A. THE SCOPE OF BASEBALL'S EXEMPTION FROM THE ANTITRUST LAWS

The *Flood* decision made it clear that the Supreme Court would not remove the exemption it had created for baseball from federal antitrust law. However, the wording of the *Flood* opinion left important questions unresolved about the scope of an exemption that was no longer attributable to a limited federal authority over interstate commerce. *Flood* and *Toolson* directly, and *Federal Baseball* indirectly, each involved complaints that baseball's traditional player reserve system amounted to an illegal restraint of trade under the Sherman Act. Two circuit court decisions in the early 1970s applied the exemption to Major League Baseball's dealings with umpires (*Salerno v. American League*, 429 F.2d 1003 (2d Cir.1970)), and with the minor leagues (*Portland Baseball Club v. Kuhn*, 491 F.2d 1101 (9th Cir.1974)). Other cases, however, have refused to extend the exemption to baseball's dealings with outside parties: with concessionaires (see *Twin City Sportservice Inc. v. Charles O. Finley & Co. (Oakland Athletics),* 365 F.Supp. 235 (N.D.Cal.1972), rev'd on other grounds, 512 F.2d 1264 (9th Cir.1975)); with broadcast outlets (see *Henderson Broadcasting Corp. v. Houston Sports Ass'n (Houston Astros)*, 541 F.Supp. 263 (S.D.Tex.1982)); and with merchandisers (see *Fleer v. Topps Chewing Gum & Major League Baseball Players Ass'n,* 658 F.2d 139 (3d Cir.1981)).

Baseball's antitrust exemption came back to the legal as well as the political scene in the early 1990s—in pursuit of franchise, not player, free agency. The immediate focus was a fierce struggle between San Francisco and Tampa Bay for the baseball Giants.[1]

After taxpayer voters in the San Francisco Bay area had rejected a proposal to finance a new stadium to replace Candlestick Park in the spring of 1992, Giants' owner Robert Lurie accepted an offer from a Tampa Bay Area group that summer to purchase the franchise (for $115 million) with the intention of moving the team to St. Petersburg's Suncoast Dome. Although Lurie had agreed not to negotiate with any other potential buyers of the Giants, the combined efforts of officials from the City of San Francisco and Major League Baseball eventually produced a competing offer (for $100 million) from a San Francisco group led by Peter Magowan. In November 1992, the National League owners rejected the Tampa Bay group's request to relocate the team. Lurie immediately accepted the San Francisco offer and the Giants stayed in Candlestick Park

These decisions by Major League Baseball precipitated numerous lawsuits, some filed in Florida state courts, some in California, and one even in a Pennsylvania federal court. The Pennsylvania suit was brought by two residents of the state, Vincent Piazza and Vincent Tirendi. They were major investors in the Tampa Bay group and, as persons of Italian descent, were aggrieved about reported comments from Baseball's Ownership Committee that they would not be approved as owners because of questions about their "background" that had come up during a "security check." (By the way, Piazza's son Mike would soon become the star catcher for the Los Angeles Dodgers, and later the New York Mets.) Added to Piazza's and Tirendi's claims of defamation and inducing breach of contract was the claim that rejection by National League owners of the proposed Giants move to Tampa Bay constituted a violation of the Sherman Act. Naturally, Major League Baseball's lawyers requested summary dismissal of this claim on the basis of the sport's long standing antitrust immunity. The following is the response by the federal district judge.

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[1] See Bob Andelman, *Stadium For Rent: Tampa Bay's Quest for Major League Baseball* (Jefferson, N.C.: McFarland & Co., 1993).

PIAZZA AND TIRENDI V. MAJOR LEAGUE BASEBALL

U.S. District Court, Eastern District of Pennsylvania, 1993.
831 F.Supp. 420.

PADOVA, DISTRICT JUDGE.

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(i) Scope of the exemption

In each of the three cases in which the Supreme Court directly addressed the [antitrust] exemption, the factual context involved the reserve clause. Plaintiffs argue that the exemption is confined to that circumstance, which is not presented here. Baseball, on the other hand, argues that the exemption applies to the "business of baseball" generally, not to one particular facet of the game.

Between 1922 and 1972, Baseball's expansive view may have been correct. Although *Federal Baseball* involved the reserve clause, that decision was based upon the proposition that the business of exhibiting baseball games, as opposed to the business of moving players and their equipment, was not interstate commerce and thus not subject to the Sherman Act. *Toolson*, also a reserve clause case, spoke in terms of the "business of baseball" enjoying the exemption. Likewise, *Radovich*, a 1957 decision concerning football, recognized the exemption as extending to the "business of organized professional baseball."

In 1972, however, the Court in *Flood v. Kuhn* stripped from *Federal Baseball* and *Toolson* any precedential value those cases may have had beyond the particular facts there involved, i.e., the reserve clause. The *Flood* Court employed a two prong approach in doing so. First, the Court examined the analytical underpinnings of *Federal Baseball*—that the business of exhibiting baseball games is not interstate commerce. In the clearest possible terms, the Court rejected this reasoning, removing any doubt that "professional baseball is a business . . . engaged in interstate commerce."

Having entirely undercut the precedential value of the reasoning of *Federal Baseball*, the Court next set out to justify the continued precedential value of the result of that decision. To do this, the Court first looked back to *Toolson* and uncovered the following four reasons why the Court there had followed *Federal Baseball*:

> (a) Congressional awareness for three decades of the Court's ruling in Federal Baseball, coupled with congressional inaction. (b) The fact that baseball was left alone to develop for that period upon the understanding that the reserve system was not subject to existing antitrust laws. (c) A reluctance to overrule Federal Baseball with consequent retroactive effect. (d) A professed desire that any needed remedy be provided by legislation rather than court decree.

The emphasized text indicates that the *Flood* Court viewed the disposition in *Federal Baseball* and *Toolson* as being limited to the reserve system, for baseball developed between 1922 and 1953 with the understanding that its reserve system, not the game generally, was exempt from the antitrust laws. This reading of *Flood* is buttressed by (1) the reaffirmation in *Flood* of a prior statement of the Court that "*Toolson* was a narrow application of the doctrine of *stare decisis*," and (2) the *Flood* Court's own characterization, in the first sentence of its opinion, of the *Federal Baseball, Toolson*, and *Flood* decisions: "For 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 antitrust laws."

Viewing the dispositions in *Federal Baseball* and *Toolson* as limited to the reserve clause, the *Flood* Court then turned to the reasons why, even though analytically vitiated, the precise results in *Federal Baseball* and *Toolson* were to be accorded the continuing benefit of *stare decisis*.

Like *Toolson*, the *Flood* Court laid its emphasis on continued positive congressional inaction and concerns over retroactivity. In particular, the *Flood* Court "concluded that Congress as yet has had no intention to subject baseball's reserve system to the reach of the antitrust statutes." Finally, the Court acknowledged that "with its reserve system enjoying exemption from the federal antitrust laws, baseball is, in a very distinct sense, an exception and an anomaly. *Federal Baseball* and *Toolson* have become an aberration confined to baseball." Thus in 1972, the Supreme Court made clear that the *Federal Baseball* exemption is limited to the reserve clause.

[The judge then described and disagreed with the Seventh Circuit's contrary ruling in *Finley v. Kuhn*, 569 F.2d 527 (7th Cir.1978). That court had quickly dismissed Charles Finley's antitrust claim against Commissioner Kuhn's barring the sale of Athletics players to the Yankees and Red Sox on the assumption that *Flood* intended to preserve baseball's exemption for its entire business, not just its reserve clause.]

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[T]here is an even more significant flaw in the Seventh Circuit's analysis of *Flood* than in failing to note the extent to which that decision turned upon the reserve clause. Application of the doctrine of *stare decisis* simply permits no other way to read *Flood* than as confining the precedential value of *Federal Baseball* and *Toolson* to the precise facts there involved. To understand why this is so, one must fully understand the doctrine of *stare decisis* and its application by lower courts to Supreme Court decisions. The Third Circuit recently offered the following explanation:

> [Supreme Court] . . . opinions usually include two major aspects. First, the Court provides the legal standard or test that is applicable to laws implicating a particular . . . provision. This is part of the reasoning of the decision, the ratio decidendi. Second, the Court applies that standard or test to the particular facts of the case that the Court is confronting—in other words, it reaches a specific result using the standard or test.

As a lower court, we are bound by both the Supreme Court's choice of legal standard or test and by the result it reaches under the standard or test. As Justice Kennedy has stated, courts are bound to adhere not only to results of cases, but also "to their explications of the governing rules of law." Our system of precedent or *stare decisis* is thus based on adherence to both the reasoning and result of a case, and not simply to the result alone. This distinguishes the American system of precedent, sometimes called "rule *stare decisis*," from the English system, which historically has been limited to following the results or disposition based on the facts of a case and thus referred to as "result stare decisis."

Like lower courts, the Supreme Court applies principles of stare decisis and recognizes an obligation to respect both the standard announced and the result reached in its prior cases. Unlike lower courts, the Supreme Court is free to change the standard or result from one of its earlier cases when it finds it to be "unsound in principle [or] unworkable in practice." . . .

Applying these principles of stare decisis here, it becomes clear that, before *Flood*, lower courts were bound by both the rule of *Federal Baseball* and *Toolson* (that the business of baseball is not interstate commerce and thus not within the Sherman Act) and the result of those decisions (that baseball's reserve system is exempt from the antitrust laws). The Court's decision in *Flood*, however, effectively created the circumstance referred to by the Third Circuit as "result stare decisis," from the English system. In *Flood,* the Supreme Court exercised its discretion to invalidate the rule of *Federal Baseball* and *Toolson*. Thus no rule from those cases binds the lower courts as a matter of stare decisis. The only aspect of *Federal Baseball* and *Toolson* that remains to be followed is the result or disposition based upon the facts there involved, which the Court in *Flood* determined to be the exemption of the reserve system from the antitrust laws.

Neither *Finley* nor any other case cited by Baseball in support of its view of the exemption has undertaken such an analysis of the Supreme Court's baseball trilogy. And as none of these decisions is binding upon this Court, I will not follow them. It is well settled that exemptions from the antitrust laws are to be narrowly construed. Application of this principle is particularly appropriate, if not absolutely critical, in this case because the exemption at issue has been characterized by its own creator as an "anomaly" and an "aberration." (*Federal Baseball* is a "derelict in the stream of the law." (Douglas, J. dissenting)). For these reasons, I conclude that the antitrust exemption created by *Federal Baseball* is limited to baseball's reserve system, and because the parties agree that the reserve system is not at issue in this case, I reject Baseball's argument that it is exempt from antitrust liability in this case.

[In the latter part of his decision, the judge addressed the implications of the *Finley* court being correct in reading *Flood* as preserving the *Federal Baseball* "rule" that the "business of baseball," not just the reserve system, is exempt from the Sherman Act. That still left the question of the scope of the "relevant product market" in baseball. The judge noted that the Court in *Federal Baseball* itself had drawn a distinction between "giving exhibitions of baseball" and "moving players and their paraphernalia from place to place:" it was only the latter to which the Sherman Act could apply. The market to which the expansive version of the exemption would apply consisted of the sale by owners of the exhibition of games to buyers who were fans (or perhaps broadcasters). The market to which the *Piazza* suit applied was the sale of baseball teams by the current owners to those who wanted to become owners. The claim of the plaintiffs was that the latter "ownership" market was as distinguishable from the "game exhibition" market as was the "player transportation" market mentioned in *Federal Baseball*. The judge was not prepared at this stage of the proceeding to rule that the sale of teams was sufficiently central to the "exhibitions of baseball" as to be covered by the latter's exemption. He did, however, intimate that if the eventual record were to show that the sale was inseparable from a proposed relocation, something that seemed an integral part of the structure of baseball, then "rule stare decisis" would likely "require application of the exemption."]

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Summary dismissal denied.

The *Piazza* case never came to a conclusion because on the eve of trial (not just of the antitrust claim but also the defamation and inducing contract breach claims), the National League owners settled with an apology and a $6 million payment. However, the federal judge's interpretation of *Flood* was endorsed by the Florida Supreme Court when it upheld the authority of the state Attorney General to institute investigative proceedings against the National League for having refused to allow the Giants to move to Florida. See *Butterworth v. National League of Professional Baseball Clubs*, 644 So.2d 1021 (Fla.1994). In March 1995, faced with both this litigation and a congressional attack on the exemption sparked by Florida Senators Graham and Mack, Major League Baseball granted new franchises to St. Petersburg (the Tampa Bay area) and Phoenix, Arizona, to begin play in 1998, in return for expansion fees of $130 million each (plus another $25 million in foregone television revenues for five years).

Even this league action could not, however, forestall a suit by another Florida group who claimed that Major League Baseball had blocked their earlier efforts to buy the Minnesota Twins in 1984 and bring that team to St. Petersburg. In *Morsani v. Major League Baseball*, 663 So.2d 653 (Fla.App.1995), a Florida appellate court followed *Butterworth* and *Piazza* and ruled that baseball could not claim an exemption from this action under either federal or state antitrust law. However, in *McCoy v. Major League Baseball*, 911 F.Supp. 454 (W.D.Wash.1995), a federal district judge in Seattle explicitly disagreed with *Piazza* and *Butterworth*, and used the exemption

of "the business of baseball" as the principal grounds for rejecting a class action antitrust suit filed against baseball owners on behalf of the Mariners' fans who were left with no games to watch when the players went out on strike in August, 1994.

QUESTIONS FOR DISCUSSION

1. Does the *Piazza* opinion constitute a fair reading of the scope and limits of *Flood* and its depiction of *Federal Baseball*? From the point of view of *stare decisis* in the judicial process, can one justify the line between baseball's traditional player reserve system and its controls over team ownership and movement?

2. Alternatively, is there a viable distinction between baseball's relations with concession operators, broadcast outlets, and merchandising firms (relations that have been subjected to antitrust scrutiny) and its relations with communities and their stadium authorities (whether San Francisco's Candlestick Park or St. Petersburg's Suncoast Dome)?

3. Finally, if *Piazza's* "result *stare decisis*" approach to *Flood* were to be endorsed, what would this imply for the owner's assertion of antitrust immunity for collective imposition of a salary cap on player contracts and movements?

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