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A Historical Review of Litigation in Baseball

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A HISTORICAL REVIEW OF LITIGATION IN BASEBALL

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I. INTRODUCTION

Commentators have recently identified a lack of needed research concerning the history of sports law. More specifically, an analysis of the origins of the entanglement of sports and litigation throughout history, as well as the manner by which sports have been governed by judicial law and internal regulation is required. In an effort to respond to this need, this paper will trace and analyze historical litigation in the sport of professional baseball.

Legal issues in sports generally revolve around three areas: contract law, antitrust law, and labor law.[1] In general, baseball's litigation history follows this very path while adding a few legal interpretations specific only to the game of baseball. A comprehensive case analysis will attempt to demonstrate the various challenges brought against organized baseball, the primary issues involved in the challenges, and how the results have impacted professional baseball.

Baseball, with its lengthy professional history in the United States, provides an ample volume of case review of legal concepts and their interrelationship with sports. Faced with litigation practically from its inception, professional baseball has received its share of notoriety in the courtroom. Baseball seems to have conspicuously received favored judicial status possibly due to its status as a "national institution."[2] On the other hand, because professional baseball embedded its roots in American culture at such an early stage, it may be that this forerunner status helped assist the baseball system in future litigated matters.

In any event, there exists two distinct, historical eras in the development of sports litigation: 1) 1890-1922, and 2) post World War II.[3] This fragmentation of history applies to baseball litigation as well. As seen in this paper's case review, the first period, 1890-1922, dealt primarily with contract law and how court interpretations affected baseball's attempts to re-

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1. R. BERRY & G. WONG, I LAW AND BUSINESS OF THE SPORTS INDUSTRIES 66 (1986) [hereinafter BERRY & WONG].

2. B. SPEARS & R. SWANSON, HISTORY OF SPORT AND PHYSICAL ACTIVITY IN THE UNITED STATES 198 (3rd ed. 1988) [hereinafter SPEARS & SWANSON].

3. BERRY & WONG, *supra* note 1, at 66.

strict player movement as well as monumental antitrust litigation.[4] The second period - post World War II - involved continued proceedings regarding alleged antitrust violations; and a relationship with labor issues, such as collective bargaining and arbitration, emerged. Throughout both periods, baseball continued to be the exception to antitrust law applications in professional sports. Although various other legal principles were litigated in baseball, the issues predominantly litigated were those set forth above.

II. DEVELOPMENT OF SPORTS LITIGATION - FIRST ERA: 1890-1922

Contract law disputes were the catalyst for early baseball litigation.[5] The primary issue involved the inclusion of reserve clauses which enabled employers to prevent an athlete from playing for another team.[6] Furthermore, certain features, including the reserve clause, served to distinguish baseball contracts from contracts of general employment.[7]

In the late 1800's and the early 1900's, a lack of mutuality was the legal principle most frequently used by the courts in denying enforcement of sports contracts.[8] The provisions in question concerned a team's ability to terminate the agreement at its discretion and at the same time bind the player to a lengthy commitment. Players resented this affluent slavery and wanted measures adopted to balance the power between themselves and the owners.[9]

The earliest litigation regarding the reserve clause appears to have occurred in 1882.[10] In that case, Pittsburgh catcher Charles Bennett refused to submit to reservation and was sued by the club for breach of contract. The court ruled in favor of Bennett holding that the contract lacked in equity.[11] Following Bennett's successful objection to the reservation rule, however, little changed, players were reluctant to legally challenge the reserve clause.

Dissatisfaction with contract conditions led to a new organization, a union of the players, known as the Brotherhood of Professional Base Ball

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4. *Id.* Even though the antitrust laws at that time did not apply to professional sports, at least to baseball, initial inquiries into antitrust did set future course for the industry.

5. *Id.*

6. J. DWORKIN, OWNERS VERSUS PLAYERS: BASEBALL AND COLLECTIVE BARGAINING 44 (1981).

7. BERRY & WONG, *supra* note 1, at 68-69.

8. J. WEISTART & C. LOWELL, THE LAW OF SPORTS (1979) [hereinafter WEISTART & LOWELL].

9. D. VOIGHT, I AMERICAN BASEBALL 155 (1966).

10. *Id.*

11. *Id.*

Players.[12] The formation of this organization was the braintrust of John Ward, a highly skilled player for the New York Giants. Ward, a 1885 graduate from Columbia Law School, possessed the legal expertise to advise the players of their contractual rights, as well as the charisma to spearhead such an operation.[13]

The Brotherhood became a reality in 1885, the same year Ward received his degree from Columbia. He wanted players to know that a violation of the reserve clause was not illegal or dishonest. Ward forecasted that if challenged in the courts, the league contracts, including the reserve clause, would be lacking equity.[14]

A challenge to the reserve clause occurred again in 1890 when, through Ward's persistence, the Players League was created.[15] This unique development in sports history was one in which the players attempted to form their own league.[16] The league was enticing to the players because it gave them voice in management, eliminated the reserve clause, and offered them part ownership in the member clubs.

The National League originally resorted to bribery to entice players to stay as numerous players attempted to defect.[17] While this approach resulted in widespread success, the league owners also sought legal relief against the league jumpers. However, the owners found the judicial system a much greater challenge than had the players.[18]

As Ward attempted to lead his band of players to the new league, the club owners sued to restrain the players from playing for any other team. The New York Giants sought injunctive relief in *Metropolitan Exhibition Co. v. Ward*[19] in order to maintain Ward's services for the upcoming season.

The court sided with Ward, declaring that the contracts lacked mutuality and definiteness. It felt that the language used within the contract was too vague and uncertain with no fixed salary or definite conditions for the reserved year. Additionally, the court cited a lack of mutuality within the

12. SPEARS & SWANSON, *supra* note 2, at 156.
13. D. VOIGHT, *supra* note 9, at 156.
14. *Id.* at 155.
15. *Id.* at 157.
16. BERRY & WONG, *supra* note 1, at 65.
17. D. VOIGHT, *supra* note 9, at 162.
18. *Id.* at 163.
19. 9 N.Y.S. 779 (1890).

contract. The plaintiffs had provisions to terminate the contract with only a ten-day notice while the defendant was bound to the contract indefinitely.[20]

The Giants were equally unsuccessful in *Metropolitan Exhibition Co. v. Ewing*,[21] where the Giants attempted to enjoin Buck Ewing from departing for the Players League. Relying on *Metropolitan Exhibition Co. v. Ward*,[22] the court ruled in the defendant's favor.[23] In addition, the Giants' lack of success in the courtroom proved very costly with legal fees alone totaling $15,000.[24]

Other players, such as Bill Hallman, George Gore, Hardie Richardson, and Tom Keefe, were equally successful in the courts.[25] As prior court decisions basically rendered the reserve clause ineffective, the players seemingly had their emancipation from the owners' rule. The new league appeared destined for survival and ready to compete with the National League.

Unfortunately, due to poor management and undercutting by investors, the Players League disbanded after only one season.[26] Players, including Ward, were forced back to the National League without any recourse. Having won the battle, the National League revised the league agreement and included an "option to renew" clause, as opposed to the much maligned reserve clause.[27]

The next legal challenge to confront the National League was due to the organization by Bancroft Johnson of the American League of Professional Baseball Clubs in 1900.[28] The American League was willing to battle the National League for major league status. With the expiration of the National Agreement in 1901, the American League felt free to entice the National League players to greener pastures.[29]

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20. *Id.* at 781-83. The plaintiffs argued that the reserve clause bound Ward to play only for their baseball team, as stated in the National Agreement. The court ruled that the reserve clause did not apply because the newly formed Players League did not participate in the governance of the National Agreement, and Ward was freed of his contractual obligation.

21. 42 F. Supp. 198, 199 (S.D.N.Y. 1890).

22. 9 N.Y.S. 779 (1890).

23. *Ewing*, 42 F. Supp. at 205.

24. D. VOIGHT, *supra* note 9, at 164.

25. *Id.* at 163.

26. BERRY & WONG, *supra* note 1, at 68-68.

27. D. VOIGHT, *supra* note 9, at 168.

28. SPEARS & SWANSON, *supra* note 2, at 157. The National League had trouble with its monopoly over major league baseball. Factionalism, disloyalty, distrust, and most of all, greedy individualism by the owners, together with a tyrannical attitude towards the players, fans and press, and a lack of firm leadership and organization, found the National League in serious trouble by 1900. *Id.*

29. D. VOIGHT, *supra* note 9, at 168.

The highest regarded player who made an attempt to depart for the American's Athletic franchise was Philadelphia Phillies second baseman, Napoleon Lajoie.[30] The legal battle to retain Lajoie was well traveled and quite lengthy. The case was tried in several different courts as well as several different states in Philadelphia's attempt to restrain Lajoie from playing in the American League.

In *Philadelphia Ball Club v. Lajoie*,[31] the plaintiffs, attempting to utilize the reserve clause, sought injunctive relief to restrain Lajoie from breaking his contract. Lajoie argued that the reserve clause violated his rights, while the Phillies ownership argued it was an essential element of the game. The lower court refused to issue an injunction due to the lack of mutuality and uncertainty of the contract.[32] The court held that Lajoie's skills were not of a unique or extraordinary nature for which Philadelphia would suffer if it lost.[33]

The lower court's ruling was overturned by the Pennsylvania Supreme Court.[34] The Supreme Court granted injunctive relief to the plaintiff, ruling that Lajoie did in fact have the necessary skills that would be impossible for Philadelphia to replace and would cause the team irreparable harm. Additionally, the court stated that it viewed Lajoie as a draw for the public; his loss would financially hinder the Philadelphia club.[35]

Other state courts disagreed with the *Lajoie* decision. For example, when Philadelphia attempted to obtain an injunction in Ohio, the court found against the team.[36] These rulings completely nullified the National League's success in the *Lajoie* case.[37] The American League, in securing these victories, was gaining momentum and weakening the power of the National League's reserve clause.[38]

Following the *Lajoie* decision, contract law moved away from the concerns of mutuality of obligations in the player's contracts, focusing instead

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30. *Id.* at 306.

31. 202 Pa. 210, 51 A. 973 (1902).

32. Philadelphia Ball Club v. Lajoie, 202 Pa. 210, 51 A. 9B (1902).

33. 202 Pa. 51 A. 794.

34. *Lajoie*, 202 Pa. 210, 51 A. 973.

35. *Lajoie*, 202 Pa. at 217, 52 A. at 974. The Pennsylvania Supreme Court's ruling affected numerous players in the American League, including Lajoie's former Philadelphia teammates Bill Bernhard and Chick Fraser.

The National League owners were encouraged by the *Lajoie* decision, and followed with legal action seeking to reclaim some of their players. E. MURDOCK, BAN JOHNSON 54 (1982).

36. BERRY & WONG, *supra* note 1, at 73.

37. E. MURDOCK, *supra* note 35, at 55.

38. D. VOIGHT, *supra* note 9, at 306. The courts once again held the reserve clause to be lacking in equity and mutuality and branded such control by the National League unjust. *Id.*

on issues of uniqueness and irreparable harm.[39] For example, in *Brooklyn Baseball Club v. McGuire*,[40] Brooklyn sued to recapture the services of Jimmy McGuire, who had defected to the Detroit Club in the American League. The court ruled that the evidence presented in no way demonstrated that without the defendant's services, the Detroit Club would be harmed, as McGuire did not possess abilities so peculiar that they could not be performed by others in professional baseball.[41]

The players again failed to respond to the court's notice that the league was operating on unsound ground. Rather than securing a strong player representation to challenge these practices, the players exercised their customary individualism in deciding to defect to the American League.[42]

Following three seasons of successful operation by the American League, the National League owners, faced with rising costs and reduced attendance, approached the American League to arrange a plan of accommodation.[43] A National Agreement, regulating both the National and American Leagues, was created in 1903. In establishing this National Agreement, the parties placed a ten-year limit on their handiwork after which the arrangement would be reviewed.[44]

The players were the real losers following the formation of the National Agreement. From a legal standpoint, the agreement was a deliberate attempt to enforce the reserve clause and to control the organizations without outside interference.[45] The reserve clause became embedded in a system ruled by a three-man National Commission which consisted of the president of each league and an at-large candidate.[46]

Ironically, with the National Agreement's ten-year expiration date approaching, organized baseball was preparing itself for the next series of courtroom battles. In 1913, the Federal League began what appeared to be low scale and short lived attempts to produce a competitive baseball

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39. BERRY & WONG, *supra* note 1, at 73; *see also Weegham v. Killefer*, 215 F. 168 (W.D. Mich. 1914).

40. 116 F. 782 (E.D. Pa. 1902).

41. *Id.* at 783. The court stated: "The evidence adduced is by no means conclusive upon the question whether the services which the defendant contracted to render were so unique and peculiar that they could not be performed, and substantially as well, by others engaged in professional baseball playing, who might easily be obtained to take his place. *Id.*

42. D. VOIGHT, *supra* note 9, at 307.

43. SPEARS & SWANSON, *supra* note 2, at 157.

44. D. VOIGHT, *supra* note 9, at 309.

45. *Id.*

46. SPEARS & SWANSON, *supra* note 2, at 157-58.

league.[47] What transpired over the course of the Federal League's existence was more litigation, culminating in perhaps the most resounding court decision in sport litigation history.

The Federal League respected the reserve clause during its premier season of 1913. Beginning in 1914, however, the Federals refused to honor the clause in order to gain equality with the established leagues. This refusal resulted in attempts by the Federal club owners to go after any players they could obtain, regardless of players' contractual obligations.[48]

The first legal battle involved Bill Killefer of the Philadelphia Phillies who defected to the Chicago Federal Club and then attempted to return to the Phillies. Charles Weegham, owner of the Chicago franchise, sought an injunction to restrain Killefer, who had signed a Federal League contract, from returning to the National League Club.[49]

The case of *Weegham v. Killefer*[50] presented the court with two separate issues: whether the initial contract with Philadelphia was valid in its reservation of Killefer, and whether the plaintiff's conduct hindered his ability to recover, if in fact the contract with Philadelphia was invalid.[51]

The original Philadelphia contract was found to be unenforceable due to a lack of mutuality. The case spurned a new concept in sports litigation known as the "Clean Hands" principle. This concept was used to bar Weegham from retaining Killefer's services for his Chicago franchise. The court found that even though Chicago knew that Killefer was under contract with Philadelphia, the Chicago management induced him to sign a contract by offering him more money.[52] The court concluded that a basic principle of equity is that good faith is required to bring suit and while the plaintiff's conduct was not illegal, it was unethical in the eyes of the court. This concept has since been defined as the "Clean Hands" principle of equity.[53]

Interestingly, two players, Armando Marsans of Cincinnati and Hal Chase of Chicago, made attempts to invoke the ten-day release clause, and when the challenges were brought to court, the holdings directly contra-

47. E. MURDOCK, *supra* note 35, at 108. When the Federal League was initiated it did not appear to be threatening because no potentially competitive league ever lasted more than a few years, but by the close of the season became a clear threat to the other established leagues. *Id.*

48. *Id.* at 109.

49. Weegham v. Killefer, 215 F. 168, 169 (W.D. Mich. 1914).

50. 215 F. 168 (W.D. Mich. 1914).

51. *Id.* at 170.

52. *Id.* at 172-73.

53. BERRY & WONG, *supra* note 1, at 80-81.

dicted each other.[54] In *Cincinnati Exhibition Co. v. Marsans*,[55] the court ruled that Marsans accepted the contract executed with Cincinnati, and therefore, had waived any rights he may have had to mutuality. The court stated that it is a settled rule of law that where a person agrees to render services that are unique, the employee has agreed to a negative covenant.[56] The negative covenant has been described as an agreement to prohibit the use of a player's unique skills for another club or organization.[57] In the event a player attempts to violate the negative covenant, a court is empowered to enjoin such action.[58]

American League Baseball Club of Chicago v. Chase[59] provided a quite different result, but more importantly, it served as the impetus for an issue which was to be tested in the courts for the next seventy-five years. *Chase* was the first challenge to baseball which involved the antitrust laws. Chicago sought to enjoin Chase from jumping leagues. The defense for Chase alleged, on the other hand, that the contract constituted an illegal restraint of trade, and therefore, was a violation of the antitrust laws.[60]

The Supreme Court of New York ruled for the defendant and dissolved the lower court's injunction.[61] The court held that even though baseball was not subject to federal laws, it would not enforce an injunction which not only promoted a monopoly in contravention of common law, but which also stifled personal liberty.[62]

While the ruling appeared to jeopardize the hopes of invoking the federal antitrust laws against baseball, the legal status of the reserve clause had been successfully challenged once again. This put the management of the American and National Leagues in a difficult position as it sought to resist further attempts by the Federal League to recruit their players.[63]

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54. E. MURDOCK, *supra* note 35, at 113.

55. 216 F. 269 (E.D. Mo. 1914).

56. *Id.*

57. YASSER, TORTS AND SPORTS 152 (1985).

58. *See, e.g., Marsans*, 216 F. 269.

59. 149 N.Y.S. 6 (1914).

60. *Id.* at 15-16.

61. *Id.* at 20.

62. E. MURDOCK, *supra* note 35, at 109. *Id.* In addressing the defendant's antitrust allegation, the court used a unique description of the professional sport of baseball, as well as a colorful and candid interpretation of the monopolistic powers of organized baseball. The court stated: "[Baseball is merely] an amusement, a sport, a game that clearly comes within the civil and criminal laws of the state." *Chase* 149 N.Y.S. at 17. However, the court also stated that baseball was not a commodity of an article of merchandise subject to Congress' power to regulate interstate commerce, and therefore, was outside the jurisdiction of the federal antitrust laws. *Id.* at 16-17.

63. E. MURDOCK, *supra* note 35, at 109.

The Federal League seemed to gain momentum much like the American League had some fourteen years earlier in its attempt to be recognized on an equal "major league" basis. Peace talks between the two factions were initiated in August, 1914.[64] When the talks failed and the Federal League faced increasing financial difficulties, the parties once again looked to the courts.[65] Even in the wake of *Chase*, the Federal League felt it would be able to bring antitrust violations against organized baseball. Thus, in 1915, the Federal League sued organized baseball and members of the National Commission for conspiring to restrain trade in violation of the federal antitrust statutes.[66]

U.S. District Judge Keneshaw Mountain Landis was assigned to hear the dispute and there was little doubt that Judge Landis' demeanor demonstrated a favoritism towards baseball.[67] Although his decision was expected rather quickly after the hearings concluded, weeks and then months passed without a decision on the case. The two sides then initiated settlement talks.[68] Presumably, this was what Landis had hoped would happen during his delay in rendering a decision. By the end of the year, a satisfactory accommodation was made and the Federal League withdrew its antitrust suit.[69]

The Federal Baltimore Club, however, felt it had not been satisfactorily dealt with in the settlement agreement. The owners of the Baltimore Club filed suit in the Federal District Court of Philadelphia in 1916, alleging that organized baseball had conspired in restraint of trade. Anticipating an out of court settlement, Baltimore withdrew its complaint.[70]

However, when Baltimore did not receive the anticipated settlement, it again filed suit. *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*[71] eventually found its way to the United States Supreme Court. Baltimore not only challenged the American and National League, but also challenged former members of the now defunct Federal League. Baltimore alleged that the defendants had entered into a conspiracy to monopolize major league baseball.[72]

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64. *Id.* at 110-111.

65. *Id.* at 114.

66. *Id.*

67. BERRY & WONG, *supra* note 1, at 92.

68. D. VOIGHT, *supra* note 9, at 316-17.

69. The accommodation with its accompanying mergers, buyouts, and trades, cost the parties an estimated $10 million. E. MURDOCK, *supra* note 35, at 117.

70. *Id.*

71. 259 U.S. 200, (1922).

72. *Federal Baseball Club of Baltimore*, 259 U.S. at 207.

The Supreme Court in keeping with the holding in *Chase*, ruled that baseball was a local business not involved in interstate commerce, and therefore, was not governed by the federal antitrust laws.[73] Furthermore, the Court held that baseball did not involve production, and therefore, was not a subject of commerce subject to antitrust regulation.[74]

Consequently, the Supreme Court concluded a brief but monumental case in sport litigation history. This, however, did not preclude parties from attempting to challenge the status of baseball under federal antitrust laws.

Following the Supreme Court's decision, the first era in sports litigation ended (1890-1922). For the next quarter of a century, litigation involving baseball was relatively limited. Additional challenges involving antitrust issues as well as problems with labor again arose in the second era of sport litigation (post World War II).

One other aspect of the first era of sports litigation deserves mention. Organized baseball sought to stabilize its internal governance by selecting a commissioner to replace the three member National Commission. Originally, it was felt that Ban Johnson, the founder and president of the American League would be the man for the job. However, because of internal uneasiness regarding Johnson's executive powers, the owners looked elsewhere for a commissioner. It was eventually decided that Judge Landis should be appointed, as he had won the owner's respect with his favoritism of baseball in the *Federal Baseball Club of Baltimore* case. Thus, in 1920, Keneshaw Mountain Landis was chosen to become the first Commissioner of baseball.[75]

As Commissioner of baseball, one of Landis' first duties included dealing with the "Black Sox" players of Chicago, who had been indicted for fixing the 1919 World Series. The players had been acquitted in a grand jury investigation when their confessions suspiciously disappeared. Despite the acquittal, Landis banned the players for life from professional baseball.[76]

During this interim period between the first and second eras of sport litigation, Landis' authority as Commissioner was challenged in *Milwaukee American Association v. Landis*.[77] The owner of the Milwaukee club sought an injunction against Landis based on his disapproval of a player transac-

73. *Id.* at 206-07.
74. *Id.* at 206.
75. D. VOIGHT, *supra* note 9, at 317.
76. SPEARS & SWANSON, *supra* note 2, at 195.
77. 49 F.2d 298 (N.D. Ill. 1931).

tion. The plaintiff owned several major and minor league clubs. He attempted to conceal various transactions involving a player's movement between his major to minor clubs, but Landis recognized that several improprieties were occurring. Landis relieved the player of his contractual obligations with Milwaukee, thereby declaring him a free agent. The Milwaukee organization felt Landis had exceeded his authority.[78]

The court denied the injunction and held that Landis had acted prudently in his responsibilities.[79] This favorable ruling is credited with empowering future commissioners of baseball with generous internal authority over the organization.

For almost a quarter of a century, baseball's involvement in judicial matters was quite limited. It appears that other national matters of the time were more important. In addition, Landis' firm hand reign as Commissioner kept all parties in baseball happy. This inactivity would end with the establishment of yet another rival baseball league.[80]

III. DEVELOPMENT OF SPORTS LITIGATION - SECOND ERA: POST WORLD WAR II

In 1946, the Mexican Pasquel brothers promoted a rival major league, The Mexican League, and came to the United States offering large salaries in an effort to lure players to their league. American owners responded by blacklisting any player who chose to defect to the new league.[81] American owners returned to the courts in hopes of receiving legal support in this situation.

In *American League Baseball Club of New York, Inc. v. Pasquel*,[82] the New York Yankees sought an injunction against the Mexican League's invasion. The injunction sought to restrain the Pasquel brothers from inducing players presently under contract with the club from breaking their contracts to play in the Mexican League. The court granted an injunction finding that the Pasquel brothers had in fact acted maliciously and illegally. The injunction prohibited any further contact with players presently under contract with any professional baseball club.[83]

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78. *Id.* at 300.

79. *Id.* at 304.

80. The only other interim case of record was *Spencer v. Milton*, 287 N.Y.S. 944, 159 Misc. 793 (1936). In *Spencer*, the plaintiff was denied injunctive relief against the defendant which sought to restrain the latter from playing for any other ball club. The court denied relief based on prior cases involving a lack of mutuality and a lack of irreparable harm. *Id.*

81. D. VOIGHT, AMERICAN BASEBALL 301 (1970).

82. 63 N.Y.S. 2d 537, 187 Misc. 230 (1946).

83. *Id.* at 539, 187 Misc. at 232-233.

The next issue involving the Mexican League dealt with a players's challenge to the blacklisting instituted by the American owners in their early attempts to discourage defection. American players had soon learned that the Mexican League was not to their liking and wanted to return to American baseball, however, the owners' blacklisting prevented players reentry to the American Leagues.[84] The first player to challenge the issue in the courts was Dan Gardella, a former New York Giant.[85]

It was felt at the time that this case could have overruled the antitrust exemption in baseball if it had not been for Gardella's eagerness to settle the issue. In *Gardella v. Chandler*,[86] the plaintiff argued that the blacklisting of players was a restraint of trade in violation of antitrust statutes. The District Court dismissed the case, but on appeal, the Second Circuit found that the ruling in *Federal Baseball Club of Baltimore* did not preclude further proceedings.[87]

While offering differing opinions as to the status of baseball, especially with regard to interstate commerce, the court implied it would be wise to scrutinize the authority in *Federal Baseball Club of Baltimore*.[88] It was believed by many that *Gardella* would be the case to bring about the demise of baseball's antitrust immunity.[89] This speculation was quickly squashed when Gardella accepted an out of court settlement. Fearful of their position, baseball executives rescinded the blacklists and issued amnesties to all defectors.[90]

The next threat to baseball and its immunity from antitrust regulations came in *Toolson v. New York Yankees*.[91] This case reached the Supreme Court and speculation as to its outcome was high after the promise gained in the *Gardella* case. Unfortunately, this glimmer of hope faded rather quickly. By a 7-2 majority vote, the Court stayed with the ruling in *Federal Baseball Club of Baltimore*. Additionally, the Court felt that the lack of Congressional action in regard to the matter meant that baseball should not be subject to antitrust laws.[92]

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84. D. VOIGHT, *supra* note 8, at 3011.

85. *Id.*

86. 172 F.2d 402 (2d Cir. 1946).

87. *Id.* at 405.

88. *Id.* at 412.

89. *See* WEISTART & LOWELL, *supra* note 8, at 483.

90. D. VOIGHT, *supra* note 9, at 301.

91. 346 U.S. 356 (1953).

92. *Id.* at 356-57. In a dissenting opinion, Justices Burton and Read stated: "[B]y affirming the present case based on [*Federal Baseball Club of Baltimore*] (we announce) that baseball in 1953 is not engaged in interstate commerce and we do not agree . . . ." *Id.* at 357-58. Due to the

The decision in *Toolson* became authority for two subsequent cases, *Kowalski v. Chandler*,[93] and *Corbett v. Chandler*.[94] These courts concluded that *Toolson* mandated a decision in favor of the defendants. It was now fully understood what the Supreme Court's position was and the lower courts had to obey the precedent.[95]

Ironically, in a case brought against professional football for antitrust violations, the same immunity was not granted. The case of *Radovich v. NFL*[96] was tried to the Supreme Court, where the defendants claimed to be protected from alleged antitrust violations by virtue of the court's decisions in *Federal Baseball Club of Baltimore* and *Toolson*. The Court refused to apply either case and stated that had it been reviewing baseball for the first time, baseball would not enjoy its current status of immunity.[97]

Thus, while all other professional sports organizations came within the purview of the antitrust statutes, baseball continued to enjoy an immunity to antitrust laws. Perhaps, if the early challenges in baseball had not been brought to the high courts, baseball may not have found itself in such a unique position.

Over the remaining course of baseball litigation, alleged antitrust violations would still be brought against baseball.[98] However, *Federal Baseball Club of Baltimore* and *Toolson* continued to make the antitrust exemption impossible to penetrate. Many of the decisions though, affirmed the exemption with reluctance. For example, in *Salerno v. American League of Professional Clubs*, the court stated "a differentiation between baseball and other sports is 'unrealistic, inconsistent, and illogical.' "[99] The court ac-

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travel, broadcasting, attendance, and minor league operations, the dissent felt baseball met the interstate criterion required to exercise antitrust jurisdiction. *Id.*

93. 202 F.2d 413 (1953).

94. 202 F.2d 428 (1953).

95. WEISTART & LOWELL, *supra* note 8, at 485. The hope gained in *Gardella* had quickly vanished based on the *Toolson* decision. Many took the Supreme Court's decision to present the issue to Congress. *Id.* at 486.

96. 352 U.S. 445 (1957).

97. *Id.* at 452.

98. Complainants included players, Flood v. Kuhn, 407 U.S. 258 (1972); umpires, Salerno v. American League, 429 F.2d 1003 (2d Cir. 1970); municipal government, Wisconsin v. Milwaukee Braves, Inc., 385 U.S. 990 (1966); Washington v. American League, 460 F.2d 654 (9th Cir. 1972); minor league clubs, Portland Baseball Club, Inc. v. Baltimore Baseball Club, 282 F.2d 680 (9th Cir. 1960); and owners, Charles O. Finley, Co. v. Kuhn, 569 F.2d 527 (7th Cir. 1978).

The issues concerned such matters as the reserve clause, *Flood*, 407 U.S. 258; discrimination due to unionization, *Salerno*, 429 F.2d 1003; club relocation, *Wisconsin*, 385 U.S. 990; new franchise allocations; *Washington*, 460 F.2d 654; territorial rights compensation, *Portland*, 282 F.2d 680; and authority of the Commissioner, *Finley*, 569 F.2d 527.

99. *Salerno*, 429 F.2d at 1005.

knowledged, however, that a change could only occur by action of the Supreme Court or Congress.

A last legal shot at the reserve clause was attempted in *Flood v. Kuhn*.[100] Curt Flood of the St. Louis Cardinals was disgruntled over a recent trade. The case had the potential of penetrating the baseball antitrust immunity based on the fact that all other professional sports organizations were not exempt.[101] Furthermore, baseball's increasing involvement in interstate commerce, player unionization, and the league's control over employment opportunities was viewed as a means to destroy the foundation of the immunity.[102] The case was heard before the Supreme Court, thus giving it the opportunity to overrule its earlier decision in *Toolson*.

Unfortunately, the Supreme Court felt differently about the matter, and instead affirmed the antitrust exemption for baseball. The court saw no reason to overturn its decisions in *Federal Baseball Club of Baltimore* and *Toolson* when Congress had not acted to overturn those decisions.[103]

> Accordingly, we adhere once again to *Federal Baseball*. We adhere also to *International Boxing*[104] and *Radovich*[105] and their respective applications to professional boxing and professional football. If there is any inconsistency, or illogic in all this, it is an inconsistency and illogic of long standing that is to be remedied by Congress, not by the Court.[106]

Eventually, as a part of the 1970 Basic Agreement, the contract between the Major League Players Association and the Major League Baseball Player Relations Committee, impartial arbitration on internal grievances was established.[107] Consequently, the players were finally able to successfully challenge the long standing reserve clause through arbitration.

In a 1975 arbitration case involving pitchers Andy Messersmith of the Los Angeles Dodgers and Dave NcNally of the Montreal Expos, a panel of arbitrators headed by Peter Seitz heard the issue. Both Messersmith and McNally had played the 1974 season without a new contract and felt that upon the completion of the season they had fulfilled their contractual obli-

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100. 407 U.S. 258 (1972).

101. WEISTART & LOWELL, *supra* note 8, at 486.

102. *Id.* at 486.

103. FLOOD, 407 U.S. at 285. After *Toolson* was decided, over fifty biills were introduced by Congress into legislation, seeking to eliminate baseball's antitrust exemption. However, none of the bills received final passage. BERRY & WONG, *supra* note 1, at 100-07.

104. 358 U.S. 242 (1958).

105. 352 U.S. 445 (1956).

106. *Id.* at 284.

107. J. DWORKIN, OWNERS VERSUS PLAYERS 126 (1981).

gations to their respective teams.[108] The arbitration panel was to determine if this was a correct assertion. The panel did in fact rule in favor of the players and declared them free agents for the 1975 season[109] - thus establishing a means in which players could break the reserve clause.

The owners challenged the arbitrators' authority in the courts. In *Kansas City Royals Baseball Corporation v. Major League Baseball Player's Association*,[110] the owners were unsuccessful at seeking to have the arbitration panel's decision overturned for lack of jurisdiction. The court held that because the arbitration panel was established in collective bargaining between the parties it derived its jurisdictional authority from the agreement.[111] The owners had, in effect, granted the panel authority by agreeing to its establishment. The judges also relied upon a Supreme Court ruling that did not enable courts to overturn an arbitrator's decision in labor cases.[112]

Through negotiations, resulting in arbitration, the players now had their freedom from the perpetual reserve clause. The Messersmith/McNally arbitration decision has been called the players "Emancipation Proclamation."[113] What could not be accomplished in over a half century of antitrust litigation was secured by this one arbitration decision.[114]

In 1976, the Basic Agreement granted veteran players a much stronger bargaining position.[115] No longer would the reserve clause bind a player to a team for the entire length of his career. This historic document ended a century of owner control over player mobility, and its inception turned the baseball world upside down.[116]

The hero of this turnaround in baseball player rights was Marvin Miller, the Players Association's Executive Director. By his masterful use of the labor laws and his charismatic leadership, he had given the players better employment opportunities and a voice in governing matters.[117]

When players achieved free agency, and thus, the ability to market their skills, their salaries escalated tremendously. By 1981, the average player's salary had reached $150,000.[118] With this open market of athletes, guide-

108. BERRY & WONG, *supra* note 1 at 407.
109. *Id.* at 414-15.
110. 532 F.2d 615 (8th Cir. 1976).
111. *Id.* at 623.
112. *Id.* at 621.
113. BERRY & WONG, *supra* note 1, at 407.
114. *Id.*
115. M. MARKHAM & P. TEPLITZ, BASEBALL ECONOMIC AND PUBLIC POLICY 54 (1981).
116. D. VOIGHT, AMERICAN BASEBALL 215 (1983).
117. *Id.*
118. *Id.* at 356.

lines were established to secure fairness in negotiating with unsigned players.

The remaining professional baseball litigation involves challenges to the Commissioner's authority brought by some high profile individuals involved with the game. In 1977, owners had to be fined by the Commissioner for tampering with potential free agents. Ted Turner, owner of the Atlanta Braves, not only was fined, but was suspended and denied a draft choice for the upcoming season.[119] Turner challenged the penalties imposed by the Commissioner in *Atlanta National League Baseball Club v. Kuhn*.[120] The court found for the commissioner on all issues except for the denial of the draft choice. The court felt that this was an ultra vires act, above the scope of the authority granted to the Commissioner.[121] While the ruling favored Kuhn's actions, it severely discredited him.[122]

The authority of the commissioner was again challenged in *Charles O. Finley, Co. v. Kuhn*.[123] Finley, a longtime adversary of Kuhn, had attempted to sell some of his high priced talent from the Oakland Athletics to the Boston Red Sox. Kuhn blocked the sale, alleging that the sale was not in the best interests of baseball. Finley challenged the action alleging that Kuhn acted arbitrarily and capriciously, beyond his authority, and in violation of antitrust statutes.[124] The court ruled for Kuhn, although it recommended that future internal disputes be resolved through arbitration.[125]

Pete Rose, baseball's all-time hit producer, attempted to block Commissioner Bart Giamatti's power to conduct a hearing regarding gambling allegations levied against Rose. After receiving a temporary restraining order from a sympathetic state court - enjoining the commissioner's office from disciplining Rose - Giamatti successfully had the case reviewed in federal court where the commissioner had a much stronger platform for argument.[126] Rose's request for the case to be remanded to the state court was subsequently denied.[127]

It appears that the issues argued in *Rose v. Giamatti*[128] are relevant to labor law principles in which an employer does in fact possess the right to probe and take disciplinary action against an employee suspected of mis-

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119. *Id.* at 312.
120. 432 F. Supp. 1213 (N.D. Ga. 1977).
121. *Id.* at 1226.
122. D. VOIGHT, *supra* note 116, at 312.
123. 569 F.2d 527 (7th Cir. 1978).
124. *Id.* at 530-31.
125. *Id.* at 538-42.
126. Chambers, *Pete's Fans Learn What Lawyers Do*, NAT'L L.J., Sept. 11, 1988, at 13.
127. Rose v. Giamatti, 721 F. Supp 924 (1989).
128. *Id.*

conduct unless the charge violates a statute or a contract or constitutes a tort.[129] The 26 major league ball clubs have satisfactorily empowered the Commissioner with the authority to do just that, especially with respect to a charge of gambling.[130]

Having been denied the opportunity to litigate the case in state court, Rose elected to accept the commissioner's settlement proposal of a lifetime ban from baseball as well as dropping litigation against the commissioner.[131] Apparently, faced with a limited legal foundation and historical litigious success owned by baseball in federal court, Rose opted to take "what the Commissioner offered."[132] However, the legal fiasco had assisted Rose by keeping him on the Cincinnati Reds payroll, enhancing his endorsement potential, and serving as a camouflage against pending tax evasion charges on his vast winnings.[133]

The most recent victim of the commissioner's disciplinary powers, George Steinbrenner, owner of the New York Yankees, was also cited for actions deemed unbecoming to baseball. Steinbrenner's involvement with admitted gambler Howard Spira[134] lead commissioner Fay Vincent to order the Yankee owner to reduce his majority partnership from 55 percent to less than 50 percent as well as resign as general partner of the ballclub.[135] On September 4, 1990, Vincent was subsequently sued by Leonard Kleinman, the Yankees executive vice president, for trying to run him and Steinbrenner out of baseball.[136] The suit was apparently filed in an effort to stop a disciplinary hearing regarding Kleinman's role in the Steinbrenner-Spira conspiracy.[137]

And so concludes the second and final era of baseball litigation, the post World War II years. The courtroom proceedings of this era were valuable in shaping the future of professional baseball, especially as it pertained to player rights in America. While the most encouraging development for players and umpires resulted from labor relations and arbitration, the courts eagerly stood by these decisions.

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129. Cohen, *Judge Should Strike Out Rose*, MANHATTAN LAWYER, Aug. 22, 1989, at 10.

130. Chambers, *supra* note 126.

131. Lieber and Neff, *An Idol Banned*, SPORTS ILLUSTRATED, Sept. 4, 1989, at 29-30.

132. Frankel, *Baseball Bets on Willkie Farr Partner*, THE AMERICAN LAWYER, Oct. 1989, at 79.

133. Chambers, *supra*, note 26.

134. *Today's News Update*, N.Y. L.J., Sept. 5, 1990, at 1.

135. *Steinbrenner Stock Stays In Family*, The Sporting News, Oct. 8, 1990, at 13.

136. *See Supra* note 134.

137. *Id.*

IV. CONCLUSION

Litigation most often resulted from competition of rival leagues.[138] Each new league attempting to establish their position in the baseball enterprise generally created chaos for organized baseball. Players generally profited from this rival league competition. Bidding wars, enticements, and bribery have always benefitted the player's bank accounts and had the potential to strengthen their rights. In most instances, their early failure to capitalize on court decisions hindered baseball player's rights for almost a century.

The modifications to the reserve clause have been one of the greatest changes in the profession of baseball. The freedom of movement and bargaining power have resulted in higher player compensation and greater competition for player's rights.

The baseball antitrust exemption controversy may very well never be settled. As a new commissioner, Fay Vincent will now have to contend with this issue. Congress is growing impatient over the reluctance of baseball to expand and have established a Task Force on the Expansion of Major League Baseball. Senate members also are strongly considering introducing legislation repealing the sport's antitrust exemption.[139]

It does appear that with America's love for the game that many have become so enamored with its beauty and its joy that its imperfections are often and easily overlooked. The "National Institute", has found itself challenged in the courts numerous times, but generally seems to escape irreparable harm by the skin of its teeth. Maybe Judge Landis with his procrastination as well as the courts in 1914 and 1922 were moved by a compelling force and did have an idea of how they were going to affect the future of baseball and professional sport litigation after all. And just maybe their decisions on this "gentlemen's game" should be judicially and legislatively adhered to through perpetuity so that the only baseball ruling challenged is by grown men dressed like their players for the judgement of "He's Out"!

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138. BERRY & WONG, *supra* note 1, at 65-66.

139. Welling, Bernstein & Studghill, *Professor Hardball*, BUSINESS WEEK, April 3, 1989, at 85, 88.