THE NATIONAL PASTIME OF THE AMERICAN JUDICIARY: REEXAMINING THE STRENGTH OF MAJOR LEAGUE BASEBALL'S ANTITRUST EXEMPTION FOLLOWING THE PASSAGE OF THE CURT FLOOD ACT AND THE SUPREME COURT'S RULING IN AMERICAN NEEDLE, INC. V. NFL

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I. Introduction 325
II. History of Major League Baseball's Antitrust Exemption 326
III. The Curt Flood Act 333
IV. Judicial Interpretation of the Business of Baseball 334
A. Courts Employing a Broad Interpretation 334
B. Courts Applying a Narrow Standard 338
V. Emerging Antitrust Scenarios Against Major League Baseball 341
VI. American Needle, Inc. v. NFL and Future Supreme Court Analysis of Baseball's Antitrust Exemption 342
VII. Conclusion 343

I. Introduction

Professional baseball has existed in the United States since the founding of the Cincinnati Red Stockings in 1869. [1] The modern model of professional baseball was created in 1903 when the American League and the National League reached an agreement to coexist. [2] The teams in both leagues agreed to employ the Reserve System and to honor player contracts. [3] After finalizing the union between the American and National ***326** Leagues, the first World Series was played in 1903, creating an American tradition that continued without interruption until 1994. [4] From the outset, Major League Baseball's (MLB) evolution has been marked by an overall steady growth in attendance and revenues. [5]

In addition to this economic success, the American judiciary has consistently deferred to "America's pastime." [6] The United States Supreme Court has allowed the business of baseball to become a figurative "field of dreams." [7] The Court's "baseball trilogy" has set baseball apart from all other professional sports leagues by insulating it from the reach of the antitrust laws. [8] This Article details the history of baseball's antitrust exemption, then proceeds to examine the effect of the Curt Flood Act and the Supreme Court's ruling in American Needle, Inc. v. NFL on the potential expansion of the Supreme Court's holdings as applied to baseball.

II. History of Major League Baseball's Antitrust Exemption

The merger between the American League and the National League stabilized the business of baseball at the turn of the twentieth century.[9] Before the merger, the two leagues poached each other's players and directly competed for fans' attention and money.[10] The goal of placing the best product on the field generated competition between the two leagues.[11] This created a general disregard for existing player contracts and led to an escalation in player costs,[12] as demonstrated by the signing ***327** of Napoleon "Nap" Lajoie by the upstart Philadelphia Athletics of the American League from their crosstown National League rival, the Philadelphia Phillies.[13] Additionally, legendary shortstop Honus Wagner was offered $20,000 from the American League's Washington Senators to leave the National League's Pittsburgh Pirates.[14] The offer, which he declined, represented an almost 1000% increase in Wagner's salary.[15] Thus, the union of the American League and the National League was accomplished not for the benefit of the sport but as a business venture.[16]

The merger was founded on respect being afforded to existing player contracts and on the addition of the Reserve System into all Major League contracts.[17] The Reserve System was composed of two clauses in player contracts that restricted player mobility.[18] First, the Reserve Clause prohibited a ballplayer from playing for another team during the term of his contract and in the succeeding year.[19] Second, the Option Clause enabled management to unilaterally renew a player's contract for one year following the inability of the parties to reach an agreement.[20] The concurrent existence of these two clauses resulted in the perpetual renewal of an individual player's contract at the whim of team ownership.[21] The Reserve System effectively controlled player costs by eliminating the market for player services. This scheme remained successful as long as upstart leagues followed suit.

The Federal League, formed in 1914 as a direct competitor to MLB, placed half of its new teams in cities with an established Major League club.[22] This new league was a threat to MLB because of its comparatively player-friendly contracts.[23] Under Federal League contracts, players received automatic annual salary increases of 5% and were eligible for free agency after ten years of service in the league.[24] Following the defection of more than eighty Major Leaguers to the Federal League, MLB responded by raising the salaries of its star players ***328** and blacklisting any players who jumped to the upstart league.[25] The advent of the Federal League and the competition it created for players resulted in the increase of the average Major League salary from $3200 to $7300 over three seasons.[26]

In 1915, after merger negotiations failed, the Federal League brought suit in the United States District Court for the Northern District of Illinois seeking an injunction to prevent MLB from blacklisting players and using the Reserve System.[27] The Federal League alleged that these actions by MLB constituted concerted action in restraint of trade and therefore violated the antitrust laws.[28] Judge Kennesaw Mountain Landis, who became Major League Baseball's first commissioner five years later, refused to rule on the case, citing the potential damage facing the game.[29] The case was later settled with Federal League franchise owners disbanding the league in exchange for a substantial amount of money and the transfer of two Major League franchises to two Federal League owners.[30] Dissatisfied with this settlement, the Federal League's Baltimore Terrapins filed suit alleging the same antitrust violations.[31]

The Terrapins' case was successful at the district court level, but the ruling was reversed on appeal.[32] In determining that baseball did not constitute interstate commerce under the Commerce Clause and thus was not subject to the Sherman Act, the United States Court of Appeals for the District of Columbia overturned the $80,000 damage award.[33] The case then proceeded to the Supreme Court, bringing about the first opinion of the Court's "baseball trilogy."[34] By affirming

the appellate court's decision in Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs, the Supreme Court established professional baseball's antitrust exemption. [35] In a brief opinion issued by Justice Oliver Wendell Holmes, the Court held that baseball exhibitions and the travel necessary to produce them were merely incidental to, and ***329** not a subject of, interstate commerce. [36] Despite the Supreme Court's expansion of the scope of the Commerce Clause during its review of New Deal legislation, baseball maintained its judicially created antitrust exemption. [37]

The effect of the Supreme Court's ruling on player salaries was noticeable, but another serious challenge to Major League Baseball's supremacy did not emerge until immediately after the Second World War. [38] Without the Federal League's influence and with the judiciary's endorsement of the Reserve System, players' salaries declined following Federal Baseball. [39] For example, future Hall of Fame center fielder Tris Speaker played for a $15,000 salary for each of the two years that the Federal League's shadow hung over baseball. [40] However, after its demise, he received only $10,000. [41]

In 1946, the Mexican League surfaced as the next major challenger to Major League Baseball. [42] The Mexican League followed the blueprint created by the Federal League and lured many Major Leaguers with substantial contract offers. [43] Although this league was short-lived, it did have an effect on players' salaries. [44] Stan Musial, a Hall of Fame outfielder for the St. Louis Cardinals, saw his salary more than double from $13,500 in 1946 to $31,000 in 1947 as a response to a contract offer from the Mexican League for $175,000 over five years. [45] The Mexican League failed at the end of the 1947 season, and the players who jumped ship desired to return to their Major League clubs. [46] However, with the Supreme Court's Federal Baseball precedent in hand, MLB responded by blacklisting the defectors for five years. [47]

Danny Gardella, a blackballed player who violated his contract with the New York Giants to play in the Mexican League, challenged the legality of this tacit agreement among the sixteen Major League clubs by alleging violations of the antitrust laws. [48] The United States District Court for the Southern District of New York dismissed the suit, citing a ***330** lack of jurisdiction under the Sherman Act. [49] The United States Court of Appeals for the Second Circuit reversed that decision in Gardella v. Chandler, finding that the business of baseball had made sufficient advancements to fall under the auspices of the Commerce Clause. [50] This determination hinged on the radio and television broadcasting agreements that had become commonplace in baseball. [51] Judge Learned Hand considered Major League clubs' involvement in broadcasting games not merely incidental, but a significant part of the game. [52] This led to the conclusion that MLB was engaged in interstate commerce. [53]

In a separate opinion, Judge Jerome Frank targeted the Reserve System, which he considered a "shockingly repugnant" monopoly, of which the effect on baseball players was almost equivalent to that of slavery. [54] Believing that individual player contracts were in such conflict with public policy that they should fall under the scope of the prohibitions enumerated by the Sherman Act, Judge Frank narrowly construed Federal Baseball as holding that only travel necessary to produce games was incidental to the business of baseball and thus did not constitute interstate commerce. [55] On the other hand, television and radio broadcasts constituted substantial interstate commerce, bringing baseball under the jurisdiction of the antitrust laws. [56] Although the parties settled before the merits of the case were brought to trial, this shift in judicial philosophy signaled to MLB that the foundations of its antitrust exemption may have eroded. [57]

Despite contemplating legislation affecting baseball's antitrust status, Congress believed the decision in Gardella replaced the Supreme Court's Federal Baseball precedent and negated the need for legislation. [58] Nonetheless, four years later, the Supreme Court reaffirmed MLB's exemption after issuing an opinion in sharp contrast to the Second Circuit's decision in Gardella. [59] Toolson v. New York Yankees, Inc., arose when the MLB Commissioner blacklisted a minor league player under ***331** the control of the New York Yankees, per the Reserve System, after the player refused to report to the minor league club to which he was assigned. [60] The suit challenged the Reserve System as a violation of the Sherman Act. [61]

In a brief one-paragraph opinion, the Supreme Court refused to find an antitrust violation under the Federal Baseball precedent. [62] The Court reasoned that while Congress had considered that ruling, it had neglected to enact legislation specifically bringing the business of baseball under the antitrust laws. [63] In closing, the Court noted that "Congress had no intention of including the business of baseball within the scope of the federal antitrust laws." [64] This statement signified a shift in the Supreme Court's reasoning regarding baseball. [65] With Justice Holmes' interpretation that exhibitions of baseball were not interstate commerce and thus fell outside the purview of federal antitrust laws no longer credible, the Court interpreted congressional inaction to mean that baseball was never susceptible to--and therefore exempt from--federal antitrust laws. [66]

Under this reasoning, it would seem logical that the antitrust exemption created for baseball would extend to other professional sports. However, within five years of Toolson, the Supreme Court twice ruled otherwise. [67] In United States v. International Boxing Club of New York, the Court held that its precedents related to baseball did not grant an antitrust exemption to "all businesses based on professional sports." [68] Referencing the House Subcommittee on Study of the Monopoly Power of the Committee on the Judiciary, which considered a legislative antitrust exemption for all professional sports leagues, the Court reasoned, "Such a broad exemption could not be granted without substantially repealing the antitrust laws." [69]

The Supreme Court more famously refused to extend baseball's antitrust exemption to the National Football League (NFL) in Radovich v. NFL. [70] The case challenged football's version of the Reserve System ***332** after All-Pro guard Bill Radovich was blacklisted by the NFL for playing in a rival league while he was still under contract with the Detroit Lions. [71] In Radovich, the Court specifically limited the reach of Federal Baseball and Toolson to the business of organized professional baseball. [72] Recognizing its hypocrisy, the Court noted the "dubious validity" of its baseball precedents and recognized that if it had considered the question of baseball as a case of first impression it would have ruled differently. [73]

Despite this realization, the Supreme Court reasserted the strength of baseball's antitrust exemption when it decided Flood v. Kuhn, the final case of the "baseball trilogy." [74] The case originated from a lawsuit brought by center fielder Curt Flood challenging MLB's Reserve System after the St. Louis Cardinals traded him against his will to the Philadelphia Phillies. [75] In Flood, the Supreme Court expressly pronounced what it indirectly said in Toolson--that professional baseball is a business engaged in interstate commerce. [76] However, in upholding the application of baseball's antitrust exemption to the Reserve System, the Court adhered to the precedents of Federal Baseball and Toolson, maintaining that the principle of stare decisis ran paramount. [77] The Court held, "We continue to be loath, 50 years after Federal Baseball and almost two decades after Toolson, to overturn those cases judicially when Congress, by its positive inaction, has allowed those decisions to stand for so long and . . . has clearly evinced a desire not to disapprove them legislatively." [78]

Often overlooked, however, is the Court's statement that narrowed the application of its holding to the Reserve System. [79] Justice Harry Blackmun emphasized, "With its reserve system enjoying exemption from the federal antitrust laws, baseball is, in a very distinct sense, an exception and an anomaly." [80] In light of precedent, the Court's statement that "Federal Baseball and Toolson have become an aberration confined to baseball" was a reference to the Radovich decision to not extend an antitrust exemption to the NFL's Reserve System. [81] Moreover, in affirming its precedents, the Court looked to the history and application ***333** of those decisions and documented the House Committee on the Judiciary's determination that baseball operates in chaos without the Reserve System. [82] The Court acknowledged that the differences between baseball and other professional sports stem from "baseball's unique characteristics and needs"--namely its reliance on the Reserve System to operate successfully. [83]

However, lower courts have split on the interpretation of the Court's holding in Flood, which resulted in the application of the antitrust exemption to the business of baseball even after Congress answered the Court's call to pass legislation. [84]

III. The Curt Flood Act

After shaking off the signs put down by the Supreme Court when it called for legislation to bring MLB under the federal antitrust laws, Congress finally enacted the Curt Flood Act in 1998. [85] The Act's primary intentions were to eliminate baseball's antitrust exemption as it relates to Major League players and provide those players with "the same rights under the antitrust laws as . . . other professional athletes" have, while not changing the application of the antitrust laws in other contexts with respect to baseball. [86] Section A of the Act specifically subjects baseball to the antitrust laws "to the same extent such conduct, acts, practices, or agreements would be subject to the antitrust laws if engaged in by persons in any other professional sports business affecting interstate commerce" as long as those violations directly relate to or affect employment of MLB players. [87] Twenty-five years after the Supreme Court decided Flood, the Curt Flood Act finally allowed players to challenge the Reserve System under federal antitrust laws. [88] The collectively-bargained-for additions of salary arbitration and free agency to the MLB Collective Bargaining Agreement (CBA) have effectively made Section A of the Act duplicative and irrelevant. However, if the players challenge League policies in the absence of a CBA between the League and the Major League Baseball Players Association, this no longer holds true.

***334** Section B explicitly mentions that courts should not rely on the Act when applying the antitrust laws to baseball, aside from the Act's express provision eliminating the exemption as it relates to Major League players. [89] As a result, judicial precedent governs all other issues that may arise concerning baseball's antitrust exemption. [90] This includes minor league players, the amateur draft, issues relating to franchise ownership and relocation, and the licensing of intellectual property. [91] During deliberation over this bill in the Senate, Senator Paul Wellstone (D-MN) required confirmation that the Act would not affect recent lower court precedents that narrowed the scope of baseball's exemption. [92] Senator Patrick Leahy (D-VT) and Senator Orrin Hatch (R-UT), the bill's cosponsors, put Senator Wellstone at ease by confirming that it was "intended to have no effect other than to clarify the status of major league players under the antitrust laws. With regard to all other context or other persons or entities, the law will be the same after the passage of the Act as it is today." [93] Therefore, the economic side of baseball was left untouched and under the control of the American judiciary with respect to antitrust laws. [94]

IV. Judicial Interpretation of the Business of Baseball

A. Courts Employing a Broad Interpretation

The lower courts' broad interpretation of baseball's antitrust exemption after Flood amounts to a judicial recognition that "[b]aseball has been the national pastime for over one hundred years and enjoys a unique place in our American heritage." [95] The United States Court of Appeals for the Seventh Circuit issued an opinion post-Flood broadly construing the application of baseball's exemption [96] when Oakland Athletics owner Charles Finley sued MLB Commissioner Bowie Kuhn. [97] In Charles O. Finley & Co. v. Kuhn, Finley alleged that Kuhn violated ***335** federal antitrust laws after he rejected the trades of left fielder Joe Rudi and pitcher Rollie Fingers to the Boston Red Sox and pitcher Vida Blue to the New York Yankees in exchange for a total of $3.5 million. [98] Essentially, the Athletics were prevented from executing a "fire sale." [99]

In dismissing the argument that baseball's antitrust exemption was limited to protecting the Reserve System, the Seventh Circuit, extrapolating from the Supreme Court's baseball trilogy and Radovich, held that "the Supreme Court intended to exempt the business of baseball, not any particular facet of that business, from the federal antitrust laws." [100] However, the court did note the exemption does not necessarily apply "to all cases which may have some attenuated relation to the business of baseball." [101] This seems to imply that issues having no relation to the game on the field might fall outside the scope of the antitrust exemption. [102]

In light of Flood, the United States Court of Appeals for the Eleventh Circuit similarly construed the exemption. [103] In Professional Baseball Schools & Clubs, Inc. v. Kuhn, the owner of a Single-A minor league franchise in the Carolina League filed an antitrust suit against MLB and its commissioner. [104] The suit challenged MLB's player assignment system, rules on franchise location, the monopolization of the business of professional baseball, and Carolina League rules requiring member teams to play games only against teams within the official structure of **minor league baseball**. [105] The Eleventh Circuit upheld the district court's dismissal for want of subject matter jurisdiction because all of the alleged violations were integral parts of the business of baseball. [106]

Prior to the enactment of the Curt Flood Act, two federal district courts also dealt with baseball's exemption without further appeal to a higher court. [107] In New Orleans Pelicans Baseball, Inc. v. National Ass'n of Professional Baseball Leagues, Inc., the plaintiff filed suit after a ***336** failed attempt to move the Double-A Charlotte Knights to New Orleans. [108] This offer was approved initially, but later rejected in favor of an offer submitted by the Triple-A Denver Zephyrs. [109] The plaintiff challenged the preference given to a club in a league with a higher classification. [110] The United States District Court for the Eastern District of Louisiana followed the limited weight of authority supporting a broad interpretation of baseball's antitrust exemption in granting the defendant's motion for summary judgment and dismissing the case. [111] In McCoy v. MLB, fans and businesses affected by the 1994 player strike sued MLB, alleging that the responsive actions taken by the League violated antitrust laws. [112] The United States District Court for the Western District of Washington construed the Supreme Court's decision in Flood broadly, focusing primarily on the Court's affirmation of Federal Baseball and Toolson, and dismissed the suit. [113] Neither the New Orleans Pelicans court nor the McCoy court attempted to define the scope of the exemption. [114] Instead, both courts simply relied on nonbinding authority and either failed to distinguish or ignored the game-related circumstances addressed in the previous cases. [115]

Following the passage of the Curt Flood Act, the Minnesota Supreme Court was next to apply a broad interpretation of baseball's antitrust exemption. [116] In order to prevent the Minnesota Twins from relocating to North Carolina, Minnesota Attorney General Michael Hatch served the Twins with civil investigative demands under Minnesota law as part of an investigation into violations of state antitrust law. [117] The Twins resisted and filed suit seeking a protective order. [118] ***337** Although this case only involved state law, Minnesota adopted the federal courts' interpretation of federal antitrust laws in applying its own law. [119] Following its predecessors, the Minnesota Supreme Court determined that the "great weight of federal cases" necessitated a finding that Flood exempts the entire business of professional baseball from antitrust law. [120] Applying the Supreme Court's trilogy of baseball cases, the Minnesota court ruled "that the sale and relocation of a baseball franchise, like the reserve clause discussed in Flood, is an integral part of the business of professional baseball and falls within the exemption." [121] As a result, the court granted the Twins' request for a protective order, effectively ending the Attorney General's investigation and his attempt to prevent the relocation of the club. [122] Although Minnesota Twins was a state court decision, it was the first case to apply baseball's exemption to a business decision that had no tangible connection to on-field performance. [123]

Minnesota Twins laid the foundation for the United States District Court for the Northern District of Florida to rule similarly in MLB v. Butterworth (Butterworth II). [124] This lawsuit resulted from MLB's resistance to the Florida Attorney General's civil investigative demands under Florida antitrust law following baseball's proposed contraction prior to the 2002 season. [125] Following other courts' defenses of a broad antitrust exemption, the court prefaced its opinion by stating, "Baseball is an American game that has occupied a unique position in American society." [126] The district court specifically rejected the notion that the ***338** Supreme Court's baseball trilogy limited the exemption's scope to the Reserve System and related issues. [127] Looking to the Eleventh Circuit's decision in Professional Baseball Schools & Clubs, the court determined that contraction fell within the bounds of the business of baseball and received a complete exemption from the antitrust laws. [128]

The Eleventh Circuit heard the appeal in MLB v. Crist. [129] In affirming the district court, the Eleventh Circuit held that a wide umbrella encompassed the business of baseball under the antitrust exemption. [130] The court reasoned that "[f]ederal antitrust law exempts the contraction issue from judicial scrutiny" because "contraction implicates the heart of the 'business of baseball.'" [131] The court believed that the effect of contraction on the number of teams in the Major Leagues directly affected the scheduling of games and revenue sharing, clearly bringing contraction under the ambit of the business of baseball. [132] However, the Eleventh Circuit did restrict baseball's invulnerability, stating that "the antitrust exemption has not been held to immunize the dealings between professional baseball clubs and third parties." [133]

Unlike the Eleventh Circuit in Crist and the Seventh Circuit in Charles O. Finley & Co., most of the courts that have broadly applied baseball's exemption fail to specifically delineate their reasoning for construing the exemption in such a manner. [134] They rely on the holdings supplied by the Supreme Court's baseball trilogy and fail to recognize any limitations to baseball's overreaching immunity. [135] This in turn has allowed other courts to decide similar cases differently. [136]

B. Courts Applying a Narrow Standard

The first court to construe baseball's antitrust exemption narrowly was the United States District Court for the Southern District of Texas in ***339** Henderson Broadcasting Corp. v. Houston Sports Ass'n. [137] A Houston radio station sued the ownership group of the Houston Astros for antitrust violations, alleging that it conspired with a competing radio station and breached a broadcasting rights agreement with the plaintiff [138] in order to enter into an exclusive broadcasting agreement with a competitor. [139] The Astros submitted a motion to dismiss for want of subject matter jurisdiction, citing baseball's exemption from federal antitrust laws. [140] The district court interpreted the applicable Supreme Court decisions to "imply that the exemption covers only those aspects of baseball, such as leagues, clubs and players which are integral to the sport and not related activities which merely enhance its commercial success." [141] The court held that MLB's exemption did not apply because "[t]he reserve clause and other 'unique characteristics and needs' of the game have no bearing" on a radio contract to broadcast games. [142] The court also viewed the Sports Broadcasting Act to apply only to television agreements negotiated on a league level, leaving no protection to radio broadcasting contracts negotiated by individual clubs. [143]

Arguably the most famous decision involving a narrow interpretation of baseball's antitrust exemption is Piazza v. MLB. [144] There, Vincent Piazza and Vincent Tirendi executed a letter of intent to purchase the San Francisco Giants for $115 million and move the club to Tampa, Florida. [145] However, MLB's ownership committee cited concerns regarding background checks of the plaintiffs' ownership group and ultimately rejected their offer. [146] Instead, an ownership group willing to keep the team in San Francisco was selected despite submitting an inferior offer of $100 million. [147] The plaintiffs filed suit alleging antitrust violations, among other claims. [148] In its defense, MLB filed a motion to dismiss for a lack of subject matter jurisdiction. [149]

In rejecting the defendant's motion, the United States District Court for the Eastern District of Pennsylvania concluded that the Supreme ***340** Court's application of the stare decisis doctrine confined the precedential value of Flood to its specific facts: antitrust immunity only for the Reserve System, [150] which had no relevance to the issue at hand. [151] Consequently, the court rejected MLB's argument that it was exempt from antitrust liability in this situation. [152]

Shortly after the Eastern District of Pennsylvania issued its decision in Piazza, the Supreme Court of Florida weighed in on the issue in Butterworth v. National League of Professional Baseball Clubs (Butterworth I). [153] In response to the Piazza case and Florida's inability to obtain an MLB franchise, Florida's Attorney General issued civil investigative demands to the National League per Florida's antitrust laws. [154] The investigation centered on a "conspiracy in restraint of trade in connection with the sale and purchase of the San Francisco Giants baseball franchise." [155] MLB sought to quash the investigative demands, and the suit ensued. [156] After assessing the language and findings in Flood, the Butterworth I court reached the same conclusion as the Piazza court: "baseball's antitrust exemption extends only to the reserve system." [157]

There is disagreement over the breadth of baseball's immunity from antitrust laws even between courts that narrowly interpret the exemption. [158] Courts adopting the narrowest view of the exemption apply it solely to the reserve clause, which virtually eliminates baseball's exemption following the passage of the Curt Flood Act and the creation of free agency. [159] However, courts that look to the unique characteristics and needs of the game successfully balance deference and restrictiveness. [160] Thus, the Supreme Court is the only court equipped to settle the three-way dispute over the interpretation of Flood and the application of baseball's antitrust exemption.

***341 V. Emerging Antitrust Scenarios Against Major League Baseball**

Major League Baseball has recently faced several developments that could lead to a high profile antitrust suit that may find its way onto the Supreme Court's docket. [161] In August 2007, MLB signed a five-year agreement making StubHub, eBay's ticket-reselling subsidiary, the League's exclusive market for secondary tickets. [162] Under this agreement, MLB's Web site and all individual team sites contain a link to StubHub's Web site for fans interested in participating in the secondary ticket market. [163] Both MLB and StubHub share the revenue generated by commissions charged to buyers and sellers of Major League tickets. [164] The problem is that several clubs had independent agreements with other online secondary ticket providers--most notably Ticketmaster, who has a reputation of resorting to the legal system when its contractual rights are violated. [165] Consequently, MLB has risked antitrust litigation by Ticketmaster or another online secondary ticket market by agreeing to the exclusive contract with StubHub. [166]

Similarly, MLB has brought the online rights for radio and television game broadcasts for all thirty clubs in-house, precluding individual teams from selling these rights on their own. [167] Baseball has also entered into an exclusive agreement with DIRECTV for the distribution of all televised games over satellite and cable. [168] That contract is valued at $700 million over seven years and displaced other distributors who were licensed to carry the "Extra Innings Package." [169] Furthermore, Major League Baseball faced potential antitrust litigation ***342** in August 2009 when Upper Deck threatened to file suit after MLB agreed to an exclusive trademark license with rival baseball card manufacturer Topps. [170] Exclusive rights deals are generally dangerous for professional sports leagues because they inhibit competition; individual clubs can no longer compete in the marketing and distribution of broadcasting rights, intellectual property rights, or other licensing rights. [171]

Lastly, in April 2011, Commissioner Bud Selig took control of the Los Angeles Dodgers under the Commissioner's "best interests of baseball" powers. [172] Selig asserted his authority due to concerns regarding the Dodgers' solvency and compliance with MLB financial requirements. [173] This takeover has potential antitrust implications since it is highly unusual for businesses in an industry to exert control and authority over a competitor. However, a significant limitation to such an antitrust suit is the agreement that all owners sign when they assume control over a franchise, promising not to sue MLB or its Commissioner. [174] Nonetheless, as Major League Baseball maximizes its revenue streams by bringing in new business partners and entering into complex agreements, it risks whittling away its exemption and exposing itself to the antitrust laws. [175]

VI. American Needle, Inc. v. NFL and Future Supreme Court Analysis of Baseball's Antitrust Exemption

The latest major application of the antitrust laws to professional sports leagues occurred in American Needle. [176] American Needle, Inc., an apparel company and former NFL licensee, filed an antitrust suit against the NFL after the league entered into an exclusive apparel license with Reebok and declined to renew American Needle's nonexclusive license. [177] The question before the Court was not whether the NFL was shielded by an antitrust exemption--this was decided in the negative over a half-century earlier in Radovich--but rather if the NFL was a joint venture cooperating with its teams for a common economic purpose. [178] ***343** The Supreme Court determined that the efforts of the thirty-two NFL teams to pool their intellectual property rights for concerted licensing activities was not beyond the coverage

of the antitrust laws, specifically Section 1 of the Sherman Act. [179] The Court held that for the purposes of licensing intellectual property, the NFL did not constitute a single entity [180] and was therefore subject to the antitrust laws because the teams are "separate economic actors pursuing separate economic interests." [181]

The holding in American Needle has little or no substantive effect on baseball's antitrust exemption. However, it does signal the current Court's direction in applying the antitrust laws to modern professional sports. [182] In American Needle, the Court constrained its ruling to an ancillary business of the sport--the licensing of intellectual property--and softly hinted at the acceptability of concerted action for athletic purposes. [183] The inference can therefore be made that had American Needle dealt with on-field issues, the Court would have ruled differently. [184] This signifies the importance of American Needle concerning baseball's antitrust exemption. If the Court applies similar reasoning to an analysis of baseball's exemption, then the business of baseball would only encompass the "unique characteristics and needs" of the sport. [185] This will better define the scope of the antitrust exemption and insulate baseball only with respect to agreements that touch the game on the field.

The lower courts' split in applying baseball's antitrust exemption will require the Supreme Court to eventually settle this divergence. The Court's interpretation of the baseball progeny, especially Flood, will have the greatest effect on the breadth of the antitrust exemption. Having not glanced at the scope of the baseball antitrust exemption in nearly forty years, American Needle provides a mere glimpse at how the Supreme Court might characterize baseball's proverbial blank check.

VII. Conclusion

Proponents for a broad interpretation of baseball's antitrust exemption point to the fact that Federal Baseball was never overturned, leaving it to reach issues on and off the baseball diamond. Although ***344** Congress finally addressed the Supreme Court's request for legislation regarding baseball's exposure to the antitrust laws, the substantive effect of the Curt Flood Act was minimal. Ultimately, the Supreme Court needs to define the "business of baseball" and differentiate between the sport and its economics. The emergence of baseball as a multi-billion dollar industry necessitates this division and the application of the antitrust laws to the actual business of the game. If baseball is eventually subjected to the antitrust laws, MLB could defend its policies and business decisions under the "rule of reason," which looks favorably upon professional sports. [186] Therefore, the partial dissolution of baseball's exemption is not a death sentence; it simply brings the economics of baseball in line with the rest of American business. The Supreme Court's baseball trilogy has laid the foundation and the framework supporting baseball's antitrust exemption. It simply needs to finish the construction.

Footnotes

a1 © 2012 Avraham J. Sommer. J.D. candidate 2012, Tulane University Law School; B.A. History and Political Science 2008, University of Rochester. A lifelong baseball enthusiast, Avi has always had a love and respect for the history of the game. Special thanks to Professor Gabe Feldman for all his guidance and support during law school.

1 Albert Theodore Powers, The Business of Baseball 11 (2003).

2 Id. at 27.

3 Id.

4 Id. at 39. As a result of the players' strike in 1994, Major League Baseball (MLB) cancelled the remainder of the season and, for the first time, the World Series. William B. Gould, IV, Labor Issues in Professional Sports: Reflections on Baseball, Labor, and Antitrust Law, 15 Stan. L. & Pol'y Rev. 61, 73-74 (2004).

5 Powers, supra note 1, at 29; James Quirk & Rodney D. Fort, Pay Dirt: The Business of Professional Team Sports 8-9 (1992) (extrapolated from the graphs on pages 8 and 9). In 1991, Financial World estimated total MLB revenue to be $1.35 billion. Quirk & Fort, supra, at 2. League revenue eclipsed $7 billion following the 2010 season. See Maury Brown, Revenue-Sharing in Major League Baseball Totals $404 Million for 2010, BIZ OF BASEBALL (Dec. 22, 2010, 8:48 AM), http://www.bizofbaseball.com (search "revenue-sharing 2010"; then follow "Revenue-Sharing in Major League Baseball Totals $404 Million in 2010" hyperlink).

6 See, e.g., Flood v. Kuhn, 407 U.S. 258 (1972).

7 James Quirk & Rodney Fort, Hard Ball: The Abuse of Power in Pro Team Sports 5 (1999) (quoting colorful owner Bill Veeck).

8 The "baseball trilogy" is three Supreme Court cases: Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs, 259 U.S. 200 (1922); Toolson v. New York Yankees, Inc., 346 U.S. 356 (1953); and Flood v. Kuhn, 407 U.S. 258 (1972).

9 Powers, supra note 1, at 25-29.

10 Id. at 25-27.

11 See id.

12 See id.

13 Id. at 26.

14 Id. at 25.

15 Id. at 25-26. Wagner's salary from the Pirates the previous year was $2100. Id. After he rejected the Senators' offer, the Pirates awarded him a salary of $2700. Id.

16 Id. at 27-29.

17 Id. at 27.

18 Id. at 177.

19 Id.

20 Id.

21 See id.

22 See id. at 36-37.

23 See id. at 37.

24 Id.

25 Id.

26 Id.

27 Nathaniel Grow, Defining the "Business of Baseball": A Proposed Framework for Determining the Scope of Professional Baseball's Antitrust Exemption, 44 U.C. Davis L. Rev. 557, 566 (2010); Powers, supra note 1, at 37.

28 Grow, supra note 27, at 566.

29 Powers, supra note 1, at 37. Landis delayed the case for about a year in order to encourage the parties to settle. Id. The outcome of this case played a major role in his ascension to the Commissioner's office. Quirk & Fort, supra note 5, at 184.

30 Powers, supra note 1, at 37.

31 Id. at 38.

32 Id.; Quirk & Fort, supra note 5, at 184.

33 Quirk & Fort, supra note 5, at 184.

34 Id.

35 259 U.S. 200, 209 (1922).

36 Id. at 208-09.

37 Quirk & Fort, supra note 5, at 185.

38 Powers, supra note 1, at 29, 38.

39 See id. at 38.

40 Id.

41 Id.

42 Id. at 121.

43 Id.

44 See id. at 82-83.

45 Id.

46 See id. at 121.

47 See id.

48 Quirk & Fort, supra note 5, at 188.

49 See Gardella v. Chandler, 79 F. Supp. 260 (S.D.N.Y. 1948), judgment rev'd by Gardella v. Chandler, 172 F.2d 402 (2d Cir. 1949).

50 Gardella, 172 F.2d at 408.

51 Id. at 407.

52 Id. at 407-08.

53 Id. at 408.

54 Id. at 409.

55 Id. at 410, 412.

56 Id. at 411.

57 Quirk & Fort, supra note 5, at 188.

58 Andrew Zimbalist, Baseball and Billions: A Probing Look Inside the Big Business of our National Pastime 14-15 (1994).

59 See Toolson v. N.Y. Yankees, Inc., 346 U.S. 356 (1953).

60 Quirk & Fort, supra note 5, at 189.

61 Grow, supra note 27, at 569.

62 Toolson, 346 U.S. at 357.

63 Id.

64 Id.

65 Grow, supra note 27, at 570-71.

66 Id.

67 See Radovich v. NFL, 352 U.S. 445, 447-48 (1957); United States v. Int'l Boxing Club of N.Y., 348 U.S. 236, 243 (1955).

68 Int'l Boxing Club, 348 U.S. at 243.

69 Id. at 244.

70 352 U.S. at 445.

71 Id. at 448.

72 Id. at 451.

73 Id. at 450-52.

74 407 U.S. 258 (1972).

75 See Powers, supra note 1, at 158-59.

76 Flood, 407 U.S. at 282.

77 Id.

78 Id. at 283-84.

79 Id. at 282.

80 Id.

81 Id.

82 Id. at 272-73.

83 Id. at 282.

84 Compare Charles O. Finley & Co. v. Kuhn, 569 F.2d 527 (7th Cir. 1978) (broadly construing the exemption) with Henderson Broad. Corp. v. Hous. Sports Ass'n, 541 F. Supp. 263 (S.D. Tex. 1982) (narrowly construing the exemption).

85 Curt Flood Act of 1998, 15 U.S.C. §26b (2006).

86 Curt Flood Act of 1998, Pub L. No. 105-297, §53, 112 Stat. 2824 (1998).

87 15 U.S.C. §26b(a).

88 See id.

89 Id. §26b(b).

90 Grow, supra note 27, at 576.

91 15 U.S.C. §26b(b)(1)-(3).

92 Grow, supra note 27, at 576 (citing 145 Cong. Rec. S9621 (daily ed. July 31, 1998) (statements of Sens. Wellstone, Hatch, and Leahy)).

93 Id. (quoting Cong. Rec. S9621 (daily ed. July 31, 1998) (statements of Sens. Wellstone, Hatch, and Leahy)).

94 See Toolson v. N.Y. Yankees, Inc., 346 U.S. 356, 357 (1953) ("[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.").

95 Flood v. Kuhn, 407 U.S. 258, 266 (1972) (quoting Flood v. Kuhn, 309 F. Supp. 793, 797 (S.D.N.Y. 1970)).

96 Charles O. Finley & Co. v. Kuhn, 569 F.2d 527, 541 (7th Cir. 1978).

97 See id. at 531.

98 Id.

99 See id.

100 Id. at 541.

101 Id. at 541 n.51 (citing Twin City Sportservice, Inc. v. Charles O. Finley & Co., 365 F. Supp. 235 (N.D. Cal. 1972), rev'd on other grounds, 512 F.2d 1264 (9th Cir. 1975)).

102 See id.

103 See Prof'l Baseball Sch. & Clubs, Inc. v. Kuhn, 693 F.2d 1085 (11th Cir. 1982).

104 Id. at 1085.

105 Id.

106 Id. at 1086.

107 See McCoy v. MLB, 911 F. Supp. 454 (W.D. Wash. 1995); New Orleans Pelicans Baseball, Inc. v. Nat'l Ass'n of Prof'l Baseball Leagues, Inc., No. 93-253, 1994 WL 631144 (E.D. La. Mar. 1, 1994).

108 New Orleans Pelicans Baseball, 1994 WL 631144, at *1.

109 Id. at *1-2.

110 Id. The relocation approval letter sent to the Charlotte Knights gave preference to teams with a higher minor league classification. Id. at *1. **Minor League Baseball** maintains several leagues in a tiered system, and the talent level in each league increases as players progress towards the Major Leagues in ascending order: Single-A (A), Double-A (AA), and Triple-A (AAA). How **Minor League Baseball** Teams Work, HowStuffWorks, http://entertainment.howstuffworks.com/**minor**-**league**-**baseball**-team1.htm (last visited Feb. 28, 2012). The AAA Denver Zephyrs were given preference over the AA Charlotte Knights for the New Orleans market because they played in a league with a higher minor league classification. See New Orleans Pelicans Baseball, 1994 WL 631144, at *5.

111 New Orleans Pelicans Baseball, 1994 WL 631144, at *10.

112 See McCoy, 911 F. Supp. at 455-56.

113 Id. at 457-58.

114 Grow, supra note 27, at 583.

115 See McCoy, 911 F. Supp. at 455-56; New Orleans Pelicans Baseball, 1994 WL 631144, at *9. These courts cited and addressed the Supreme Court's baseball trilogy but relied on nonbinding authority to interpret the scope of the Court's decisions.

116 Minn. Twins P'ship v. State, 592 N.W.2d 847, 856 (Minn. 1999).

117 Id. at 849.

118 Id. at 850.

119 Id. at 851 (citing Humphrey v. Alpine Air Prods., Inc., 490 N.W.2d 888, 894 (Minn. Ct. App. 1992), aff'd, 500 N.W.2d 788 (Minn. 1993)).

120 Id. at 854 (quoting Butterworth v. Nat'l League of Prof'l Baseball Clubs (Butterworth I), 644 So. 2d 1021, 1025 (Fla. 1994)).

121 Id. at 856.

122 Id.

123 See id.

124 181 F. Supp. 2d 1316 (N.D. Fla. 2001).

125 Id. at 1318-19. Contraction in MLB requires support from three-quarters of the owners. Id. at 1319. On November 6, 2001, the clubs voted in favor of contraction for the upcoming 2002 season by a vote of twenty-eight to two. Id. Perhaps fearing that either one or both of the Florida teams--the Florida Marlins and Tampa Bay Devil Rays (now known as the Rays)--were slated for contraction, the Florida Attorney General issued the civil investigative demands on November 13, 2001. Id. The most likely teams to fall victim to contraction were the Montreal Expos and the Minnesota Twins. Hal Bodley, MLB: Contracting Teams Still Can Happen in 2002, USA Today, Jan. 31, 2002, at 1C. After surviving contraction, the Twins secured the necessary public financing to build Target Field, and the Expos became the Washington Nationals after relocating to America's capital. See, e.g., Dennis Brackin, The Story of How a Parking Lot Became a Ballpark, Star Trib., Apr. 4, 2010, at 23S; Hal Bodley, Washington Gets Selig's Vote, USA Today, Sept. 30, 2004, at 1C.

126 Butterworth II, 181 F. Supp. 2d at 1318.

127 Id. at 1323.

128 Id. at 1332.

129 See 331 F.3d 1177 (11th Cir. 2003).

130 Id. at 1183.

131 Id. at 1184.

132 Id. at 1183.

133 Id.

134 See id.; Prof'l Baseball Sch. & Clubs, Inc. v. Kuhn, 693 F.2d 1085, 1086 (11th Cir. 1982); Charles O. Finley & Co. v. Kuhn, 569 F.2d 527, 541 (7th Cir. 1978); Butterworth II, 181 F. Supp. 2d 1316, 1332 (N.D. Fla. 2001); McCoy v. MLB, 911 F. Supp. 454, 456-58 (W.D. Wash. 1995); New Orleans Pelicans Baseball v. Nat'l Ass'n of Prof'l Baseball Leagues, No. 93-253, 1994 WL 631144, at *9 (E.D. La. Mar. 1, 1994); Minn. Twins P'ship v. State, 592 N.W.2d 847, 856 (Minn. 1999).

135 See Grow, supra note 27, at 585.

136 See, e.g., Piazza v. MLB, 831 F. Supp. 420 (E.D. Pa. 1993); Henderson Broad. Corp. v. Hous. Sports Ass'n, 541 F. Supp. 263 (S.D. Tex. 1982).

137 541 F. Supp. at 271.

138 Id. at 264.

139 Id.; Grow, supra note 27, at 589-90.

140 Henderson Broad., 541 F. Supp. at 265.

141 Id.

142 Id. at 271.

143 Id. at 269-70 (citing Sports Broadcasting Act of 1961, 15 U.S.C. §1291 (2006)).

144 831 F. Supp. 420 (E.D. Pa. 1993).

145 Id. at 422.

146 Id. at 422-23.

147 Id. at 423.

148 See id. at 420.

149 Id. at 424.

150 Id. at 437.

151 Id. at 438.

152 Id.

153 644 So. 2d 1021 (Fla. 1994).

154 Id. at 1022.

155 Id.

156 Id.

157 Id. at 1025.

158 See, e.g., Piazza v. MLB, 831 F. Supp. 420, 438 (E.D. Pa. 1993); Henderson Broad. Corp. v. Hous. Sports Ass'n, 541 F. Supp. 263, 271 (S.D. Tex. 1982); Butterworth I, 644 So. 2d at 1025.

159 See Henderson Broad., 541 F. Supp. at 271.

160 See Piazza, 831 F. Supp. at 438.

161 Brittany Van Roo, One Trilogy That Should Go Without a Sequel: Why the Baseball Antitrust Exemption Should Be Repealed, 21 Marq. Sports L. Rev. 381, 382 (2010).

162 Id. at 397.

163 Id.

164 Id. ("If a baseball ticket sells for $100, the buyer pays $110 and the seller pockets $85, so $25 would go to StubHub and the baseball teams.").

165 Id. at 397-98.

166 Id. at 398.

167 See Martin M. Tomlinson, The Commissioner's New Clothes: The Myth of Major League Baseball's Antitrust Exemption, 20 St. Thomas L. Rev. 255, 304-05 (2008).

168 Richard Sandomir, Extra Innings Exclusively on DirecTV, N.Y. Times, Jan. 20, 2007, at D6.

169 Id. As it currently stands, the Sports Broadcasting Act of 1961 insulates professional sports from antitrust litigation with respect to the pooling of their television broadcasting rights. Sports Broadcasting Act of 1961, 15 U.S.C. §1291 (2006). However, Senator Arlen Specter (D-PA) has indicated that exclusive access packages with DIRECTV could be a reason to repeal the sports leagues' antitrust exemption regarding broadcasting rights. See Sandomir, supra note 168. Moreover, Senator Specter specifically contended that baseball's deal with DIRECTV violated federal antitrust laws. Grow, supra note 27, at 563.

170 Grow, supra note 27, at 563.

171 Id.

172 Richard Sandomir, Uncertainty of What's Next for Dodgers, N.Y. Times, Apr. 22, 2011, at B15.

173 Id.

174 Id.

175 See Van Roo, supra note 161, at 382.

176 130 S. Ct. 2201 (2010).

177 Id. at 2207.

178 Id. at 2207-08; Radovich v. NFL, 352 U.S. 445, 451-52 (1957).

179 Am. Needle, 130 S. Ct. at 2206-07.

180 Id. at 2215.

181 Id. at 2213.

182 See id. at 2215.

183 Id. at 2215-16.

184 See id. at 2216.

185 Flood v. Kuhn, 407 U.S. 258, 282 (1972).

186 See Am. Needle, 130 S. Ct. at 2216-17; NCAA v. Bd. of Regents of the Univ. of Okla., 468 U.S. 85 (1984).

19 SPLAWJ 325

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