ANTITRUST LAW AND SPORTS FRANCHISE RELOCATION: WHY THE SINGLE-ENTITY DEFENSE FALLS SHORT

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I. INTRODUCTION

> [**Charlie Donovan**]: *What exactly is our team concept?*
>
> [**Rachel Phelps**]: *[…] I want to put together a team that will help us relocate to Miami.*
>
> [**Donovan**]: *What do you mean? Some of these guys are furniture movers?*
>
> [**Phelps**]: *[…] The weather's lousy, downtown is a pit, the stadium's falling apart, and we can't draw [any fans]…*
>
> [**Donovan**]: *Mrs. Phelps, you can't just up and move a team on a whim!*
>
> [**Phelps**]: *It's hardly a whim. Miami's offered to build us a new stadium […] No other franchise in baseball can match that deal.*
>
> [**Donovan**]: *Even so, the League'll never let us leave Cleveland. We got a lease with the City.*[1]

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[1] MAJOR LEAGUE (Mirage Enters. 1989), screenplay at http://www.imsdb.com/scripts/Major-League.html (last visited July 14, 2011).

The above dialogue from the movie "*Major League*" shows exactly what sports leagues have been attempting to do for years – prevent franchises from relocating, especially on a "whim." American jurisprudence shows that antitrust laws often thwart leagues' attempts at such action, as most leagues have seen their single-entity defense defeated in court.[2]

A single-entity professional sports league is one in which the league has an operating committee and operator-investors for each team, but the league is in charge of the on-field operations in all aspects.[3] A current model for such a setup is Major League Soccer ("MLS"), which hires players for the teams directly, while each operator-investor hires its own front office staff.[4] An example under MLS's single-entity model is that the league itself signed international star David Beckham to a contract and assigned him to the Los Angeles Galaxy, while the Galaxy franchise hired Bruce Arena on its own to coach the team and serve as general manager.[5]

A multiple-entity professional sports league is comprised of each team as a "separate business entit[y] whose products have an independent value."[6] In a multiple-entity sports league the policies are set by the separate teams acting jointly, not by one individual or parent corporation.[7] An example of how a multiple entity league operates is the National Football League's framework, whereby the Indianapolis Colts have autonomy from the league to acquire players as it wishes, as with future Hall of Fame quarterback Peyton Manning, as well as hire its own coach, as with Jim Caldwell, without league input.

These two frameworks resulted from a variety of court opinions regarding antitrust laws in sports. The single-entity status was fashioned out of opinions holding that a league is unable to restrain such things as franchise relocation without violating antitrust laws.[8] As such, leagues have created a single-entity defense in order to argue "that the league itself is an indivisible product, and that without the structure and governing rules of enforcement leading to the creation of a marketable enterprise, the consumer would have little if any interest in the outcome of any given contest between two independent teams unaffiliated with league play."[9] Such a defense, however, has not become the norm.

The single-entity defense derived out of *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984), as the Supreme Court held that Section 1 of the Sherman Act "reaches unreasonable restraints of trade effected by a 'contract, combination ... or conspiracy' between separate entities."[10] Further, the court stated "the coordinated activity of a parent and its wholly owned subsidiary must be viewed as that

[2] *See Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League ("Raiders I")*, 726 F.2d 1381 (9th Cir. 1984); *Nat'l Basketball Ass'n v. SDC Basketball Club, Inc. ("Clippers")*, 815 F.2d 562 (9th Cir. 1987); *but cf. San Francisco Seals, Ltd. v. Nat'l Hockey League*, 379 F.Supp. 966 (C.D. Cal. 1974) (concluding that NHL did not violate Sherman Act because teams within league are not competitors)..

[3] *Fraser v. Major League Soccer, L.L.C. ("Fraser I")*, 97 F.Supp.2d 130, 132-133 (D. Mass. 2000), *aff'd ("Fraser II")*, 284 F.3d 47 (1st Cir. 2002).

[4] *Id.*

[5] Robert M. Bernhard, *MLS' Designated Player Rule: Has David Beckham Single-Handedly Destroyed Major League Soccer's Single-Entity Antitrust Defense?*, 18 MARQ. SPORTS L. REV. 413, 413 (2008).

[6] *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League ("Raiders I")*, 726 F.2d 1381, 1389 (9th Cir. 1984), *quoting Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 519 F.Supp. 581, 584 (C.D. Cal. 1981).

[7] *Id.* at 1388-89.

[8] *See generally San Francisco Seals, Ltd. v. Nat'l Hockey League*, 379 F.Supp. 966 (C.D. Cal. 1974); *Raiders I*, 726 F.2d at 1381 *American Needle, Inc. v. Nat'l Football League*, 130 S.Ct. 2201 (2010).

[9] Thane N. Rosenbaum, *The Antitrust Implications of Professional Sports Leagues Revisited: Emerging Trends in the Modern Era*, 41 U. MIAMI L. REV. 729, 741 (1987).

[10] *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 768 (1984) (quoting *Albrecht v. Herald Co.*, 390 U.S. 145,149 (1968).

of a single enterprise for purposes of Section 1 of the Sherman Act. A parent and its wholly owned subsidiary have a complete unity of interest."[11]

Sports leagues have historically preferred characterization as a single entity to monopolize a portion of their market without violating antitrust laws, specifically when looking at relocation of franchises. These leagues would prefer to be able to have their franchises stay where they are and have the league's central operations have the power to quash such moves, while the franchise owners would prefer to be able to relocate to cities where their franchise may be more profitable. In the myriad of cases dealing with antitrust laws in professional sports, courts often find that there is not a "complete unity of interest," thereby defeating the sports leagues' single-entity defense and allowing the franchise to relocate.

The key argument for a league contending its single-entity status is that such an arrangement encompasses a complete unity of interest among the parties involved.[12] As such, a single-entity arrangement prevents conspiracies in restraint of trade due to the parties' complete unity of interest.[13]

Some leagues have attempted to structure themselves as single entities from their inception, but even that has proven tenuous.[14] Most sports fans in this country do not realize that such a structural difference is present when they follow their favorite teams. Yet the fact remains that the professional sports landscape in America has two different frameworks from which leagues operate: single-entity and multiple-entity.[15]

In this article, I will explain why it is better for the overall state of sports franchises and leagues to allow for team relocation, and why multiple-entity sports leagues are preferable to allow for such relocation. While many other issues arise based on the distinction between single-entity and multiple-entity frameworks with regard to professional sports league operations, this article will only survey the discrepancies pertaining to franchise relocation.

In Part II, I look at the history of antitrust laws in sports as they relate to franchise relocation. In Part III, I will look at various cases of sports franchises interested in relocation but having restrictions placed upon them. In Part IV, I will analyze the benefits and disadvantages of both single-entity and multiple-entity frameworks. Finally, in Part V, I will explain why, though it is not perfect, the multiple-entity framework is more beneficial than the single-entity for purposes of franchise relocation.

II. HISTORY/BACKGROUND

There is a long history of American jurisprudence dealing with antitrust laws in sports. Some of this history applies antitrust law to franchise relocation.

A. The History of Antitrust Laws in Sports

In the summer of 1958, the Senate Judiciary Subcommittee on Antitrust and Monopoly held a multi-part hearing entitled, "Organized Professional Team Sports," that focused on legislation to limit the

[11] *Copperweld*, 467 U.S. at 771.
[12] Nathaniel Grow, *There's No "I" in "League": Professional Sports Leagues and the Single Entity Defense*, 105 Mich. L. Rev. 183, 189 (October 2006).
[13] *Id.*; *See Raiders I*, 726 F.2d at 1388.
[14] Matthew C. Garner, *Time To Move On? Franchise Relocation in MLS, Antitrust Implications … and the Hope that FIFA Is Not Watching*, 16 SPORTS LAW J. 159 (2009).
[15] *Id.*

applicability of federal antitrust laws to "exempt certain aspects of designated professional team sport."[16] The Sherman Antitrust Act and the Clayton Antitrust Act are examples of laws enacted in previous years to prevent companies from illegally forming or maintaining a monopoly in a particular market.[17]

Professional baseball has enjoyed an exemption from federal antitrust law dating back to the 1922 Supreme Court decision in *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*.[18] This exemption, however, has only recently faced any challenge based on franchise relocation.[19] The *Federal Baseball* court held that professional baseball was not an interstate activity, thus not subject to federal antitrust law.[20] Justice Oliver Wendell Holmes, himself a former amateur baseball player, wrote in his opinion that "[t]he business is giving exhibitions of base ball, which are purely state affairs … 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."[21]

The Baltimore Terrapins, at the time a member of the Federal League that operated as a major league in 1914-15, sued the National and American Leagues, charging the Federal League's inability to sign players was due to antitrust violations involving the reserve clause that foreclosed the possibility of a player ever playing for a team other than the one with which he first signed a contract.[22] The Baltimore club alleged that the reserve clause led to a monopoly by the National League, but the Supreme Court disagreed, narrowly defining interstate commerce to include transportation of players and equipment, but not the game of baseball with that clause, thus creating the antitrust exemption.[23]

After *Federal Baseball*, professional sports grew both on the playing fields and in the boardrooms. The decision creating baseball's exemption was challenged in the Supreme Court in 1953's *Toolson v. New York Yankees, Inc.*, as the plaintiff, a minor league player, claimed that the reserve clause was depriving him of his livelihood in violation of antitrust law, by blocking his path to the major leagues.[24]

The Supreme Court, however, did not stray from its ruling in *Federal Baseball*, holding that the facts in *Toolson* did not materially differ.[25] Further, the court held that Congress's intent was not to

[16] "Professional Sports and Federal Antitrust Law," http://judiciary.senate.gov/about/history/SportsAntitrust.cfm, last visited May 19, 2011.
[17] *Id.*
[18] *Federal Baseball Club of Baltimore v. Nat'l League of Professional Baseball Clubs*, 259 U.S. 200 (1922); *See* Timothy D. Blevin, *Foul Ball!! Piazza v. Major League Baseball*, 19 T. MARSHALL L. REV. 677, 678-79 (1994).
[19] *Piazza v. Major League Baseball*, 831 F.Supp. 420 (E.D. Penn. 1993).
[20] *Federal Baseball*, 259 U.S. 200.
[21] *Id.* at 208-09.
[22] "Baseball's antitrust exemption: Q & A," Darren Rovell, http://assets.espn.go.com/mlb/s/2001/1205/1290707.html, last visited May 19, 2011; Blevin, *supra* note 18, at 679.
[23] Latour Rey Lafferty, *The Tampa Bay Giants and the Continuing Vitality of Major League Baseball's Antitrust Exemption: A Review of Piazza v. Major League Baseball*, 21 Fla. St. U. L. Rev. 1271 (1994).
[24] Rovell, *supra* note 22; Blevin, *supra* note 18, at 680.
[25] Blevin, *supra* note 18, at 680.

include baseball upon ratifying the Sherman Act in 1890, rather to prevent monopolies and trusts like those of John D. Rockefeller and Andrew Carnegie.[26]

Another challenge to *Federal Baseball* came in 1972 in *Flood v. Kuhn*, when the St. Louis Cardinals' traded an unhappy player to the Philadelphia Phillies against his wishes.[27] Curt Flood, the player, argued that the reserve clause precluded him from playing baseball for whichever club he wanted to in 1970, and after he filed suit, Flood sat out the 1970 season.[28] The court again followed its own precedent established in *Federal Baseball*, but noted that the exemption created in that case was "outdated," according to Joseph McMahon and John Rossi, as professional baseball was engaged in interstate commerce, but that any alteration to the law should be created by Congress.[29]

Federal Baseball, *Toolson*, and *Flood* make up the Supreme Court's trilogy of baseball cases exempting the sport from federal antitrust laws.[30] The Supreme Court, however, has acknowledged that such exemptions are "outdated" and provide inconsistencies with other professional sports leagues attempting to gain a limited form of immunity with respect to antitrust laws.[31] Once again, however, this trilogy does little to guide a court or franchise regarding franchise relocation because none of these cases dealt with such an issue. These cases, however, help lay the groundwork for *Piazza*'s discussion of the exemption and how it applies to franchise relocation.[32]

In the 1950s and '60s, antitrust law allegations arrived in professional football when the United States Department of Justice brought action against the National Football League ("NFL") challenging its bylaws that restricted radio and television broadcasts of games into the "home territory"[33] of another league member.[34] The court held that while certain restraints by the league on broadcasting were acceptable, others violated antitrust law and the NFL was forced to modify their broadcasting restrictions.[35]

The NFL was once again subject to antitrust scrutiny when it merged with the American Football League.[36] Between the Sports Broadcasting Act and the Football Merger Act, certain leagues enjoy immunization in selected aspects from antitrust liability, as the commissioner negotiates the broadcast rights for each league with the proceeds distributed equally to each franchise.[37]

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[26] Rovell, *supra* note 22; Rockefeller created a monopoly on oil in the 1880s with Standard Oil, while Carnegie created a monopoly by creating the Union Railroad to prevent anyone else from having a monopoly on traffic moving in and out of his steel plants.
[27] *Flood v. Kuhn*, 407 U.S. 258, 265 (1972).
[28] Lafferty, *supra* note 23; *Flood v. Kuhn*, 407 U.S. at 265..
[29] Joseph J. McMahon, Jr., John P. Rossi, *A History and Analysis of Baseball's Three Antitrust Exemptions*, 2 VILL. SPORTS & ENT. L.F. 213, 242 (1995).
[30] *Butterworth v. Nat'l League of Professional Baseball Clubs*, 644 So.2d 1021, 1023 (Fla. 1994).
[31] Rosenbaum, *supra* note 9, at 769.
[32] *See* Lafferty, *supra* note 23; *Piazza, supra* note 19.
[33] The NFL's bylaws defined "home territory" as the area within 75 miles of the boundaries of a league city. Constitution and Bylaws of the National Football League, Art. 4.1, effective Feb. 1, 1970 (2006 Rev.).
[34] Joseph P. Bauer, *Antitrust and Sports: Must Competition on the Field Displace Competition in the Marketplace?*, 60 TENN. L. REV. 263, 270 (Winter 1993).
[35] *United States v. Nat'l Football League*, 116 F.Supp. 319, 324 (E.D. Penn. 1953); Bauer, *supra*, at 270-71.
[36] 15 U.S.C.A. § 1291 (2011) (amended 1966).
[37] *Id.*; 15 U.S.C.A. § 1291 (2011) (amended 1966); Rosenbaum, *supra* note 9, at 772.

The Supreme Court stated in 1971's *Haywood v. NBA*, that "[b]asketball … does not enjoy exemption from the antitrust laws."[38] Further, the court stated just one year later that, "[t]he longstanding exemption of professional baseball from the antitrust laws … is an established aberration, in the light of the Court's holding that other interstate professional sports are not similarly exempt, but one in which Congress has acquiesced, and that is entitled to the benefit of stare decisis."[39]

Congress further limited baseball's antitrust exemption in 1998 upon the passage of the Curt Flood Act, specifically excluding from its scope franchise relocation issues, among other subjects.[40] Through this reading, and *McCoy v. Major League Baseball*, a subsequent case to *Piazza*, only Major League Baseball ("MLB") players may challenge baseball's antitrust exemption.[41] In *McCoy*, a group of fans and businesses lacked standing to challenge MLB's antitrust exemption because there was "no evidence that the Owners intended to harm the fans."[42] More importantly, however, the court held that "the fans' damages do not arise out of the allegedly illegal conduct that the antitrust laws are intended to remedy."[43]

Baseball's commissioner, Allan "Bud" Selig, claimed that the exemption should continue to include franchise relocation so as to "vigilantly enforce strong policies prohibiting clubs from abandoning local communities which have supported them."[44] Further, Selig focused on the best interests of the sport and society as a whole in arguing that "[n]o legitimate public policy would be served by legislation that would force MLB to defend constantly the reasonableness of its efforts to promote franchise stability."[45]

While Selig's arguments are effective, it is important to note that the commissioner himself once owned a MLB team, which he purchased and relocated in 1970.[46] The Seattle Pilots franchise purchased and relocated by Selig to become the Milwaukee Brewers, operated in the Emerald City[47] for only one season before moving to the Brew City,[48] thereby becoming a textbook example of abandonment of a local community in derogation of franchise stability.[49]

Franchise stability through relocation is especially pertinent when discussing relocation cases in professional football. The most prominent of such football relocations involved the Oakland Raiders franchise and its owner Al Davis.

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[38] *Haywood v. Nat'l Basketball Ass'n*, 401 U.S. 1204, 1205 (1971).
[39] *See Flood*, 407 U.S. at 259 (1972).
[40] Michael J. Mozes, Ben Glicksman, *Adjusting the Stream? Analyzing Major League Baseball's anti-trust Exemption After American Needle*, 2 HARV. J. SPORTS & ENT. L. 265, 274-75 (Spring 2011); 15 U.S.C.A. § 26b(b).
[41] 15 U.S.C.A. § 26b(b)(3) (2006); *McCoy v. Major League Baseball*, 911 F.Supp. 454 (W.D. Wash. 1995).
[42] *McCoy*, 911 F.Supp. at 458.
[43] *Id.*; *See Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 791 F.2d 1356, 1365 (9th Cir. 1986), *cert. denied*, 484 U.S. 826 (1987).
[44] Mozes, Glicksman, *supra*, at 276; Allan Selig, *Major League Baseball and Its Antitrust Exemption*, 4 Seton Hall J. Sport L. 277, 280 (1994).
[45] Mozes, Glicksman, *supra* note 40, at 276; ; Allan Selig, *Major League Baseball and Its Antitrust Exemption*, 4 SETON HALL J. SPORT L.at 280.
[46] Mike Fuller, *Seattle Pilots – History*, http://www.seattlepilots.com/histindx.html (last visited July 4, 2011).
[47] *The Emerald City*, http://www.beautifulseattle.com/ (last visited July 4, 2011).
[48] Lisa Price, *Brew City Loses its oldest brewery*, CNN: US (Oct. 31, 1996) http://articles.cnn.com/1996-10-31/us/9610_31_pabst.closing_1_pabst-plans-oldest-brewery-milwaukee-brewery?_s=PM:US, Oct. 31, 1996 (last visited July 4, 2011).
[49] Fuller, *supra* note 46.

B. The Oakland-Los Angeles-Oakland Raiders

The Oakland Raiders were the first team to challenge antitrust laws regarding franchise relocation when Davis relocated the team from Oakland to Los Angeles before the 1982 season.[50] The entire process began with discussions between Davis and the Los Angeles Coliseum in 1979 and continued with an agreement signed in 1980 for the Raiders to move to Los Angeles.[51] The Coliseum filed suit against the NFL after the Los Angeles Rams vacated to move south to Anaheim, leaving the Coliseum empty.[52] The Coliseum attempted to convince a team to move into its building, but faced a substantial legal obstacle in Rule 4.3 of the NFL's Constitution requiring unanimous approval of all 28 teams in the League for a franchise to relocate.[53] The Coliseum sued, arguing that Rule 4.3 unlawfully restrained trade in violation of antitrust.[54]

The district court concluded that there was no justiciable controversy because no team had committed to moving to Los Angeles, but the NFL nevertheless amended Rule 4.3 to require only a three-quarter approval for franchise relocation.[55] After the franchises voted 22-0 (with five abstentions) not to allow the Raiders to move to Los Angeles, Davis joined in the Coliseum's reactivated lawsuit, which resulted in a mistrial at first in 1981.[56]

The second trial resulted in a victory for the Raiders, their second momentous victory of the 1981 calendar year that included the franchise's Super Bowl XV win over the Philadelphia Eagles in January, as the court concluded that the NFL was not a "single entity" for purposes of antitrust defense.[57] The NFL argued that it was "a single entity, akin to a partnership or joint venture, precluding application" of antitrust laws preventing conspiracies in restraint of trade.[58] Once again, the key argument for a league contending its single-entity status is that such an arrangement encompasses a complete unity of interest among the parties involved.[59]

The court held that "[w]hile the NFL clubs have certain common purposes, they do not operate as a single entity. NFL policies are not set by one individual or parent corporation, but by the separate teams acting jointly."[60] In deciding so, the Ninth Circuit's opinion highlights the fact that, while shared revenues exist in an arrangement such as the NFL, the profits and losses remain the responsibility of the individual teams, which emphasizes the distinction between a true single-entity corporation and a professional sports league.[61]

Accordingly, the Raiders move to Los Angeles gained approval, as did their move back to Oakland in 1995. Similarly, other franchises in the NFL were able to relocate since *Raiders I* – the

[50] *Los Angeles Mem'l Coliseum v. Nat'l Football League (Raiders I)*, 726 F.2d 1381 (9th Cir. 1984), *cert. denied* 469 U.S. 990 (1984).
[51] *Id.* at 1385.
[52] *Id*.
[53] *Id.* at 1384.
[54] *Id.* at 1385.
[55] *Id.*; *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 468 F.Supp. 154 (C.D. Cal. 1979).
[56] Raiders I, 726 F.2d 1381, 1385.
[57] *Id.*; *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 519 F.Supp. 581, 585 (D.C. Cal. 1981); Timeline – Raiders Historical Highlights, http://www.raiders.com/history/timeline.html (last visited June 24, 2011).
[58] Raiders I, 726 F.2d 1381, 1388.
[59] Grow, *supra* note 12.
[60] Raider I, 726 F.2d 1381, 1388-1389.
[61] Rosenbaum, *supra* note 9, at 782.

Baltimore Colts to Indianapolis, the Cleveland Browns to Baltimore, the Los Angeles Rams to St. Louis, the St. Louis Cardinals to Phoenix, the Houston Oilers to Nashville.[62]

C. Another L.A. Story

In the early 1980s, the San Diego Clippers were also exploring relocation to Los Angeles before the National Basketball Association ("NBA") sued to prevent an unauthorized move by one of its franchises.[63] The parties eventually resolved the dispute by the Clippers agreeing to stay in San Diego and to conduct any further litigation in the Southern District of California, as opposed to New York, where the NBA operates.[64]

After the Raiders' successful relocation from Oakland to Los Angeles, the Clippers saw this as their opening to follow suit and join the Raiders in the City of Angels.[65] The Clippers went ahead with the move and to avoid any potential liability, the NBA scheduled the franchise's games in Los Angeles and amended its constitution by adopting Article 9A, a new rule governing franchise moves.[66] This new rule required a majority of the member teams to approve franchise relocations, whereas the previous Article 9 provided that no team could move into a territory in which another team operated without that team's approval.[67]

The NBA argued that it could assess limits on franchise movement, and that it could assess charges against the Clippers for their unauthorized move, asserting that Article 9A was a new constitutional provision codifying previous practice.[68] The Clippers argued that its move complied with Article 9 of the NBA Constitution and that under Article 9A, which had not yet been adopted at the time of its move, the moving franchise must receive permission from the team already in the territory.[69] The Clippers received such permission from the Los Angeles Lakers.[70] The NBA further argued that franchise relocation considerations must be under the purview of the league, while the Clippers argued that such consideration would be in violation of antitrust laws.[71]

The district court found no genuine issues of material fact and agreed with the Clippers, granting summary judgment to the franchise and finding that the NBA violated antitrust law.[72] This ruling showed professional sports leagues that they could not restrict relocation through the leagues own evaluations, as this violated antitrust. Since the Clippers moved to Los Angeles, other NBA franchises have also relocated,[73] showing that league restrictions are not as binding in court as lease agreements.[74] Major

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[62] Mitchell Nathanson, *The Irrelevance of Baseball's Antitrust Exemption: A Historical Review*, 58 RUTGERS L. REV. 1, 23 (Fall 2005).
[63] Ronald J. Shingler, *Antitrust Law and the Sports League Relocation Rules*, 18 GOLDEN GATE U. L. REV. 35, 36 (1988); *See Nat'l Basketball Ass'n v. SDC Basketball Club, Inc.*, 815 F.2d 562, 564 (9th Cir. 1987) (herinafter *Clippers*).
[64] Shingler, *supra* note 63; *See Clippers*, 815 F.2d at 564.
[65] Shingler, *supra* note 63; *See Clippers*, 815 F.2d at 564.
[66] Shingler, *supra* note 63,at 37; *See Clippers*, 815 F.2d at 564.
[67] Shingler, *supra* note 63; *See Clippers*, 815 F.2d at 564.
[68] Shingler, *supra* note 63; *See Clippers*, 815 F.2d at 564.
[69] Shingler, *supra* note 63; *See Clippers*, 815 F.2d at 564.
[70] Shingler, *supra* note 63; *See Clippers*, 815 F.2d at 564.
[71] Shingler, *supra* note 63 at 37-38; *See Clippers*, 815 F.2d at 564.
[72] Shingler, *supra* note 63 at 38; *See Clippers*, 815 F.2d at 564.
[73] In 1985, the Kansas City Kings moved to Sacramento; the Vancouver Grizzlies moved to Memphis in 2001; the Charlotte Hornets moved to New Orleans in 2002; and the Seattle SuperSonics moved to Oklahoma City in 2008.

League Baseball's exemption from antitrust laws give lip service to being able to prevent such relocations, but because only a major league baseball player has standing to challenge such an endeavor, MLB is just as powerless to prevent such moves.[75]

D. Vincent Piazza and the Tampa Bay Giants?

Such a relocation issue confronted baseball in the early 1990s when the San Francisco Giants were for sale. An ownership group headed by Vincent Piazza and Vincent Tirendi executed a letter of intent to purchase the Giants from Robert Lurie for $115 million in 1992, included in which was an agreement by Lurie to secure MLB approval to move the team to the Suncoast Dome in St. Petersburg, Florida.[76] Major League Baseball did not want the franchise to leave San Francisco so it recruited competing bids, of which the league accepted one for $100 million for the Giants to remain in place, leaving Piazza and Tirendi in the dust.[77]

Piazza and Tirendi filed suit against MLB, alleging, among other things, that MLB "monopolized the market for … teams and that Baseball has placed direct and indirect restraints on the purchase, sale, transfer, relocation of, and competition for such teams … [and] have unlawfully retrained and impeded [their] opportunities to engage in the business of Major League Baseball."[78] MLB asserted protection from such claims through the antitrust exemption created in *Federal Baseball* in 1922, seeking dismissal of the claim.[79]

The district court looked to the Supreme Court trilogy for guidance and specifically found that *Flood* narrowed the exemption to protecting only the reserve system after determining that the business of baseball was engaged in interstate commerce.[80] The *Piazza* court determined that no rule binds lower courts determining whether baseball's antitrust exemption applies in a particular case, and that after *Flood*, only the reserve system was exempt.[81]

The *Piazza* court, while remaining in compliance with Supreme Court precedent established in *Federal Baseball*, *Toolson*, and *Flood*, relegated MLB's antitrust exemption to irrelevancy.[82] Despite this fact, Commissioner Selig stated in a 1992 Senate Judiciary Committee testimony that after *Raiders I*, only MLB had the ability "to stop a franchise from abandoning its local community."[83] In reality, however, more baseball franchises have relocated than football franchises since 1950, rendering Selig's assertion pure fiction, as there has been more instability in baseball than the other major professional sports.[84]

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[74] *See* Elizabeth Odian, *Preventing Sonicsgate: The Ongoing Problem of Franchise Relocation*, 18 SPORTS LAW. J. 67 (2011).
[75] Mitchell Nathanson, *The Irrelevance of Baseball's Antitrust Exemption: A Historical Review*, 58 RUTGERS L. REV. 1, 23 (Fall 2005); 15 U.S.C.A. § 26b.
[76] *Piazza*, 831 F.Supp. at 422.
[77] Blevin, *supra* note 18; Lafferty, *supra* note *23*
[78] *Piazza*, 831 F.Supp. at 424.
[79] McMahon, Jr., Rossi, *supra* note 29, at 247.
[80] *Id*.
[81] *Id.* at 248. (The reserve system of Major League Baseball is still exempt from antitrust laws, but due to the league's collective bargaining agreement with the MLB Players Association, the reserve system has become obsolete.)
[82] Lafferty, *supra* note 23, at 1286.
[83] Nathanson, *supra* note 62, at 23.
[84] *E.g., Id.* at 24. Braves (Boston-Milwaukee in 1953 and then Milwaukee-Atlanta in 1966); Browns (St. Louis-Baltimore [becoming the Orioles] in 1954); Athletics (Philadelphia-Kansas City in 1955 and then Kansas City-Oakland in 1968); Dodgers (Brooklyn-Los Angeles in 1958); Giants (New York-San Francisco in 1958); Senators (Washington-Minnesota [becoming the Twins] in 1961); the expansion

The *Piazza* court essentially ruled that the exemption carried over from *Federal Baseball* would not be an umbrella exemption that turns a blind eye toward the dealings and business transactions of baseball.[85] As such, the exemption did not protect baseball's restrictions on team relocation.[86] After Judge Padova handed down his ruling, he ordered a trial to further explore whether he was incorrect about the scope of baseball's exemption to decide, essentially, whether the Giants could move.[87] On the night before the trial, the parties negotiated a $6 million settlement and the hearing never occurred, leaving open the question of team relocation falling under baseball's long-standing antitrust exemption.[88]

As seen in *Raiders I* and *Piazza*, the single-entity defense did not help prevent relocation. Professional hockey, however, has seen different results and has brought up another set of issues pertaining to franchise relocation.

E. Hockey's Issues

i. Single-Entity

In 1974, a United States District Court held that the National Hockey League ("NHL") did not violate antitrust law because the relevant market, for antitrust purposes, was determined to be professional hockey games in the United States and Canada.[89] For the purposes of antitrust analysis, the relevant market provides the basis on which to balance competitive harms and benefits of the restraint at issue, specifically focusing on the product market and the geographic market.[90] In the *Raiders I* and *Piazza*, the relevant market was determined to be the market for ownership of professional football or baseball teams, respectively, in the United States and Canada.[91]

In *San Francisco Seals v. NHL*, the court denied the Seals' claim that the league unlawfully prevented the franchise from relocating from San Francisco, Calif., to Vancouver, British Columbia, violating antitrust laws.[92] The court agreed with the NHL's single-entity defense, ruling that the league's teams were not competitors from an economic standpoint as the NHL was a single entity.[93]

The single-entity ruling has not held up in most major professional sports as there has yet to be a significant challenge to such an issue. The last challenge to a league's bylaw requiring a vote by the team owners to allow for franchise relocation was by the NFL's Raiders. That doesn't mean that there has not been exploration of other, more creative, ways to relocate a franchise.

ii. Bankrupt Pucks?

The Phoenix Coyotes created a new issue for analyzing franchise relocation by crafting an original way to circumvent antitrust scrutiny in the franchise's unsuccessful sale from Dewey Ranch Hockey, LLC to Jim Balsillie. The franchise, under its holding company, Dewey Ranch (for whom the

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Senators (Washington-Texas [becoming the Rangers] in 1972); Pilots (Seattle-Milwaukee [becoming the Brewers] in 1970) and the Expos (Montreal-Washington [becoming the Nationals] in 2005); Nathanson, *supra* note 62, at 24.

[85] Blevin, *supra* note 18, at 682.

[86] *Piazza*, 831 F.Supp. at 420.

[87] Rovell, *supra* note 22; *See Piazza*, 831 F.Supp. at 420 (E.D. Penn. 1993).

[88] *Piazza*, 831 F.Supp. at 420.

[89] *San Francisco Seals, Ltd. v. Nat'l Hockey League*, 379 F.Supp. 966, 969 (C.D. Cal. 1974).

[90] *Raiders I*, 726 F.Supp. at 1392; *See Kaplan v. Burroughs Corp.*, 611 F.2d 286, 291 (9th Cir. 1979).

[91] *Raiders I*, 726 F.Supp. at 1381; *Piazza*, 831 F.Supp. at 420.

[92] *Seals*, 379 F.Supp. at 967.

[93] *Id*. at 966.

cases are named), filed for Chapter 11 bankruptcy before agreeing to a sale to Balsillie.[94] In doing so, Dewey Ranch attempted to take advantage of the bankruptcy code's provision allowing a purchaser of the collateral held in bankruptcy free and clear of any contractual restrictions. This would have allowed Balsillie to purchase the Coyotes without the encumbrances placed upon the franchise by the NHL and would have allowed him to relocate the franchise to Hamilton, Ontario.[95]

The Coyotes argued that §§ 363 and 365 of the Federal Bankruptcy Code ("Code") allowed for such a transaction, while the NHL asserted the primacy of league rules.[96] Section 365 of the Code strikes down an existing agreement that somehow prevents the assignment of the assets.[97] An obvious example of this would be a non-assignment clause.[98] Section 363 of the Code allows for a sale free and clear of interests where "applicable nonbankruptcy law permits sale of such property free and clear of such interests" and where such an interest is in "bona fide dispute." Under this, Dewey Ranch and Balsillie argued that antitrust law was applicable nonbankruptcy law, and that the interest affected was their ability to relocate the team upon purchase.[99]

This issue was a matter of first impression for the court, which ruled that the NHL could not excise its relocation constraints from the "contract" because the requirements violated some portion of the Code or violated antitrust law.[100] For the antitrust issues, the court looked for guidance to the Ninth Circuit, which heard such claims regarding antitrust violations and franchise relocation in *Raiders I* and *Clippers*.[101]

In *Clippers*, the Ninth Circuit reached several important conclusions, including that for purposes of antitrust claims, professional sports league franchise movement restrictions are not invalid as a matter of law, and that the mere existence of terms and conditions for franchise relocations cannot violate antitrust law.[102] The *Dewey Ranch* court noted that antitrust claims are inherently fact-driven and more information would be necessary for the Coyotes and Balsillie to establish that there are "bona fide disputes" regarding the interests of the NHL and the claim that the franchise can be sold free and clear of the league's interests.[103] The court established that the "bona fide dispute" must not be a dispute on points of law, as there must be a factual basis for the dispute, and since there was no dispute on a point of fact (i.e., no denial of an application for relocation, only denial of transfer of ownership), the court rejected the claim under §363.[104] As such, the court found for the NHL and did not allow the sale free and clear of the relocation rights of the NHL through its application of nonbankruptcy law (antitrust law).[105]

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[94] Ben Fidler, *Coyote Ugly*, The Deal Magazine, November 2, 2009 issue (published October 30, 2009), available at http://www.thedeal.com/magazine/ID/031333/features/cover-stories/coyote-ugly.php, last visited June 4, 2011.
[95] David C. Blum, Elizabeth B. Vandesteeg, *Bankruptcy Court Faces NHL's Right to Choose: Phoenix Coyotes Decision and the Interplay of Bankruptcy and Sports Law*, AM. BANKR. INST. J., December/January 2010, at 54.
[96] Ryan Gauthier, *In Re Dewey Ranch Hockey*, 1 HARV. J. SPORTS & ENT. L. 181, 188 (Spring 2010); *In Re Dewey Ranch Hockey, LLC*, 406 B.R. 30 (Bankr. .D.Ariz. 2009).
[97] Gauthier *supra* note 96; 11 U.S.C.A. §365(f); *Dewey Ranch*, 406 B.R. at 30.
[98] Gauthier *supra* note 96; *Dewey Ranch*, 406 B.R. at 30.
[99] *I*Gauthier *supra* note 96; 11 U.S.C.A. §363(e); *Dewey Ranch*, 406 B.R. at 30.
[100] *Dewey Ranch*, 406 B.R. at 35, 37.
[101] *Id.* at 39.
[102] *Dewey Ranch*, 406 B.R. at 39; *Clippers*, 815 F.2d at 562.
[103] *Dewey Ranch*, 406 B.R. at 40.
[104] Gauthier, *supra* note 96; *Dewey Ranch*, 406 B.R. at 39.
[105] *Dewey Ranch*, 406 B.R. at 40.

To summarize, the Coyotes attempted a novel way to circumvent relocation restrictions, but found that the bankruptcy court did not need to directly address whether such restrictions by the NHL violate antitrust law because it ruled that Balsillie could not purchase the franchise due to his attempt at circumventing antitrust laws through the Code.[106] While in bankruptcy, Moyes and Dewey Ranch sold the franchise to the NHL, which currently owns the team while searching for a buyer to keep the team in Phoenix.[107]

As we have seen through the various case studies listed above, there are numerous antitrust issues pertaining to franchise relocation in a multiple-entity league framework. Due to other surrounding issues, any particular case can go either way. The reason for this is that courts will analyze the case at hand based upon precedence in that jurisdiction, antitrust laws, and the individual league's framework. The next case study examined involves the only league with a proven single-entity status.

F. Single-Entity Soccer

When MLS was formed in 1995 by Alan Rothenberg, President of World Cup USA 1994 and the United States Soccer Federation, it was done so in order to specifically avoid antitrust problems that other leagues had encountered.[108] Rothenberg consulted with antitrust counsel and settled on organizing a limited liability company ("LLC") to run the league, under which framework MLS owns all of the teams in the league and contracts with certain investors to relinquish some control over some team operations.[109]

In *Fraser v. MLS*, players sued the league claiming that it violated antitrust laws by agreeing not to compete for player services, to which the league countered with its single-entity defense, just as every professional sports league has when confronted with an antitrust suit.[110] The court ruled for MLS, noting that an LLC is like that of a single corporation and that because the league's structure is so centralized, it could not violate antitrust laws unless team operators were acting for their own interests and not those of the league.[111]

On appeal, the court in *Fraser II* said that it must work within the framework of existing circuit law and that several other circuits had rejected single-entity status for professional sports leagues.[112] As such, the First Circuit noted that the framework of MLS was more akin to a hybrid arrangement, somewhere between a single entity and a cooperative arrangement between competitors.[113] The court suggested that the league's operations should be subject to antitrust scrutiny, but that it had difficulty in finding guidance on how to decide on criteria for a hybrid case.[114] Thus, the court affirmed the district court's ruling in acknowledging that there didn't seem to be a better way to dispose of the case.[115]

Under MLS's single-entity status, the question of franchise relocation has not yet been brought to light, but because MLS has been ruled to be a single-entity, such designation is an automatic bar to antitrust scrutiny because a single entity is incapable of conspiring with itself.[116] Should a franchise relocation matter arise, MLS would likely look to *Raiders I* in order to see how a league should and

[106] Gauthier, *supra* note 96, at 198.
[107] Blum, Vandesteeg, *supra* note 95, at 88.
[108] *Fraser I*, 97 F.Supp.2d at 132, *aff'd*, 284 F.3d 47 (1st Cir. 2002).
[109] *Fraser II*, 284 F.3d at 53 (1st Cir. 2002); Garner, *supra* note 14, at 162.
[110] Garner, *supra* note 14, at 166-67; *Fraser I*, 97 F.Supp.2d at 131.
[111] Garner, *supra* note 14, at 167-68; *Fraser I*, 97 F.Supp.2d at 134-39.
[112] *Fraser II*, 284 F.3d at 55-56.
[113] Garner, *supra* note 14, at 168; *Fraser II*, 284 F.3d. at 58.
[114] Garner, *supra note* 14, at 168; *Fraser II*, 284 F.3d. at 57-58.
[115] *Fraser II*, 284 F.3d at 47.
[116] Garner, *supra* note 14, at 164; *See Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984).

should not address such an issue due to the Ninth Circuit's ruling and the NFL's subsequent rule changes.[117]

Since the First Circuit's ruling in *Fraser II*, where the court doubted MLS's single-entity status but did not overturn the district court's ruling as such due to lack of guidance on a hybrid arrangement, MLS has made several rule and organizational changes.[118] The most significant of these changes is that each franchise now has a team operator controlling it with MLS no longer solely operating any member franchise.[119]

The current structure of MLS now seems to resemble that of the NFL in *Raiders I* where the court denied the league single-entity status.[120] Until there is a challenge to this status in court, however, it seems clear that MLS will retain its single-entity standing based upon *Fraser I* and *II*.

With the above background in antitrust law pertaining to franchise relocation, it is still somewhat unclear as to whether a single-entity defense would withstand judicial scrutiny. This is due to the fact that there has not been a definitive ruling on the subject with regards to MLS and its single-entity status, nor has there been a relaxation of the antitrust exemption still enjoyed by MLB. As such, a sports league opening up shop today has a big decision to make as to how to structure its league while thinking ahead to possible franchise relocation issues and antitrust matters that may arise therefrom.

III. SINGLE OR MULTIPLE?

A. Single-Entity

As discussed above, MLS is the only current professional sports league in America to have had the single-entity defense upheld in its antitrust dealings.[121] While this status has yet to see a challenge, especially as pertaining to franchise relocation, there must be thorough scrutiny of the advantages and disadvantages to make a proper determination as to whether or not to base a league's structure on MLS's formula.

When Alan Rothenberg explored how to create MLS, he had the right idea – he consulted with antitrust counsel and potential investors in a concerted effort to avoid the antitrust problems that other leagues, like the NFL, had encountered.[122] In doing this, Rothenberg acknowledged that antitrust issues are inevitable in professional sports and he, and the rest of the league's founders, settled on forming an LLC to run the league.[123]

The benefits of forming an LLC to organize and run a professional sports league are evident in Rothenberg's process. This particular LLC, however, is tenuous and may no longer be able to stand as a single-entity if it is challenged in court.

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[117] *Garner, supra* note 14, at 166. In the history of MLS, one franchise has relocated, the San Jose Earthquakes became the Houston Dynamo in 2005. This relocation was not challenged in court. As such, while relocation is nothing totally out of the ordinary for MLS, having an antitrust challenge to a relocation attempt is. *See* Bernardo Fallas, *A Seismic Shift for MLS: Futbol Time in Houston*, HOUS. CHRON., Dec. 16, 2005

[118] *Id.* at 168-69.

[119] *Id.* at 169.

[120] *Id.* at 171.

[121] *See Fraser I*, 97 F.Supp.2d at 130; *Fraser II*, 284 F.3d at 47.

[122] *Fraser I*, 97 F.Supp.2d at132.

[123] *Id.*

A league under single-entity status has various franchises scattered throughout the country, with the league controlling not only its own operations, but also those of the franchises. One of the major arguments in favor of single-entity status for a sports league is that the franchise's revenues would diminish greatly if not for its membership in the league.[124] Gary Roberts, former sports law professor at Tulane University School of Law and current Dean at the Indiana University School of Law – Indianapolis,[125] argues that the wholly integrated joint operations of the NFL is solely responsible for all of the income derived from league operations.[126]

"[T]he realities of league economics and the inherent (as opposed to voluntary) co-productive nature of the clubs' only revenue-generating activity render the expression essentially meaningless for all relevant antitrust purposes," wrote Roberts.[127] In such a league, the decision as to how to allocate revenue rests solely with the league, as opposed to the individual franchises.[128] The league can only make such decisions on revenue – or in this case, franchise relocation – through the collective decision-making of the owners acting jointly.[129]

Owning a franchise in a professional sports league is not a complete separate ownership for antitrust purposes, as each owner comprises a portion of the league's voting and decision-making population, thus making the franchise owner a partial owner of the league as a whole.[130] Thus, Roberts argues, "reliance on the fact of separate team ownership as justification for refusing to treat the league as a single economic firm reflects a basic misunderstanding of the unique co-productive nature of that separate ownership."[131]

Under a single-entity framework, such as MLS, franchise relocation issues are solely decided by the commissioner or president of the league without input of the franchise owners.[132] This co-productive nature of a single-entity league is clear, but without a clause allowing the owners to vote on franchise relocation, a single-entity league may seem more like a dictatorship.[133]

Single-entity sports leagues, however, have not gained much – if any – traction in the judicial system because courts have generally been "unwilling to recognize that the need to cooperate…does not later manifest itself in unlawful conspiratorial behavior once the league is established.[134] "[U]nlike other industries where independent entities are capable of surviving alone, the same cannot be said of the multitude of team franchises that exist as part of a larger structure … It is only as a league, and not as

[124] *See* Lee Goldman, *Sports, Antitrust, and the Single Entity Theory*, 63 Tul. L. Rev. 751, 762 (March 1989); Gary R. Roberts, *The Single Entity Status of Sports Leagues Under Section 1 of the Sherman Act: An Alternative View*, 60 Tul. L. Rev. 562, 572 (Jan. 1986).
[125] Gary R. Roberts, http://indylaw.indiana.edu/people/profile.cfm?id=313, last visited July 1, 2011.
[126] Roberts, *supra* note 124; *See Raiders I,* 726 F.2d at 1402 n.1 (Williams, J., dissenting) ("no team could generate any revenue without drawing down upon the goodwill and reputation of the N.F.L. in the largest sense, or upon the status of any one scheduled opponent in an immediate sense, so that, in effect, all team revenue is jointly produced").
[127] Roberts, *supra* note 124, at 572.
[128] *Id.* at 573.
[129] *Id.*
[130] *Id.* at 576.
[131] *Id.*
[132] *See* Garner, *supra* note 14, at 172-74. Again, this has not yet been challenged for franchise relocation, but with *Fraser II* casting doubts on MLS's single-entity status, should another franchise wish to relocate, as Real Salt Lake explored doing in 2005, it seems clear that this framework would not hold up.
[133] *See* Rosenbaum, *supra* note 9, at 782; Roberts, *supra* note 44, at 576.
[134] Rosenbaum, *supra* note 9, at 782.

individual teams, that the professional sports industry can compete as a meaningful entertainment form."[135]

More recently, the Supreme Court reviewed yet another argument by a sports league for single-entity status in *American Needle v. NFL*.[136] In that case, a sportswear company sued the NFL claiming that it restricted the marketplace by not allowing its individual franchises to license its trademarks as it saw fit in order to maximize its revenue through its own intellectual property.[137] The NFL, of course, argued for single-entity status for purposes of licensing intellectual property, but the Court denied this argument – "[c]ommon interests in the NFL brand 'partially' unit[e] the economic interests of the parent firms, but the teams still have distinct, potentially competing interests."[138]

The Court further explained that "[32] teams operating independently through the vehicle of NFLP (NFL Properties) are not like the components of a single firm that act to maximize the firm's profits. The teams remain separately controlled, potential competitors with economic interest that are distinct from NFLP's financial well-being."[139]

As the most recent review of an issue defended by a sports league with a single-entity defense, *American Needle* shut off another avenue for a sports league attempting a single-entity defense. While this avenue was not for relocation purposes, *Fraser II*'s ruling fortifying MLS's single-entity status became even more tenuous, certainly ripe for a challenge.

Therefore, while there are plenty of benefits for a league to position itself as a single entity, it seems that such an attempt will eventually come under scrutiny and possibly lead to the demise of the single-entity framework. Currently, MLS's status as a single-entity has not come under fire through the Supreme Court, nor has it come under fire for a relocation issue, but if such a claim were to arise, MLS's single-entity status would be unlikely to hold up under such scrutiny.

B. Multiple-Entity

Just about every major professional sports league in America, despite their best attempts to argue otherwise, is set up as a multiple-entity group. Under most professional sports leagues' franchise agreements or league bylaws, a team wishing to relocate must garner the approval of a certain number of other franchise owners.[140]

The arguments above that show disadvantages of a single-entity sports league and the precedent contravening such a defense also display the benefits of a multiple-entity sports league. With regards to

[135] *Id.* at 783, fn. 229; *Compare Raiders I*, 726 F.2d at 1393 (describing the Super Bowl as "the ultimate NFL product"), *cert. denied*, 469 U.S. 990 (1984) *with* Roberts, *supra* note 44, at 232-33 n.40 (suggesting that "[b]ecause no single team is capable of production, and no two teams are capable of producing anything but single isolated games, the enormous utility created by the modern-day league product can only be produced by a league").
[136] *American Needle v. Nat'l Football League*, 130 S.Ct. 2201 (2010).
[137] *Id.* at 2207.
[138] *Id.* at 2213; (quoting Joseph F. Brodley, *Joint Ventures and Antitrust Policy*, 95 HARV. L.REV. 1521, 1526 (May 1982)).
[139] *Id.* at 2215.

[140] *See e.g.* NHL By-Laws, § 36, Transfer of Franchise Location; Constitution and Bylaws of the National Football League, Art. 4.3, effective Feb. 1, 1970 (2006 Rev.); Major League Baseball Constitution, Art. V, §§ 2-3; Shingler, *supra* note 63 (discussing to NBA Constitution Art. 9a and *Clippers*, 815 F.2d at 562).

relocation, leagues have integrated non-relocation agreements into their franchise agreements, as have cities into their lease agreements with the franchise.[141] While the lease agreements are often the most difficult issue to maneuver around for a franchise attempting relocation, such disputes are, in essence, contract disputes and not related to antitrust concerns because they are when dealing with the league itself.[142]

The most compelling argument in support of a multiple-entity league is purely precedent. The Supreme Court and Ninth Circuit[143] have rejected numerous attempts at a league's single-entity defense, most notably in *Raiders I*, *Clippers*, and *American Needle*.[144] With regards to franchise relocation, Courts have allowed for such movement, but the individual leagues have agreements in place to govern these instances.

While it may appear that the voting restrictions in place for franchise relocation in a multiple-entity league[145] seem to favor a single-entity league if you are the owner of a franchise wishing to relocate, this is not necessarily the case. In a single-entity league, such as MLS, only the commissioner has approval authority over such an issue, while the team owner/operators would not have the same rights to approve or disapprove.[146] Under a league organized through a multiple-entity framework, the other voting owners would be able to participate in approval of such relocation.

The key distinction between the two is that under a single-entity framework, the decision on relocation is left to one person who may decide either way on a whim, whereas the decision on relocation under a multiple-entity league would be left open to a majority (or greater) vote, allowing a fair chance for the franchise seeking relocation to state its case as to why such a move would be beneficial to his franchise and the league as a whole. Under this argument, the owners will be able to show their colleagues the need to maximize income from game-day revenues to fund escalating salaries, which would be more affordable to build new facilities rather than upgrading existing, outdated facilities, and that another city's fan base would provide greater overall economic return than his current locale.[147]

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[141] Martin J. Greenberg, Bryan M. Ward, *Non-Relocation Agreements in Major League Baseball: Comparison, Analysis, and Best Practice Clauses*, 21 MARQ. SPORTS L. REV. 7, 10 (Fall 2010) [hereinafter Greenberg].

[142] *See e.g.* Odian, *supra* note 74, at 83; Matthew J. Mitten, Bruce W. Burton, *Professional Sports Franchise Relocations from Private Law and Public Law Perspectives: Balancing Marketplace Competition, League Autonomy, and the Need for a Level Playing Field*, 56 MD. L. REV. 57, 70 (1997); Greenberg, Ward, *supra* note 141, at 8-9.

[143] The First Circuit, in *Fraser II*, seems to have been inclined to concur with the Ninth Circuit.

[144] *See Raiders I*, 726 F.2d at 1381; *Clippers*, 815 F.2d at 562; *American Needle*, 130 S.Ct. at 2201.

[145] The NFL and MLB both require three-fourths of the member clubs to approve of such a relocation (24 out of 32 for the NFL; 23 out of 30 for MLB); the NBA and NHL both require a majority vote (16 out of 30 for both the NBA and the NHL).

[146] *See* Garner, *supra* note 14, at 172-74; Letter from Don Garber, Commissioner, Major League Soccer, to Phil Anschutz, et al., Owner, Houston Dynamo (Apr. 4, 2008), *available at* http://images.chron.com/content/news/photos/08/04/16/dynamoletter1.pdf and http://images.chron.com/content/news/photos/08/04/16/dynamoletter2.pdf, last visited June 30, 2011 (showing that the league itself is in control of such relocation issues without tangible input from the league's operator/investors).

[147] Odian, *supra* note 74, at 69; *See* Bradley J. Stein, *How the Home Team Can Keep From Getting Sacked: A City's Best Defense to Franchise Free Agency in Professional Football*, 5 TEX. REV. ENT. & SPORTS L. 1, 2-3 (2003); Matthew J. Mitten, Bruce W. Burton, *Professional Sports Franchise Relocations from Private Law and Public Law Perspectives: Balancing Marketplace Competition, League Autonomy, and the Need for a Level Playing Field*, 56 MD. L. REV. 57 (1997).

Many of the owner's colleagues may either currently be, or previously have been, in similar situations and be able to empathize with the owner attempting to relocate his franchise, while the league's commissioner will most likely not have stood in those shoes.

Despite the best efforts of professional sports leagues, a single-entity defense has not been successful, although the league's current multiple-entity status has been beneficial to most franchises wishing to relocate. While some relocation attempts have been controversial and voted against by some league members,[148] they usually proceed as intended by the owner.[149] Therefore, it seems that a multiple-entity framework for a professional sports league is preferential to a single-entity league.

IV. CONCLUSION

The most important thing to recognize in this discussion is that, according to Roberts, "[s]eparately, the member teams of a league are nothing[,]" but together as an integrated league, they are a productive economic entity.[150] The reality behind this is that whether the league members are separately owned, as in a traditional multiple-entity league, or the league is in charge of all aspects of the on-field competition between teams, as through the single-entity structure, both frameworks show that without the league itself, the teams' inherent worth would be lower. As such, there is an essential common purpose behind both the league and all member franchises to maximize league revenue.[151] In order to effectively do this, however, there must be acknowledgment as to what is and is not working for the league as a whole; including the current locales of the franchises in the league.

Under the single-entity framework of MLS, the league's centralized headquarters seems to have full authority for recognizing and remedying such issues. Under a system such as the NFL's where courts have shown that the league is not a single-entity, the league has the ability to recognize such issues, but cannot unilaterally remedy a situation, such as a possible necessity to relocate a franchise, without a vote of the member franchises.

While franchise movement restrictions are necessary to protect fan interest and insure that no team is located in a market that is not capable of supporting a healthy franchise, such restrictions should be democratic and reasonable, not left to the whim of one person.[152] Therefore, while a multitude of antitrust issues will inevitably arise pertaining to a multiple-entity league, as antitrust laws relate to franchise relocation, a single-entity defense is likely to be defeated. Although there will still be issues in attempting to persuade other owners of the merit of a relocation bid, the fact is there is a higher possibility

[148] The Seattle Supersonics move to become the Oklahoma City Thunder in 2008 gained approval through a 28-2 vote, with the Dallas Mavericks and Portland Trailblazers voting against it. Rich Myhre, *How I came to ignore the NBA: Former Sonics writer Rich Myhre on why he doesn't care about the NBA playoffs and how he came to love Mark Cuban*, HERALDNET (May 23, 2011), http://www.heraldnet.com/article/20110523/SPORTS/705239901/1017/sports05. *See* Elizabeth Odian, *Preventing Sonicsgate: The Ongoing Problem of Franchise Relocation*, 18 Sports Law. J. 67 (2011).

[149] Not so for the Sacramento Kings this past April, as it is questionable whether the franchise would have received the requisite number of votes for a move to Anaheim, with at least two other franchises planning to vote against such relocation. *See* Sam Amick, *Lakers, Phil Jackson ramping up effort to oppose Kings' move*, SI.COM, http://sportsillustrated.cnn.com/2011/basketball/nba/04/07/kings.relocation.news/index.html, April 7, 2011, last viewed July 5, 2011.

[150] Roberts, *supra* note 125, at 594.

[151] *Id.* at 593.

[152] Bauer, *supra* note 34, at 282.

of such a move; whereas under a single-entity, an owner wishing to relocate his franchise is apt to have far less luck in his attempt.

Finally, as stated by Lee Goldman, "[s]ports leagues are big businesses. They are run for profit and have a great impact on the American culture. They should not be allowed to operate without the judicial supervision required in virtually every other business. When individual owners with independent economic interests form agreements, the reasonableness of those agreements should be subject to antitrust review."[153] As such, the multiple-entity framework is the best model for professional sports leagues to properly protect the league from possible antitrust violations, including franchise relocation.

[153] Goldman, *supra* note 124, at 797.