

Appeal sends MLS back to court

Chance of settlement rests on players' freedom of movement

Baseball may not be the only American professional sport to be plagued by labor strife in 2001. Soccer is riddled by forces much different than those that threaten yet another upheaval in baseball, in which the two sides are fighting over huge chunks of vast revenues.



RIDGE MAHONEY

“There were a lot of errors in this case. We think the Court of Appeals is going to agree with us, and that's what we're presenting.”
— Jeffrey Kessler, lead counsel representing the MLS Players' Association.

There are no such soccer revenues to be divvied up, so it's easy to pick sides in this battle.

Both sides are wrong. Which side is more wrong than the other is indeterminable and irrelevant.

What is relevant is both sides are likely to continue being wrong for quite some time, and that time is extremely costly to the players, to the league, and to the sport.

The players' representatives have attacked the single-entity system in the courts and in the press as the underpinnings of MLS's restrictive policies as well as its staggering financial losses.

Documents submitted in evidence cite the league's losses at approximately \$250 million.

Yet players' primary objective is not to bring single-entity crashing down. The intent is gain some freedom of movement within the league upon expiration of contracts. Or so say their representatives.

"The problem on our side is that the players have no freedom whatsoever," said MLS Players' Association executive director John Kerr. "We can agree to a system that says these are the amounts of monies that these teams can afford to pay for salaries, but it's to be determined by the coach or general manager of each team who fits within that range."

That quest shall continue in the courts, yet their attorneys — rather than moving forward — are going back to square one.

The players' representatives have appealed to the First District Court of Appeals, which has jurisdiction in New England, a judge's dismissal of claims against single-entity and the jury verdict in favor of MLS. The original case was heard in U.S. District Court in Boston.

In an appeal, no new evidence is presented and no witnesses are called. After briefs are filed, a panel of three judges listens to each side's arguments and asks questions. The judges then issue a written opinion.

"The first thing is we're appealing the original decision of not letting us present single-entity to the jury," said lead counsel Jeffrey Kessler of the appeal filed by the

MLS Players' Association last month.

"It's that issue that the Court of Appeals is going to address first. It has nothing to do with the verdict because the jury never got to hear the arguments."

The league has won in court, the players have lost. But the wra-

LEAGUE HOLDS

FIRM. The operator-investors are smugly entrenched in the belief their policies are proper. Having won in court, any concessions they might make to the players would be token ones at best.

There's nothing inherent in the single-entity system or the imposition of a salary cap that prevents MLS from raising the minimum salary of \$24,000, instituting retirement benefits or allowing players some form of free agency. The league has simply refused to do so, although the sides discussed these topics as recently as last summer, shortly before the case went to trial.

"It has to do with allowing players to sign a contract and negotiate with another team in the league," said Kerr. "If you're going to be spending the same amount of money, with a salary cap, why can't you negotiate with various teams?"

Bolstered by its courtroom victories, the league now holds all the leverage. The time is ripe to extend an olive branch and negotiate a settlement, but men stung by \$10 million in court costs may not be in the mood to be magnanimous.

League executives have portrayed the MLSPA as pawns of the NFL Players' Association, whose offices house the MLSPA.

"We have never viewed this as a legal battle between the league and its players," MLS chief operating officer Mark Abbott said when the jury verdict was announced in December.

"It was a battle between us and the NFLPA. We had offered the players money we had allocated to spend on legal fees, and it was rejected. It goes to show definitely that the NFLPA had an agenda that is distinct from the best interests of the players."

Judge George O'Toole summarily dismissed claims against single-entity last April, and a jury verdict in December went in favor of defendants MLS and U.S. Soccer.



ED PURCELL

"We think the judge was wrong about single-entity and the Court of Appeals will agree with us on that," said Kessler. "I think he made a number of errors at the trial in terms of what evidence he allowed in, in terms of what he told the jury the law was concerning the claim that was presented to them."

"There were a lot of errors in this case. We think the Court of Appeals is going to agree with us, and that's what we're presenting."

NEW GAME IN

TOWN? A group that may try to wrest representation rights from MLSPA is researching its options, and must soon decide if it will make a push during spring training in Florida to win the players' favor.

"Your first hope would be to have successful collective bargaining," said attorney Steve Gans of his interest in forming a players' union. "The whole value is to have a partnership, which is something that soccer sorely needs."

The MLSPA is trying to head off this challenge

Had he possessed freedom of movement, Eric Wynalda (right, battling Chicago's DaMarcus Beasley) probably would not have returned to the New England Revolution.

by whipping up the specter of a strike.

"If they were to form a union, as some people have been urging, they would have to go on strike," said Kessler. "You think MLS can take a strike? I can't find a player in this league who would vote for a strike."

Gans points out the lawsuit need not be sacrificed and the players have several courses of action in addition to a strike. "The lawsuit can continue in the appeal," he said. "You can disband the union and continue with the lawsuit if you can't reach an agreement."

"Forming a union does not necessarily mean the lawsuit needs to be dropped. You hope it doesn't come to that. The idea is to reach an agreement both sides can live with."

That's an idea still lost in the blizzard of depositions, rhetoric, and court dates.

(Ridge Mahoney is a senior editor at Soccer America.)