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THE CURT FLOOD ACT OF 1998: THE PLAYERS' PERSPECTIVE

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Last October 27 the President signed into law the Curt Flood Act of 1998 (CFA).[1] Through its provisions, and the unequivocal statement in its purpose section that Major League Baseball players have the same rights under the antitrust laws as do other professional athletes, the CFA clarifies the law and dispels any notion that baseball players cannot bring antitrust actions against Major League Baseball owners. At the same time the CFA ensures that it does not affect the application of the antitrust laws to any other person or entity or in any other context.

Both points were of utmost importance to the players. The first, although by no means a panacea for all that strains the relationship between owners and players in Major League Baseball, should reduce the likelihood of work stoppages, something that has plagued the industry for nearly three decades. But it is the second aspect that is most susceptible to being mischaracterized, misunderstood or overlooked by observers and commentators. Congress was careful to specify that this legislation says nothing about the application of the antitrust laws except with regard to the employment of Major League players. Whatever the law was as to other individuals or circumstances on October 26, 1998, it remained unchanged on October 28, 1998. As will be discussed below, this aspect of the bill reflects a significant disagreement between the parties about the extent to which baseball's so-called antitrust exemption continues to exist.

PROTECTING PLAYERS

The Need

If, in the course of collective bargaining, the Major League Baseball players and owners bargain to an impasse, labor law permits the owners to impose unilaterally on the players the terms of the owners' last offer.

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1. The Act was named in honor of the courageous Major League Baseball player, Curt Flood, who sacrificed his career to fight a system he believed to be a form of involuntary servitude.

Unlike traditional unions, the Major League Baseball Players Association (MLBPA) does not negotiate the salary of individual players. Thus, if the owners merely dig in their heels and wait the players out, at the end of the "waiting" period the owners can impose a structured and capped salary system, in essence returning to the good old days of absolute control over players that existed before the union won for the players the right to free agency. The desire of the owners to control and cap salaries cannot be overstated. It has been the tantalizing notion of obtaining such control, and the owners dogged pursuit of that goal, that has been largely responsible for eight work stoppages in eight rounds of collective bargaining in the last 25 years. Indeed, in the last negotiations, the owners unilaterally imposed a salary cap which a court order forced the owners to rescind.[2]

In other sports and industries, once such terms and conditions are imposed, the employees have the right to challenge those terms and conditions under the antitrust laws if they believe those restraints can be proven to be unreasonably anticompetitive. Because of the nature of antitrust litigation, and the threat of treble damages, the mere prospect of such a challenge can serve to moderate the actions of employers and the content of their bargaining proposals. Such moderation tends to foster negotiated settlements. In so doing, the antitrust laws have worked well, and served a laudable public purpose. Because the CFA should eliminate any thought on the part of Major League Baseball owners that, after impasse, they can impose new terms and conditions of employment without regard to the antitrust implications, there should be a similar moderation of actions and proposals in baseball. If so, the stress on baseball's collective bargaining process should be reduced.

Some may question the need for the CFA in the mistaken belief that the issue of "free agency" is settled for Major League Baseball, or because they question the utility of the antitrust laws in the labor context following the recently decided Supreme Court case of *Brown v. Pro Football Inc.*[3] Free agency, that is the right to look for work with more

2. *See* Silverman v. Major League Baseball Player Relations Committee, Inc., 880 F. Supp. 246 (S.D.N.Y.), *aff'd* 67 F.3d 1054 (2d Cir. 1995).

3. 116 S. Ct. 2116 (1996). In 1989, the NFL adopted a rule to allow every team to establish a "developmental squad" of players who had not made the regular team roster but who would be available to practice with the players who had. These players were to be paid a uniform salary, contrary to the situation for all other players. After adopting the rule, the NFL presented the developmental squad proposal to the union and set a salary of $1,000.00 per week for these players (comparable players in the prior season had received an average of $4,000.00 per week). The union rejected the proposal and insisted that the developmental squad players be permitted to bargain individually for their salaries like other players. When

than one potential employer, came about in baseball as the result of an arbitrator's interpretation of the provisions of the standard player contract.[4] But, because the terms of the standard player contract are always subject to renegotiation in collective bargaining, absent recourse to the antitrust laws, free agency is at risk, and has been, every time a Basic Agreement[5] expires. When combined with the previously held belief of the owners that their joint actions were not subject to the antitrust laws, confrontation, not compromise, has been the rule.

As in other circumstances, the utility of the antitrust laws in the context of employee relations lies in their deterrent effect. It is clear that in providing for treble damages, Congress intended the effectiveness of the antitrust laws to stem largely from such deterrence. If anticompetitive behavior is deterred, or even ameliorated, the conduct of parties is necessarily changed. And so it should be with baseball. If the owners are more wary of imposing potentially anticompetitive terms and conditions of employment, that will, one would think, increase the likelihood of negotiating a settlement with the players.

The full import of the *Brown* case is not yet known. There are questions regarding its application left unanswered by the opinion. Moreover, the potential for the reasoning of the opinion in the context of sports or, indeed, any industry in which labor is the equivalent of the

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negotiations on the proposal reached an impasse, the NFL unilaterally implemented the plan. The issue before the Court was what protection employers have under the non-statutory exemption when they act together to impose new terms and conditions of employment under the labor laws. The players asserted that the non-statutory exemption did not protect a proposal to which the players had not agreed. The owners asserted that as long as a collective bargaining relationship existed, i.e. the union continued to represent the players, even if there was an impasse, the owners actions could not be attacked under the antitrust laws. The Supreme Court held that under the facts of the *Brown* case, because the parties were involved in the collective bargaining process which included being at impasse, the agreements of the employers (owners) were shielded from an antitrust challenge by the non-statutory exemption to the federal labor laws. The Court declined to speculate on the outer reaches of the non-statutory labor exemption, but noted that there were instances "sufficiently distance in time and in circumstances" from the collective bargaining process that might warrant the application of the antitrust laws, citing the appellate court's suggestion that forgoing union status or decertifying their union were ways in which players could invoke the protections of the antitrust laws, rather than the labor laws.

For a thoughtful critique of the appellants' argument in *Brown* and the suggestion of an alternative approach to analyzing multiemployer bargaining issues in the sports and entertainment industries *see* Michael C. Harper, *Essay: Multiemployer Bargaining, Antitrust Law, and Team Sports: The Contingent Choice of a Broad Exemption*, 38 WM & MARY L. REV. 1663 (1997).

4. In other sports it came about as the result of antitrust litigation.

5. The term Basic Agreement refers to the final collective bargaining agreement resulting from negotiations.

product, to result in unforseen consequences may be far greater than the Court has impliedly suggested.[6] But the real question is whether the decision is sufficient to dissuade players from nonetheless seeking recourse to the antitrust laws. There may well be a circumstance in which the protections of the antitrust laws, even with the stark choice apparently presented by *Brown*, are seen as preferable to the hollow reality of a flawed labor law system.

Finally, a strong argument can be made that this legislation was not really necessary, given recent developments in the law, and that Major League players could turn to the courts for protection against anticompetitive conduct by the owners. As discussed below, the case of *Piazza v. Major League Baseball,*[7] invokes the doctrine of *stare decisis* to determine the extent of any alleged antitrust immunity. *Piazza* recognizes the reserve system as the *only* specific baseball antitrust issue on which the Supreme Court has ever opined. The Court also invoked the doctrine of *stare decisis* in *Flood v. Kuhn.*[8] That decision reflects the Court's concern about long standing reliance by the owners on an antitrust immunity in the development of the reserve system. And yet, were a similar case brought before the Court today, it would be much more difficult for the owners to claim such reliance given the changes in the system necessitated by the *Messersmith/McNally* arbitration case, which followed *Flood* by just four years, and subsequent collective bargaining. Moreover, it would be interesting to listen to the owners argue reliance on the reserve system as it existed at the time of *Flood*, or even the *Messersmith/McNally* decision, when virtually none of the ownership or management of Major League teams at that time continues in baseball today.

Nonetheless, in addressing the issue of the application of the antitrust laws to Major League Baseball, practical considerations made litigation a less appealing remedy for the players than a legislative one. Major League Baseball players have careers that last, on average, a little more than four years. Antitrust litigation is complex and lengthy enough as it is; but here the players would also have had to litigate the threshold question of whether, or to what extent, the antitrust laws apply—a question surely to result in one of the parties ultimately appealing to the Supreme Court for a final determination.[9] And, following the *Brown*

6. *See* Harper, *supra* note 3.

7. 831 F. Supp. 420 (E.D. Pa. 1993).

8. 407 U.S. 258 (1972).

9. One of the barriers to obtaining further explanation from the Supreme Court of the application of the antitrust laws to baseball is the paucity of cases that get beyond the trial court level. If Major League Baseball suffers an adverse decision on an antitrust issue the

decision, such litigation could well require a player to forego his labor law rights in order to make an antitrust challenge. Taken together, these considerations made the pursuit of clarifying legislation the most appropriate, if not appealing, course of action.

The Process

The final and successful push for passage of this clarifying legislation was, ironically, the result of an agreement reached in collective bargaining. Pending before Congress for several years, the issue of the application of the antitrust laws to Major League Baseball became what is known as a "maturing issue;" i.e. one involving some question of public policy either previously overlooked, unexplored or deliberately ignored by Congress. Even when brought to the attention of Congress by a highly motivated interest group, such a "maturing issue" can require a process of educating members and developing a record that can take several years.[10] Progress comes slowly, but steadily. If things go well, eventually, usually after some years, a tipping point is reached and the momentum seems to swing to the advocates of the legislation. When that happens, although the outcome can be delayed, it can seldom be avoided.

A recognition of the maturation of this issue on the part of Major League owners may have been one of several reasons why they agreed to discuss antitrust clarifying legislation during collective bargaining discussions. The need to identify something of interest to the players to trade for something of interest to the owners in collective bargaining, or the view that the *Brown* decision reduced the usefulness of the antitrust laws to the players may also have contributed.[11]

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clubs quickly undertake settlement negotiations, virtually always successful ones. Only the players can reasonably be expected to resist such efforts because, unlike other litigants who may be legitimately able to quantify their injury, there is no settlement to an antitrust action, short of free agency, that would be acceptable to players.

10. Other examples of maturing issues include civil rights legislation, including most recently, disability rights legislation (the Americans with Disabilities Act); a federal product liability law (legislation first proposed in the early 1980s, often lingering in committee is now repeatedly debated on the Senate floor restrained only by filibuster); and the Brady bill, requiring a waiting period for the purchase of a handgun.

11. The text of Article XXVIII of the BASIC AGREEMENT contains within it evidence of a quid pro quo for support of the legislation; reference is made to a change in the termination date of the contract if the legislation is not passed in the 105th Congress. Prior agreements terminated on December 31 of the final year. Because of the passage of the Curt Flood Act, the current agreement will terminate on October 31 of its final year. The seemingly innocuous change in the termination date to October 31 has been sought by the owners for several years because of its relationship to the rest of the off-season baseball calendar.

Whatever the reason, the owners finally acquiesced, and became participants in the legislative process. In return for their promise to support legislation, the termination date of the Basic Agreement was changed.[12] Article XXVIII of the current Basic Agreement addresses this issue and reads as follows:

> The Clubs and the Association will jointly request and cooperate in lobbying the Congress to pass a law that will clarify that Major League Baseball Players are covered under the antitrust laws (i.e. that Major League 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 the bill does not change the application of the antitrust laws in any other context or with respect to any other person or entity. If such a law is not enacted by December 31, 1998 (the end of the next Congress), then this Agreement shall terminate on December 31, 2000 (unless the Association exercises its option to extend this Agreement as set forth in Article XXVII).

After the Basic Agreement was signed by the parties in March 1997, the owners and players negotiated the terms of a bill that would fulfil the mutual promises contained in Article XXVIII. That bill, S. 53, was relatively straight forward and clean. It passed the Senate Judiciary Committee on July 31, 1998.[13]

Following the Senate Judiciary Committee's vote, the minor league owners finally entered the process, having declined many previous invitations to do so.[14] They used their individual and collective political clout in the House of Representatives to threaten to block the enactment of the legislation unless the language was changed to their satisfaction.[15] Although the Major League owners, the players and a majority

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12. The change in the termination date may play a part in the players consideration of whether to exercise the option to extend the contract one additional year. If that option is exercised, the owners will also receive the contents of an escrow account that contains that portion of the proceeds of certain post season games representing the difference between sixty and eighty percent of the proceeds. If the players do not exercise the option, they receive the proceeds of the escrow account.

13. Four members of the Committee offered an amendment they thought would protect the minor leagues. Although adopted by the Committee, it was dropped in later negotiations.

14. Although complaining about being excluded from the process, the minor leagues failed to attend a hearing held prior to the Committee's vote for the very purpose of examining their concerns.

15. Because there are approximately 170 teams in the affiliated minor league system, many of the members of the House have minor league teams in their districts. The minor leagues took the position that passage of a bill addressing the application of the antitrust laws to Major League Baseball employment issues would require many minor league teams to move or would cause the demise of a large number of teams. Though such claims are highly

of the Judiciary Committee thought that the minor leagues were well protected by the bill as it passed the Committee, the owners and players agreed to negotiate new language with the affiliated minor leagues.[16] After much prodding and guidance from Senators Hatch and Leahy, the result was the Curt Flood Act of 1998.[17] Although the Act is far from the clean, concise language that passed the Committee, it does accomplish the twin goals essential to the players, that there be no question that Major League players have the protection of the antitrust laws and that the CFA have no affect on the application of the antitrust laws to any other persons or entities or in any other circumstances.

MAINTAINING THE LAW FOR OTHERS

Unfortunately, there has been too little examination or reexamination of the status of the application of the antitrust laws to Major League Baseball, or the legal underpinnings for baseball's asserted broad immunity, since the *Flood* decision.[18] Because of the constant and effective repetition by the owners of the claim that they enjoy a broad antitrust immunity, many people, including some judges, accept it as true, while others, including members of the press, simply repeat the assertion rather than explain that opinions on the state of the law differ.[19]

It is unnecessary to recite a lengthy historical review of the case law which has been the underpinning of the Major League Baseball owners'

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speculative at best, no member of the House would risk being held responsible for such a result.

16. Affiliated minor league teams are those who have a contractual relationship with a Major League team. In recent years, many independent teams and leagues have begun operations.

17. The text of the negotiated bill was offered as a substitute for S.53 on the Senate floor. It passed by unanimous consent. The bill then went to the House where it also passed by unanimous consent.

18. Although many presume a blanket exemption for all activities, courts have announced certain parameters to any exemption noting for example that the exemption applies only to "the business of baseball" insofar as that business involves activities that are central to the "unique characteristics and needs" of baseball. Postema v. National League of Professional Baseball Clubs, 799 F. Supp. 1475, 1488 (S.D.N.Y. 1992) (*quoting* Flood v. Kuhn, 407 U.S. 258, 282 (1972)), *rev'd* on other grounds, ___ F.2d ___ (2nd Cir. July 6, 1993) (exemption does not apply to baseball's action with respect to umpires); *see also*, Henderson Broadcasting Corp. v. Houston Sports Ass'n, 541 F. Supp. 236 (S.D. Tx. 1982) (exemption does not apply to local radio broadcasting).

19. At least one member of the press, understanding the legal arguments and the deliberate neutrality of the Act, nonetheless mimicked the owners characterization of the Act as preserving a broad exemption. When asked by the author why he did so, he responded that it was easier for the public to understand and it was too much trouble to explain the difference of opinion as to the remainder, if any, of an antitrust immunity.

assertions that they can act without reference to, or concern about, the antitrust laws of the United States and the individual states.[20] It is enough to note that the owners assert that they enjoy a judicially created antitrust immunity which is virtually absolute. As the storm clouds of the 1994 collective bargaining battle were looming, however, a significant decision, in the form of the denial of a motion to dismiss, was issued in the *Piazza* case, then pending in the federal district court for the Eastern District of Pennsylvania.

In what other courts have identified as an extremely well reasoned decision, one which denied the defendant Major League owners' motion to dismiss on the basis of antitrust immunity, the *Piazza* court engaged in the most insightful and thoughtful review of the Major League Baseball's alleged antitrust immunity since *Federal Baseball* in 1922. In analyzing the continuing significance of the Supreme Court's decisions, the *Piazza* court turned its attention to the doctrine of *stare decisis*. Following the reasoning in *Planned Parenthood of Southeastern Pa. v. Casey*,[21] *the judge identified two distinct aspects of stare decisis*. The doctrine binds courts either by requiring adherence to the rule of law set forth in the prior case (rule *stare decisis*), or by requiring adherence only to the result (result *stare decisis*).

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20. To quickly summarize, however, the exemption was created through an odd Supreme Court case known as *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922). That case arose from the demise of the Federal Baseball League which had competed with the preexisting American and National Leagues in 1914 and 1915.

After the Federal League folded, the Baltimore Terrapins of the Federal League sued Major League Baseball claiming conspiracy in restraint of trade in violation of the Sherman Act. Those violations were apparently proven at trial as the plaintiff obtained a damage award in the amount of $80,000.00 which was appropriately trebled to $240,000.00. The Court of Appeals for the District of Columbia later overturned the judgment, holding that the Sherman Act was not applicable. Thereafter, in what many regard as the weakest point of his distinguished judicial career, Oliver Wendell Holmes, writing for the Supreme Court in 1922, held that exhibitions of baseball, "which are purely state affairs," did not involve interstate commerce and, therefore, the business of producing such exhibitions was not subject to the antitrust laws.

This unfortunate decision was reaffirmed by the Supreme Court in a one-paragraph *per curiam* opinion in the case of *Toolson v. New York Yankees*, 346 U.S. 356 (1953). The Court relied entirely on the failure of Congress, in 30 years, to change the result in *Federal Baseball*. Finally, relying once more upon the "affirmative inaction" of Congress, as well as the rule of *stare decisis*, the Supreme Court again upheld the exemption in the case of *Flood v. Kuhn*, 407 U.S. 258 (1972). In the majority opinion in *Flood*, the Court described the exemption as "an anomaly" and "an aberration confined to baseball . . . ."

21. 947 F.2d 682, (3rd Cir. 1991), *aff'd in part and rev'd in part on other grounds*, 505 U.S. 833, 112 S.Ct. 2791 (1992).

In reviewing *Flood*, to determine its scope and binding effect, the judge also noted it had two key components. First, the issue before the Court in *Flood*, as in its previous considerations of the application of the antitrust laws to baseball, was simply the question of the application of the antitrust laws *to the reserve clause*. No other activities of Major League Baseball were involved. Second, the Court in *Flood* expressly repudiated the reasoning that was the underpinning of *Federal Baseball* and its progeny.[22]

Finding that *Flood* had overruled the *rule* of the *Federal Baseball* case, i.e that the business of baseball does not involve interstate commerce, Judge Padova concluded that he was bound only by the *result* in *Flood*. Because that result dealt only with the reserve clause, and the issue in *Piazza* had nothing to do with the reserve clause, the motion to dismiss the case on the basis of baseball's alleged antitrust immunity was denied.[23] After the court refused to certify the case for interlocutory appeal, the case was settled.

The reasoning of the district court in *Piazza* has since been adopted by other courts.[24] In the same way in which the application of the antitrust laws to baseball in the legislative context was a maturing one, so too, is it a maturing one in a judicial context. Although the reasoning of

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22. Specifically, the Court in *Flood* held at page 282 of the decision that:

1. *Professional baseball is a business and it is engaged in interstate commerce.*

2. *With its reserve system enjoying exemption from the federal antitrust laws*, baseball is, in a very distinct sense, an exception and an anomaly. *Federal Baseball* and *Toolson* have become an aberration confined to baseball.

3. Even though others might regard this as "unrealistic, inconsistent, or illogical," the aberration is an established one . . ., heretofore deemed fully entitled to the benefit of stare decisis, and one that has survived the Court's expanding concept of interstate commerce. . . .

4. Other professional sports operating interstate—football, boxing, basketball, and, presumably, hockey and golf—are not so exempt.

5. The Court has emphasized that since 1922 baseball, with full and continuing congressional awareness, has been allowed to develop and to expand unhindered by federal legislative action. . . *The Court accordingly has concluded that Congress as yet has had no intention to subject baseball's reserve system to the reach of the antitrust statutes.* . . . (Emphasis supplied.)

23. The *Piazza* case had nothing to do with the reserve clause. The case arose out of the effort by Vincent Piazza, the father of then minor league player Mike Piazza, and his friend, Vincent Tirendi to participate in a group trying to purchase the San Francisco Giants with the intent of moving the franchise to Tampa Bay.

24. *See* Minnesota Twins v. Minnesota, No. 62-CX-568 (Minn. Dist. Court, 2d Jud. Dist., Ramsey County April 20, 1998) (*reprinted in* 1998-1 Trade Cases (CCH) Paragraph 72, 136); Butterworth, etc. v. National League of Professional Baseball Clubs, et al., 644 So. 2d 1021 (1994); Morsani v. Vincent et al, 663 So. 2d 653 (Ct. App. Fl. 1995).

the *Piazza* case has been found compelling by many who seriously study it, some lower courts may be loathe to take action which they believe might be construed as overruling a Supreme Court decision. But if the premise of the *Piazza* case is correct, i.e., that the Supreme Court's prior review has been limited to the reserve clause, *Flood* would not be overruled by applying the antitrust laws to Major League Baseball in any case in which the reserve clause is not the issue.

Judge Padova, in *Piazza*, did more than just refuse to dismiss an antitrust case against Major League Baseball. Indeed, he unwound the knot of confused reasoning that has dissuaded others from reassessing the true status of the law. Because of the Supreme Court's silence, and to a lessor extent that of Congress, there is currently no generally accepted understanding of the scope or true nature of the application of the antitrust laws to Major League Baseball.[25] Even before *Piazza*, lower court decisions have demonstrated that fact with respect to a number of antitrust issues having nothing to do with the reserve clause.[26] Unfortunately, as far as this writer is aware, since *Flood*, every antitrust case against Major League Baseball that has survived a motion to dismiss, has been settled. Thus, the Supreme Court has had no opportunity to clarify the meaning of *Flood*. But, gradually, courts and commentators are studying *Piazza* with a seemingly growing appreciation of its thoughtful analysis.

All of which squarely poses the question which Congress, in the CFA, expressly chose to leave unaddressed. Although the Major League Baseball owners may continue to assert that they enjoy the broadest possible antitrust immunity, if *Piazza* is good law, and the MLBPA believes it is, then the CFA is the final piece of the puzzle.[27] In other words, if *Piazza* is good law, now all the actions of Major League Baseball owners are subject to the antitrust laws. The owners, of course, are far from

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25. Interpreting congressional silence as affirmance of the Supreme Court's reasoning can be vastly overrated. It may be the result of something as simple as the lack of an advocacy group with sufficient resources to pursue the issue in Congress, other pending issues that have the potential to affect larger numbers of individuals or the triumph of an appeal to the "sport" at the expense of the very real business involved.

26. *See supra*, note 19, and accompanying text.

27. Some might argue that the minor league system is not yet a part of the completed puzzle, and the minor leagues certainly would, but under the doctrine of "result *stare decisis*" the only issue before the Court in *Flood* was the Major League reserve system. If that view is accepted, the antitrust laws apply to the minor leagues just as they do to the ownership issues in *Piazza*. Alternatively, the freedom with which the minor league system has been changed internally and in its relation to Major League Baseball, calls into question whether a reliance argument is well-taken.

ready to admit that *Piazza* is, or should be, the law. It was the recognition of this fundamental dispute about the status of the law that prompted Congress to leave the application of the law to other persons or entities and in other contexts unchanged. Thus, the statute expressly states that no one else's rights are affected.[28] Congress has neither endorsed nor repudiated *Piazza* or any other case law; the application of the antitrust laws to baseball in other areas will continue to be developed case-by-case.

As stated previously, even if the majority of lower courts hearing antitrust cases against Major League Baseball adopt the reasoning of *Piazza*, the manner in which antitrust litigation develops in baseball raises a substantial question as to whether the Supreme Court will ever have another opportunity to review the application of the antitrust laws to Major League Baseball.[29] This is unfortunate, because any claim by baseball owners, which now include such corporations as Fox, Disney, Nintendo, Microsoft, the Chicago Tribune and Time-Warner, that it would be an undue hardship to play by the same rules of law as NFL owners or, indeed, as the local grocery store, is absurd. In all other areas of business, these corporations have been the beneficiaries of competition. They know how to compete, to do so fairly, and know how to invoke the antitrust laws to maintain that fair competition; the business of baseball should be no different. Thanks to the Curt Flood Act of 1998, at least it is now no different with regard to the employment of Major League Baseball Players.

28. The necessity to preserve the rights of those who would challenge the assertion of a baseball antitrust exemption was cited both in the Senate and House debate accompanying passage of the bill. Specifically, *Minnesota Twins*, was mentioned in both Houses as a case that would be unaffected by passage of the Curt Flood Act of 1998.

29. One reason the owners may have finally agreed to this legislation is the security of knowing that the group most likely to seek review of the antitrust exemption issue by the Supreme Court has had its rights clarified and needs met. It remains to be seen if there is any other person or group who will be willing to take the antitrust exemption all the way to the Court.