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THE CURT FLOOD ACT OF 1998 AND
MAJOR LEAGUE BASEBALL'S
FEDERAL ANTITRUST EXEMPTION

JOHN T. WOLOHAN*

INTRODUCTION

In 1922, Justice Oliver Wendell Holmes writing for the United States Supreme Court held that organized baseball was “purely a state affair” and while money was involved, baseball “would not be called trade or commerce in the commonly accepted use of those words.” Since Justice Holmes’ decision in Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs, organized baseball has cherished its antitrust exemption and rigorously protected and fought over it in the courts. One of the individuals who challenged baseball’s unique legal position was Curt Flood, in Flood v. Kuhn. In 1969, Curt Flood was traded from the St. Louis Cardinals to the Philadelphia Phillies, without his knowledge or consent. When informed of the trade, Flood petitioned Bowie Kuhn, the Commissioner of Baseball at the time, requesting that he be declared a free agent. When his request was denied and with help from the Major League Baseball Players Association (MLBPA), Flood filed a federal antitrust lawsuit against Major League Baseball (MLB) claiming that baseball’s reserve rule violated federal antitrust law. In 1972, the Supreme Court, for the third time in 50 years, upheld baseball’s antitrust exemption even though it acknowledged that “professional baseball is a business and it is engaged in interstate commerce.” In holding organized baseball exempt from federal antitrust law, the Supreme Court blindly followed Justice Holmes’ decision and held that

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2. Id.
3. Id.
5. Id. at 282.
if there were "any inconsistency or illogic" in the decision it was up to Congress to remedy it, not the Court.  

It took twenty-six years, but Congress has finally acted to remedy the inconsistency or illogic in baseball's antitrust exemption. Although too late to help his playing career, Flood may have finally won his victory against MLB when on October 27, 1998, President Bill Clinton signed into law the Curt Flood Act of 1998. The Curt Flood Act, which over-turns part of baseball's 76-year-old antitrust exemption, grants to major league baseball players, for the first time, the same rights under antitrust law as other professional athletes. Congress also hopes that by passing the Curt Flood Act and making the playing field between the owners and players more equal, it will bring some stability to baseball's labor relations.

Although baseball has traditionally fought hard to keep its antitrust exemption, the Curt Flood Act would never have unanimously passed in Congress if it were not for the support and urging it received from both MLB and the Players' Association. In the last Collective Bargaining Agreement (CBA), both MLB and the Players' Association agreed to "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." According to the CBA, Article XXVIII—Antitrust.

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 that 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).

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6. *Id.* at 285.
10. Article XXVIII—Antitrust.

To answer why MLB was willing to give up part of its cherished antitrust exemption, this paper examines both the Curt Flood Act of 1998 and the impact it will have on baseball. The paper begins with a historic review of baseball's antitrust exemption. The review is broken into three sections: pre-Federal Baseball, Baseball's Supreme Court trilogy and post Flood v. Kuhn. Next, the paper examines the Curt Flood Act of 1998; its origins, purpose and the potential impact it may have on future labor negotiations and disputes. Finally, the article concludes by looking at what is left of Major League Baseball's antitrust exemption after passage of Curt Flood Act of 1998 and the impact the Act will have on future antitrust lawsuits against Major League Baseball.

**HISTORY OF BASEBALL AND FEDERAL ANTITRUST LAW**

Although the National League began playing professional baseball before Congress passed the Sherman Antitrust Act in 1890, baseball more than any other sport has had to continuously defend itself against antitrust allegations. This section of the paper examines how the courts have historically treated organized baseball under Federal antitrust laws. The review is divided into three sections: pre-Federal Baseball, Baseball's Supreme Court trilogy, and post Flood v. Kuhn to show how the courts have relied on stare decisis to let stand baseball's antitrust exemption even though the legal theory upon which the original decision was based is no longer valid.

**A. Pre-Federal Baseball**

The first court to examine whether the rules and regulations governing professional baseball players were covered under federal antitrust laws was American League Baseball Club of Chicago v. Chase. In March of 1914, Harold H. (Hal) Chase signed a contract to play first base for the Chicago White Sox. On June 15, in the middle of the season, Chase informed Chicago that he intended to back out of his contract. On June 20, Chase entered into a second contract to play with the Buffalo Club of the new Federal Baseball League. In an attempt to

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13. See id. at 8. The Federal League was not the first minor league to challenge for major league status. The first league to challenge the national league was the American Association; the others include the Union Association, the Players League and the American League. The
keep Chase in Chicago and away from the Federal League, the White Sox sought a court injunction.\textsuperscript{14}

Refusing to grant Chicago an injunction, the court held that although Chase had "special, unique and extraordinary characteristics as a baseball player,"\textsuperscript{15} there was an "absolute lack of mutuality, both of obligation and remedy" in Chase's contract, that made the contract unenforceable for want of mutuality.\textsuperscript{16} As evidence, the court noted that the standard player contract was terminable by the employing club on only 10 days' notice, but that due to the scheme of the National Agreement, the club and organized baseball had an absolute option on the player's services for the succeeding year.

After rejecting Chicago's argument on contract grounds, the court went on to examine whether the "National Agreement\textsuperscript{17}" and the rules

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\textsuperscript{14} See id. at 6.

\textsuperscript{15} Id. at 14; citing Lumley v. Wagner, 1 De Gex. M. & G. 604. The court noted that it was a well settled rule that an employer could prevent an employee under contract from working for another if that employee's services are of a unique and unusual character. This doctrine was first applied to professional baseball players in Metropolitan Exhibition Co. v. Ward, 24 Abb. N. C. 393, 9 N.Y. Supp. 779 (1890), when the New York National League team sought an injunction against John Montgomery Ward from playing in the Players League in direct competition with the National League. Ward was the head of the Brotherhood of Professional Baseball Players, the players' first attempt at unionizing. The court denied the team's injunction request due to the lack of mutuality in the baseball contracts signed by the players. See Seymour, supra note 11, at 221-239, for more information on John Montgomery Ward and the Brotherhood of Professional Baseball Players.

\textsuperscript{16} American League Baseball Club of Chicago, 149 N.Y.S. at 14. The court found that "the player [by way of his contract] is made a chattel; the title of the club to the player, if he be a player of a major league, is made absolute ..." Id. at 12.

\textsuperscript{17} The court stated "that a combination of 40 leagues, major and minor, has been formed under the terms of the National Agreement, controlling for profit the services of 10,000 players of professional baseball, practically all of the good or skillful players in the country" Id. at 17.

The National Agreement controlled "the services of these skilled laborers, and providing for their purchase, sale, exchange, draft, reduction, discharge, and blacklisting, would seem to establish a species of quasi peonage unlawfully controlling and interfering with the personal freedom of the men employed." Id. See also, Metropolitan Exhibition Co. v. Ewing, 42 Fed. 198 (S.D. NY 1890) which found that "the parties to the National Agreement comprise all, or substantially all, of the clubs in the country which employ professional players, this National Agreement, by indirection, but practically, affects every professional player, and subordinates his privilege of engaging as he chooses to the option of the club by which he is under reservation." The National Agreement was first enacted to end a bidding war that was driving up player salaries between the National League and the American Association. The first National Agreement was signed by the National League, the American Association and the Northwest-
and regulations adopted pursuant thereto, violated the Sherman Act.\textsuperscript{18} The court, while finding organized baseball had "ingeniously devised and created" a monopoly to control the business of baseball played in the United States, also found that baseball was not interstate trade or commerce within the meaning of Sherman Antitrust Act.\textsuperscript{19} In finding organized baseball outside the coverage of the Sherman Act, the court held that baseball "is an amusement, a sport, a game ... it is not a commodity or an article of merchandise subject to the regulation of Congress" and the Sherman Act.\textsuperscript{20}

The court also examined whether "organized baseball, operating under the provisions of the National Agreement and the Rules and Contracts subsidiary thereto, is an illegal combination or monopoly in contravention of the common law."\textsuperscript{21} After reviewing the National Agreement, which controlled the services of every professional baseball player and provided "for their purchase, sale, exchange, draft, reduction, discharge, and blacklisting."\textsuperscript{22} The court found that organized baseball, excluding the newly organized Federal League "is now as complete a monopoly of the baseball business for profit as any monopoly can be made and is in contravention of the common law."\textsuperscript{23}

The court found that:

while the services of these baseball players are ostensibly secured by voluntary contracts a study of the system ... as practiced under the plan of the National Agreement, reveals the involuntary character of the servitude which is imposed upon players by the strength of the combination controlling the labor of practically all of the players in the country. This is so great as to make it necessary for the player either to take the contract prescribed by the commission or abandon baseball as a profession and seek some other mode of earning a livelihood. There is no difference

\textsuperscript{18} American League Baseball Club of Chicago, 149 N.Y.S. at 16.
\textsuperscript{19} Section 1 of the Sherman Act provides, that "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States ... is declared to be illegal. ..." 15 U.S.C.A. § 1. Section 2 of the Sherman Act provides that "[e]very person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states ... shall be deemed guilty of a felony. ..." 15 U.S.C.A. § 2.
\textsuperscript{20} American League Baseball Club of Chicago, 149 N.Y.S. at 17.
\textsuperscript{21} Id.
\textsuperscript{22} Id. at 7.
\textsuperscript{23} Id. at 17.
in principle between the system of servitude built up by the operation of this National Agreement, which as has been shown, provides for the purchase, sale, barter, and exchange of the services of baseball players—skilled laborers—without their consent, and the system of peonage brought into the United States from Mexico and thereafter existing for a time within the territory of New Mexico. The quasi peonage of baseball players under the operations of this plan and agreement is contrary to the spirit of American institutions, and is contrary to the spirit of the Constitution of the United States.24

B. Baseball Supreme Court Trilogy

The most famous antitrust challenge concerning baseball, and the case that provides it with an antitrust exemption, is the first case in baseball's Supreme Court trilogy, Federal Baseball.25 The Federal League declared its intention to establish itself as a third major league in 1913 and began play in 1914.26 After two years of direct competition for players and fans, both the Federal League and Major League Baseball27 were ready to reach some form of settlement. In December of 1915, the leagues entered into a “Peace Agreement” which resulted in the dissolution of the Federal League and all of its constituent clubs.29 As part of


24. Id. at 19.
26. Under the leadership of James Gilmore, the Federal League proclaimed itself a third major league in 1914. As part of its strategy to compete with the National and American Leagues, the Federal League offered major league players hefty pay raises to jump to the Federal League. The league started in 1914 with teams in Baltimore, Buffalo, Brooklyn, Chicago, St. Louis, Kansas City, Indianapolis and Pittsburgh. Indianapolis, even though the team won the league championship in 1914, folded after the season and was replaced in 1915 by Newark.

The Federal League started in 1915 by attacking Major League Baseball in the courts. The league filed an antitrust lawsuit against the National and American Leagues. Unfortunately for the Federal League, it filed the suit in the Federal District Court of Kenesaw M. Landis, who was later to become Major League Baseball's first Commissioner. Landis, a big baseball fan, delayed making a decision in the case. Instead, he urged both sides to negotiate a settlement, which eventually lead to the merger of the two leagues. In December of 1915, after only two years, the Federal League folded. DAVID S. NEFT & RICHARD M. COHEN, THE SPORTS ENCYCLOPEDIA: BASEBALL (15th ed. 1995). See also LEE LOWENFISH, THE IMPERFECT DIAMOND: A HISTORY OF BASEBALL'S LABOR WARS (rev. ed. 1991).
27. See Lowenfish, supra note 26.
28. Although the article uses Major League Baseball, the actual named defendants in the case are the National League of Professional Base Ball Clubs and the American League of Professional Base Ball Clubs; the presidents of the two Leagues and a third person, constituting what is known as the National; and three Federal League owners.
the settlement, the Federal League received $600,000.00, two of its owners were allowed to buy existing major league teams, and the contracts of some Federal League players were sold to the highest bidders among the major league teams.30

However, the settlement made no provisions for the Federal League team in Baltimore. With no league to play in and no where to go after the Federal League dissolved, the Baltimore team folded and its owners filed an antitrust suit alleging that organized baseball conspired to monopolize the baseball business in violation of the Sherman Act. The Baltimore franchise claimed that MLB "destroyed the Federal League by buying up some of the constituent clubs and in one way or another inducing all those clubs except the plaintiff to leave their League."31 A federal district court agreed with Baltimore's argument and awarded them $240,000.00 in treble damages, costs, and attorney fees.32

Baltimore's victory was short lived. The District Court's decision was overturned by the Court of Appeals.33 In reaching its decision, the Court of Appeals, citing Chase, held that baseball was a game and "did not constitute trade or commerce."34 The Court of Appeals also noted that the giving of exhibitions of baseball "is local in its beginning and in its end" and therefore not interstate.35

Disappointed with the Court of Appeals' decision, Baltimore appealed to the United States Supreme Court. The Supreme Court, in upholding the Court of Appeals' decision, also held that the business of baseball was purely a state affair and did not involve interstate com-

30. The owner of the Chicago team, Charles Weeghman, became a major shareholder of the Chicago Cubs and moved the team into the stadium, Wrigley Field, which he built for his Federal League Team. The owner of the St. Louis team, Phil Ball, received the American League St. Louis franchise. The owner of the Brooklyn team, Harry Sinclair, was allowed to sell back all his players at a large profit. See LOWENFISH, supra note 26, at 91.


32. The court reached the conclusion that MLB was engaged in interstate commerce and that it had attempted to monopolize and did monopolize a part of that commerce. The only question presented to the jury was whether MLB had conspired to destroy the Federal League. See National League of Professional Baseball Clubs v. Federal Baseball Club of Baltimore, 269 Fed. 681 (D.C. Cir. 1920).

33. Id.

34. Id. at 686. It is interesting to note that the Court of Appeals, in finding that baseball was not a business, but a game, relied on the Chase court's view of baseball in 1914. In reaching their decisions, future courts would rely on Federal Baseball's view of the business of baseball. It is hard to believe that the game played in 1914 resembles anything like the business baseball has grown into.

35. Id. at 685.
merce within the meaning of the Sherman Antitrust Act. In delivering the Supreme Court's decision, Justice Holmes stated that although "competitions must be arranged between clubs from different cities and States . . . the transport is a mere incident, not the essential thing." Justice Holmes also found that "a baseball exhibition, although made for money, is not trade or commerce in the commonly accepted use of those words, since personal effort not related to production is not a subject of commerce."

This decision to exempt baseball from federal antitrust law, would survive repeated challenges for the next seventy-six years until Congress passed the Curt Flood Act. Although not part of baseball's Supreme Court trilogy, the first case after Federal Baseball to challenge baseball's antitrust immunity and the one that came closest to overturning it was Gardella v. Chandler.

Daniel Gardella was a journeyman baseball player who played baseball for the New York Giants during the 1944 and 45 seasons and was under contract with them for the 1946 season. During the 1946 spring training, with the World War II veteran having returned to the States, Gardella signed a contract to play professional baseball in Mexico. Gardella, a minor league player before the war, did not believe that he had a chance to make the Giants. Upon returning to the United States, Gardella, who only played one year in Mexico, was blacklisted from organized baseball.

36. The business is giving exhibitions of base ball, which are purely state affairs. It is true that in order to attain for these exhibitions the great popularity that they have achieved, competitions must be arranged between clubs from different cities and States. But the 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. . . the transport is a mere incident, not the essential thing. That to which it is incident, the exhibition, although made for money would not be called trade of commerce in the commonly accepted use of those words. As it is put by defendant, personal effort, not related to production, is not a subject of commerce.

Federal Baseball, 259 U.S. at 208.

37. Id.

38. Id.


41. For a complete history and insight of the case, see Lowenfish, supra note 26.
The Commissioner of Baseball, Albert B. "Happy" Chandler, in an attempt to avert another war over players' salaries, declared that any player who jumped to the Mexican League would be barred from organized baseball. No longer able to make a living by playing organized baseball professionally, Gardella filed a lawsuit challenging baseball's reserve clause and the Supreme Court's decision in Federal Baseball.

The Federal District Court in New York, citing Federal Baseball, dismissed the case for failure to state a cause of action and Gardella appealed to the Second Circuit Court. In a 2-1 decision, the Second Circuit ruled that due to the use of radio and television the game of baseball is now interstate commerce. The Second Circuit, noted that the game of baseball and the Supreme Court's expending definition of interstate commerce had changed so much since Federal Baseball, decided that there was enough merit in the case to warrant a trial.

In rejecting organized baseball's argument that it was exempt from federal antitrust law under Federal Baseball, Judge Frank stated that "the Supreme Court's recent decisions have completely destroyed the vitality of Federal Baseball... and have left that case but an impotent zombi." In distinguishing Gardella from Federal Baseball, the Second Circuit found baseball's reserve clause "shockingly repugnant to moral principles" which "results in something resembling peonage of the baseball player." The Second Circuit also noted that unlike the situation in the Federal Baseball case, organized baseball now had "lucratively contracted for the interstate communication, by radio and television, of the playing of the games."

42. The Commissioner of Baseball, Albert B. "Happy" Chandler, imposed a ban of up to five years for any player who jumped from his contract to play in the Mexican League. While blacklisted, the player could not play for any club in organized baseball, either in the major or minor leagues. In effect, this clause prevented a player from playing for any team other than his original employer, unless that employer consents. See LowENRsH, supra note 26.

43. Organized baseball was comprised of the two major leagues, the National and the American, and the minor leagues made up of clubs composing leagues of eight grades based upon the respective abilities of the players in the several clubs in each of such leagues. See Gardella, 172 F.2d at 403.


45. Gardella, 172 F.2d at 408.

46. Id. at 408-9.

47. Id. at 409.

48. Id.

49. In Federal Baseball, the Supreme Court held that the traveling across state lines was but an incidental means of enabling games to be played locally and therefore insufficient to constitute interstate commerce. The Second Circuit, however, found that the interstate communication by radio and television is in no way a means, incidental or otherwise, of performing the intra-state activities and thus constituted inter state commerce. See id. at 410.
that it could not overturn a Supreme Court decision, the court stated that it was not required to “wait for a formal retraction in the face of changes plainly foreshadowed.”

Although remanded back to the district court for trial, the case never made it back to court. A week before the case was scheduled to be heard, organized baseball settled with Gardella for $60,000.00. Although organized baseball received a scare in Gardella, the next case, the second in baseball’s Supreme Court trilogy, is more indicative of how the courts have treated organized baseball’s antitrust immunity. The case, Toolson v. New York Yankees, which is actually three cases, reaffirmed that Congress had no intention of including baseball within the scope of federal antitrust law.

In Toolson, George Toolson, a minor league player within the Yankee farm system refused to report to the team’s Eastern League affiliate after he had been demoted from the Yankees’ International League team. In an attempt to free himself from his contract, Toolson filed an antitrust lawsuit against organized baseball arguing that its reserve clause and farm system denied him the opportunity to improve his livelihood.

50. “This Court’s duty is to divine as best it can, what would be the event of the appeal in the case before it.” Id. at 409, n. 1.

51. See Lowenfish, supra note 26, at 167.

52. Toolson, 346 U.S. 356.

53. The United States Supreme Court attached two other baseball cases to Toolson: Kowalski v. Chandler, 202 F.2d 413 (6th Cir. 1953) & Corbertt v. Chandler, 202 F.2d 428 (6th Cir. 1952).

In Kowalski, Walter Kowalski, a minor league player within the Dodger organization, argued that organized baseball, through the use of the reserve clause, deprived him of the reasonable value of his services and the opportunity for professional promotion. The United States District Court for the Southern District of Ohio dismissed the complaint for lack of jurisdiction and for failure to state a cause of action. In affirming the decision, the Sixth Circuit Court of Appeals held that the “structure known as ‘organized baseball’ was not engaged in trade or commerce within [the] Sherman and Clayton Acts.” Kowalski, 202 F.2d 413. In rejecting the argument that the sale of broadcasting rights for radio and television distinguished the case from Federal Baseball, the Sixth Circuit found the broadcasting rights to be essential, in the same manner as the telegraph rights that were examined in Federal Baseball. Id. The Sixth Circuit also refused to disregard Federal Baseball on the speculation that the Court might overturn its decision. Id.

In Corbertt, Corbertt was the owner of minor league team in El Paso, Texas who wanted to sign some of the players coming back from the Mexican League. Corbertt filed suit against baseball after he was barred from signing the players due to the fact that they were blacklisted by organized baseball. The Sixth Circuit affirmed the order of the District Court dismissing Corbertt’s complaint. Corbertt, 202 F.2d 428.
Having lost in both the District Court and the Ninth Circuit Court of Appeals, Toolson appealed to the United States Supreme Court. Toolson, therefore, was the Supreme Court's first opportunity to correct *Federal Baseball* by including baseball within the scope of federal antitrust law. The Supreme Court, however, in a one page decision, upheld its decision in *Federal Baseball* ruling that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws. In support of this decision, the Supreme Court noted that Congress had thirty years since *Federal Baseball* to bring the business of baseball under the scope of federal antitrust law and that during that time baseball had been allowed to develop with the belief that it was not subject to antitrust law. The Supreme Court concluded that it was the obligation of Congress to bring baseball within the scope of federal antitrust law, not the courts.

Unlike *Federal Baseball*, the Supreme Court's decision in Toolson was not unanimous. In his dissent, Justice Burton stated that it was impossible to believe that "organized baseball, in 1953, still is not engaged in interstate trade or commerce." In support of his conclusion, Justice Burton observed that the Supreme Court in *Federal Baseball* only held that the activities of organized baseball did not amount to interstate commerce, not that those activities were exempt from the Sherman Act. Only Congress has the power to exempt organized baseball from the antitrust laws noted Justice Burton. Justice Burton also noted that while there might be “possible justification of special treatment for organized sports” Congress had failed to pass four bills which would have

57. See id. at 357.
58. See id.
59. Id. In finding that baseball was engaged in interstate commerce, Justice Burton examined a number of areas, including: capital investments used in conducting competitions, the team travel between states, its numerous purchases of materials in interstate commerce, game attendance by out of state audiences, radio and television contracts, advertising, and its highly organized 'farm system' of minor league baseball clubs. See id. at 358.

60. See id. at 360.
granted baseball and all other professional sports a complete and unlimited immunity from the antitrust laws. 61

The last case in baseball’s Supreme Court trilogy was *Flood v. Kuhn*. 62 Curt Flood, an all-star outfielder with the St. Louis Cardinals, was traded to the Philadelphia Phillies in 1969, without Flood’s knowledge or consent. 63 When informed of the trade, 64 Flood complained to Commissioner Bowie Kuhn and requested that Kuhn declare him a free agent, thereby allowing him to negotiate with any major league team he wished. When Kuhn denied his request, Flood filed a lawsuit 65 claiming that organized baseball’s reserve rule violated federal antitrust law.

In rejecting Flood’s lawsuit, the District Court 66 and the Second Circuit Court of Appeals 67 found that *Federal Baseball* and *Toolson* were controlling and felt compelled to uphold them. 68 Flood appealed, and “for the third time in 50 years,” 69 the Supreme Court agreed to examine whether organized baseball was within the reach of federal antitrust law.

After an extensive history of the game and some of its players, 70 the Supreme Court held that the “longstanding exemption of professional baseball’s reserve system from federal antitrust laws is an established aberration in which Congress has acquiesced, is entitled to [the] benefit of stare decisis, and any inconsistency or illogic is to be remedied by the Congress and not by the Supreme Court.” 71 Therefore, the Court held

61. *Id.* at 363.
63. Curt Flood never reported to Philadelphia in 1970, and he sat out the year. After the 1970 season, Flood’s rights were sold to the Washington Senators. Flood agreed to play for Washington in 1971, but retired from baseball on April 27. *See id.* at 266.
64. One of Flood’s contentions was that he was not consulted about the trade beforehand. It was only after the trade was finalized that he was informed of the deal by telephone. *See id.* at 265.
65. For the first time, the Major League Baseball Players Association (MLBPA), the players’ collective-bargaining representative, was involved in a player’s antitrust challenge. The MLBPA was formed in 1966, with Marvin Miller as its Executive Director.
66. *See Flood v. Kuhn*, 316 F.Supp. 271 (S.D.N.Y. 1970). The District Court went so far as to state that “[b]aseball has been the national pastime for over one hundred years and enjoys a unique place in our American heritage. . . . The game is on higher ground; it behooves every one to keep it there.” *See id.* at 297.
68. *Id.* One Judge went so far as to state in his concurring opinion that there was “no likelihood” that the courts would overturn *Federal Baseball*. *See id.* at 268.
70. Starting in 1846, when the New York Nine defeated the Knickerbockers 23 to 1, Justice Blackmun reviewed the history of baseball from the Cincinnati Red Stockings in 1869 and the formation of the National League in 1876, all the way to the formation of the Major League Baseball Players Association in 1966. *See id.* at 262.
71. *Id.* at 238.
that although baseball enjoyed an exemption from the federal antitrust laws, it was an "aberration" confined to baseball.\textsuperscript{72}

The Supreme Court did acknowledge in \textit{Flood} that baseball was a trade or commerce engaged in interstate commerce, but it still refused to overturn baseball's antitrust exemption.\textsuperscript{73} In support of its decision, the Supreme Court noted that "baseball with full and continuing congressional awareness, has been allowed to develop and to expand unhindered by federal legislative action."\textsuperscript{74} The Court reasoned that since Congress had failed to revoke baseball's antitrust exemption, Congress must have intended for baseball to be outside the reach of the antitrust laws.\textsuperscript{75}

Just as in \textit{Toolson}, the Supreme Court's decision was not unanimous. In his dissent, Justice Douglas held that if the Supreme Court were to consider the question of baseball for the first time upon a clean slate, there would be no doubt that the Court would hold baseball subject to federal antitrust regulation.\textsuperscript{76} As for the failure of Congress to pass legislation overruling \textit{Federal Baseball} and subjecting baseball to federal antitrust laws, Justice Douglas argued that "the unbroken silence of Congress should not prevent us from correcting our own mistakes."\textsuperscript{77} If in making its decision the Court was to rely upon congressional inaction, Justice Douglas noted that Congress also failed to pass any legislation exempting professional sports from antitrust regulation.\textsuperscript{78}

\textbf{C. Baseball's Antitrust Exemption after Flood}

Based upon baseball's Supreme Court trilogy, it is clear that baseball enjoys some form of exemption from antitrust laws. Therefore, the only question is the scope of that exemption. For example, is the entire business of baseball exempt or is it just baseball's reserve rule and other

\textsuperscript{72} "Other professional sports operating interstate—football, boxing, ... basketball, hockey and golf—are not so exempt." \textit{Id.} at 283.

\textsuperscript{73} \textit{See Flood}, 407 U.S. at 283.

\textsuperscript{74} \textit{Id.} at 284.

\textsuperscript{75} Citing \textit{Toolson}, the court stated that "[w]ithout re-examination of the underlying issues, the [judgment] below [is] affirmed on the authority of \textit{Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs}, supra, so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws." \textit{Id.} at 284.

\textsuperscript{76} \textit{See id.} at 289.

\textsuperscript{77} \textit{Id.}

player controls. As the following cases demonstrate, the courts are mixed on the scope of the exemption.

1. A Broad View of Baseball Antitrust Exemption

The first case after Flood to challenge the scope of baseball’s antitrust exemption was Charles O. Finley & Co. v. Kuhn. Charles Finley, the owner of the Oakland Athletics, sued the Commissioner of Baseball Bowie Kuhn over Kuhn’s decision to void the sale of three Oakland players. When Kuhn rejected the sales, Finley filed a lawsuit principally challenging the scope of the Commissioner’s authority to void the sales. The complaint also argued “that the Commissioner, acting in concert with others, conspired to eliminate Oakland from baseball in violation of federal antitrust laws.”

In rejecting Finley’s antitrust argument, the district court held that “baseball . . . is not subject to the provisions of the [Sherman Antitrust] Act.” On appeal, Finley argued that any antitrust exemption professional baseball might enjoy applies only to the reserve system, and not to the entire business of baseball. In affirming the district court’s decision, the Seventh Circuit Court of Appeals held that regardless of any mention of the reserve system in the Flood case, the Supreme Court intended to exempt the whole business of baseball, and not just the reserve system or any other particular facet of that business from the federal antitrust laws.

80. Just before the trading deadline of June 15, 1976, Finley attempted to sell Joe Rudi and Rollie Fingers to the Boston Red Sox for $2 million and Vida Blue to the New York Yankees for $1.5 million. Finley argued that he was going to lose Rudi and Fingers to free agency and that he could use the money to develop new talent. The first free agents were declared on December 23, 1975, when Peter Seitz’s arbitration panel held that players Andy Messersmith and Dave McNally were free agents able to negotiate with any clubs they wanted. In rejecting the sales, Kuhn claimed that he was acting in the best interest of baseball. See id. at 541. (The author wonders what Kuhn would have done when the Florida Marlins traded away their team after winning the World Series).
81. Id. at 531.
82. Id.
83. Finley relied upon two quotations from Justice Blackmun’s opinion in Flood, “[f]or the third time in 50 years the Court is asked specifically to rule that professional baseball’s reserve system is within the reach of the federal antitrust laws.” Flood, 407 U.S. at 259, and “[w]ith its reserve system enjoying exemption from the federal antitrust laws, baseball is, in a very distinct sense, an exception and an anomaly. Id. at 282.
84. See id. at 541. The court also referred to the Flood court which stated that “[p]rofessional baseball is a business and it is engaged in interstate commerce. . .” and “we
Another case that interpreted baseball's Supreme Court trilogy as granting MLB blanket immunity is *Professional Baseball Schools & Clubs, Inc. v. Kuhn.* The plaintiff, the owner of a baseball franchise in the Carolina League, filed a lawsuit challenging baseball's "player assignment system and the franchise location system; the monopolization of the business of professional baseball, and the Carolina League's rule requiring member teams to only play games with other teams." The district court dismissed the antitrust claim for want of subject matter jurisdiction, and the plaintiff appealed. The Eleventh Circuit Court, just as the Seventh Circuit had done in *Finley*, rejected the antitrust argument. The Eleventh Circuit, citing baseball's Supreme Court trilogy, found that "[a]lthough it may be anomalous, the exclusion of the business of baseball from the antitrust laws is well established." Therefore, since each of the activities in the complaint concerned matters that are an integral part of the business of baseball, they fell within baseball's antitrust exemption.

2. A Narrow View of Baseball Antitrust Exemption

Within the last few years, there has been a willingness by some courts to chip away at baseball's federal antitrust exemption. The first case to take a more narrow view of organized baseball's antitrust exemption was *Piazza v. Major League Baseball.* In *Piazza*, Vincent Piazza and Vincent Tirendi reached an agreement with Robert Lurie, the owner of the San Francisco Giants, to purchase the Giants and move the team to Tampa Bay, Florida. The National League President, Bill White, and the Ownership Committee of MLB, however wanted to keep the franchise in San Francisco and rejected the proposal to relocate the Giants and began to look for local buyers. After a frantic search, local investors were finally found and Lurie sold the Giants to the local group for $100 million, $15 million less than the Piazza and Tirendi partnership had offered.
After MLB rejected their offer to purchase the team and move it to Florida, Piazza and Tirendi filed an antitrust lawsuit. In their lawsuit, the plaintiffs “claim[ed] that Baseball ha[d] monopolized the market for Major League Baseball teams and that Baseball ha[d] placed direct and indirect restraints on the purchase, sale, transfer, relocation of, and competition for such teams.” Faced with another antitrust lawsuit, but relying on the baseball Supreme Court trilogy, MLB moved to dismiss the case for failure to state a cause of action as a result of baseball’s antitrust exemption.

The district court refused to extend baseball’s antitrust exemption to the entire “business of baseball.” In refusing, the court ruled that “the exemption created by Federal Baseball is inapplicable . . . because it is limited to baseball’s reserve system.” In support of this conclusion, the district court interpreted the Supreme Court decision in Flood as “stripping from Federal Baseball and Toolson any precedential value those

91. In August 1992, Piazza & Tirendi executed an agreement with Lurie to purchase the Giants for $115 million. Lurie also agreed not to negotiate with anyone else and to use his best efforts to secure from defendant Major League Baseball approval of the sale. See Piazza, 831 F. Supp. at 424.

92. The plaintiffs alleged that:
(1) Baseball’s actions ‘have placed direct and indirect restraints on the purchase, sale, transfer and relocation of Major League Baseball teams and on competition in the purchase, sale, transfer and relocation of such teams, all of which directly and indirectly affect interstate commerce,’ (2) ‘Major League Baseball is an unreasonable and unlawful monopoly created, intended and maintained by defendants for the purpose of permitting defendant team owners, an intentionally select and limited group, to reap enormous profits,’ and (3) Baseball has achieved these restraints on trade and its monopoly status by engaging in ‘an unlawful combination and conspiracy . . . the substantial terms of which have been to eliminate all competition in the relevant market [defined as the market for American League and National League baseball teams], to exclude plaintiffs from participating in the relevant market, to establish monopoly control of the relevant market and to unreasonably restrain trade by denying the sale, transfer and relocation of the Giants to the Tampa Bay area,’ The effect of Baseball’s actions, plaintiffs allege, has been, among other things, to restrain their right to engage in the business of Major League Baseball, restrain their right to competitively bid on Major League Baseball teams, and cause plaintiffs to lose contract rights and profits. Id. at 429, n. 13 (citations omitted).


94. The court also examined the markets in which the anticompetitive activity took place. In Federal Baseball the anticompetitive activity was in the market for the exhibition of baseball games. In Piazza, the anticompetitive activity is in the market for the “sale of ownership interests in baseball teams—a market seemingly as distinguishable from the game exhibition market as the player transportation market.” 831 F. Supp. at 440.
cases may have had beyond the particular facts there involved, i.e., the reserve clause.”

There can be no doubt, the court held, that after Flood, “[p]rofessional baseball is a business . . . engaged in interstate commerce” and that baseball’s exemption from the federal antitrust laws created by Federal Baseball was limited to the reserve clause. Therefore, the court concluded, since the case did not involve the reserve system, baseball’s conduct could be subject to federal antitrust laws.

After the district court rejected MLB’s motion to dismiss the antitrust claims based on baseball’s antitrust exemption, MLB moved for an immediate appeal on the issue to the Third Circuit Court of Appeals. Judge Padova of the district court refused baseball’s motion, ruling that such an action would unnecessarily delay the proceedings in the district court.

As in Gardella, this case also never made it to trial. A day before jury selection MLB settled the case with Piazza and Tirendi for a reported $6 million. Unfortunately for baseball, the settlement did not end the legal troubles resulting from MLB’s refusal to move a team into Florida. In Florida state court, baseball was facing two state antitrust lawsuits.

The first case was filed by Florida Attorney General, Robert Butterworth. After baseball voted to reject the sale and transfer of the Giants, he issued an antitrust civil investigative demand (CID) to the National League of Professional Baseball Clubs and its president William D. White pursuant to section 542.28, Florida Statutes (Supp.

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95. Id. at 436.
96. Id. citing Flood, 407 U.S. at 282.
97. See id.
99. See id. at 270. The decisions by both the trial judge and the appellate court in certification hearings are discretionary; certification however is only appropriate in “exceptional” cases. Id. citing Rottmund v. Continental Assurance Co., 813 F.Supp. 1104, 1112 (E.D.Pa.1992). In considering whether to allow an interlocutory appeal, the court must determine whether such an appeal would result in a single trial or multiple trials, undue delays, and whether costs will be reduced. The Piazza court found that “instead of promoting efficiency and certainty, which are the goals of § 1292(b), interlocutory appeal in this case would create the potential for chaotic litigation, . . . that would complicate rather than simplify, and compound costs and time.” Piazza, 836 F. Supp. at 272.
100. See Todd Schulz, Sports, USA TODAY, Nov. 3, 1994, at 7C. Acting Commissioner Bud Selig also issued an apology on behalf of Baseball, “[w]e apologize to each of you for any inconvenience, embarrassment or loss which you may have suffered as a result of any comments or inferences drawn by anyone from such comments.”
The specific focus of the CID was "[a] combination or conspiracy in restraint of trade in connection with the sale and purchase of the San Francisco Giants baseball franchise."\(^{102}\)

The league, faced with the Attorney General’s CID, petitioned the Florida courts to have the CID set aside. After losing at both the trial level and the District Court of Appeals,\(^ {103}\) the Attorney General appealed to the Florida Supreme Court. In *Butterworth v. National League of Professional Baseball Clubs*\(^ {104}\) the Florida Supreme Court was asked to determine the parameters of baseball’s antitrust exemption. In particular, whether “the antitrust exemption for baseball recognized by the United States Supreme Court in [Federal Baseball] and its progeny exempt all decision involving the sale and location of baseball franchises from federal and Florida antitrust law?”\(^ {105}\) The Attorney General argued that the exemption only applied to the reserve system. The National League on the other hand argued that baseball’s antitrust exemption should be applied broadly to “the business of baseball.”\(^ {106}\)

In reversing the decisions of the lower courts, the Florida Supreme Court held that although there was “no question that Piazza is against the great weight of federal cases regarding the scope of the exemption ... none of the other cases have engaged in such a comprehensive analysis of Flood and its implications.”\(^ {107}\) The Florida Supreme Court held that even though the Piazza court was the only federal court to have interpreted baseball’s antitrust exemption so narrowly, the United States Supreme Court’s language in *Flood* supported such an interpretation.\(^ {108}\) It “defied legal logic and common sense,” the Florida Supreme Court

\(^{101}\) Section 542.28(1), of the Florida Statutes authorizes the Attorney General to issue a civil investigative demand (CID) to any person that the Attorney General has reason to believe may be in possession, custody, or control of documentary material or information relevant to a civil antitrust investigation. The CIDs may require that person to produce documents for inspection, to answer written interrogatories, or to give sworn testimony. *Butterworth v. National League of Professional Baseball Clubs*, 644 So. 2d. 1021 (Fla. 1994).

\(^{102}\) *Butterworth*, 644 So. 2d. 1021.

\(^{103}\) *Butterworth v. National League of Professional Baseball Clubs*, 622 So.2d 177 (Fla. 5th DCA 1993).

\(^{104}\) 644 So.2d. at 1022. The Circuit Court for Osceola County, granted Major League Baseball’s petition. That decision was affirmed by the District Court of Appeal in, *Butterworth*, 622 So. 2d at 177.

\(^{105}\) *Butterworth*, 644 So. 2d at 1022.

\(^{106}\) *Id.* at 1024.

\(^{107}\) *Id.* at 1025.

\(^{108}\) *See id.* at 1024.
held, that baseball would have such a broad judicially created antitrust exemption, while all the others professional sports did not.\textsuperscript{109}

The second state antitrust claim, \textit{Morsani v. Major League Baseball},\textsuperscript{110} involved the Tampa Bay Baseball Group (TBBG) and their attempts to purchase a Major League Baseball team and relocate it to the Tampa Bay area. At the 1982 Major League Baseball winter meetings, the plaintiff, Frank Morsani, sought advice from various team owners concerning the purchase and relocation of a Major League team to the Tampa Bay area; and was told by various owners that if the TBBG could secure a site for a stadium in Tampa,\textsuperscript{111} the owners would support and approve the sale and relocation of the Minnesota Twins.\textsuperscript{112} Relying upon the owners promised support, Morsani entered into negotiations to purchase the Minnesota Twins.\textsuperscript{113} However, after securing an agreement to purchase a minority interest in the Twins, but before Morsani and his group could complete a deal for the Twins, Griffith and Griffith-Haynes, with baseball's approval, sold their majority interest in the Twins to Carl Pohlad.\textsuperscript{114} After initially refusing, Morsani and his group, in exchange for the promise of another team, assigned their interest in the Twins to Pohlad. Besides interfering in their attempt to buy the Twins, Morsani and his group also alleged that baseball interfered with their efforts to

\textsuperscript{109} 644 So. 2d. at 1026. The court also recommended that the United States Supreme Court take another look at Major League Baseball and "determine whether (1) a judicially-created exemption for baseball is still viable and, (2) if the exemption exists, whether that exemption should be applied narrowly, as interpreted in \textit{Piazza}, or broadly," as in \textit{Finley}, 569 F.2d at 541.

\textsuperscript{110} 663 So. 2d. 653.

\textsuperscript{111} Relying upon these statements the Tampa Bay Baseball Group at a cost of over $2 million, Morsani secured a long-term lease with the Tampa Sports Authority for the construction of a baseball stadium. \textit{Id.} at 655.

\textsuperscript{112} \textit{Id.}

\textsuperscript{113} In 1984, Calvin Griffith and Thelma Griffith-Haynes, owners of 51\% of the stock of Minnesota Twins, agreed to sell their controlling interest to the plaintiffs for approximately $24 million on the condition that they first buy H. Gabriel Murphy's 42.14\% minority interest in the corporation. "The plaintiffs then negotiated and entered into a fully-executed written contract with Murphy for the purchase of his interest, at a purchase price of $11.5 million. The contract provided that its closing was conditioned upon prior approval by the owners of other American League teams, as the Constitution of the American League required, and any other approvals which might validly be required." \textit{Id.}

\textsuperscript{114} \textit{Id.} Baseball also demanded that the Tampa group assign its contract with Murphy to Pohlad. At the time this assignment was demanded, the value of the minority interest purchased by the plaintiffs had increased from $11.5 million to $25 million. The Tampa group refused to assign the contract to Pohlad until Baseball paid them the $13.5 million increase in value of the contract, plus the $2 million previously expended on the stadium lease. \textit{Id.} at 655-656.
purchase the Texas Rangers,¹¹⁵ and failed to grant them a promised expansion team.¹¹⁶

Although the decision concentrated on other issues,¹¹⁷ the court relied on the Florida State Supreme Court’s decision in Butterworth, and ruled that baseball’s antitrust exemption was limited and only covered the reserve system.¹¹⁸

Another case that rejected baseball’s claim of blanket antitrust immunity was Postema v. National League of Professional Baseball Clubs.¹¹⁹ The plaintiff, a female umpire alleged that baseball discriminated against her in her job. Postema claimed that Baseball’s conduct violated antitrust laws. Although not decided on antitrust grounds, the District Court rejected baseball’s claim of blanket antitrust immunity. The court found that while “the baseball exemption to the antitrust law immunizes baseball from antitrust challenges to its league structure and its reserve system, the exemption does not provide baseball with blanket immunity . . . in every context in which it operates.”¹²⁰ The court reached this decision after holding that the Supreme Court decision in Flood was an “endorsement of a limited view of the exemption.”¹²¹

The willingness of the courts in Piazza, Butterworth, Morsani and Postema to limit baseball’s antitrust exemption has not become the rule. In McCoy v. Major League Baseball,¹²² a federal District Court in the state of Washington interpreted baseball’s Supreme Court trilogy as extending the antitrust exemption to the entire business of baseball. In Mc-

¹¹⁵. Morsani and his group had reached an agreement with Eddie Gaylord for his 33% interest, and had entered into a written contract with Eddie Chiles for his 58% controlling interest in the team. 663 So. 2d. at 656.
¹¹⁶. The two new expansion teams went to Miami and Colorado. Id. The plaintiffs alleged antitrust violations and tortious interference corresponding to the plaintiffs’ attempts to purchase both the Minnesota Twins, Inc. and Texas Rangers, Ltd. and to acquire an expansion team, respectively. Id. at 655.
¹¹⁷. On the tortious interference argument, the Florida District Court of Appeal found that Major League Baseball’s alleged “use of threats and intimidation and conspiratorial conduct” was outside of their rights and could show tortious interference with advantageous contractual and business relationships. Serafino v. Palm Terrace Apartments, Inc., 343 So. 2d 851 (Fla. 2d DCA 1976). The court identified the following necessary elements in establishing the tort of interference with a contractual or business relationship: “(1) the existence of a business relationship under which the plaintiff has legal rights, (2) an intentional and unjustified interference with that relationship by the defendant and (3) damage to the plaintiff as a result of the breach of the business relationship.” Morsani, 663 So. 2d. at 656.
¹¹⁸. See id. at 653.
¹²⁰. Id. at 1488.
¹²¹. Id.
Coy, a group of fans and business owners brought an antitrust action against MLB stemming from the owners’ alleged unfair labor practice during the 1994 strike.\(^{123}\)

In granting baseball’s motion to dismiss, the District Court rejected the reasoning behind the Piazza courts’ interpretation of baseball’s antitrust exemption as only applying to baseball reserve system. After examining baseball’s Supreme Court trilogy, the McCoy court found that baseball’s antitrust exemption encompassed the entire business of baseball.\(^ {124}\) The “great weight of authority,” the court noted, recognizes that baseball’s antitrust exemption covers the business of baseball, and until Congress or the Supreme Court sees fit to alter the rule, the exemption covers the business of baseball.\(^ {125}\)

**The Curt Flood Act of 1998**

As mentioned in the introduction, as part of the 1997 Basic Agreement between MLB and the MLBPA both sides agreed that they would jointly request and lobby for the passage of a law clarifying that professional baseball players are covered under antitrust law. The result of this joint effort is the Curt Flood Act.

An important aspect of the Curt Flood Act, which amends the Clayton Act by adding a new section at the end,\(^ {126}\) is that it only applies to Major League Baseball players.\(^ {127}\) Therefore any antitrust issues cover-
ing minor league baseball, the amateur draft, the relationship between the major leagues and the minors, franchise relocation, intellectual property, the Sports Broadcasting Act, and umpires are specifically excluded from coverage under the Curt Flood Act.

This section of the paper analyzes some of the key sections and provisions of the Curt Flood Act and their possible impact on future antitrust litigation involving MLB.

The first section to review is Section 3.

Sec. 3. Application of the Antitrust Laws to Professional Major League Baseball.

The Clayton Act (15 U.S.C. Sec.12 et seq.) is amended by adding at the end the following new section:

Sec. 27 (a) Subject to subsection (b) through (d), the conduct, acts, practices, or agreements of persons in the business of organized professional major league baseball directly relating to or affecting employment of major league baseball 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.128

In an attempt to accommodate the concerns of the minor leagues, The Senate Judiciary Committee amended the original proposal of the Curt Flood Act to include the word “directly” immediately before the phrase “relating to or affecting employment” and the phrase “major league players” before the phrase “to play baseball.”129 The Senate Judiciary Committee included these two phrases “at the behest of the minor leagues . . . to ensure that minor league players, particularly those who had spent some time in the major leagues, did not use new subsection (a) as a bootstrap by which to attack conduct, acts, practices or agreements designed to apply to minor league employment.”130 The Act, therefore, only applies to the conduct, acts, practices, or agreements of Major League Baseball that affect the employment of Major League Baseball players. In making the changes, Senator Orrin Hatch of Utah, Chair of the Senate Judiciary Committee and the principle sponsor131 of the Curt Flood Act stated that the changes were “in keeping with the

130. Id.
131. Senator Patrick Leahy of Vermont, Strom Thurmond of South Carolina and Daniel Moynihan of New York also introduced and were lead sponsors of the bill.
neutrality sought by the Committee with respect to parties and circumstances not between major league owners and major league players.”

The next paragraph of the Act, §27 (b), begins to outline the Act’s restrictions.

§27 (b) 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). This section does not create, permit or imply a cause of action by which to challenge under the antitrust laws, or otherwise apply the antitrust laws to, any conduct, acts, practices, or agreements that do not directly relate to or affect employment of major league baseball players to play baseball at the major league level, including but not limited to.

“While providing major league players with the antitrust protections of their colleagues in the other professional sports,” the legislative history of the Act makes it clear that the Act “is absolutely neutral with respect to the state of the antitrust laws between all entities and in all circumstances other than in the area of employment as between major league owners and players.” Senator Hatch also emphasized that the Act “affects no pending or decided cases except to the extent a court would consider exempting major league clubs from antitrust laws in their dealing with major league players.” The Senate Judiciary Committee inserted the language limiting the court’s ability to rely on the Flood Act in changing or supporting how the antitrust laws are applied to baseball because it felt that the language was crucial in getting the Flood Act passed.

Congress, therefore, presented with the perfect opportunity to clarify the judicial debate over the application of federal antitrust law to baseball, failed to take advantage of this opportunity. In fact, the language of the Act does not even attempt to overturn or clarify Major League Base-

132. CONG. REC. S 9494-9498.
133. Only those acts, practices, or agreements that directly relate to or affect employment of the major league players to play baseball at the major league level may be challenged under the Flood Act. § 27 (d)(2) prohibits plaintiffs from using the Flood Act to piggyback in claims that would otherwise be excluded.
134. CONG. REC. S 9494-9498.
135. “Whatever the law was the day before this bill passes in those other areas it will continue to be after the bill passes.” Id. The Judiciary Committee also noted that “both the parties [Major League Baseball and the MLBPA] and the Committee agree that Congress is taking no position on the current state of the law one way or the other.” Id.
136. Ted Curtis, Partial Repeal of Major League Baseball’s Antitrust Exemption is Enacted, 16 THE SPORTS LAWYER 1, 6-8 (Nov./Dec. 1998).
ball's antitrust exemption in any other area except in the area of employment between major league owners and players.

The next six sections of the Act specifically identify areas excluded from coverage under the Act. The first two sections, §§27 (b)(1) and (2), are designed to protect the relationship between Major League Baseball and the minor leagues.

§27(b)(1) any conduct, acts, practices, or agreements of persons engaging in, conducting or participating in the business of organized professional baseball relating to or affecting employment to play at the minor league level, any organized professional baseball amateur or first-year player draft, or any reserve clause as applied to minor league players;

§27(b)(2) the agreement between organized professional major league baseball teams and the teams of the National Association of Professional Baseball Leagues, commonly known at the “Professional Baseball Agreement,” the relationship between organized professional major league baseball and organized professional minor league baseball, or any other matter relating to organized professional baseball’s minor leagues.

As mentioned above it was important for the Senate Judiciary Committee to accommodate the concerns of the minor leagues, and these sections accomplish this goal by “direct[ing] a court’s attention to only those practices, or aspects of practices, that affect major league players.” Senator Hatch included these sections at the urging of several members of the Senate Judiciary Committee because of the complex relationship between the major leagues and their affiliated minor leagues. Due to this relationship, the Senate Judiciary Committee was concerned “that the bill might inadvertently have a negative impact on the minor leagues.” Therefore, as long as a player is in the minor leagues, the Curt Flood Act will not apply to them or their relationship with their minor league team and league.

137. CONG. REC. S 9494-9498.
138. One of the reasons Senators would want to protect minor league teams by excluding them from coverage under the Curt Flood Act is because of the large amount of tax payer money local communities have invested in such stadiums. See Arthur T. Johnson, Minor League Baseball and Local Economic Development (1995) (for more information on city investments in minor league facilities).
139. CONG. REC. S 9495. Stanley Brand, vice president of the National Association of Professional Baseball Leagues expressed his concern to the Judiciary Committee that the Act did not adequately protect the minor leagues. Due to the reservations by Brand, Bud Selig, then chairman of the Major League Executive Council, wrote the Committee a letter stating that although he supported the Curt Flood Act, his support was tempered because of the concerns of the minor leagues. See S. REP. No. 118, 105th Cong., 1st Sess. 4 (1997).
After addressing the minor league issue, the next area excluded from coverage is franchise expansion, relocation, or ownership issues. Section 27 (b)(3) states that:

§27(b)(3) any 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, the marketing or sales of the entertainment product or organized professional baseball and the licensing of intellectual property rights owned or held by organized professional baseball teams individually or collectively;

The only real area MLB's antitrust exemption has not worked is in the area franchise relocation and ownership. Section 27 (b)(3), makes it clear that the conduct, acts, practices, or agreements relating to or affecting franchise expansion, location or relocation, franchise ownership issues, including ownership transfers are specifically excluded from coverage under the Act. In light of the recent litigation concerning this issue, there are two ways Congress' inaction can be interpreted.

First, it could be argued that Congress, at the urging of baseball, inserted this clause for the specific purpose of challenging the decisions in Piazza and Butterworth, thereby protecting MLB from future antitrust lawsuits over “affecting franchise expansion, location or relocation, franchise ownership issues.” Support for this argument can also be found in a letter by the Congressional Budget Office concerning the cost of the Curt Flood Act. In the cost estimate of the Act, June O’Neill, Director of the Congressional Budget Office states that the Act “would remove baseball’s current exemption from antitrust laws, except that it would retain the antitrust exemption for minor league baseball and for decisions regarding league expansion, franchise location, the amateur draft and broadcast rights, and employment relations with nonplayers, such as umpires.”

The second argument is that Congress, by failing to clarify or specifically overturn Piazza, wanted to include this type of conduct under federal antitrust law. This argument is supported by the language at the

140. 831 F. Supp. 420.
141. 644 So. 2d. at 1022.
143. S. REP. No. 118, 105th Cong., 1st Sess. 6 (1997). The cost estimate also acknowledged that it was removing baseball’s antitrust exemption only to allow players to challenge baseball owners in federal court.
beginning of §27 (b) stating that "[n]o 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)."¹⁴⁴

The fourth area excluded from coverage under the Curt Flood Act is the Sports Broadcasting Act of 1961.¹⁴⁵ The Sports Broadcasting Act of 1961 exempts professional football, baseball, basketball, and hockey leagues from antitrust laws in the area of network TV contracts.¹⁴⁶ The Act was enacted after the American Football League (AFL) pooled the entire league’s television rights and negotiated a four-year television contract with ABC for $1.7 million per year. ABC’s contract with the AFL was the first instance wherein a league sold the television rights of the entire league, up to this point teams sold their rights individually. The National Football League (NFL), worried about the competitive balance between its large and small market teams, and the impact the AFL’s contract would have on the competitive balance between the leagues, entered into a league wide contract with CBS. The NFL’s new contract would also pool league members’ television rights and equally divide all television revenue.¹⁴⁷ However, the NFL was barred from

¹⁴⁵. Id. at §27 (b)(4).
¹⁴⁶. Before the passage of the Sports Broadcast Act of 1961, professional sports teams sold the television rights of their games individually. In 1960, the American Football League (AFL) negotiated a four-year television contract for the rights to the entire league with ABC for $1.7 million per year. The AFL’s deal was unique in that for the first time an entire professional sports league pooled its television rights and sold them to a single network. The NFL fearing that the deal would provide the AFL with a competitive advantage also sought to pool its television rights. The NFL however was barred from pooling its television rights by the court in United States v. National Football League, 196 F. Supp. 445 (E.D. Pa. 1961). Believing that the NFL was at a competitive disadvantage, Pete Rozelle, the NFL Commissioner, approached Congress seeking special legislation, which would allow the league to pool its members’ television rights. After hearing from Rozelle and the heads of the other professional sports leagues, Congress passed the Sports Broadcast Act of 1961. The Act exempts professional sports leagues from antitrust litigation in the limited area of pooling and selling the league’s television rights as a package. The Act also restricts the ability of the leagues to define the geographical area into which the pooled telecasts may be broadcast. For more information on the Sports Broadcasting Act of 1961 see David S. Neft & Richard M. Cohen, The Football Encyclopedia: The Complete History of Professional NFL Football from 1892 to the Present (1991); Gary R. Roberts, Pirating Satellite Signals of Blacked-Out Sports Events: A Historical and Policy Perspective, 11 Columbia—VLA Journal of Law & the Arts, 363-386 (1987); Robert A. Garrett & Philip R. Hochberg, Sports Broadcasting and the Law, 59 Indiana Law Journal, 155-192 (1984); and John T. Wolohan, NFL Broadcasts and the Home System Defense of the Federal Copyright Act, 5 Journal of Legal Aspects of Sport 35 (1995).
¹⁴⁷. Wolohan, supra note 146.
pooling its television rights by the court. With no other alternative, the NFL petitioned Congress for a limited antitrust exemption. After hearing from each of the professional sports leagues, Congress passed the Sports Broadcast Act, thereby allowing professional sports leagues to pool and sell television rights as a package.

The fifth area excluded from coverage under the Act is the relationship between organized baseball and umpires. Although Major League Umpires have their own union and their relationship with baseball has been almost as combative as that of the players, umpires are excluded from coverage under the Curt Flood Act. Also, just like in the case of franchise relocation, there is some disagreement between the courts whether umpires should be covered under baseball’s antitrust immunity. In Postema the District Court rejected Baseball’s claim of blanket antitrust immunity. In fact, the court found that baseball antitrust exemption only immunized baseball from challenges to its league structure and its reserve system. The alternative view can be seen in

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In the 1953 case, the United States Justice Department challenged the NFL’s black-out policy as a violation of section 1 of the Sherman Act. Judge Grim, using a rule of reason analysis, held that while it was reasonable for a team to black-out other NFL games into a team’s home territory on days that the team was playing at home, since the televised game would be competing with the home team’s ticket sales and profits. Any and all restrictions on broadcasts of other NFL games within the home territory when the team was on the road, however, would be unreasonable and illegal, since the televised game would not be competing with the home team’s ticket sales and profits.

Therefore, since pooling of television rights would require teams to televise games into the home territory, contrary to his 1953 judgement, the NFL petitioned Judge Grim in 1961 for a ruling on the CBS contract. The next step for the NFL was Congress.

149. Wolohan, supra note 146.


151. This was especially true in the aftermath of the 1996 playoffs when Baltimore second baseman Roberto Alomar spit in the face of umpire John Hirschbeck. In the spring of 1997, the umpires went public with their new strategy to get tough with players and managers. See Dan Bickley, *Umpires Are Drunk On Power*, ARIZONA REPUBLIC, Aug. 30, 1998, at C12.

There has been some talk that the umpires would soon work out of the MLB Commissioner’s office, rather than individual leagues, beginning in 2000 after their current collective bargaining agreement expires. Before that could happen however, MLB would have to negotiate with Richie Phillips, head of the umpires union. See USA Today, Jan. 15, 1999 at 2C.

152. 799 F. Supp. at 1488.

153. Id.

154. Id.
In Salerno, the Second Circuit Court of Appeals, after freely acknowledging its "belief that Federal Baseball was not one of Mr. Justice Holmes' happiest days, [and] that the rationale of Toolson is extremely dubious" held that overruling the Supreme Court is the exclusive privilege of the Supreme Court.

Once again, Congress had the perfect opportunity to clarify this judicial debate and failed to take advantage of the opportunity. Therefore, depending on the interpretation of Congress' action or inaction, baseball's antitrust exemption may or may not include umpires.

The last area specifically excluded from coverage under the Curt Flood Act is all persons not in the business of organized professional major league baseball. Under this section, Vincent Piazza and Vincent Tirendi would be excluded from using the Curt Flood Act because they were not in the business of organized professional major league baseball at any time. Once again Congress failed to include an important group under coverage of the Curt Flood Act—individual, partnerships, corporations, trusts, or unincorporated associations who are attempting to purchase Major League Baseball teams.

After identifying what type of conduct, acts and practices are specifically excluded from coverage under the Curt Flood Act, Section 27 (c) states that only major league baseball players have standing to sue Major League Baseball under the Act. This limitation of standing seems to

155. In Salerno, two former American League umpires filed antitrust charges against the league after they were fired by, American League president Joseph E. Cronin for incompetence. The plaintiffs however claimed that the real reason was their attempt to organize the American League umpires into a union. Salerno v. American League of Professional Baseball Clubs, 429 F.2d 1003 (2d Cir.1970), cert. denied, 400 U.S. 1001 (1971). An unfair labor practice charge was also filed and the National Labor Relations Board issued a complaint. See 180 N.L.R.B. No. 30 (Dec. 15, 1969).

156. Salerno, 429 F.2d at 1005.

157. See id.


159. §27 (c) states that:

Only a major league baseball player has standing to sue under this section. For the purposes of this section, a major league baseball player is—

(1) a person who is a party to a major league player's contract, or is playing baseball at the major league level; or

(2) a person who was a party to a major league player's contract or playing baseball at the major league level at the time of the injury that is the subject of the complaint; or

(3) a person who has been a party to a major league player's contract or who has played baseball at the major league level, and who claims he has been injured in his efforts to secure a subsequent major league player's contract by an alleged violation of the antitrust laws: Provided however, That for the purposes of this paragraph, the al-
be directed at depriving the Justice Department, which opposed the Curt Flood Act, and the Federal Trade Commission the ability to sue Major League baseball over player restraints.\textsuperscript{160}

Besides those individuals who are currently under contract, or playing baseball at the major league level, there are three other groups of individuals who qualify as major league players with standing under the Flood Act. The first group includes anyone who is under contract or playing baseball at the major league level at the time of an injury that is the subject of an antitrust complaint.\textsuperscript{161} The second group includes any individual who has played in the majors, and claims he has been injured in his efforts to secure a subsequent major league player’s contract by an alleged violation of the antitrust laws.\textsuperscript{162} The final group includes anyone who was under contract or playing in the majors “at the conclusion of the last full championship season immediately preceding the expiration of the last collective bargaining agreement.”\textsuperscript{163}

The final section of note is § 27 (d)(4), which states that:

Nothing in this section shall be construed to affect the application to organized professional baseball of the nonstatutory labor exemption from antitrust laws.\textsuperscript{164}

Due to the United States Supreme Court’s decision in \textit{Brown vs. Pro Football Inc.},\textsuperscript{165} the impact the Curt Flood Act will have on collective

\begin{itemize}
\item\textsuperscript{160} Curtis, \textit{supra} note 136.
\item\textsuperscript{161} See \textit{id}. at §27 (c)(2).
\item\textsuperscript{162} See \textit{id}. There is an exception to this definition in that the alleged antitrust violation can not include any conduct, acts, practices relating to or affecting employment to play baseball at the minor league level, including any organized professional baseball amateur or first-year player draft, or reserve clause as applied to minor league players; or
\item\textsuperscript{163} a person who was a party to a major league player’s contract or who was playing baseball at the major league level at the conclusion of the last full championship season immediately preceding the expiration of the last collective bargaining agreement between persons in the business of organized professional major league baseball and the exclusive collective bargaining representative of major league baseball players.
\item\textsuperscript{164} Id. at §27 (d)(4).
\item\textsuperscript{165} 518 U.S. 231 (1996). After the collective-bargaining agreement between the NFL and the NFL Players Association expired, the two sides began to negotiate a new collective-bargaining agreement. The NFL presented a plan that would permit each club to establish a “developmental squad” of substitute players, each of whom would be paid the same $1,000.00 weekly salary. The union rejected this proposal and insisted that individual squad members
bargaining between MLB and the MLBPA is probably very little. In Brown, a group of professional football players challenged the right of the NFL to unilaterally, once an impasse was reached in collective bargaining process, fix the salary of all players assigned to a team's developmental squad. In upholding the NFL's right, as the employer, the Supreme Court ruled that the league's conduct fell within scope of nonstatutory labor exemption from antitrust liability. The nonstatutory labor exemption allows parties involved in collective bargaining to engage in conduct that is authorized by labor law without the fear of being sued under antitrust law by the other party. As long as there is a union, the nonstatutory labor exemption will bar the players from filing any antitrust claims. Therefore, the only way baseball players could use the Curt Flood Act would be to decertify their union.

**CONCLUSION**

To determine the importance of the Curt Flood Act, we must first determine what the current status of organized baseball's antitrust exemption is after the passage of the Act. Odd as it may sound, by passing the Curt Flood Act, Congress may have actually saved baseball's anti-
trust exemption. After the Supreme Court's decision in *Flood*, there was a trend among some courts to limit baseball's antitrust exemption to the reserve system only. Examples of baseball's shrinking antitrust exemption can be seen in *Piazza, Butterworth* and *Postema*. In each of these cases, the courts interpreted the Supreme Court's decision in *Flood* as placing limits on baseball's antitrust exemption, narrowly applying the exemption only to baseball's player reserve system.

Still, not every court interpreted *Flood* as placing limits on baseball's antitrust exemption. The *Finley* and *McCoy* courts, for example, upheld an industry-wide antitrust exemption when they held that until Congress acted to limit baseball's antitrust exemption, the exemption encompassed the entire business of baseball.

With the passage of the Curt Flood Act, baseball can now argue that Congress has acted. As discussed above, the Act is specifically designed to repeal baseball's antitrust exemption as it applies to Major League Baseball players. A reasonable interpretation of Congress' decision to only include Major League Baseball players, therefore would be that Congress did not want the entire business of baseball to be covered under a blanket antitrust exemption. Congress could have included minor league baseball, the amateur draft, the relationship between the major leagues and the minors, franchise relocation, intellectual property, the Sports Broadcasting Act, umpires or any other area it wanted in the Curt Flood Act, but it specifically excluded them. It only stands to reason, therefore, that Congress in its actions, by failing to include the entire business of baseball in the Curt Flood Act, wanted everything not having to do with player relations exempt from antitrust laws.

If you accept this interpretation of the Curt Flood Act, the arguments presented in *Piazza, Butterworth* and *Postema* that baseball's antitrust exemption is just limited to the reserve system, no longer have any value. Therefore, the Act, instead of weakening baseball's antitrust exemption, actually makes it stronger.