NASCAR Preliminary Injunction Casts Doubt on Antitrust Waivers

January 17, 2025

It is now 2025, and Michael Jordan keeps winning. On December 18, 2024, Judge Kenneth D. Bell of the District Court for the Western District of North Carolina granted Jordan's racing team, 23XI, and competitor Front Row Motorsports ("Plaintiffs") a preliminary injunction against NASCAR ("Defendant") ordering that Plaintiffs be allowed to compete under the terms of the charter agreement even though they refused to be bound by that agreement's antitrust waiver provision. While on appeal, 23XI and Front Row Motorsports will be able to compete without their drivers being forced to compete in "open" slots.

BACKGROUND

A "chartered car" in NASCAR refers to a race car belonging to a team that holds a "charter," which essentially guarantees that team entry into every Cup Series race throughout the season and a guaranteed share of the prize money. A charter gives a team a more secure position within NASCAR and greater financial stability compared to non-chartered teams. Front Row and 23XI each held two charters which expired on December 31, 2024. In addition to "chartered cars," NASCAR races may include a few "open" cars who must qualify for each race separately. In recent race seasons, there have been 36 chartered cars, which leaves at most four open slots in a 40-car field for non-chartered teams looking to race their cars.

When negotiations for the 2025 Charter Agreements began, Plaintiffs were wary of a Release provision in the 2025 Charter Agreement that read:

> "Team Owner . . . hereby releases and forever discharges [NASCAR Event Management] . . . from all [claims] . . . arising out of or relating to the criteria used by [NASCAR Event Management] to determine whether or not to enter into, or to offer to enter into, a Charter Member Agreement with the Team Owner or any other Person . . . ."

Plaintiffs refused to sign the 2025 Charter Agreement because they felt the above provision barred any future antitrust claims that might be brought by racing teams under the Sherman Antitrust Act.

NASCAR PREVAILS IN THE FIRST ROUND OF LEGAL PROCEEDINGS

On October 2, 2024, Plaintiffs sought a preliminary injunction against Defendant. Plaintiffs asked the Court to enjoin Defendant from enforcing the Release provision in the 2025 Charter Agreement while the parties litigated whether the Sherman Antitrust Act invalidates it, and to allow them to compete during the 2025 season. To prevail on a Preliminary Injunction, a Plaintiff must establish that:

- he is likely to succeed on the merits,
- he is likely to suffer irreparable harm in the absence of preliminary relief,
- the balance of equities tips in his favor, and
- an injunction is in the public interest.

On November 8, 2024, the Court denied the Plaintiff's Motion for a Preliminary Injunction based on the second factor above without ruling on the other factors because there was only a *possibility* of irreparable harm as opposed to a *likelihood*. However, the Court also realized that circumstances might change and invited Plaintiffs to re-file their motion if irreparable harm to their businesses became likely.

NASCAR'S INITIAL VICTORY IS REVERSED IN ROUND 2

After that ruling, on November 18, 2024, 23XI driver Tyler Reddick notified the team that it had breached his Driver and Personal Services Agreement, which requires 23XI to "provide the Race Car prepared and entered by 23XI under a NASCAR Cup Series Charter Member Agreement . . . for Reddick to drive in all Cup Series Events," and gave 23XI 30 days to cure the breach. 23XI and Front Row Motorsports had executed similar deals with drivers Riley Herbst and Noah Gragson. Additionally, 23XI drivers Bubba Wallace and Corey Heim subsequently raised concerns about their team's status for the upcoming season.

Plaintiffs' relationships with sponsors also eroded after losing the first Motion for Preliminary Injunction. For example, on November 15, 2024, Monster Energy informed

23XI that it decided "to delay [its] 'Ultimate Race Weekend' Consumer Promotion to a later date" because "the uncertainty around 23XI, Tyler, and the relationship with N[ASCAR] for the start of the season" makes it "just too big of a risk." On November 23, 2024, 23XI received another email from Monster Energy, stating that it was reconsidering its entire relationship with 23XI. To the same effect, Front Row's largest sponsor, Love's Travel Stops, emailed the team on November 22, 2024, expressing its concern about Front Row's "ability to meet contractual obligations next season" given "the numerous uncertainties raised around . . . not having a team Charter, as the 2025 season approaches."

In light of these developments, Plaintiffs renewed their Motion for Preliminary Injunction against the defendant, NASCAR, on November 26, 2024. This time, the Court addressed each of the *Winter* factors to make its decision.

Likelihood of Success

The Court found likelihood of success on a narrow issue of law: that the Release provision waiving antitrust claims is unlawful. The Court explained that a monopolist cannot require that a party agree to release the monopolist from all claims that it is violating the antitrust laws as a condition of doing business. Any other rule, the Court reasoned, could allow a monopolist to transact only with those who consent to the monopolist's improper use of monopoly power. In so holding, the Court was clear that it was not reaching any broader claims about anticompetitive conduct by NASCAR.

Still, in reaching that narrow issue of law, the Court found that NASCAR possessed monopoly power over the market for premier stock car racing teams in the United States. The Court reached this conclusion in part because NASCAR's Cup Series is the only premier stock car racing series in the United States, and premier stock car racing is distinct from other types of motorsports like Formula 1 and IndyCar because of its unique cars and highly specialized racing teams. Thus, NASCAR fully controls which racing teams can compete at the highest level of stock car racing and effectively has a 100% market share.

Irreparable Harm, Balancing of Equities, and Public Interest

Having found likelihood of success on the merits, the Court found that the other requirements were easily satisfied.

The Court ruled that Plaintiffs faced a present prospect of irreparable harm because other drivers have similar contracts or have expressed a need for immediate resolution of the uncertainty surrounding the upcoming racing season, along with the potential impact that a lack of charters would have on relationships with key sponsors.

The Court also found that equity weighed in favor of granting the preliminary injunction because racing as an "open" team might strip Plaintiffs of the opportunity to race their most competitive team and risk several important sponsorships, while Defendants would not be significantly harmed (and perhaps not harmed at all) by allowing Plaintiffs to race on the same terms as other chartered teams.

Finally, the Court ruled that the public interest also favored an entry of a preliminary injunction because "NASCAR fans (and members of the public who may become fans) have an interest in watching all the teams compete with their best drivers and most competitive teams." Further, the public has an interest in pursuing legal claims in good faith, and the public interest in supporting freedom of contract is not undermined by preserving the status quo until the lawfulness of Defendant's conduct is resolved.

WHAT'S NEXT

Defendants have appealed the decision on the Release provision. In the meantime, litigation will continue on the underlying antitrust claims through the beginning of the NASCAR Cup Series season. Those claims include allegations of anticompetitive conduct by NASCAR in connection with non-compete agreements on racing teams, exclusive dealing agreements with racetrack owners, and the monopolizing acquisition of a competing stock car racing series. Further, sports leagues that anticipate negotiations with current or future franchises or members should assess whether their existing or proposed charters require franchises or members to release their right to make antitrust claims. This is especially true if the league could be argued to dominate its sport in the United States.

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