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# [***Wyckoff v. Office of the Comm'r of Baseball***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5PCD-9GX1-F04K-J068-00000-00&context=)

United States Court of Appeals for the Second Circuit

August 31, 2017, Decided

16-3795-cv

**Reporter**

705 Fed. Appx. 26 \*; 2017 U.S. App. LEXIS 16728 \*\*; 168 Lab. Cas. (CCH) P11,046; 2017-2 Trade Cas. (CCH) P80,117; 2017 WL 3856454

JORDAN WYCKOFF, Individually and on behalf of all others similarly situated, DARWIN COX, Plaintiffs-Appellants, v. OFFICE OF THE COMMISSIONER OF BASEBALL, an unincorporated association doing business as MAJOR LEAGUE BASEBALL, ALLAN H. SELIG, ROBERT D. MANFRED, JR., KANSAS CITY ROYALS BASEBALL CORP, MIAMI MARLINS, L.P., SAN FRANCISCO BASEBALL ASSOCIATES LLC, BOSTON RED SOX BASEBALL CLUB L.P., ANGELS BASEBALL LP, CHICAGO WHITE SOX LTD., ST. LOUIS CARDINALS, LLC, COLORADO ROCKIES BASEBALL CLUB, LTD., THE BASEBALL CLUB OF SEATTLE, LLLP, THE CINCINNATI REDS, LLC, HOUSTON BASEBALL PARTNERS LLC, ATHLETICS INVESTMENT GROUP, LLC, ROGERS BLUE JAYS BASEBALL PARTNERSHIP, CLEVELAND INDIANS BASEBALL CO., L.P, CLEVELAND INDIANS BASEBALL CO., INC., PADRES L.P., SAN DIEGO PADRES BASEBALL CLUB, L.P., MINNESOTA TWINS, LLC, WASHINGTON NATIONALS BASEBALL CLUB, LLC, DETROIT TIGERS, INC., LOS ANGELES DODGERS LLC, LOS ANGELES DODGERS HOLDING COMPANY LLC, STERLING METS L.P., ATLANTA NATIONAL LEAGUE BASEBALL CLUB, INC., AZPB L.P., BALTIMORE ORIOLES, INC., BALTIMORE ORIOLES LIMITED PARTNERSHIP, THE PHILLIES, PITTSBURGH ASSOCIATES, L.P., TAMPA BAY RAYS BASEBALL LTD., RANGERS BASEBALL EXPRESS, LLC, RANGERS BASEBALL, LLC, CHICAGO CUBS BASEBALL CLUB, LLC, MILWAUKEE BREWERS BASEBALL CLUB, INC., MILWAUKEE BREWERS BASEBALL CLUB, L.P., NEW YORK YANKEES P'SHIP, Defendants-Appellees.2[[1]](#footnote-0)2

**Notice:** PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

**Subsequent History:** US Supreme Court certiorari denied by [*Wyckoff v. Office of the Comm'r of Baseball, 2018 U.S. LEXIS 3603 (U.S., June 11, 2018)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5SJ0-1CV1-F04K-F0JK-00000-00&context=)

**Prior History:** **[\*\*1]**Appeal from the United States District Court for the Southern District of New York (Gardephe, J.).

[*Wyckoff v. Office of the Comm'r of Baseball, 211 F. Supp. 3d 615, 2016 U.S. Dist. LEXIS 135443 (S.D.N.Y., Sept. 29, 2016)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5KTY-1G81-F04F-01S6-00000-00&context=)

**Core Terms**

Baseball, professional baseball, ***antitrust***, exemption, players, scouts, district court, League, major league baseball, baseball player, ***regulation***, factual allegations, ***anti trust*** law, acquisition, allegations

**Case Summary**

**Overview**

HOLDINGS: [1]-In light of the binding precedent from the U.S. Supreme Court and from the U.S. Court of Appeals for the Second Circuit, and the limited exception created by Congress in the Curt Flood Act, the court refused plaintiffs' invitation to adopt a narrower reading of baseball's ***antitrust*** exemption. Because the court was bound by that precedent, it held that defendants' conduct in this case was insulated from ***antitrust*** scrutiny; [2]-Based on plaintiffs' allegations, the district court properly concluded that professional baseball scouts were involved in the business of baseball and, therefore, that the complained-of conduct failed to state a claim for which relief could be granted under existing precedent.

**Outcome**

The district court's judgment was affirmed.

**LexisNexis® Headnotes**

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > ... > Defenses, Demurrers & Objections > Motions to Dismiss > Failure to State Claim

[***HN1***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5PCD-9GX1-F04K-J068-00000-00&context=&link=LNHNREFclscc1)[] **Standards of Review, De Novo Review**



The appellate court reviews a district court's dismissal pursuant to [*Fed. R. Civ. P. 12(b)(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=) de novo. When reviewing the dismissal of a complaint for failure to state a claim, the court accepts as true the factual allegations in the complaint and draws all reasonable inferences in plaintiff's favor.

***Antitrust*** & Trade Law > Sherman Act > Scope > Exemptions

[***HN2***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5PCD-9GX1-F04K-J068-00000-00&context=&link=LNHNREFclscc2)[] **Scope, Exemptions**



*Section 1 of the Sherman Act* prohibits that every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce. *15 U.S.C.S. § 1*. Since 1922, however, the U.S. Supreme Court has recognized a judicially created exemption from ***antitrust*** ***regulation*** for the business of baseball. Despite heavy criticism, the Supreme Court has repeatedly affirmed baseball's ***antitrust*** exemption.

***Antitrust*** & Trade Law > Sherman Act > Scope > Exemptions

[***HN3***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5PCD-9GX1-F04K-J068-00000-00&context=&link=LNHNREFclscc3)[] **Scope, Exemptions**



In 1998, Congress passed the Curt Flood Act, which created an exception to baseball's ***antitrust*** exemption for major league baseball players; refer to [*15 U.S.C.S. § 26b*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GP11-NRF4-44NY-00000-00&context=). The Act clearly stated that this exception applied only to major league baseball players and not to others "employed in the business of organized professional baseball." [*15 U.S.C.S. § 26b(b)(5)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GP11-NRF4-44NY-00000-00&context=).

**Counsel:** Appearing for Appellants: Garrett R. Broshuis, Korein Tillery, LLC (Robert L. King, George A. Zelcs, on the brief), St. Louis, MO. Judith S. Scolnick, Peter A. Barile, III, Christopher M. Burke, Scott + Scott, Attorneys at Law, LLP, New York, NY, and San Diego, CA. Michael Dell'Angelo, Patrick F. Madden, Berger & Montague, P.C., Philadelphia, PA.

Appearing for Appellees: Elliot R. Peters, Keker & Van Nest LLP (John W. Keker, R. Adam Lauridsen, Thomas E. Gorman, on the brief), San Francisco, CA. Elise M. Bloom, Adam M. Lupion, Proskauer Rose LLP, New York, NY.[[2]](#footnote-1)3

**Judges:** Present: ROSEMARY S. POOLER, GERARD E. LYNCH, Circuit Judges. BRIAN M. COGAN,[[3]](#footnote-2)1 District Judge.

**Opinion**

**[\*28]** **SUMMARY ORDER**

**ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the judgment of said District Court be and it hereby is **AFFIRMED**.

Plaintiffs-Appellants Jordan Wyckoff, individually and on behalf of other professional baseball scouts, and Darwin Cox (collectively, "Plaintiffs"), appeal from the November 3, 2016 judgment of the United States District Court for the Southern District of New York (Gardephe, *J.*). That judgment**[\*\*2]** dismissed Plaintiffs' purported class action suit alleging violations of the *Sherman Act*, [*New York's Donnelly Act*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CT3-0WS1-6RDJ-84HF-00000-00&context=), and the [*Fair Labor Standards Act*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GRY1-NRF4-42MH-00000-00&context=) by the Office of the Commissioner of Baseball, doing business as Major League Baseball, its current and former Commissioner, and its 30 professional baseball clubs (the "Franchises") (collectively, "Defendants"). We assume the parties' familiarity with the underlying facts, procedural history, and specification of issues for review.

Plaintiffs argue primarily that Defendants conspired to decrease competition in the labor market for professional baseball scouts in violation of the Sherman Act and New York's Donnelly Act. Moreover, they argue that the district court erred by ignoring factual allegations indicating that the professional baseball scouts' claims fall outside professional baseball's long-recognized exemption from ***antitrust*** ***regulation***. We disagree and affirm the district court's decision.

[***HN1***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5PCD-9GX1-F04K-J068-00000-00&context=&link=clscc1)[] This Court reviews a district court's dismissal pursuant to [*Federal Rule of Civil Procedure 12(b)(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=) de novo. [*Stratte-McClure v. Morgan Stanley, 776 F.3d 94, 99-100 (2d Cir. 2015)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5F28-PT31-F04K-J11Y-00000-00&context=). When reviewing the dismissal of a complaint for failure to state a claim, this Court accepts as true the factual allegations in the complaint and draws all reasonable inferences**[\*\*3]** in plaintiff's favor. *See* [*Adelson v. Harris, 774 F.3d 803, 807 (2d Cir. 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5DW5-DCK1-F04K-J0YS-00000-00&context=).



[***HN2***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5PCD-9GX1-F04K-J068-00000-00&context=&link=clscc2)[] *Section 1 of the Sherman Act* prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce." *15 U.S.C. § 1*. Since 1922, however, the Supreme Court has recognized a judicially created exemption from ***antitrust*** ***regulation*** for the business of baseball. *See* [*Fed. Baseball Club of Balt. v. Nat'l League of Prof'l Baseball Clubs, 259 U.S. 200, 208-09, 42 S. Ct. 465, 66 L. Ed. 898, 20 Ohio L. Rep. 211 (1922)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-45Y0-003B-H2DX-00000-00&context=). Despite heavy criticism, the Supreme Court has repeatedly affirmed baseball's ***antitrust*** exemption. *See* [*Toolson v. New York Yankees, Inc., 346 U.S. 356, 357, 74 S. Ct. 78, 98 L. Ed. 64 (1953)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-JF70-003B-S4WM-00000-00&context=) (per curiam) ("[T]he business of providing public baseball games for profit between clubs of professional baseball players was not within the scope of the federal ***antitrust*** laws."); [*Flood v. Kuhn, 407 U.S. 258, 282, 284, 92 S. Ct. 2099, 32 L. Ed. 2d 728 (1972)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-D6K0-003B-S2JP-00000-00&context=) (recognizing that baseball's ***antitrust*** exemption was an established "aberration" and "adher[ing] once again to *Federal Baseball* and *Toolson* and to their application to professional baseball"). Our Court has applied this precedent **[\*29]** to exempt from ***antitrust*** ***regulation*** certain claims brought by professional baseball umpires against the American League. *See* [*Salerno v. Am. League of Prof'l Baseball Clubs, 429 F.2d 1003, 1005 (2d Cir. 1970)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-KJ50-0039-X2H9-00000-00&context=) (Friendly, *J.*) ("[P]rofessional baseball is not subject to the ***antitrust*** laws.").



[***HN3***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5PCD-9GX1-F04K-J068-00000-00&context=&link=clscc3)[] In 1998, Congress passed the Curt Flood Act, which created an exception to baseball's ***antitrust*** exemption for major league baseball players. *See* [*15 U.S.C. § 26b*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GP11-NRF4-44NY-00000-00&context=). The Act clearly stated that this exception**[\*\*4]** applied only to major league baseball players and not to others "employed in the business of organized professional baseball." *Id.* [*§ 26b(b)(5)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GP11-NRF4-44NY-00000-00&context=).



In light of the binding precedent from the Supreme Court and from this Circuit, and the limited exception created by Congress in the Curt Flood Act, we refuse Plaintiffs' invitation to adopt a narrower reading of baseball's ***antitrust*** exemption here. Because we are bound by that precedent, we hold that Defendants' conduct in this case is insulated from ***antitrust*** scrutiny.

Plaintiffs' own allegations foreclose their argument that they are not involved in the business of baseball. The complaint states that professional baseball scouts "assess baseball players and project the players' abilities to perform at the major league level, and they present that information to the Franchises." App'x at 41 ¶ 93. Plaintiffs acknowledge that this information is "important and valuable to the Franchises," because it "guide[s] the Franchises' decisions on how to rank players to be acquired" through free agency, the amateur draft, and other player acquisition means. App'x at 41 ¶¶ 95-96. Plaintiffs further acknowledge that because the Franchises "place importance on the acquisition and development of**[\*\*5]** baseball players, . . . a scout who is good at evaluating baseball players has great value." App'x at 48 ¶ 127. Based on Plaintiffs' allegations, the district court properly concluded that professional baseball scouts are involved in the business of baseball and, therefore, that the complained-of conduct fails to state a claim for which relief can be granted under existing precedent.

We have considered the remainder of Plaintiffs' arguments and find them to be without merit. Accordingly, the judgment of the district court hereby is AFFIRMED.

**End of Document**

1. 2The Clerk of Court is respectfully directed to amend the caption as above. [↑](#footnote-ref-0)
2. 3Appearing for Appellees other than Baltimore Orioles Limited Partnership and Baltimore Orioles, Inc. [↑](#footnote-ref-1)
3. 1Judge Brian M. Cogan, United States District Court for the Eastern District of New York, sitting by designation. [↑](#footnote-ref-2)