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CRS Report for Congress

"Curt Flood Act of 1998": Application of Federal Antitrust Laws to Major League Baseball Players

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Summary

The "Curt Flood Act of 1998"(S. 53, 105th Congress)[1] was narrowly directed at altering just one aspect of the anomalous situation under which professional baseball operates with an "exemption" from the antitrust laws. The measure added a new section (§ 26b)[2] to the Clayton Act (15 U.S.C. §§ 12 *et seq.*) to clarify that major league baseball players would be covered under the federal antitrust laws to the same extent as are other professional athletes, and defined "major league baseball players" as persons who are or were parties to major league players' contracts. It specifically did not purport to affect in any way, *inter alia*: (1) professional baseball's relations with "organized professional minor league baseball"; or (2) "the agreement between organized professional major league baseball teams and the National Association of Professional Baseball Leagues ("Professional Baseball Agreement"). Questions concerning whether the measure will be of substantial efficacy, however, remain, primarily owing to the existence of the judicially created labor-antitrust doctrine.

[1] *See* S.Rept. 105-118. The measure passed the House, without any report, under suspension.

[2] The bill itself directed that the new section is to be added at the end of the existing Clayton Act, but discussion with staff at the Senate Judiciary Committee at the time of passage confirmed that the section was, in fact, to be inserted between section 26a and the then-existing section 27 (severability clause), which was to be (and has since been) renumbered as section 28. In fact, the new section has been codified as 15 U.S.C. § 26b, pursuant to editorial "redesignation," according to a Note in the 2003 Supplement to the volume containing 15 U.S.C. § § 8-40.

Background

Professional baseball — alone among professional sports — has traditionally been considered to enjoy a complete exemption from the antitrust laws: in 1922, when the National League was sued in an action which alleged that the League had acted in contravention of the antitrust laws to destroy the rival Federal League, the Supreme Court ruled that the business of giving "exhibitions of baseball" could not be considered commerce for purposes of federal antitrust jurisdiction;[3] the Court has never reversed its position that the antitrust laws may be made applicable to baseball only by Congress, although it has had the opportunity several times to do so.[4] In the years since the *Flood* decision (*see* note 4), Congress had made several attempts to act on the Court's invitation, but until S. 53 in the 105th Congress, none was successful.[5] In addition to clarifying that

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[3] Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs, 259 U.S. 200, 208-209.

[4] In 1953, in Toolson v. New York Yankees, Inc., 346 U.S. 356, 357, the Court reaffirmed its position, although it did note that "if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation" and not by judicial action. By 1972, the Court's "expanding interpretation of the commerce power led it to state unequivocally that 'professional baseball **is** a business ... engaged in interstate commerce'" (Piazza v. Major League Baseball, 831 F.Supp. 420, 435, 436 (E.D. Pa. 1993), *quoting*, Flood v. Kuhn, 407 U.S. 258, 282 (emphasis added)), and, *quoting* the Toolson language (407 U.S. at 273), continued to state that although it considered the antitrust-exempt status of professional baseball an "anomaly" and an "aberration" in the application of the antitrust laws — both to business generally and to professional sports particularly, the "inconsistency or illogic" of that situation would have to be "remedied by Congress and not by th[e] Court" (407 U.S. at 284); the "Curt Flood Act" took its name from the plaintiff in that case, Curt Flood, the St. Louis Cardinals player traded to the Philadelphia Phillies against his wishes.

[5] In its Final Report, the House Select Committee on Professional Sports (94th Congress), concluded that "adequate justification does not exist for baseball's special exemption from the antitrust laws ... [and] the exemption should be removed in the context of overall sports antitrust reform" (*Inquiry into Professional Sports* (January 3, 1977) at 60). Among the first responses to the Committee's Report was H.R. 2129,"Sports Antitrust Reform Act of 1979," introduced by Representative Seiberling. The bill was prompted, *inter alia*, he indicated upon introduction, by the "invitations" to Congress (from both the Supreme Court and the Committee on Professional Sports) to legislatively repeal the antitrust exemption enjoyed by baseball alone among professional sports (*see*, 125 Cong. Rec. 2521, February 13, 1979).

In the 103rd Congress, (1) the Senate Judiciary Committee voted not to report S. 500 (Metzenbaum, "Professional Baseball Reform Act of 1993"); (2) H.R. 108 (Bilirakis, a measure to make the antitrust laws applicable to professional baseball teams and the leagues of which they are a part remained pending in the Economic and Commercial Law Subcommittee of the House Judiciary Committee; (3) several measures — each titled "Baseball Fans Protection Act" — to "encourage serious negotiation between the major league baseball players and the owners of major league baseball" by amending the Clayton Act to make the antitrust laws applicable to "unilateral terms or conditions ... imposed by any party that has been subject to an agreement between the owners of major league baseball and labor organizations representing the players of major league baseball ..." were introduced immediately prior to or at the beginning of the 1994 baseball strike; (4) House labor-specific measures were the focus, as a group, of September 1994 hearings before the Economic and Commercial Law Subcommittee or the House Judiciary Committee; (5) H.R. 4994 (Synar, "Baseball Fans and Communities Protection Act," which

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the bill was not intended to apply in any way to the minor league arrangements between major league baseball and its "farm" system, the bill also made specifically clear that it did not apply to: (1) any activity "relating to or affecting" the franchise activities of professional baseball (*e.g.*, (re)location, expansion, ownership transfer, *etc.*); (2) any sports-broadcasting activities protected under the "Sports Broadcasting Act" (*see* note 5); or (3) relationships between professional baseball and persons who are neither "major league baseball players" (*e.g.*, umpires) nor "not in the business of organized professional major league baseball."

While the fact of an antitrust exemption for professional baseball has been recognized since 1922, the *extent and scope* of baseball's antitrust exemption have been the subject of some recent judicial discussion in the state and lower federal courts. For example, the *Piazza* court (*supra*, note 3) stated in 1993 that

> the exemption created by *Federal Baseball* [*supra*, note 2] is ... limited to baseball's 'reserve system.' ... In each of the three cases in which the Supreme Court directly addressed the exemption, the factual context involved the reserve clause. ... Between 1922 and 1972, Baseball's expansive view [of the scope of its exemption] may have been correct. ... In 1972, however, the Court in *Flood v. Kuhn* stripped from *Federal Baseball* and *Toolson [supra*, note 3] any precedential value those cases may have had beyond the particular facts there involved., *i.e.*, the reserve clause.[6]

Piazza was discussed and its conclusion endorsed by the Florida Supreme Court in *Butterworth v. National League of Professional Baseball Clubs*,[7] and *followed in*,

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[5] (...continued)
specifically exempted from its coverage "non-major league baseball club[s]")was reported by the Judiciary Committee (H.Rept. 103-871), but not acted upon; and (6) S. 2380 (Metzenbaum, "Baseball Fans Protection Act of 1994," which did not contain the minor league exemption) was placed on the calendar, but not acted upon by the full Senate.

More than a dozen measures to make the antitrust laws either unqualifiedly applicable to professional baseball generally, or applicable only to specific issues (*e.g.*, player-management relations), were introduced in the 104th Congress, which was also energized by the 1994 strike, but it, too, adjourned without having enacted any of them. For example, Senator Hatch, sponsor of S. 53 in the 105th Congress, sponsored S. 627, "Major League Baseball Antitrust Reform Act of 1995," substantially similar to S. 53, which would have exempted from otherwise inclusive antitrust coverage for professional baseball, the "draft, any ... matter related to the minor leagues," franchise relocation or the "Sports Broadcasting Act of 1961" (P.L. 87-331, 15 U.S.C. §§ 1291-1295, which allows professional sports teams to pool their rights to sponsored telecasting of their games without violating the antitrust laws, and to pool the revenues received from such telecasts. Professional baseball is, curiously, among the team sports enumerated as enjoying the protection of the Act, although the thinking when it was enacted in 1961 was that professional baseball did not need the exemption from the antitrust laws because it was not covered in the first place.) Legislation to exclude professional baseball from the antitrust exemption provided by the "Sports Broadcasting Act" was, in fact, introduced in both the 103rd (H.R. 1549, Bilirakis) and 104th (H.R. 105, Bilirakis) Congresses.

[6] *Piazza* at 421, 435, 436. The Flood Court had stated, at 407 U.S. 282, "... it seems appropriate now to say that: ... *[w]ith its reserve system enjoying exemption from the federal antitrust laws*, baseball is, in a very distinct sense, an exception and an anomaly" (emphasis added).

[7] 644 So. 2d 1021 (Fla. S. Ct. 1994).

Morsani v. Major League Baseball,[8] even though the *Butterworth* court recognized that the *Piazza* conclusion "is against the great weight of federal cases regarding the scope of the exemption".[9]

On the other hand, the United States District Court for the Western District of Washington, in *McCoy v Major League Baseball*[10] "reject[ed] the reasoning and results of *Piazza* and *Butterworth*" that while the **result** of *Federal Baseball* and *Toolson* — that the reserve clause is exempt from the operation of the antitrust laws — remains valid, the **rule** of those cases — that baseball is totally exempt from the operation of the antitrust laws — was fatally undermined by the Court's statement in *Flood* that professional baseball is, in fact, a "business ... engaged in commerce." The Washington court preferred to defer to the Court's reiteration in *Flood* (407 U.S. at 285) of its statement in *Toolson* (346 U.S. at 357) that it was sustaining and approving *Federal Baseball* "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."[11]

Conclusion

Despite the enactment of the "Curt Flood Act" to assure that "major league baseball players will have the same rights under the antitrust laws as do other professional athletes," the ability of professional baseball players to prevail in court has not been assured, and there has not been a single case interpreting 15 U.S.C. § 26b reported in the annotations to that provision. Although players no longer face the possibility of having their cases summarily dismissed because the court cannot exercise jurisdiction over a claim which states an antitrust count, another judicially created exemption may not allow the cases to proceed to conclusion: the labor-antitrust exemption holds that when legitimate conditions of employment are contained within a genuinely negotiated collective bargaining agreement, the antitrust laws do not apply to either side of the labor-management equation, and may not be used to challenge a term or condition — even where the antitrust laws might otherwise be utilized to challenge a similar term or condition.[12] For example, in *Caldwell v. American Basketball Association, Inc.*,[13] when a professional basketball player attempted to bring an antitrust action against the basketball association, its commissioner, a former team, and owners, charging that he had been "blacklisted" and prevented from playing professional basketball as a result of his activities as president of a players' union, the court denied his challenge, noting that when

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[8] 663 So. 2d 653 (Fla. Dist. Ct. App. 1995).

[9] 644 So. at 1025.

[10] 911 F.Supp. 454 (W.D. Wash. 1995).

[11] *Id.* at 457.

[12] *E.g.*, Connell Construction Company, Inc. v. Plumbers & Steamfitters Local Union No. 100, 421 U.S. 616, 622 (1975): "The Court has recognized that a proper accommodation between the congressional policy favoring collective bargaining under the NLRA [National Labor Relations Act] and the congressional policy favoring free competition in business markets requires that some union-employer agreements be accorded a limited nonstatutory exemption from antitrust sanction. Meatcutters v. Jewel Tea Co., 381 U.S. 676 (1975)."

[13] 66 F. 3d 523 (2d Cir. 1995).

there is a players' union involved, "the [player] employee loses the right to bargain for the best price for his or her labor." The court also stated that

> [w]e will assume for purposes of analysis that absent a collective bargaining relationship, the conduct alleged by Caldwell would state a claim under the Sherman [Antitrust] Act [15 U.S.C.§§1-7]. Nevertheless, because Caldwell's antitrust claims would 'subvert fundamental principles of federal labor policy,' *Wood v. National Basketball Ass'n.*, 809 F.2d 954, 959 (2d Cir. 1987), they are barred by the so-called non-statutory exemption.

The court also noted emphatically that, "To be sure, in sports leagues, unionized players generally engage in individual bargaining with teams. However, it must be emphasized that such individual bargaining is not an exercise of a right to free competition under the antitrust laws; rather, it is an exercise of a right derived from collective bargaining itself."[14] The still-remaining unanswered question, therefore, is whether and how the non-statutory labor exemption will affect the efficacy of P.L. 105-297.

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[14] *Id.* at 527, 528.