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Sophie Jacobi

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NEWS

The Business of Baseball: The Antitrust Exemption

Sophie Jacobi*

I. Introduction

Let's root, root, root for the home team, for if they don't win...they might not survive? Yes, according to Major League Baseball Commissioner Bud Selig. On opening day 2002, hope springs eternal for baseball fans, players, and owners alike. This year, more so than years past, fans are hoping that "this is their year," for fear their teams will not exist next year. During the winter, Major League Baseball¹ ("MLB") drastically attempted to balance its budget.² On November 6, 2001, MLB's owners, by a vote of 28 to 2,³ voted to contract the league by eliminating *at least* two teams.³ Therefore, despite the cold weather in many cities, opening day this year brought out the fans. The Philadelphia Phillies had 40-degree weather and 50,983 fans,⁴ the most since the 1994 home opener. The

* J.D. candidate, May 2003, Loyola University Chicago School of Law; M.S.W. candidate, May 2004, Loyola University School of Social Work; B.A. Psychology and Religious Studies, 1998, Bucknell University. The author would like to thank her family and friends for their help and support.

¹ There is no legal entity known as Major League Baseball, this term is used to refer to the joint operations of the American League of Professional Baseball Clubs, Inc. and the National League of Professional Baseball Clubs, Inc. *See* *Minn. Twins P'ship v. State of Minn.*, 592 N.W. 847, 847 n.1 (Minn. 1999).

² Hal Bodley, *Owners, Players Set to Begin Dealing with Contraction*, USA TODAY, Nov. 12, 2001, at 12C.

³ *Id.*

⁴ Robert Moran, *For Phillies Fans, A Case of the Opening-Day Shivers*, PHILA. INQUIRER, Apr. 6, 2002, available at 2002 WL 14968230.

Yankees had a full house at 55,771,⁵ and 34,351 fans came to watch the Montreal Expos win, almost four times last season's average of 7,935 fans.⁶

While the two major league teams to be eliminated were not officially named, most people assumed the unnamed teams to be the Montreal Expos and the Minnesota Twins because they are financially the weakest.⁷ However, the plan to eliminate two teams by the start of the 2002 season did not come to fruition.⁸ Plans were halted by the Minnesota Supreme Court's refusal to hear the appeal to lift the injunction compelling the Twins to honor their 2002 lease at their stadium, the Metrodome.⁹ This decision gives both teams at least one more season of play.¹⁰ Nevertheless, Bud Selig still intends to cancel at least two teams, and as many as four teams for the 2003 season, because "[b]aseball's economic state makes contraction 'absolutely inevitable.'"¹¹

Presently, both the Minnesota Twins and the Montreal Expos are no longer the top choices for contraction in 2003. The Twins are likely off the contraction list because a wealthy banker from Alabama is hoping to purchase them and buy the team a new ballpark.¹² The Expos, owned by MLB, are still in the running for contraction; however, they may be purchased and relocated to the Washington-Northern Virginia region.¹³ Consequently, teams that may be looking at their last season of play include the Florida Marlins, the Kansas City Royals, the Oakland Athletics, the Tampa Bay Devil Rays, and

⁵ Ken Davidoff, *Andy Likes a New York State of Mind*, NEWSDAY, Apr. 6, 2002, available at 2002 WL 2736913.

⁶ K.C. Johnson, *Expos Show Signs of Life*, CHIC. TRIB., Apr. 3, 2002, Sports at 4-1.

⁷ *Id.* See also Murray Chass, *Baseball Won't Drop Teams This Season*, N.Y. TIMES, Feb. 6, 2002, at D1.

⁸ Murray Chass, *For Teams, It's Survival; For Fans, It's About Scorecards*, N.Y. TIMES, Feb. 10, 2002, at D2. See also Chass, *supra* note 7, at D1.

⁹ *Id.*

¹⁰ Chass, *supra* note 7, at D1.

¹¹ *Id.*

¹² Monte Burke, *Show Me the Money*, FORBES, Apr. 1, 2002, available at 2002 WL 2214098. Note that if Donald Watkins' bid for the Minnesota Twins is accepted, he would be the Jackie Robinson of MLB owners. *Id.*

¹³ Murray Chass, *Contraction Plans? Anyone's Guess*, N.Y. TIMES, Feb. 7, 2002, at D6.

the San Diego Padres.¹⁴

How can twenty-eight owners sit down and decide to simply squeeze out two teams for the benefit of their own teams? Such dramatic action would seemingly be subject to legal sanctions because it is so unjust; but in fact, it is perfectly legal. If twenty-eight airline owners would convene and decide to fix prices and squeeze out another airline, there is no question violations of antitrust law would exist. MLB, however, is exempt from antitrust law.

Bud Selig wants Congress to maintain the antitrust exemption so that he can have control to even out the market and fight “for the Cincinnati of the world.”¹⁵ He believes that if the two weakest teams are knocked off, he can save the other small city teams, like the Cincinnati Reds, that are struggling to win games and make a profit. Selig claims that he can ensure there are fewer players to pay, thereby creating a larger pool of money for the owners.¹⁶

II. The History of MLB’s Exemption

Baseball’s exemption from antitrust law developed in common law. A trilogy of United States Supreme Court cases created and upheld the exemption. *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*,¹⁷ decided in 1922, is the first case of the trilogy. In *Federal Baseball*, the plaintiff, Federal League, tried to compete with defendants, the National League of Professional Baseball Clubs (the “National League”) and the American League of Professional Baseball Clubs (the “American League”), and failed.¹⁸ The Federal League argued that the defendants destroyed their league by inducing constituent clubs to leave the Federal League in order to join the National and American Leagues.¹⁹ The Federal League claimed that this conspiracy against them is a violation of antitrust law.²⁰ The Supreme Court, however,

¹⁴ *Id.*

¹⁵ Jim Litke, *Bud Selig Knows Winning Costs*, ASSOCIATED PRESS, Dec. 6, 2001, available at 2001 WL 31033531.

¹⁶ *Id.*

¹⁷ 259 U.S. 200 (1922).

¹⁸ *Id.* at 207.

¹⁹ *Id.*

²⁰ *Id.*

held that the defendants did not violate antitrust law.²¹

The plaintiffs first were awarded \$80,000, but the Court of Appeals of the District of Columbia reversed the judgment, holding that the defendants' actions did not fall within the Sherman Act.²² The Supreme Court affirmed the appellate decision.²³ The Court noted that although the business of baseball involves at least one club crossing state lines in order to make the public exhibition possible, exhibitions of baseball are purely state affairs.²⁴ The Court further stated that, "the transport [of baseball players] is a mere incident not the essential thing [of the business of baseball]."²⁵ Consequently, in 1922, baseball clubs were not subject to antitrust law because, according to the Supreme Court, the business of baseball did not involve interstate commerce.²⁶

The decision in *Federal Baseball* has survived two challenges in the Supreme Court.²⁷ The first challenge came thirty years later in 1953.²⁸ In *Toolson v. New York Yankees*,²⁹ MLB's professional players brought an action against MLB's owners.³⁰ The Supreme Court, however, did not review its 1922 decision. Instead, it affirmed the lower court's dismissal of the plaintiff's complaints based simply on the precedent of the *Federal Baseball* case.³¹ The Supreme Court subsequently gave four reasons for affirming the appellate court in *Toolson*: 1) Congressional awareness, but yet inaction, for three decades since the Court's ruling in *Federal Baseball*; 2) the fact that baseball has been left alone to develop with the understanding that it was exempt from antitrust laws; 3) the Court's concern for the retroactive consequences of overturning *Federal Baseball*; and 4) the Court's desire that any needed remedy was to be determined by

²¹ *Federal Baseball*, 259 U.S. at 209.

²² *Id.* at 208; Sherman Antitrust Act § 1 *et seq.*, 15 U.S.C. §§ 1-7 (2001).

²³ *Federal Baseball*, 259 U.S. at 209.

²⁴ *Id.* at 208.

²⁵ *Id.* at 209.

²⁶ *Id.*

²⁷ See *Toolson v. N.Y. Yankees*, 346 U.S. 356 (1953); *Flood v. Kuhn*, 407 U.S. 258 (1972).

²⁸ *Toolson*, 346 U.S. 356.

²⁹ *Id.*

³⁰ *Id.* at 357.

³¹ *Id.*

legislation, not by the court system.³²

In *Flood v. Kuhn*,³³ the third case in the exemption trilogy, the Supreme Court affirmed the lower court and followed the *Federal Baseball* precedent.³⁴ The detailed opinion by Justice Blackmun is incredibly meticulous, as it gives an account of the history of baseball as an American pastime, as well as a thorough history of the preceding antitrust litigation.³⁵ Curtis Flood was a professional player who played for the Saint Louis Cardinals for twelve years.³⁶ In 1969, Flood was traded to the Philadelphia Phillies as part of a multi-player deal.³⁷ Flood was not consulted and he was notified of the trade only by telephone after the trade was executed.³⁸ Flood filed suit against MLB and its owners.³⁹

In its decision, the Court undermined the *Federal Baseball* holding by stating that MLB is a business engaged in interstate commerce.⁴⁰ Nevertheless, the Court continued to uphold MLB's antitrust exemption by stating that it is an aberration, applying only to baseball and to no other professional sports.⁴¹ Furthermore, the Court noted that this aberration existed for over half a century, survived the Court's expanding concept of interstate commerce, and is fully

³² *Flood*, 407 U.S. at 273-74.

³³ 407 U.S. 258.

³⁴ *Id.* at 285.

³⁵ *See id.* at 260-280. *See also* Mary Diebel, *U.S. Deletes Part of Baseball's Antitrust Status*, PITTSBURGH POST-GAZETTE, Oct. 9, 1998, at C7 (noting that Justice Blackmun has been a lifelong baseball fan).

³⁶ *Flood*, 407 U.S. at 264.

³⁷ *Id.* at 265.

³⁸ *Id.*

³⁹ *Flood*, 407 U.S. 258. *See Hockey Dad Crossed Most Serious Line*, HOUSTON CHRON., Jan. 27, 2002, Sports at 2 (stating that Flood's challenge of baseball's reserve clause made him an outcast in management's eyes and it finished his career, but his efforts eventually spawned the free-agent movement that revolutionized the game with the Curt Flood Act of 1998).

⁴⁰ *Flood*, 407 U.S. at 282.

⁴¹ *Id.* at 287-88. *See Radovich v. Nat'l Football League*, 352 U.S. 445, 451 (1957) (sustaining a football player's claim against the NFL for an antitrust violation, as it specifically limited the rule established under *Federal Baseball* and *Toolson* to the "facts there involved, i.e., the business of organized professional baseball."); *United States v. Int'l Boxing Club of N.Y.*, 348 U.S. 236 (1955) (holding that boxing promoters are subject to civil action for claims under the antitrust laws because boxing is not exempt from such laws).

entitled to stare decisis.⁴² Moreover, the Court declared that MLB's exemption rests on a recognition of baseball's unique characteristics and needs, and does not change with the increased coverage and additional revenues from radio and television.⁴³ Additionally, the Court noted its concern for the retroactive consequences of lifting the exemption.⁴⁴ Finally, the Court stated that it "continues to be loath, 50 years after *Federal Baseball*. . .to overturn [the trilogy] when Congress, by its positive inaction, has allowed those decisions to stand for so long and, far beyond mere influence and implication, has clearly evinced a desire not to disapprove them legislatively."⁴⁵

In October 1998, Congress modified MLB's exemption from antitrust law through the creation of the Curt Flood Act.⁴⁶ The Act modifies the long-standing exemption because it applies antitrust law to labor relations for major league players.⁴⁷ The goal of the Curt Flood Act is to allow relations between labor and management to rule the game and end the strife between owners and players that disrupted the 1994 and 1995 seasons.⁴⁸

III. The Current Status of MLB's Exemption

Commissioner Bud Selig claims that MLB owners sustained a \$52.9 million operating loss this year, including interest payments and depreciation, as a result of incredibly high player salaries.⁴⁹ The Commissioner also purports that baseball is in an economic downward spiral because "fans want winners and winning is expensive."⁵⁰ Many people have called Commissioner Selig's

⁴² *Flood*, 407 U.S. at 276-77.

⁴³ *Toolson*, 346 U.S. at 282-83.

⁴⁴ *Id.* at 278-79.

⁴⁵ *Id.* at 283-84.

⁴⁶ 15 U.S.C. § 27a (2001); Diebel, *supra* note 35, at C7.

⁴⁷ 15 U.S.C. § 27a; Diebel, *supra* note 35, at C7.

⁴⁸ Diebel, *supra* note 35, at C7.

⁴⁹ *MLB's Top Lawyer Rips Forbes Report*, ASSOCIATED PRESS, Apr. 5, 2002, available at <http://www.msnbc.com/news/731544.asp#BODY> (last visited on Apr. 7, 2002).

⁵⁰ See Litke, *supra* note 15 (stating that yet, even the winners can still be the losers; noting the example that for the 2001 season, the Yankees spent the most money, made the most money (a profit of \$40.9 million) and went to the World Series, while the Arizona Diamondbacks beat them in the World Series and lost

accounting into question. Recently, Forbes Magazine stated that Commissioner Selig's math was erroneous, and that it calculated a \$75 million profit for MLB last year.⁵¹

Currently, the Curt Flood Act still stands as the only antitrust law that applies to MLB. Four years after the creation of the Curt Flood Act, the exemption discussion is still raging as a result of looming contractions and Selig's claim that MLB is losing money. Some people feel that Congress has not gone far enough with the Curt Flood Act, while others think that Congress should have left the antitrust exemption alone.⁵² Representative Jim Bunning of Kentucky, who is also a Hall of Fame pitcher, thinks the exemption should be repealed altogether, because MLB is a multibillion-dollar industry that should have to play by the same rules as other sports and businesses.⁵³ Bunning also contends that the exemption is "anti-competitive and anti-American."⁵⁴ On the other side is Commissioner Selig, who is convinced that MLB can balance itself out by contracting away two to four teams while being free from public scrutiny.

If antitrust laws applied to MLB, it is arguable that they would prevent teams from folding. Seemingly, however, fans and MLB consumers would at least gain a right of action against MLB. Furthermore, antitrust law may not prevent a person from buying a team and moving to another city, but it does seem that it would prohibit the owners from dictating which teams stay and which go.

The contraction plans will have an effect on fans of the closing teams, and on baseball fans in general. To see a team fold is sad and frustrating, even for a New Yorker, whose teams are not in danger of contraction.⁵⁵ It is frustrating to see player salaries and game ticket prices rise, while teams fold because of a lack of finances. It is sad to see a team fold, because it cannot inspire fans into the stadium. Baseball fans are becoming disillusioned with major league baseball. Contraction will also affect the businesses that base their venture around the baseball season. Bars, restaurants, and souvenir shops will have to close if the team closes.

\$32.2 million).

⁵¹ *MLB's Top Lawyer Rips Forbes Report*, *supra* note 49.

⁵² Diebel, *supra* note 35, at C7.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Note that New Yorkers have little to worry about, their teams, the Yankees and the Mets, are staying put. They both make money and can fill their stadiums.

A Congressional act is the only way that the antitrust exemption will cease to exist. Congress appears to be taking steps to analyze the antitrust exemption, but many believe the exemption is not going anywhere.⁵⁶ This is because the lawmakers enjoy MLB's lobby and contribution money.⁵⁷ Also, President George W. Bush is a former Texas Ranger owner and probably would not sign a bill removing the exemption, even if it reached his desk.⁵⁸ Consequently, not only has the Supreme Court established eighty years of precedent against removing the exemption, but there also seems to be some antagonism on behalf of Congress, and likely the executive branch, for getting rid of it.

⁵⁶ *Selig to Skip Senate Antitrust Hearing*, from http://sportsillustrated.cnn.com/baseball/news/2002/02.11/selig_senate_ap/ (last visited on Apr. 7, 2002).

⁵⁷ Barry Rozner, *Baseball Owners Spend Wisely in D.C.*, CHIC. DAILY HERALD, Feb. 6, 2002, Sports at 12.

⁵⁸ *Id.*