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**\*45 CAN ANTITRUST LAW SAVE THE MINNESOTA TWINS? WHY COMMISSIONER SELIG'S  
CONTRACTION PLAN WAS NEVER A SURE DEAL**

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Shortly after the 2001 World Series, Major League Baseball (MLB or the League) owners began talking about

"contraction." [\[FN1\]](#) Contraction was the buzzword created by MLB owners to describe the process by which the League eliminates teams to increase competition. [\[FN2\]](#) According to Commissioner Bud Selig, contraction was needed because twenty-five \*46 of the League's thirty teams were losing money and the League was operating at a \$500 million overall loss. [\[FN3\]](#)

The teams most likely to be contracted were the Minnesota Twins and the Montreal Expos. [\[FN4\]](#) The Twins ranked next to last among MLB's thirty teams in 2001 local revenue. [\[FN5\]](#) Additionally, the team's stadium lease with the city to play in the Metrodome expired after the 2002 season, and team owner Carl Pohlad wanted to neither renew the lease nor pay for a new stadium. [\[FN6\]](#)

MLB players argued that Selig's contraction proposal was illegal, because it was a unilateral implementation of terms subject to collective bargaining. [\[FN7\]](#) However, the issue of whether MLB may unilaterally contract a team was never resolved. On August 30, 2002, with fear of a players' strike looming, MLB and its players agreed to a new, four-year collective bargaining agreement in which MLB promised not to pursue a contraction strategy through the 2006 season. [\[FN8\]](#)

This Article argues that the unilateral contraction of a MLB team such as the Minnesota Twins, as suggested by Commissioner Selig, [\[FN9\]](#) may violate antitrust law. Part I of this Article discusses the history of MLB, the Minnesota Twins, antitrust law, and baseball's historic antitrust exemption. Part II discusses the issues involved in stating an antitrust claim against MLB and explains why Commissioner Selig's contraction plan was never a sure deal.

#### \*47 I. THE HISTORY OF THE MLB, THE MINNESOTA TWINS, ANTITRUST LAW AND BASEBALL'S ANTITRUST EXEMPTION

##### A. The History of MLB

MLB is currently a collection of thirty professional teams, sixteen in the National League and fourteen in the American League. [\[FN10\]](#) The National League, which is the older of the two leagues, was formed in 1876 as a union of eight clubs. [\[FN11\]](#) At its inception, the National League was the first baseball association organized on the club, rather than player, level. [\[FN12\]](#) The teams competed not only on the field, but competed as a collective business against nonmember baseball teams for the best players. [\[FN13\]](#) These nonmember teams belonged to the American Association, the Players League, and the Western League. [\[FN14\]](#)

By 1901, the Western League, under the leadership of Commissioner Ban Johnson, had lured over 100 major league players away from the National League, [\[FN15\]](#) expanded eastward into cities such as Cleveland and Chicago, and renamed itself the American League. [\[FN16\]](#) By January 1903, the two leagues grew weary of the feuding for players and the bidding up of salaries. [\[FN17\]](#) As a result, the leagues merged to form MLB. As described by baseball historian Jerold Duquette: [\[FN18\]](#)

Under the [MLB] agreement, [t]he two leagues agreed to recognize each other's reserve clauses and to form a three-man commission to oversee organized baseball. The commission would be made up of the two league presidents and a third member chosen by them. The role of the commission was to arbitrate disputes between the two major leagues and the various minor leagues. [\[FN19\]](#)

After almost two decades of weak leadership under the three-man commission, MLB sought to achieve stability. [\[FN20\]](#) By 1921 a single, neutral\*48 Commissioner, selected by baseball owners to regulate the game replaced the leadership commission. [\[FN21\]](#) MLB granted the Commissioner's post wide power to oversee the game, and vested power in the President of the United States to name the Commissioner's successor upon his death or incapacity. [\[FN22\]](#)

MLB's first Commissioner, Judge Kenesaw Mountain Landis was hired by MLB in 1921 and presided over the game until his death in 1944. [FN23] During Landis's second season as Commissioner, Supreme Court Justice Oliver Wendell Holmes wrote his famous Federal Baseball [FN24] opinion on behalf of a unanimous Court. In his opinion, Holmes stated that because MLB did not involve interstate commerce, it was exempt from antitrust law, even though it was a business. [FN25] Throughout Landis's reign, it was rarely suggested that MLB should be brought under the rule of antitrust law. As a result, the game enjoyed legal monopoly status. [FN26]

From the time of Landis's death in 1944 and continuing through 1992, MLB grew rapidly, and early challenges to baseball's antitrust status emerged. During the post-Landis era, MLB was led by seven \*49 commissioners, [FN27] expanded from sixteen to twenty-six teams, [FN28] experienced franchise values rising from hundreds-of-thousands of dollars to over one-hundred million dollars, [FN29] and witnessed the emergence of a players' union named the MLB Players Association (MLBPA), [FN30] which was composed of players waiting to share in the game's growing prosperity. [FN31] Although the owners had designated to the President of the United States the power to appoint the game's commissioners, each of Landis's successors was selected unilaterally by MLB ownership. [FN32] Despite the MLBPA, baseball continued to enjoy limited government interference and special legal status. [FN33]

Two Supreme Court cases, *Toolson v. New York Yankees, Inc.* [FN34] and *Flood v. Kuhn*, [FN35] defined baseball's antitrust exemption during the post-Landis era. [FN36] In each case, a player challenged MLB's reserve system on antitrust grounds and in each case, they failed. [FN37] The Toolson court rejected the claim that baseball's reserve clause violated the Sherman Antitrust Act as an illegal restraint of trade based on stare decisis of Federal Baseball. [FN38] The court also indicated that if antitrust laws are to be applied to baseball, Congress must impose them. [FN39] The Toolson court considered in its holding a 1952 Study of Monopoly Power of the House of Representatives Committee report, which stated that "[u]nder judicial interpretations of [the commerce clause], the Congress has power to \*50 investigate, and pass legislation dealing with professional baseball ... if that business is, or affects, interstate commerce." [FN40]

Nineteen years later in *Flood*, the Supreme Court again reviewed the holdings of *Federal Baseball* and *Toolson*, this time acknowledging that MLB is a business engaged in interstate commerce. However, the Court once again affirmed the exemption, as an anomaly that has existed for half a century and should remain, absent congressional intervention. [FN41] In *Flood*, St. Louis Cardinals center fielder Curt Flood filed an antitrust suit against Commissioner Bowie Kuhn and MLB, alleging his trade to the Philadelphia Phillies violated antitrust law, as well as the Thirteenth Amendment of the United States Constitution. [FN42] The Supreme Court, however, held that it could not enforce antitrust laws against Kuhn or MLB, because Congress had no intention to subject baseball's reserve system to antitrust law. [FN43]

While baseball players failed to achieve results through antitrust law during the post-Landis era, labor law proved more open to the players' movement. A 1969 National Labor Relations Board (NLRB) decision granted the NLRB jurisdiction over major-league baseball, opening the game to a players' union and collective bargaining. [FN44] The decision emerged from a 1969 petition filed by the umpires' union to conduct an election among American League umpires, which the NLRB extended to include players. [FN45] According to Roger Abrams, Dean at Northeastern University School of Law and a MLB salary arbiter:

As a result of the American League umpires' successful action before the National Labor Relations Board, Marvin Miller and the Players Association knew that the Labor Board would protect baseball players in the exercise of their rights under federal law. For the first time in the history of the baseball enterprise, there was a power in the world above the owners and the commissioner; there was a law of the land, not just the internal law of baseball. Federal law, enforced by a federal agency, sanctioned the union's \*51 use of the strike to compel management's agreement to improve terms and conditions of employment, required the owners to bargain in

good faith over terms and conditions of employment, and protected the unionists against discrimination. [\[FN46\]](#)

The NLRB supervision of MLB did wonders to improve the baseball players' bargaining position. A NLRB ruling in 1976 opened the door for free agency, [\[FN47\]](#) after which players' salaries and franchise values began rising dramatically. In 1981, New York Yankees outfielder Dave Winfield became the first player to earn over \$1 million per season, while ten years later in 1991, Boston Red Sox pitcher Roger Clemens became the first \$5 million per-year player. [\[FN48\]](#) The comparable rise in franchise values during this era is best exemplified by the frequently-sold Seattle Mariners, which entered baseball in 1976 for the League's \$6.25 million expansion fee, and were sold in 1981 for \$10.4 million, sold again in 1989 for \$80 million, and sold a third time in 1991 for \$106 million. [\[FN49\]](#) A similar trend exists with the franchise values of the Houston Astros, Baltimore Orioles and New York Mets, each of which were also sold twice during the post-Landis years. [\[FN50\]](#)

MLB's golden age, both politically and financially, ended on September 10, 1992, when Baseball owners fired Commissioner Fay Vincent and appointed Milwaukee Brewers' owner Bud Selig, then the head of the owners' executive council, to serve as interim Commissioner. [\[FN51\]](#) Owners were concerned that Vincent, whose position as Commissioner required that he serve as an impartial arbiter over baseball, was too sympathetic to the players' concerns in collective bargaining. [\[FN52\]](#) Additionally, there were concerns over the small-market franchises who were lagging financially. [\[FN53\]](#) According to Abrams, "[t]he \*52 owners decided they would insist on restructuring the baseball enterprise to maintain its profitability." [\[FN54\]](#) Apparently, the dramatic increase in revenue was not enough. [\[FN55\]](#)

Since 1992, MLB has experienced the problems of labor strife, the emergence of a partisan commissioner, increased centralization of team management, and expanded judicial and legislative review. In 1994, a MLB players' unfair labor-practices strike, caused in part by MLB owners' failure to make their August payment to players' pension fund, [\[FN56\]](#) led to the cancellation of 921 games between 1994 and 1995, including the first-ever cancellation of MLB's playoffs and World Series. [\[FN57\]](#)

After the removal of Vincent from power, ownership took several steps to shift bargaining power in its favor. These steps included the unilateral redefinition of the Commissioner's post from a quasi-public, impartial position to one as owners' advocate. [\[FN58\]](#) After six seasons as interim Commissioner, Selig was elected by MLB owners in 1998 as the new permanent Commissioner, and in January 2001, the former Milwaukee Brewers' owner was given unilateral power broader than any preceding Commissioner, including the legendary Landis. [\[FN59\]](#)

MLB granted Selig, among other rights, the authority to develop an economic plan in which large-market teams would increasingly share their revenue with small-market teams in hopes of reducing the competitive disparity between the small and large markets. [\[FN60\]](#) Selig exploited this power in March 2002, when he enforced a debt-ratio rule on all teams, requiring that MLB franchises reduce debt to below forty percent of franchise value, which reduced the amount of money available for teams to spend on players' salaries. [\[FN61\]](#)

Additionally, in September 1999, the owners voted unanimously to eliminate the positions of American and National League Presidents, and to centralize all baseball functions in Selig and the Commissioner's \*53 office. [\[FN62\]](#) If any business competition still existed between the National and American Leagues during Fay Vincent's reign, such competition quickly evaporated under Selig. The National and American Leagues even began regular season ticket revenue sharing via interleague play, a shift from one of MLB's most honored traditions. [\[FN63\]](#)

In the past decade, courts, alarmed by the game's changing internal regulation, have begun to interpret more stringently antitrust law with respect to MLB. The 1990s' two most significant antitrust cases, *Piazza v. MLB* [\[FN64\]](#) and *Butterworth v. National League of Professional Baseball Clubs*, [\[FN65\]](#) attempted to narrow the reach of baseball's antitrust exemption to the reserve clause. [\[FN66\]](#) Both of these cases evolved from the failed attempt

by Philadelphia businessmen Vince Piazza and Vincent Tirendi to purchase the San Francisco Giants franchise and move the team to Tampa Bay. [\[FN67\]](#) In Piazza, the court denied MLB's request to dismiss for failure to state a claim in an antitrust action filed against MLB. [\[FN68\]](#) According to the Piazza court, Federal Baseball, Toolson and Flood all involved attempts to obtain relief from baseball's reserve clause, and therefore baseball's antitrust exemption is limited to that clause and not to any other aspect of MLB's business. [\[FN69\]](#)

In Butterworth, the Florida Supreme Court applied the same reasoning as in Piazza, holding that Florida Attorney General Robert Butterworth, pursuant to Florida antitrust law, may proceed with an antitrust investigation against MLB for preventing the sale and relocation of the Giants franchise. [\[FN70\]](#)

Neither Piazza nor Butterworth, however, has been appealed to the Supreme Court. While Piazza and Tirendi settled their case with National League owners for \$6 million and an apology, [\[FN71\]](#) Duquette contends that the National League has deliberately not appealed Butterworth because \*54 "[i]f Butterworth were appealed and heard by the Supreme Court, it may well result in the repeal of the exemption." [\[FN72\]](#)

Rather than resolve the antitrust controversy via the Supreme Court, MLB as part of the 1994-95 strike settlement, agreed to support a congressional bill, defining baseball's antitrust status and eliminating the antitrust exemption as it relates to labor relations between MLB owners and players. [\[FN73\]](#) The Curt Flood Act of 1998 was signed into law with the support of both baseball owners and players. [\[FN74\]](#) According to Duquette:

There was overwhelming agreement that the Curt Flood Act should place MLB players in the same negotiation position vis-à-vis management as other professional athletes. There was also broad agreement that the bill should in no way affect the current state of the law in the areas of franchise migration, control of expansion, the minor leagues, and broadcasting and licensing rights. [\[FN75\]](#)

However, with many issues regarding baseball's antitrust exemption undetermined by the courts, the consequences of the Curt Flood Act remain ambiguous. [\[FN76\]](#)

## B. The Minnesota Twins

MLB arrived in Minnesota on October 26, 1960, when American League President Joe Cronin approved the request of owner Calvin Griffith to move the Washington Senators to the Twin Cities (Minneapolis/St. Paul). [\[FN77\]](#) The Senators were one of the American League's original franchises, and were founded in 1873 as the Washington Nationals. [\[FN78\]](#) Despite having Hall of Fame pitcher Walter Johnson, who won more games than any pitcher besides the legendary \*55 Cy Young, [\[FN79\]](#) the Washington team was futile on the field and the source of one of the game's most famous epithets: "first in war, first in peace, and last in the American League." [\[FN80\]](#)

Since arriving in Minnesota, the Twins have built a storied baseball tradition, led by Hall of Fame hitters Harmon Killebrew, Rod Carew and Kirby Puckett. [\[FN81\]](#) Although the Minnesota team was generally far from being a baseball powerhouse, under Puckett's leadership, the Twins won two World Series, in 1987 and 1991. [\[FN82\]](#)

The Twins also have had some respectable seasons in the box office. For example, in 1962, Minnesota led the League in attendance by drawing 1.4 million fans to Metropolitan Stadium. [\[FN83\]](#) Between 1987 and 1993, the Twins averaged an incredible 2.3 million fans per year at the Metrodome. [\[FN84\]](#)

Nevertheless, Twins ownership made a series of poor business decisions which hurt the teams' revenue stream. Among the Twins biggest mistakes was a 1982 request that the city of Minnesota build the Metrodome. [\[FN85\]](#) The Metrodome was the last indoor, multipurpose stadium built for a MLB team. [\[FN86\]](#) In the twenty years following its construction, outdoor baseball-only stadiums returned to vogue, with the building of successful stadium complexes such as Camden Yards in Baltimore, MD, Jacobs Field in Cleveland, OH, and the Ballpark in Arlington in

Arlington, TX. [\[FN87\]](#) These new outdoor stadiums attracted more fans and businesses than the indoor domes, leaving the Minnesota Twins at an economic disadvantage. [\[FN88\]](#) The Metrodome, within a few years of construction, was obviously too young to be replaced, but too outdated for the ownership's liking. [\[FN89\]](#)

\*56 In 1984, Twins owner Calvin Griffin sold his majority share in the team to Minnesota banker Carl Pohlad, [\[FN90\]](#) and within a decade of acquiring the team, Pohlad began an unsuccessful campaign for a new ballpark. [\[FN91\]](#) According to Jay Weiner, a sports reporter with the Minnesota Star Tribune, "Pohlad's vision, begun in 1994, of a new Twins stadium on the Minneapolis riverfront, had been eliminated by mistakes--honest and dishonest--and by ardent public opposition to subsidizing him, the second richest man in Minnesota." [\[FN92\]](#)

Most likely, the threat of MLB contraction would help Pohlad persuade Minneapolis taxpayers to finance a new stadium for the Twins, as threatened contraction establishes a holdup situation for city fans and taxpayers. [\[FN93\]](#) Under Selig's contraction plan, MLB cities like Minneapolis, which are otherwise unwilling to pay for new stadiums, risk losing their teams, and fans risk having to travel to the next closest MLB city, in this case Milwaukee, to watch a big league ballgame. [\[FN94\]](#)

### C. Antitrust Law

The Sherman Act states, "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations is declared to be illegal." [\[FN95\]](#) Enacted in 1890, during the rise of big business and mass production, the Sherman Act was intended to serve both political and \*57 economic purposes and to prevent any one business from becoming more powerful than the government. [\[FN96\]](#)

According to professors Phillip Areeda and Louis Kaplow,

The possible goals of antitrust beyond economic efficiency include consumer interests in lower prices (perhaps at the expense of productive efficiency), the political and social values of dispersed control over economic resources, multiple choices for producers and consumers free of the arbitrary dictates of monopolies or cartels, equal opportunity, and 'fairness' in economic dealings. As a general proposition, most find these goals to be attractive. [\[FN97\]](#)

In *United States v. Socony-Vacuum*, which set the modern antitrust standard, Supreme Court Justice William Douglas stated, "Under the Sherman Act a combination formed for the purpose and with the effect of raising, depressing, fixing, pegging, or stabilizing price of a commodity in interstate or foreign commerce is illegal per se." [\[FN98\]](#) Similarly, wage-fixing restraints are treated as price-fixing restraints cognizable under the Sherman Act, because wage restraints reallocate labor resources to other markets where employees are able to earn fair market value. [\[FN99\]](#)

Although Federal Baseball provided MLB with at least a limited antitrust exemption, antitrust law has played a significant role in regulating all other major league sports. In *United States v. International Boxing Club*, the Supreme Court held that defendants engaged in the business of promoting professional championship boxing contests were subject to the rules of antitrust law. [\[FN100\]](#) Similarly, in *Radovich v. NFL*, the Court held that antitrust law applies to professional football [\[FN101\]](#) and it held in *Haywood v. NBA* that antitrust law applies to professional basketball. [\[FN102\]](#)

Unionized athletes, however, enjoy only a limited benefit of antitrust law, because there is an implied nonstatutory labor exemption from antitrust law, which states, "The Court should hold that, in order to effectuate congressional intent, collective bargaining activity concerning \*58 mandatory subjects of bargaining under the Labor Act is not subject to the antitrust laws." [\[FN103\]](#)

The nonstatutory labor exemption was clarified by the 1996 Supreme Court case *Brown v. Professional Football, Inc.*, which determined that the labor exemption applies only to issues subject to collective bargaining, but that such exemption continues after an impasse in negotiations. [FN104] *Brown* states that an in-place labor union may not file a labor-market antitrust claim against an employer, even when an impasse has been reached in a collective bargaining agreement. [FN105]

The *Brown* court leaves open the possibility that a sports labor union may bring an antitrust claim in a case where a strong consumer-product component renders the claim sufficiently distant from the collective bargaining process. [FN106] As illustrated by the lower court in *Brown*, "the case for applying the [labor] exemption is strongest where a restraint on competition operates primarily in the labor market and has no anti-competitive effect on the product market." [FN107]

A second potential method to circumvent the nonstatutory labor exemption is by decertifying the union. When the Supreme Court denied the National Football League Players Association (NFLPA) petition for certiorari in *Powell v. NFL* [FN108]--an antitrust claim pertaining to a mandatory topic of collective bargaining dismissed by the Eighth Circuit based on the nonstatutory exemption--the NFLPA decertified, re-filed suit, and won in court. [FN109] Upon re-filing as a nonunion, the court held that the nonstatutory labor exemption had expired in absence of continued union representation. [FN110]

However, Clark Griffith, a Minneapolis sports antitrust lawyer and son of former Twins owner Calvin Griffith, points out that even if a \*59 sports union decertifies temporarily, ownership maintains in some circumstances a defense that union decertification is nothing more than a sham. [FN111]

#### D. Baseball's Antitrust Exemption

Today, MLB enjoys a limited exemption from antitrust law, as codified by the Curt Flood Act in 1998. [FN112] It is a statute with a somewhat ambiguous meaning that implicates both the substance and standing of baseball-related antitrust claims. [FN113] According to subsection (a) of the Curt Flood Act, entitled "MLB Subject to Antitrust Laws":

Subject to subsections (b) through (d) of this section, the conduct, acts, practices, or agreements of persons in the business of organized professional MLB directly relating to or affecting employment of MLB players to play baseball at the major league level are subject 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. [FN114]

Subsection (b), entitled "Limitation of Section," begins, "No court shall rely on the enactment of this section as a basis for changing the application of the antitrust laws to any conduct, acts, practices, or agreements other than those set forth in subsection (a) of this section." [FN115]

Beyond the obvious problem of a circular reference between subsections (a) and (b), the gist of these two clauses read together implies that any issue not discussed in subsection (b) of the Act is to be treated by \*60 the courts in the same manner as the courts would have treated it prior to enactment of the Act--by reference to case law. [FN116]

To determine whether contraction is addressed specifically in the Act, six numeric clauses denoted in subsection (b) require review. [FN117] Of the six subsection (b) clauses, (b)(3) most closely relates to the issue of contraction. The clause states that the Curt Flood Act does not imply a cause of action when: "[A]ny conduct, acts, practices, or agreements of persons engaging in, conducting or participating in the business of organized professional baseball relating to or affecting franchise expansion, location or relocation, franchise ownership issues, including ownership

transfers, the relationship between the Office of the Commissioner and franchise owners ...." [\[FN118\]](#)

Upon quick review of the Act, it appears the "not limited to" clause in the introduction of subsection (b), as well as subsection (d)(5), which states that subsection (b) "shall not be strictly or narrowly construed," permits an argument that contraction issues are within the Act's scope. [\[FN119\]](#) Upon further review, however, it becomes evident that irrespective of whether the Act establishes antitrust jurisdiction over contraction issues, the next step remains the same: reference to case law. [\[FN120\]](#)

Turning to case law, the first issue to consider is which cases best apply to contraction issues: Flood or Piazza and Butterworth. Applying Flood requires the court to consider whether the case provides baseball with a wide anti-trust exemption, yet again upholding Federal Baseball and Toolson, or a narrow exemption, limited in scope to the reserve clause. [\[FN121\]](#) On the other hand, following the lower court decisions of Piazza and Butterworth yields a narrow exemption, limited in scope to the reserve clause. [\[FN122\]](#) Under Piazza and Butterworth, the implication is that contraction would violate antitrust law because it is not a reserve clause issue. [\[FN123\]](#) However, the traditional reading of Flood implies that contraction would fall within baseball's antitrust exemption. [\[FN124\]](#) Arguably, the Curt Flood Act renders Piazza and Butterworth ineffective. [\[FN125\]](#)

#### **\*61 E. Beyond Curt Flood: Changing League Governance and Policies**

In addition to the Curt Flood Act and relevant case law, public policy may play a role in encouraging a more limited reading of baseball's exemption. One of the Sherman Act's goals was to prevent any business from becoming powerful at the expense of the government and consumers. [\[FN126\]](#) MLB often persuades local governments to comply with its subsidized-stadium demands or risk losing teams via contraction. [\[FN127\]](#) Thus, MLB has engaged in the very behavior that the Sherman Act sought to prevent, and courts could determine that this is an explicit statutory violation of antitrust law, therefore superceding what remains of MLB's nonstatutory exemption. [\[FN128\]](#) According to Harvard sports and labor law professor Paul Weiler:

In the late 1990s baseball and its commissioner, Bud Selig, conveyed [a] warning--pay or risk losing your team--to voters and politicians in San Diego, Pittsburgh and elsewhere, to persuade them to approve new publicly built ballparks for their teams. Protecting taxpayers from this kind of extortion by owners [had] to be done. [\[FN129\]](#)

Baseball as a business, furthermore, no longer carries the dignity of a distinguished, neutral Commissioner, overseen by the President of the United States. The Commissioner's position has degenerated into a position comparable to a cartel's chief officer, selected unilaterally by MLB owners and intended to serve the interests of the owners. [\[FN130\]](#)

Finally, the integration of business functions among both baseball teams and leagues has reached levels more substantial than any time before or during the Flood era, indicating the facts of Flood may no longer be relevant in interpreting an antitrust suit against MLB. Increased cooperation among teams and leagues is evident by the emergence of inter-league play, the removal of the National and American League Presidents' Offices, and the expanded powers of the **\*62** Commissioner to effectuate a business plan and financial model. [\[FN131\]](#) These are all signs that indicate baseball has overstepped its antitrust exemption.

## II. STATING A CLAIM AGAINST MLB

Based upon analysis of MLB history, the Minnesota Twins franchise, antitrust law, baseball's antitrust exemption, and underlying public policy, there exists a possibility to state a Sherman Act section 1 claim against MLB for conspiring to contract the Minnesota Twins.

### A. Standing to Sue MLB

The first issue involved in stating an antitrust claim against MLB is to determine who has standing to bring suit. Traditional antitrust law is enforceable both publicly and privately. Public enforcement is pursued at the federal level by the Antitrust Division of the Department of Justice and by the Federal Trade Commission (FTC), and on the state level by the state attorneys general, who have authority to file Sherman Act suits on behalf of consumers residing within the state. [\[FN132\]](#) Meanwhile, private civil enforcement can be commenced by "any person who [is] injured in his business or property' by reason of a violation of 'anything forbidden in the antitrust laws.'" [\[FN133\]](#)

Subsection (c) of the Act additionally raises questions regarding who has standing to sue MLB. [\[FN134\]](#) The first sentence of subsection (c) reads: "Only a MLB player has standing to sue under this section." [\[FN135\]](#) Therefore, only a player or collection of MLB players, and probably not even the federal or state government, has standing to file an antitrust suit against MLB. Further complicating the issue of who has standing to sue MLB is the labor exemption to antitrust, which prevents unions from filing antitrust claims within the labor market. [\[FN136\]](#) When considered \*63 together with subsection (c) of the Curt Flood Act, it implies that maybe only a decertified MLBPA may sue MLB under antitrust law. [\[FN137\]](#)

If the MLBPA does not decertify, the union is subject to the labor exemption, as mentioned above in the discussion on Brown. This nonstatutory exemption is weakest when the restraint on trade operates primarily in the product market, rather than the labor market. [\[FN138\]](#) Nevertheless, even a strong product-market claim is subject to the court's discretion, in balancing consumer protection against the labor exception. [\[FN139\]](#)

The alternative route, decertification, triggers a return of the Powell scenario, where the NFLPA successfully decertified and brought an antitrust suit against the NFL. Based on the Powell analysis, individual MLB players, free from the labor exemption, would have explicit standing under the Curt Flood Act to sue MLB. [\[FN140\]](#) Despite such optimism, there are several reasons why decertification may not be feasible. For example, unlike in Powell, today the MLBPA would likely need to conduct a decertification election to avoid MLB's use of a sham defense, as suggested by Griffith. [\[FN141\]](#) A decertification election, conducted under section 9(c)(1)(A)(ii) of the National Labor Relations Act, must assert that the MLBPA no longer represents more than fifty percent of MLB players. [\[FN142\]](#) Decertification would likely prove unpopular among many players because MLB employees would risk losing various union benefits, such as specified grievance procedures. [\[FN143\]](#) Furthermore, baseball veterans would strongly pressure against decertification, since the union provides significant pension benefits to retired players. [\[FN144\]](#)

In spite of the obstacles to winning a decertification election, decertifying the MLBPA seems to be the surest way to establish standing \*64 in an antitrust claim against MLB. [\[FN145\]](#) If decertification fails, the second most feasible approach is to obtain standing through a substantive product-market claim, filed by the MLBPA. [\[FN146\]](#) Additionally, Minnesota's Attorney General, a collection of Minnesota consumers or a group of general Minneapolis taxpayers may try to file suit against the League; however, subsection (c) of the Curt Flood Act would likely lead the courts to deny such a claim for lack of standing. [\[FN147\]](#)

### B. The Substance of an Antitrust Claim to Halt Contraction

If standing exists to file a claim against MLB, plaintiffs may attempt to state either a labor-market or a product-market claim against the League. [\[FN148\]](#) A product-market claim against MLB is significantly stronger, because it avoids reconsideration of nonstatutory labor-exemption issues; however, in this instance, it is easier to show anti-competitive effects in the labor market. [\[FN149\]](#)

A labor-market antitrust claim is only feasible by decertifying the MLBPA and filing suit as a collection of indi-

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vidual baseball players. [\[FN150\]](#) A labor-market claim would define the market as potential MLB players, with the requisite major or minor league credentials. Currently, each of the thirty major league teams employs twenty-five players on its major league roster. [\[FN151\]](#) If the Minnesota Twins were contracted, twenty-five players would lose their jobs. [\[FN152\]](#) Based on supply and demand analysis, competition for the final roster positions on the remaining twenty-nine major league teams would intensify based on the reduced number of total \*65 roster spots, an effect that would deflate salaries of players on all remaining teams.

A product-market suit arises either from one of two products markets: baseball games or baseball teams. [\[FN153\]](#) The more traditional claim alleges that MLB engages in price-fixing by reducing output of baseball games. [\[FN154\]](#) The first issue pertaining to a product-market claim related to baseball games is the precise definition of the product component of the market. [\[FN155\]](#) The applicable product market may be construed as widely as the sports entertainment market or as narrowly as MLB. [\[FN156\]](#) However, plaintiffs are likely to successfully contend that the product market is MLB games, based on a myriad of case law, which regards baseball as its own product market. [\[FN157\]](#) An alternative product-market claim, which is rather unorthodox but carries strong economic support, is to define the product as MLB teams where the consumers are local governments and citizens with the interest and resources to support a MLB team. [\[FN158\]](#)

The next issue is defining the geographic market. [\[FN159\]](#) Geographically, the applicable market is probably Midwestern baseball or Minnesota baseball. [\[FN160\]](#) If baseball includes minor-league and independent-league teams as well, the relevant market would include products such as the St. Paul Saints, a team that plays games ten miles outside the heart of Minneapolis, yet lacks the requisite market power to significantly alter market analysis. [\[FN161\]](#)

### C. Will an Antitrust Suit Prevent Contraction?

There are too many undefined variables to predict on the merits whether an antitrust suit against MLB would prevent contraction of the Minnesota Twins. However, one issue seems certain from the above analysis: Commissioner Selig's contraction plan was never a sure deal. The state of antitrust law with respect to MLB remains muddled at best, despite the passing of the Curt Flood Act of 1998. In addition to a myriad of interpretations of the Act, courts interpret differently the scope \*66 of the holding in Flood regarding the extent, if any, to which baseball's historic antitrust exemption goes beyond the reserve clause. Additionally, unanswered questions remain as to whether the changing governance and policies instituted by MLB at all alter Baseball's special treatment by the courts. [\[FN162\]](#)

While the Powell case clearly provides standing to MLB players that are part of a decertified baseball union to sue MLB, [\[FN163\]](#) questions persist regarding how long the MLBPA must decertify to avoid a sham defense. [\[FN164\]](#) Additionally, in event the MLBPA fails to achieve the requisite number of votes to decertify, questions regarding the scope of the nonstatutory antitrust exemption, especially in the event of a strong product-market claim, remain unanswered. [\[FN165\]](#) Furthermore, the Curt Flood Act does not completely foreclose the possibility of a public antitrust suit against MLB, depending upon interpretation of the scope of standing under the Act. [\[FN166\]](#)

Although substantive aspects of a labor-market antitrust case against MLB would be simple, issues persist about how a court would define the requisite product market. [\[FN167\]](#) If the baseball game market is applied, additional issues exist regarding the market's geographic scope and how to show antitrust injury. [\[FN168\]](#) If the baseball team market is applied, questions emerge about whether a municipality of taxpayers qualifies for consumer standing. [\[FN169\]](#)

### III. CONCLUSION

When Minnesota Twins outfielder Torii Hunter was interviewed upon learning that Selig backed down from contracting the Minnesota Twins before the 2002 season, the defensive whiz stated, "I couldn't really rest in peace. Now I can." [\[FN170\]](#) Unlike Hunter, the issues of MLB contraction are unlikely to rest in peace anytime soon, absent the finality of a Supreme Court ruling, which based on the new collective bargaining agreement, will not occur until at least 2006. When the new agreement \*67 expires, the Twins and Montreal Expos may again emerge as the test cases for contraction. [\[FN171\]](#) The legal result, obviously, will be unpredictable, given significant ambiguity in both statutes and case law pertaining to baseball's antitrust exemption. As baseball progresses through the next four seasons, fans will be left to wonder how the courts will effect change in America's national pastime, and Commissioner Selig will remain in limbo as to the extent of his power to unilaterally contract teams.

[\[FN1\]](#). B.S. magna cum laude 1999, Economics, Wharton School, University of Pennsylvania; M.A. candidate (sports management), University of Michigan; J.D. candidate University of Michigan Law School. This Article is dedicated to my father, Steven Edelman, who not only took me to my first MLB game in September 1985, but also introduced me to the games' business and legal issues. For further information, please contact me at MarcEdelman@aol.com.

[\[FN1\]](#). See Murray Chass, Baseball; Selig Offers His Forecast for the Game, N.Y. TIMES, Nov. 28, 2001, at 1. In a November 27, 2001, media presentation, MLB Commissioner Bud Selig declared, "We will contract." Id.

[\[FN2\]](#). See Ronald Blum, Baseball Commissioner Postpones Contraction Until 2003, ASSOCIATED PRESS, Feb. 6, 2002, available at Lexis-Nexis Academic Universe; see also Phil Rogers, Baseball Owners: Let's Drop 2; Expos, Twins Likely Franchises to Be Eliminated, CHI. TRIB., Nov. 7, 2001, at A2 ("This contraction ends a cycle of expansion in which the American and National League increased their membership from a total of sixteen teams in 1960 to thirty, including two team additions in 1993 and '98.").

[\[FN3\]](#). See Chass, supra note 1, at 1.

[\[FN4\]](#). See generally Bill Shaikin, Pains Begin; Baseball: As the Sport Moves to Eliminate the Twins and Expos, the First Real Obstacles Have Surfaced to Prevent That from Taking Place, L.A. TIMES, Nov. 8, 2001, at D1.

[\[FN5\]](#). Financial Data Illustrate Disparity Between Royals and Other Teams, ASSOCIATED PRESS & LOCAL WIRE, Dec. 7, 2001, available at <http://web.lexis-nexis.com/universe> (last visited Jan. 23, 2003). The Twins local revenue was just \$31.9 million, as compared to the New York Yankees, which had the highest local revenues at \$217.8 million. The only team with lower local revenues than the Twins was the Montreal Expos, at \$9.8 million. MLB has since repurchased the Expos, which are also considered as a prime candidate for contraction in 2002. Id.

[\[FN6\]](#). See Brian Bakst, Twins Seek Dismissal of Lawsuit over Elimination Threat, ASSOCIATED PRESS, Apr. 4, 2002, available at Lexis-Nexis Academic Universe. The 1998 agreement between the Twins and Minneapolis was a two-year deal with the option for one-year renewals, which the Twins exercised through 2002); Ross Newhan, Settlement Appears to Save the Twins; Baseball: They Won't Be Eliminated in 2003 if Commission Approves Written Agreement with the Team and Baseball, L.A. TIMES, May 30, 2002, at D6 (agreeing not to contract the Twins in 2003 was part of a settlement between the Metropolitan Sports Facilities Commission and the Twins and MLB).

[\[FN7\]](#). See Ken Daley, Contraction Slows the Labor Deal Process, DALLAS MORNING NEWS, Dec. 5, 2001, at 11B.

[\[FN8\]](#). See Bill Shaikin, In the End, Contraction Became Part of the Equation; Baseball: Selig Said It Wasn't a Negotiating Ploy, but Final Deal Includes Agreement Not to Eliminate Teams Through 2006, L.A. TIMES, Aug. 31, 2002, at D4, D5.

[FN9]. See Chass, *supra* note 1, at 1; Rogers, *supra* note 2, at A2.

[FN10]. See Hal McCoy, Baseball Insider; Expos, Twins Were Special Not Long Ago, DAYTON DAILY NEWS, Nov. 11, 2001, at 9D.

[FN11]. MARK POLLACK, SPORTS LEAGUES AND TEAMS: AN ENCYCLOPEDIA, 1871 THROUGH 1996, at 23 (1997).

[FN12]. JEROLD J. DUQUETTE, REGULATING THE NATIONAL PASTIME: BASEBALL AND ANTITRUST 5 (1999).

[FN13]. See generally *id.* at 6-8.

[FN14]. *Id.*

[FN15]. See *id.* at 7; see also POLLACK, *supra* note 11, at 46.

[FN16]. DUQUETTE, *supra* note 12, at 7.

[FN17]. *Id.* at 8.

[FN18]. Jerold Duquette is the author of *Regulating the National Pastime*, a book discussing baseball's relationship with antitrust law. Duquette is also an Assistant Professor of Government and Politics at George Mason University. *Id.* at 163.

[FN19]. *Id.* at 8. For additional background on baseball's reserve clause, see *id.* at 5-7.

[FN20]. *Id.* at 29. According to Duquette:

The owners created a quasi-public post by constructing the office of commissioner much like the independent regulatory commissions of government. By empowering [Judge Kenesaw Mountain] Landis to rule in the best interests of baseball free from the influence of the owners, organized baseball had effectively regulated itself in a manner consistent with the New Nationalism principles that would animate regulatory politics in the New Deal Era. One of the terms of the National Agreement of 1921, which created the commissioner's position, was that in the event of the commissioner's death or incapacity, the President of the United States would choose a new commissioner of baseball. This provision illustrates the owners' conscious attempt to make the governance of the game consistent with the regulatory philosophy of the day.

*Id.* at 30.

[FN21]. *Id.*

[FN22]. *Id.* at 29-30.

[FN23]. *Id.* at 28-29.

[FN24]. [Fed. Baseball Club of Balt., Inc. v. Nat'l League of Prof'l Baseball Clubs, 259 U.S. 200 \(1922\).](#)

[FN25]. See DUQUETTE, *supra* note 12, at 31; ROBERT C. BERRY ET AL., LABOR RELATIONS AND PROFESSIONAL SPORTS 28-29 (1986). Holmes wrote:

The business is giving exhibitions of base ball, which are purely state affairs .... [T]he fact that in order to give the exhibitions the Leagues must induce free persons to cross state lines and must arrange and pay for their doing so is not enough to change the character of the business .... [T]he transport is a mere incident, not the es-

sential thing. That to which it is incident, the exhibition, although made for money would not be called trade or commerce in the commonly accepted use of those words. As it is put by the defendants, personal effort, not related to production, is not a subject of commerce.

Id. (quoting [Fed. Baseball Club of Balt., 259 U.S. at 209-09](#)).

[FN26]. See DUQUETTE, supra note 12, at 28, 30.

[FN27]. See Larry Stone, The Commissioners--A Look at Each of Baseball's Top Leaders, SEATTLE TIMES, June 9, 1998, at C3. (Baseball commissioners during the post-Landis era were: A.B. "Happy" Chandler (1945-1951), Ford Christopher Frick (1951-1965), General William D. Eckert (1965-1968), Bowie Kent Kuhn (1969-1984), Peter Victor Ueberroth (1984-1988), A. Bartlett Giamatti (1988- 1989) and Fay Vincent (1989-1992)).

[FN28]. See POLLACK, supra note 11, at 46.

[FN29]. See id. at 7-8. The final baseball team sold during Landis's reign, the Cleveland Browns sold in 1936 for \$325,000, while the first team sold in the post-Landis era, the Philadelphia Phillies, sold in 1943 for \$400,000. This is as compared to the three baseball teams that sold in 1992, the Seattle Mariners, Houston Astros and Detroit Tigers, which sold respectively for \$106 million, \$115 million and \$85 million. Id.

[FN30]. See infra note 44 and accompanying text.

[FN31]. ROGER I. ABRAMS, LEGAL BASES 83 (1998) ("In a 1970 agreement, baseball management formally recognized the [MLB] Players Association as the sole and exclusive collective bargaining agent for all Major League Players.").

[FN32]. See DUQUETTE, supra note 12, at 43.

[FN33]. Id.

[FN34]. [346 U.S. 356 \(1953\)](#).

[FN35]. [407 U.S. 258 \(1972\)](#).

[FN36]. See Peter Macaluso, Bang the Gavel Slowly: A Call for Judicial Activism Following the Curt Flood Act, B.U. PUB. INT. L.J. 463, 467 (2000). See generally DUQUETTE, supra note 12, at 116-17.

[FN37]. Macaluso, supra note 36, at 467.

[FN38]. Id.

[FN39]. Id.

[FN40]. H.R. REP. NO. 82-2002, at 4 (1952), quoted in Joshua Hamilton, [Congress in Relief: The Economic Importance of Revoking Baseball's Antitrust Exemption](#), 38 SANTA CLARA L. REV. 1223, 1230 (1998).

[FN41]. See Flood v. Kuhn, 408 U.S. 258, 282-85 (1972).

[FN42]. See id. at 265-66.

[FN43]. Id. at 285.

[FN44]. [Am. League of Prof'l Baseball Clubs & Ass'n of Nat'l Baseball League Umpires](#), 180 N.L.R.B. No. 30, Case

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No. 1-RC-10414 (Dec. 15, 1969); see also ABRAMS, *supra* note 31, at 77-78 ("In what must be considered one of the greatest upsets in the history of baseball and the legal process, a four-to-one majority of the Labor Board ruled that it would take jurisdiction over the major-league baseball enterprise. The agency spurned the Federal Baseball precedent as an aged artifact.").

[FN45]. ABRAMS, *supra* note 31, at 77-78.

[FN46]. *Id.* at 82.

[FN47]. See *In re: The Twelve Clubs Comprising Nat'l League of Prof'l Baseball Clubs and Twelve Clubs Comprising Am. League of Prof'l Baseball Clubs, L.A. & Montreal Clubs & MLBPA*, 66 Lab. Arb. 101 (1976) (holding that a "reserve clause" allowing owners to renew a players' contract for one year on the same terms does not renew the reserve clause itself, and once a player's renewal term has expired, the players are free to negotiate with other ball clubs).

[FN48]. Eric Fisher, *On the Eve of Destruction*, WASH. TIMES, Dec. 13, 2000, at B1.

[FN49]. POLLACK, *supra* note 11, at 8.

[FN50]. *Id.* Other teams that sold on multiple occasions between 1976 and 1992 exhibited a similar effect. These teams include: the Houston Astros (\$19.0 million in 1979 and \$115 million in 1992), Baltimore Orioles (\$10.5 million for an 80% interest in 1979, \$70 million in 1988, and \$173 million in 1993), and New York Mets (\$21 million in 1980, \$95 million for 95% interest in 1996). *Id.* at 8-9.

[FN51]. See ABRAMS, *supra* note 31, at 179-80; see also Gordon Edes, *Selig Responds to His Critics*, BOSTON GLOBE, Jan. 18, 2002, at E1.

[FN52]. See DUQUETTE, *supra* note 12, at 97; see also ABRAMS, *supra* note 31, at 179-80.

[FN53]. See DUQUETTE, *supra* note 12, at 97; see also ABRAMS, *supra* note 31, at 179-80.

[FN54]. ABRAMS, *supra* note 31, at 180.

[FN55]. See Fisher, *supra* note 48, at B1; POLLACK *supra* note 11, at 8.

[FN56]. ABRAMS, *supra* note 31, at 185.

[FN57]. *Baseball Labor History*, ASSOCIATED PRESS, Aug. 29, 2001, available at <http://web.lexis-nexis.com/universe> (last visited Jan. 23, 2003).

[FN58]. See DUQUETTE, *supra* note 12, at 29; see also Tom Haudricourt, *Steinbrenner's Suit Slams Brewers: Yankees Owner Says Small Market Clubs Bad for Sport*, MILWAUKEE J. SENTINEL, May 9, 1997, at C1.

[FN59]. Edes, *supra* note 51, at E1.

[FN60]. *Id.*

[FN61]. See *Rockies in Violation of League Debt Rule*, MORNING NEWS, Mar. 15, 2002, at 12B ("Teams must meet the debt-ratio rule by June 1 or risk being fined, losing their share of their national broadcast payments or being placed in trusteeship. Baseball is requiring that a team's debt be 40 percent or less of its franchise value.").

[FN62]. Hal Bodley, *League President Jobs Eliminated*, USA TODAY, Sept. 16, 1999, at 5C.

[FN63]. Cindy Rhodes, *Travesty or History?: Angels Fans are Split on Interleague Play*, PRESS-ENTERPRISE (Riverside, CA), June 13, 1997, at C5.

[FN64]. [831 F. Supp. 420 \(E.D. Pa. 1993\)](#).

[FN65]. [644 So. 2d 1021 \(Fla. 1994\)](#).

[FN66]. DUQUETTE, *supra* note 12, at 116. *Contra* [McCoy v. Major League Baseball, 911 F. Supp. 454, 457 \(W.D. Wash. 1995\)](#) (holding that plaintiff fans and business owners could not state a claim against MLB for causing the 1994 strike through unfair labor practices, rendering season tickets worthless, because The United States Supreme Court and not the lower courts should "retain exclusive privilege of overruling its own decision.").

[FN67]. [Piazza, 831 F. Supp. at 420; Butterworth, 644 So. 2d at 1021](#).

[FN68]. See [Piazza, 831 F. Supp. at 441](#).

[FN69]. [Id. at 438](#).

[FN70]. See [Butterworth, 644 So. 2d at 1021-22, 1025](#).

[FN71]. PAUL C. WEILER & GARY R. ROBERTS, *SPORTS AND THE LAW* 145 (2d ed. 1998).

[FN72]. DUQUETTE, *supra* note 12, at 118.

[FN73]. See *id.* at 124.

[FN74]. *Id.* at 127.

[FN75]. *Id.* at 125.

[FN76]. See generally Jennifer Dyer, *The Curt Flood Act of 1998: After 76 Years, Congress Lifts Baseball's Anti-trust Exemption on Labor Relations but Leaves Franchise Relocations up to the Courts*, 3 T.M. COOLEY J. PRAC. & CLINICAL L. 247, 280-83 (2000).

[FN77]. JAY WEINER, *STADIUM GAMES, FIFTY YEARS OF BIG LEAGUE GREED AND BUSH LEAGUE BOONDOGGLES* 51-53 (2000).

[FN78]. POLLACK, *supra* note 11, at 48. The American League emerged in 1901 from a predecessor league, known as the Western League. *Id.* In 1957, the team renamed itself from Nationals to Senators. *Id.* Many historians believe the Washington/Minnesota franchise is actually the oldest in baseball, linking the current team to a Washington Nationals ball club, which was founded by government clerks in 1859 and played professionally as part of the defunct National Association in its inaugural 1871 season. See also Peter Bjarkman, *Washington Senators--Minnesota Twins: Expansion-Era Baseball Comes to the American League*, *Encyclopedia of Baseball Team Histories: American League* 487, 493 (1990).

[FN79]. See Bjarkman, *supra* note 78, at 488-89.

[FN80]. *Id.* at 487-88, 493.

[FN81]. *Id.* at 511-12, 516, 524-25.

[FN82]. See POLLACK, *supra* note 11, at 48.

[FN83]. Bjarkman, *supra* note 78, at 511.

[FN84]. WEINER, *supra* note 77, at 104.

[FN85]. See generally *id.* at 107-08.

[FN86]. See generally *id.* at 61.

[FN87]. See Dave Sheinin, Check the Box Scores for Attendance, WASH. POST, Feb. 14, 2002, at D4. The Cleveland Indians and Baltimore Orioles have proven the blueprint of baseball success, improving revenue streams with a new, outdoor stadiums. For example, the Cleveland Indians' revenue in their last two seasons at Cleveland Stadium, 1992 and 1993, was \$40.7 million and \$51 million respectively. *Id.* While, the Indians' revenue in their first season in Jacobs Field, 1994, was \$73.28 million and by 1999, Indians revenue increased to \$136.78 million. *Id.*

[FN88]. See generally *id.*

[FN89]. See WEINER, *supra* note 77, at 61. According to Weiner:

Minnesota's 1950s stadium, built to join the elite club of major-league cities, was rendered antiquated within ten years. It was the first time--but not the last--that Minnesota dropped behind the curve of stadium construction. It would happen in the next generation, when the Metrodome was built to catch up to the other multipurpose doughnuts, only to be the final one built and to help the Twins and Vikings too little and too late. This rotten liming would happen in the third generation, too. As Minnesota cautiously debated its stadium policy into the year 2000, just about every other major-league community had gone forward into new settings or was farther along in its planning. The Twin Cities have never led. They've always trailed.

*Id.*

[FN90]. WEINER, *supra* note 77, at 115, 126.

[FN91]. *Id.* at 127. "In some ways, ever since he bought the Twins, Pohlad tried to get a new stadium. As early as 1985, barely a year after he pocketed the Twins, he tried to gain control of the Vikings and buy the Dome, too." *Id.*

[FN92]. *Id.* at 114.

[FN93]. See Diane Pucin, Minnesota Fans Are Frustrated About This Version of Twin Killing, L.A. TIMES, Nov. 8, 2001, at 1; Harvey Araton, Sports of the Times; Contraction Gets No Votes in Minnesota, N.Y. TIMES, Nov. 20, 2001, at S1.

[FN94]. See Dyer, *supra* note 76, at 277.

[FN95]. [15 U.S.C. § 1 \(2002\)](#).

[FN96]. PHILLIP AREEDA & LOUIS KAPLOW, ANTITRUST ANALYSIS: PROBLEMS, TEXTS AND CASES 4-5 (1997).

[FN97]. *Id.* at 49.

[FN98]. [United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 223 \(1940\)](#).

[FN99]. See [Mackey v. NFL, 543 F.2d. 606, 616-17 \(8th Cir 1976\)](#); see also [Apex Hosiery Co. v. Leader, 310 U.S. 469, 502-03 \(1940\)](#) (citing [15 U.S.C. § 17 \(2002\)](#)) ("[T]he labor of a human being [was] not a commodity ... of commerce, ... nor shall such [labor] organizations ... be held or construed to be illegal combinations ... under the antitrust

laws.")).

[FN100]. See [348 U.S. 236, 240, 244-45 \(1955\)](#).

[FN101]. See [352 U.S. 445, 447-48 \(1957\)](#).

[FN102]. See [401 U.S. 1204, 1205 \(1971\)](#).

[FN103]. [Local Union No. 189 v. Jewel Tea Co., 381 U.S. 676, 710 \(1965\)](#) (plurality) (quoting [United States v. Hutcheson, 312 U.S. 219 \(1941\)](#)).

[FN104]. See [518 U.S. 231 \(1996\)](#).

[FN105]. See [id. at 246-47](#).

[FN106]. See [id. at 249-50](#).

[FN107]. [Brown v. Pro Football, Inc., 50 F.3d 1041, 1051 \(D.C. Cir. 1995\)](#).

[FN108]. See [Powell v. NFL, 930 F.2d 1293 \(8th Cir. 1989\)](#), cert. denied, [498 U.S. 1040 \(1991\)](#).

[FN109]. WEILER & ROBERTS, *supra* note 71, at 206-07.

[FN110]. See [Powell v. NFL, 764 F. Supp. 1351, 1358-59 \(D. Minn. 1991\)](#).

Because no 'ongoing collective bargaining relationship' exists, the court determines that the nonstatutory labor exemption has ended. In the absence of continued union representation, the Eighth Circuit's rationale for the exemption no longer applies because the parties may not invoke any remedy under the labor laws, whether it be collective bargaining, instituting an NLRB proceeding for failure to bargain in good faith or resorting to a strike.

Id.

[FN111]. Clark C. Griffith, [New Law Provides Optimism in the Coming Baseball Labor Negotiation, 14 ANTI-TRUST 33, 38 \(2000\)](#).

[FN112]. See Curt Flood Act, [15 U.S.C. § 26b \(2003\)](#). The Curt Flood Act is an amendment to the Clayton Act. The Congressional Record states:

It is the purpose of this legislation to state that MLB players are covered under the antitrust laws (i.e., that MLB players will have the same rights under the antitrust laws as do other professional athletes, e.g., football and basketball players), along with a provision that makes it clear that the passage of this Act does not change the application of antitrust laws in any other context or with respect to any other person or entity.

144 CONG. REC. H9942-03, H9943 (daily ed. Oct. 7, 1998) (statement of Rep. Hyde). Griffith, a supporter of baseball owners, contends: "Congress passed the Curt Flood Act of 1998, granting major league players the rights of other professional athletes while preserving the exemption for other organized baseball activities." Griffith, *supra* note 111, at 38. However, other scholars contend the Act implies consent for narrowly tailoring of baseball's antitrust exemption. See Dyer, *supra* note 76, at 280-83.

[FN113]. See [15 U.S.C. § 26b](#).

[FN114]. [Id. § 26b\(a\) \(2003\)](#).

[FN115]. [Id. § 26b\(b\) \(2003\)](#).

[FN116]. See generally Dyer, *supra* note 76, at 274 (citing [15 U.S.C.A. § 27a\(b\)\(3\) \(1998\)](#)).

[FN117]. [15 U.S.C. § 26b\(b\) \(2003\)](#).

[FN118]. [Id. § 26b\(b\)\(3\) \(2003\)](#).

[FN119]. *Id.*; see also [§ 26b\(d\)\(5\) \(2003\)](#).

[FN120]. See generally Dyer, *supra* note 76, at 274.

[FN121]. [Flood v. Kuhn, 407 U.S. 258 \(1972\)](#).

[FN122]. [Piazza v. MLB, 831 F. Supp. 420, 438 \(E.D. Pa. 1993\)](#); [Butterworth v. Nat'l League, 644 So. 2d 1021, 1025 \(Fla. 1994\)](#).

[FN123]. [Piazza, 831 F. Supp. at 438](#); [Butterworth, 644 So. 2d at 1025](#).

[FN124]. See [Flood, 407 U.S. at 282](#).

[FN125]. See Curt Flood Act, [15 U.S.C. § 26b\(b\)\(3\) \(2003\)](#).

[FN126]. E. THOMAS SULLIVAN & JEFFREY L. HARRISON, UNDERSTANDING ANTITRUST AND ITS ECONOMIC IMPLICATIONS 3-5 (2d ed. 1994).

Conscious choices are made to relax or minimize enforcement in certain industries where market competition would lead to diminished social welfare. The expressed exemptions are of two kinds: (1) those that further broad national policy, and (2) those that apply to specific industries .... Industries specifically exempted include insurance, railroads, agriculture, fisheries and professional baseball.

*Id.* at 57.

[FN127]. See Dyer, *supra* note 76, at 277-78; PAUL WEILER, LEVELING THE PLAYING FIELD 262 (2000).

[FN128]. See Dyer, *supra* note 76, at 277-78.

[FN129]. WEILER, *supra* note 127, at 262.

[FN130]. See generally ABRAMS, *supra* note 31, at 78.

[FN131]. *Id.* at 160-84.

[FN132]. See SULLIVAN & HARRISON, *supra* note 126, at 35.

[FN133]. *Id.* (citing [15 U.S.C. § 15](#)). Consumer standing has since been narrowed judicially by [Blue Shield of Va. v. McCready, 457 U.S. 465, 477 \(1982\)](#), which states: "It is reasonable to assume that Congress did not intend to allow every person tangentially affected by an antitrust violation to maintain an action to recover threefold damages for the injury to his business or property." *Id.* at 477. Rather, a court should look "to the physical and economic nexus between the alleged violation and the harm to the plaintiff." *Id.* at 478; see also AREEDA & KAPLOW, *supra* note 96, at 41.

[FN134]. See [15 U.S.C. § 26b\(c\) \(2003\)](#).

[FN135]. *Id.*

[FN136]. See [Brown v. Pro Football, Inc., 518 U.S. 231 \(1996\)](#); [Powell v. NFL, 930 F.2d 1293 \(8th Cir. 1989\)](#), cert. denied, [498 U.S. 1040 \(1991\)](#).

[FN137]. See [Brown, 518 U.S. at 250](#); Powell, 930 F.2d at 1358-59; [15 U.S.C. § 27\(c\)](#).

[FN138]. See [Brown, 518 U.S. at 249-50](#); see also Dyer, supra note 76, at 248-49.

[FN139]. See generally Dyer, supra note 76, at 249-50.

[FN140]. See generally [Powell v. NFL, 764 F. Supp. 1351, 1356 \(D. Minn. 1991\)](#).

[FN141]. See Griffith, supra note 111, at 38-39.

[FN142]. SULLIVAN & HARRISON, supra note 126, at 250.

[FN143]. See MICHAEL YATES, WHY UNIONS MATTER 4 (1998). According to Yates:

Every union contract includes a grievance procedure, giving each worker the right to file a complaint against the company for any discrimination. Nearly all contracts provide that a neutral person, one not employed by the company, will resolve the dispute if the parties themselves cannot do so. In other words, with a union the employer must have a good reason to fire someone.

Id.; see also Gene Frenette, *Hardball & Hard Times: Life in Minors Not Luxurious*, FLA. TIMES-UNION, May 27, 1999, at C1.

[FN144]. See Baseball Notes; Old-Timers Stage Pension Protest, L.A. TIMES, June 29, 1998, at C9.

[FN145]. Dyer, supra note 76, at 285 (citing Eric R. McDonough, [Escaping Antitrust Immunity--Decertification of the National Basketball Players Association](#), 37 SANTA CLARA L. REV. 821, 839-40 (1997)).

[FN146]. See generally [Brown v. Pro Football, Inc., 518 U.S. 231, 249-50 \(1996\)](#).

[FN147]. See SULLIVAN & HARRISON, supra note 126, at 40.

It is held that a consumer can maintain a treble damages action, although no commercial or profit interest is at stake, as long as monetary injury is alleged. If a price-fixing overcharge is asserted, the consumer is injured in her 'property' to the extent that the value of her money is diminished.

But see [15 U.S.C. § 26b\(c\) \(2003\)](#).

[FN148]. See Dyer, supra note 76, at 285-86; Griffith, supra note 111, at 37-38.

[FN149]. See [Brown, 518 U.S. at 249-50](#); [United Mine Workers v. Pennington, 381 U.S. 657, 660 \(1965\)](#).

[FN150]. See [Brown, 518 U.S. at 249-50](#); see also Dyer, supra note 76, at 248-49; Griffith, supra note 111, at 37-38.

[FN151]. See Ross Newham, *On Baseball; Owners Are Rolling the Dice with This Gambit*, L.A. TIMES, Nov. 6, 2001, at D1 (according to the MLB rules collectively bargained between the League and union, each MLB team maintains exactly 25 players on its active roster).

[FN152]. Id.

[FN153]. See generally SULLIVAN & HARRISON, supra note 126, at 31-33.

[FN154]. See id. at 113.

[\[FN155\]](#). Id. at 115.

[\[FN156\]](#). See id.

[\[FN157\]](#). See [Fed. Baseball v. Nat'l League, 259 U.S. 200 \(1922\)](#); [Toolson v. New York, 346 U.S. 356 \(1953\)](#); [Flood v. Kuhn, 407 U.S. 258 \(1972\)](#).

[\[FN158\]](#). See generally WEILER, *supra* note 129, at 262.

[\[FN159\]](#). See generally SULLIVAN & HARRISON, *supra* note 126, at 219.

[\[FN160\]](#). See id.

[\[FN161\]](#). See generally John Millea, Saints Receive a Fiery Kick, STAR TRIB. (Minneapolis, MN), July 17, 1997, at C3.

[\[FN162\]](#). See Dyer, *supra* note 76, at 280-83.

[\[FN163\]](#). See [Powell v. NFL, 764 F. Supp. 1351, 1356 \(D. Minn. 1991\)](#).

[\[FN164\]](#). See Griffith, *supra* note 111, at 38-39; see also Dyer, *supra* note 76, at 285 ("[I]t is possible that in the future, decertification will lose its effect and become a regular negotiating tool.").

[\[FN165\]](#). See [Brown v. Pro Football, Inc. 518 U.S. 231, 249-50 \(1996\)](#).

[\[FN166\]](#). See [15 U.S.C. §§ 27a\(c\), 27a\(d\)\(5\)](#).

[\[FN167\]](#). See SULLIVAN & HARRISON, *supra* note 126, at 219.

[\[FN168\]](#). Id.

[\[FN169\]](#). See Dyer, *supra* note 76, at 280-83.

[\[FN170\]](#). See Blum, *supra* note 2.

[\[FN171\]](#). Id. MLB labor negotiators told the players' association that the Twins and Expos were the two teams targeted for contraction before the 2002 season. Id.

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