signed the new collective bargaining agreement in 2011.

The dispute stemmed from a 1993 settlement agreement following a series of antitrust lawsuits. The agreement allowed player salaries to be restricted by a team salary cap, and was renewed through 2010. The purpose of lifting the cap in 2010 was to nudge NFL owners to extend the agreement rather than go through a season where players can negotiate contracts with any team — a risky prospect in a year with no salary caps.

But there was no extension of that agreement, which expired in March 2011, and 2010 remained uncapped, according to the lawsuit. The league instituted the now-infamous lockout of the players after the agreement

expired, though the parties did eventually reach a settlement and a new 10-year collective bargaining agreement, according to court documents.

After the lockout ended, the NFL insisted on a stipulation of dismissal that would shield it from claims over any past violations of the 1993 agreement. Believing that stipulation protected them, the NFL owners in 2012 admitted that regardless of the 2010 rules, they had imposed a salary cap, according to the players' May 2012 suit. Four teams, including the Dallas Cowboys and the Washington Redskins, were also publicly penalized for not imposing such a cap.

Although the players argued before the lower court that the dismissal was invalid because the lower court never approved it, the lower court ruled in 2013 that such approval was not necessary because the agreement automatically went into effect after their previous settlement agreement expired in 2011.

In its June 20 opinion, the appeals court addressed two components of the players' appeal: that the 2011 dismissal is invalid because it purports to settle the claims of a certified class without court approval required by federal law, and that even if the dismissal is valid, it was obtained fraudulently and so the players should be allowed to seek relief.

The appeals court shot down the players' class claims, saying the labor claims settled in the dismissal agreement were not the claims of a certified class. It said the claims brought by the 1993 certified class are only peripherally linked by the 1993 settlement to the recent collusion claims, and that they each involve different plaintiffs, defendants and conduct.

In reversing and remanding the other argument, the appeals court said that a stipulated dismissal is a "judgment" under federal class action rules. Although federal law can be ambiguous about what constitutes a judgment, the circuit courts and several sections of the code indicate that a settlement can be considered a judgment, it said.

The law supports permitting a settling party to seek relief from a fraudulent settlement, according to the opinion.

The appeals court said that although "our holding should not be read as in any way expressing a view on the merits of the [NFLPA's] motion," the players should be allowed to have their claims of fraudulence heard."

The NFLPA is represented by Jeffrey Kessler, David Feher and David Greenspan of Winston & Strawn LLP, James Quinn of Weil Gotshal & Manges LLP, David Barrett, James Barrett, Daniel Schechter, Thomas Heiden and Michael Nelson of Latham & Watkins LLP, Barbara Berens of Berens & Miller PA and Mark Jacobson of Lindquist & Vennum PLLP.

The NFL is represented by Gregg H. Levy and Benjamin C. Block of Covington & Burling LLP and Daniel J. Connolly and Aaron D. VanOort of Faegre Baker Daniels SLLP.

The case is Reggie White et al. v. National Football League, case number 13-1251, in the U.S. Court of Appeals for the Eighth Circuit.

--Additional reporting by Sindhu Sundar. Editing by Stephen Berg.